BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

HERC/Petition No. 15 of 2024

Date of Hearing : 16.12.2025
Date of Order : 27.02.2026

In the Matter of

Petition under section 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Regulation 67,68,69,70,71,72,84,85,86, 87,89,90 of the HERC (Conduct of Business) Regulation, 2004 and also the Electricity (Timely recovery of cost due to change of law) Rules 2021 for directing the respondents to compensate the petitioner for increase in project cost on account of change in law/force majeure, to allow the petitioner to change/amend the CUF payment of 1st running bill, refund of long term open access and SLDC charges, incentives as per Haryana Solar Policy 2019, in terms of the request for proposal and for other reliefs as prayed.

Petitioner
M/s. Giotech Power Private Limited

Respondents
1. Haryana Power Purchase Center (HPPC)
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
3. Haryana Vidyut Prasaran Nigam Limited (HVPNL)

Present on behalf of the Petitioner
1. Sh. Tajender K. Joshi, Advocate
2. Sh. Vikram Randhawa, Director
3. Sh. M.S. Randhawa, Director

Present on behalf of the Respondents
1. Ms. Sonia Madan, Advocate
2. Mr. Lovepreet Singh, Advocate
3. Sh. Gaurav Gupta, Xen, HPPC
4. Sh. Ashok Mathuria, Xen, HVPNL
5. Sh. Vijay Upadhyay, AE, HVPNL

Quorum

Shri Nand Lal Sharma	**Chairman**
Shri Mukesh Garg	**Member**
Shri Shiv Kumar	**Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Giotech Power Private Limited seeking settlement of disputes under Section 86 (1) (f) of the Electricity Act, 2003, primarily invoking Article 17 (Force Majeure events) and Article 20 (change in law), of the PPA dated 19.06.2020 (Date of CoD: 01.09.2022) executed between the petitioner and HPPC, in respect of its 1 MW Solar Power Plant selected on tariff based competitive bidding.

2. **Petitioner's submissions: -**

The petitioner has submitted that the facts leading to the filing of the present petition are as under: -

2.1 That Haryana Power Purchase Centre ('HPPC') the respondent No.1, herein issued a RfP for procurement of 300 MW solar power for long term basis from grid connected Solar PV power projects on tariff based competitive bidding process.

2.2 That the petitioner submitted online bid on 05-08-2019 for Rs.2.999/- per unit for 1 MW Capacity of Solar Power Plant and was allotted 1 MW capacity vide letter Ch-80/CE/HPPC/SE/C&R-1/300 MW dated 28-02-2020 in the name of Gurmitinder Kaur Randhawa.

2.3 That the Power Purchase Agreement (PPA) was executed between the petitioner and respondent No. 1 on 19-06-2020.

2.4 That as per PPA the Scheduled Commissioning Date of the Project was 18 months from the date of signing of the PPA. As such the SCOD of the project was 18-12-2021. During March 2020 there was outbreak of COVID-19 and due to this the respondent No. 1 extended the SCOD upto 18-05-2022. Thereafter the SCOD was further extended upto 17-08-2022.

2.5 That the petitioner installed and commissioned the said project on 19-08-2022 at village Tangori, Tehsil Shahabad, District Kurukshetra, Haryana and since then is regularly supplying the total power generated from the said project to the respondent.

DISPUTES: -

2.6 Reimbursement of increased Project Cost:-

2.6.1 That at the time of submission of the tender by the petitioner, the project cost was Rs. 2.90 crore per MW at AC and Rs. 3.48 crore at DC (1.20 DC/ 1 AC) but there occurred unprecedented, unforeseen and uncontrollable steep depreciation of INR vis-a-vis the USD, increase in container fare, increase in rates of other equipment as a consequence of Change in Law and Force Majeure Events and faults of the respondents due to which the cost of the project increased and the project was commissioned at a total cost of Rs.4,49,20,940/- excluding GST (Rs.5,04,62,640/- incl. GST). Due to outbreak of COVID-19 in the year 2020 the Government of India issued various notifications under section 10(2)(l) of the Disaster Management Act, 2005 imposing Nationwide / State-wise lockdowns and directed to maintain social distancing and to take other measures to control the Corona Virus. These measures / instructions amounted to change in law and contributed to increase in Project cost. Due to the above restrictions/ lockdowns and COVID-19 etc. the supply chain also broke down and this also increased the project cost. Due to above reasons there was

increase in cost of Plant & Machinery, Equipment, Material, Spare Part & Consumables.

2.6.2 That there were number of new approvals, consents which the petitioner was asked to obtain by the respondents for the project. The approvals sought by the petitioner under duress or otherwise were never given by the respondents in timeframe approved by this Hon'ble Commission. The dates of applying for permissions /approvals with dates on which the sanctions were accorded and the relevant guidelines issued by regulator in this regard are reproduced here under:-

Sr. No.	Particulars	Date of Applying	Date of Approval	Remarks
1.	Grid Connectivity	03-12-2020	28-04-2022	1. As per the HERC notification dated 11-01-2012 bearing no HERC/25/2012 Grid Connectivity is to be given within 45 days, whereas the same was given to us after 120 days. 2. Moreover as per clause no 2.2 of notification no 162-166/HERC/Tariff dated 15-04-2021 technical and final connectivity are not required (clause no 2.2) if generator has entered into PPA with HPPC and insisting on the same amounts to Change in Law.
2.	Financial Closure approval	21-12-2021	24-03-2022	No letter of having financial closure was given but only letter bearing Memo No. Ch-56/HPPC/SEC&R-1/LTP-III/GSR dated 24-03-2022 stating that documents for financial closure has been received.
3.	Connection Agreement	31-12-2021	13-05-2022	Connection agreement duly signed was received after a lapse of around 165 days vide letter Memo No. Ch-27/ISB-721 dated 13-05-2022, whereas plant was to be commissioned by 17-08-2022.
4.	Long Term Open Access Approval	03-12-2020 and again applied on 15-01-2022	15-07-2022	Long term open access was to be given within a period of 40 days as per clause no 4.3(i) notification no162-166/HERC/tariff dated 15-04-2021. Further as per clause no. 11(2) 3 a of HERC notification no HERC/25/2012 dated 11-01-2012 the same was to be given within a period of 40 days. However, we received LTOA approval after a gap of 20 months i.e., on 15-07-2022 whereas the plant was to be commissioned on 17-08-2022.
5.	Long Term Open Access Agreement	24-11-2022	Nil	Not yet signed
6.	Stand Alone Generator Approval	09-08-2022	No approval given	Not yet approved

2.6.3 That the Article 17 of the PPA deals with the force majeure events and Article 20 deals with the Change In law, reproduced hereunder: -

"…PPA Article 17 Force Majeure":

17.1 If any party hereto is wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through such as lightning, earthquake, drought, volcanic eruption, landslides, typhoon or tornado, radioactive contamination, fire, floods, invasion, insurrection, rebellion, mutiny, tidal wave, civil unrest, riot, epidemics, explosion, the order of any court, judge or civil authority, change in state or national law, war, any act of God or the public enemy or any other similar cause beyond its exclusive control and not attributable to its neglect or any failure or non-available of the Grid, not attributable to a default or negligence of the

buyer then and in any such event, such party shall be excused from whatever performance is prevented by such event to the extent so prevented and such party shall not be liable for any damage, sanction or any claim for any loss resulting there from.

17.2 Force Majeure Exclusions

Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;

b) Delay in the performance of any contractor, sub-contractor or their agents;

c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d) Strikes at the facilities of the Affected Party;

e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and

f) Non-performance caused by, or connected with, the Affected Party's:

i) Negligent or intentional acts, errors or omissions;

ii) Failure to comply with an Indian Law; or

iii) Breach of, or default under this Agreement.

g) In case, project is located outside the state of Haryana, Delay in Commercial operation date of project on account of commissioning of Transmission line or Grant of long-term open access shall not considered as Force Majeure.

17.3 The party invoking this clause shall satisfy the other party of the existence of such an event and give written notice within Seven (7) days to the other party and take all possible steps to revert to normal conditions. In case of failure to intimate within specified period, the event shall not be treated as force majeure event.

17.4 To the extent not prevented by a Force Majeure Event pursuant to Article 17.1, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable. The affected party shall give the other party regular reports on the progress of those remedial measures & such other information as the other party may reasonably request about the force majeure event.

17.5 If the force majeure event or its effect continues to be present beyond a period of 12 months, either party shall have the right to cause termination of agreement. In

such an event, this agreement shall terminate on the date of termination notice without any further liability to either party from the date of such termination."

"..2O.1 CHANGE IN LAW:

2O.1.1. 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.

20.1.2. *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.

20.2. Relief for Change in Law

20.2.1. The aggrieved party shall be required to approach the State Commission (HERC) for seeking approval of change in law and consequent impact on tariff.

20.2.2. The decision of State Commission to acknowledge a Change in law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the parties."

2.6.4 That the restrictions issued by Central/State Govt. through notifications/circulars under Disaster Management Act will amount to change of law as per Article no. 20 of the PPA.

2.6.5 That cost of Solar Power Projects increased steeply due to the following reasons on account of COVID-19 and the same amounts to change of law:-

a) Disruption in supply chain and suspension of economic activities and rising prices of solar equipment worldwide and created demand & supply gap world-

wide. In India also solar power plant equipment prices skyrocketed due to Covid-19.

b) Polysilicon is the critical raw material in solar PV manufacturing. Its reduction in price over the years has been the major factor contributing to decline in solar module prices. However, post July 2020, Polysilicon price in the global markets increased from $6.8/kg to $43/kg in November 2021 (six times increment) and there after these prices continued to increase.

c) Other disrupting factors in the PV supply chain include price hikes for commodities such as glass and metals, shortage of containers etc. Such disruptions were exacerbated further due to various Covid-19 induced lockdowns across the world which resulted in halting of manufacturing activity.

d) Supply demand mismatch is another major factor contributing to increase in solar module prices due to Covid-19.

e) During Q3 FY2021, several countries including China faced an energy crisis due to Covid-19. Main reasons were shortage of coal and associated supply chain disruptions in coal supply. The solar manufacturing industry, still highly concentrated in China, was affected by the rolling blackouts implemented by the government of the energy intensive industries. This crisis compounded an already difficult situation and contributed to increase in module prices. With Covid cases surging in China pre-post March 2022, the Chinese government has imposed strict lockdowns across several major provinces. Thus, this hindrance to solar manufacturing in China affected solar module prices in India.

2.6.6 That there was great impact on project cost of the Solar industry in India due to outbreak of COVID-19 and Change of law. The Solar industry was affected badly as there was unforeseen, uncontrollable, unprecedented increase in rates of the following equipment

i) Solar Module Prices / Panel Prices Increased substantially.
ii) Prices of other solar equipment such as Inverters, ACDB, VCB's, Transformer, increased substantially.
iii) Indian Currency depreciated against Dollar.
iv) Prices of Steel Increased.
v) Prices of Copper Increased.
vi) Prices of D.C. Cable Increased.
vii) Prices of A.C. Cable Increased.
viii) Prices of Conductors Increased.
ix) Prices of Cement/ Reta /Sand also increased substantially.
x) Prices of all other materials related to Installation of Solar Power Plant also increased substantially.

xi) Increase in fare of containers for shipment as containers were not available and were held up at different ports due to lockdowns;

xii) Increase in O&M expenses and wages.

xiii) Increase in steel prices raised structure cost many folds thus increasing the project cost.

2.6.7 That Govt. of India Ministry of Renewal Energy, vide Notification dated F.No.283/18/2020 Grid Solar dated 17-04-2020 directed that spread of Corona Virus be treated as “Force Majeure” and blanket time extension in schedule commissioning date of Renewable Energy Projects be allowed as per the above notification.

2.6.8 That the Ministry of Renewal Energy vide Notification dated F.No.283/18/2020 Grid Solar dated 29-06-2021 allowed extension on account of Second Wave of Covid-19 as force majeure. Thereafter, numbers of notification were issued by MNRE regarding Covid-19 as a force majeure in 2021.

2.6.9 That treating the Covid-19 as a force majeure event, the respondent Haryana Power Purchase Centre (HPPC) extended the date of C.O.D. of project up to 17-08-2022.

2.6.10 That the project was allotted to the petitioner in February 2020, the petitioner invited quotations from the EPC Contractors as detailed hereunder for Engineering, Procurement and Commissioning of the project complete in all respects. Quotations were received through email and proof of the same is attached herewith.

Sr. No.	Quotation Particulars	Date of Quotation	Rate	Annexure
1.	Vikram Solar	23-06-2020	Rs.30/- per watt excluding GST@8.9% dollar @75.88/-	Annexure -P-42
2.	Vibgyor energy	30-06-2020	Rs.31.18/- per watt excluding G.S.T @8.9%	Annexure -P-43

2.6.11 That the petitioner could not negotiate the rates with them due to Covid -19. In case there would have no Covid-19/ Change of law the rates for Design, Supply, Installation, Transportation, Testing and Commissioning of 1.00 MW of EPC Contractors would have been approximately Rs.2.90 Crores per MW after negotiations with EPC contractors.

2.6.12 That the petitioner invited fresh quotation from EPC contractors for Design, Supply, Installation, Transportation, Testing and Commissioning and the details of the quotations are as under:-

Sr. No.	Quotation Particulars	Date of Quotation	Rate	Annexure
1.	BVG Clean Energy Ltd.	07-01-2022	Rs.51.00/- per watt excluding GST@13.9%	Annexure - P-44
2.	ASUN	10-01-2022	Rs.50.56/- per watt including GST@13.9% but excluding accessories and panels for termination of power at client HT side, site levelling, fencing, evacuation, boundary wall ,gate ,water and drainage etc.	Annexure - P-45

2.6.13 That from the above quotations it is clear that project cost increased from Rs.29/- per watt excluding GST@8.9% in the year 2020 to Rs.51.00/- per watt excluding GST@13.9% in January 2022. Moreover, getting the work executed from EPC

Contractor was costing much higher so the petitioner decided to purchase the Plant & Machinery and other Balance of Systems directly from the Manufacturers/distributors and executed the erection of the plant through I&C Contractor.

2.6.14 That the comparative chart of the above quotations for solar modules are as under:-

Sr. No.	Quotation Particulars	Date of Quotation	Capacity	Cost of per watt	Cost of 1.20 MW	Annexure
1.	M/S J.S. Solartech India Pvt. Ltd.	06-08-2020	1.00 MW (A.C) & 1.20 (D.C)	Rs.18.70/-per watt excluding GST@5%	Rs.2,24,00,000/- excluding GST@5%	Annexure P-46
2.	Vikram Solar	10-11-2021	1.00 MW (A.C) & 1.20 (D.C)	Rs.26.50/-per watt excluding GST@12%	Rs.3,18,00,000/- excluding GST@12%	Annexure P-47
3.	M/s Ornate Agency Pvt. Ltd.	20th January 2022	1.00 MW (A.C) & 1.20 (D.C)	Rs.23.25/-per watt excluding GST@12%	Rs.2,79,00,000/- excluding GST@12%	Annexure P-48

2.6.15 That from the above chart it is clear that rates of Solar Panels increased by Rs.55,96,000/- from 06-08-2020 to January 2022 and increase is much higher if the same is taken from the date of biding of the tender i.e., 05-08-2019.

2.6.16 That the rates of Canadian solar Panels were having better specifications and also the rates were much less than the rate of domestic solar panel with better specifications, so the petitioner placed order for panels on 20-01-2022 and paid Rs.3,13,58,790/- for the same.

2.6.17 That at the time of bidding for the tender, the US dollar against Indian currency was at Rs.69/- in 2019 and the same rose to Rs.74.60/- in January 2022 and had to pay extra sum of Rs.25,37,795/- on account of the same.

2.6.18 That the global shipping cost across major routes in the world increased from $1300 per container to peak around $20000 in 2022 due to shortage of container on account of Corona Virus.

Container cost for Asia in August 2019	:	$1407/- per container
Container cost for Asia in March 2022	:	$10361/-per container
Increase in charges of one Container	:	$8954 /- per container
No of container	:	4
Dollar Vs. Rupees Exchange Rate in 2019	:	68
Dollar vs. Rupees Exchange Rate in 2022	:	76
Total cost of 4 container in 2019	:	$1407 x 4 = $5628/-
Total cost of 4 Containers in rupees 2019	:	$5628 x 68 = Rs.3,82704/-
Total cost of 4 container in 2022	:	$10361 x 4 = $41444/-
Total cost of 4 Containers in rupees 2012	:	$41444x76= Rs.31,49,744/-
Increase in cost of 4 container	:	Rs.27,67,040/-

Therefore, there was increase in panels cost amounting to Rs.27,67,040/- on account of increase in container fares.

2.6.19 That there was a steep rise in equipment cost such as inverter, transformer, ACDB, conductors, A/C and D/C cables, cement, reta, bajri, steel, copper and other materials.

2.6.20 That the project cost in 2020 was at Rs.2.90 crores for 1.00MW Solar Power Project. In order to obtain 1.00 MW A.C. the D.C. side has to be taken at 1.20MW. Accordingly, the cost of 1.20MW/D.C. side and 1.00MW/A.C. side has been taken at Rs.3.48 Crores excluding G.S.T. @5% in 2020. In 2022 due to uncontrollable, unforeseen and unprecedented steep depreciation of INR viz a viz USD and force majeure events/change of law and increase in cost of other equipment and material, the cost of 1.20MW/D.C. side and 1.00MW/A.C. side increased to Rs.5,04,62,640/- including G.S.T. of Rs.55,41,700/-. Project cost without G.S.T. comes to Rs.4,49,20,940/-. Therefore, net increase in project cost comes to Rs.1,01,20,940/- without G.S.T. Difference on account of change of law in GST is being claimed separately.

2.6.21 That it is further submitted that the petitioner also suffered a loss of Rs.7,51,385.72/- as on 27-02-2023 as per C.A. Certified Balance Sheet instead of getting a return of 14% on the equity i.e., Rs.31,44,770/- as provided in Haryana State Electricity Regulatory Commission Regulation no. HERC/40/2018 dated 24-07-2018.

2.6.22 That from the above, it is clear that the petitioner is entitled to be compensated for Rs. 1,01,20,940/- with interest @19.50% p.a. with monthly rest (as per MSME Act) from the date of investment upto the date of Payment by HPPC. The Hon'ble Supreme Court of India in Energy Watchdog Vrs CERC (2017) 14 SCC 80 has held that a statutory document issued under an Act and having the force of law to be covered under the expression Change in Law and the consequential benefits of change in law can be claimed thereupon. The Hon'ble Supreme Court further held that any change in any consent, approval or license available or obtained for the project, otherwise than for the default of the seller, which results in any change in any cost of the business of selling electricity is change of Law.

2.6.23 That alternatively, the petitioner is entitled to get increased levelized tariff for the above said amount for the project for the period of Power Purchase Agreement, as per the parameters specified in the HERC RE Regulations.

Other disputes: -

2.7 Payment of 1st Running bill amounting to Rs.1,90,509.98/- dated 17-09-2022.

a) That the petitioner submitted the 1st Bill amounting to Rs.1,90,509.98/- on 17-09-2022 in accordance with the provisions of RFP and PPA for the month of

August for the period from 19-08-2022 to 31-08-2022 to Chief Engineer HPPC through email on 17-09-2022 & by registered post on 17-09-2022.

b) That the petitioner sent many reminders to the respondent praying for payment of the above said first bill dated 17-09-2022.

c) That thereafter the respondent Vide its letter memo no. Ch-06/SAO/HPPC/333 dated 06-01-2023, denied the payment of the bill on the ground that no payment can be made prior to the date of Commissioning of the plant in view of terms and conditions of PPA and further that the energy supplied by the petitioner has been considered as dump energy. The original bill submitted by the petitioner was returned.

d) That there is no clause in the PPA which authorizes the respondent to treat any energy supplied by the petitioner at the interconnection point as dump energy.

e) That the petitioner is a registered MSME unit as per the MSME Act, 2006. The petitioner is entitled to get the above said amount of Rs 1,90,509.98/ being the payment of first bill along with interest @ 19.5% p.a.as per MSME act 2006. The Bank rate as per the RBI latest notification stands at 6.50%.

2.8 Compensation on account of increase in GST being Change of Law & Carrying Cost as per clause 20 of PPA.

a) There was an increase in G.S.T. from 5% to 12% on Solar Panel & Inverters vide Govt. of India notification no. 8/2021 Central Tax "Rate" dated 30-09-2021. It is clear that the said notification came after the last date of bid submission which was 02-08-2019.

b) That Ministry of New & Renewable Energy vide its notification F.No.283/3/2018 Grid Solar Part 4 dated 27-09-2022 has recognized hike in G.S.T. rate as change of law.

c) That it is clear from the notification issued by the MNRE that the last date of bid submission has to be on or before 30-09-2021 and the SCOD has to be on or after 01-10-2021. In the present case the last date for submitting the bid was 02-08-2019 and the Scheduled Commissioning Date, as extended from time to time, was 17-08-2022.

d) That due to change in GST rate from 5% to 12%, the petitioner paid Rs. 20,85,714 more as GST on Solar Panels and Inverters.

e) That the petitioner is a registered MSME unit as per the MSME Act, 2006. The petitioner is entitled for an amount of Rs. 20,85,714 on account of Change of law and also entitled to get Carrying costs @ 19.5% P.A. with monthly rest from the date of above payment made by the petitioner to the date of reimbursement by HPPC.

f) That the Hon'ble CERC in petition No.45/MP/2019 titled as Talettutayi Solar Projects One Pvt. Limited Versus Solar Energy Corporation of India Limited and others, decided on 10-08-2021, has dealt with the following issue: -

"78. Hence, we hold that the invoices raised up to COD pertaining to supply of goods can be claimed under Change in Law on account of the GST Laws since the liability of SECI/ respondent Discom for payment of purchase of the power from the petitioner starts from the Commercial Operation Date (COD).

79. There is a possibility of a few services related to goods procured up to COD, to be completed on the last date of COD. Hence, in case of 'supply of services' related to goods procured up to COD completed on the last day of COD, the invoices can be raised within 30 days after COD. Thus, in case of supply of services related to goods procured up to COD, the invoices are to be raised within 30 days of supply of such services, which cannot be later than 30 day of COD and the petitioner is entitled to be compensated accordingly….".

g) That further the Hon'ble CERC in a petition No. 174/MP/2022, titled as M/s. Clean Solar Power (Jodhpur) Private Limited Versus Solar Energy Corporation of India Limited and others, decided on 17-05-2023, has held as under: -

"….36. In view of the above, the petitioner shall be entitled for compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA along with carrying cost on account of Change in Law event upto the date of reimbursement by the respondents. The petitioner, in the instant petition shall be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations, 2017 or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the petitioner 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.

37. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure on account of introduction of Amendment Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate. The Commission further directs that the respondent JBVNL is liable to pay to SECI all the above reconciled claims

that SECI has to pay to the petitioner. However, payment to the petitioner by SECI is not conditional upon the payment to be made by JBVNL to SECI…".

2.9 Increase in O&M expenses and wages due to change of law.

a) That there was increase in O&M Expenses due To Change of GST rates from 5% TO 12% and the same amounted to change of law. In case of solar power plants 70% of the project cost is considered of panels and inverters and balance of 30% is of balance of system. Therefore, GST on complete project cost was considered at 8.89%in 2019 and the same has gone up to 13.8% after increase of GST from 5% to 12%. Accordingly, GST on operation and maintenance has gone up and the same be reimbursed keeping in view the annual escalation.

b) That due to change of law on account of wages and GST additional burden comes to Rs 81,949/ per year for the year 2022-23 and thereafter the petitioner is entitled for the same with interest as per MSME ACT 2006 with monthly rests from the date of above payment made by the petitioner to the date of reimbursement by HPPC.

2.10 Refund of Long-Term Open Access/Connection Agreement Charges.

(i) There is no clause in PPA which relates to Long Term Open Access that directs the developer to sign Long Term Open Access (L.T.O.A.) and no draft L.T.O.A. Agreement was uploaded with the tender documents. The petitioner applied for 1 MW Solar Power Plant under category 2. As per the above clause, the petitioner cannot install invertors of more than 1 MW Capacity as such the production as per PPA is restricted to 1 MW and the entire generation is to be purchased by HPPC and the question of selling it to third party does not arise. Moreover, the petitioner is not using transmission line of the Discom/HVPNL as the complete expenditure on laying of dedicated Transmission line from the Solar Plant to the HVPNL sub-station Nalvi has been borne by the petitioner.

(ii) That as per Chief Engineer/SO & Commercial letter memo no Ch-20/ISB-721 dated 26-04-2021 (ANNEXURE -P-80) it was clarified that no execution work at the site can be taken up without LTOA approval and signing of the Connection Agreement. Since the plant was getting unduly delayed on account of delay of the department, so the petitioner applied for Long Term Open Access Approval under duress otherwise the bank guarantees would have been got en-cashed by the department on account of non-achievement of C.O.D. The petitioner applied for LTOA on 03-12-2020(ANNEXURE –P-81) and again on 15/01/2022 bearing letter no. Giotech/55/2021-22 (ANNEXURE –P-82) but the same was granted on 15/07/2022 vide Chief Engineer/SO and

Commercial memo no ch-59/ISB-721(ANNEXURE –P-83) after a gap of 6 months.

(iii) That the petitioner has incurred following expenses, amounting to Rs. 2,38,805/-, which otherwise were not required to be spent as LTOA is not applicable.

i. LTOA Charges Rs.2,36,000/-

ii. Bank Guarantee Charges from 15-01-2022 to 14-01-2023 Rs.1,373/-

iii. Extension of Bank Guarantee Charges from 15-01-2023 to 14-01-2024 Rs. 1,432/-

(iv) That the petitioner applied for LTOA approval on 03/12/2020 & 15/01/2022 but the same was given only after a gap of 20 months, whereas as per HERC notification clause no 4.3(i) notification no162-166/HERC/tariff dated 15-04-2021, the same is to be provided within 40 days.

(v) After the issue of LTOA approval letter, petitioner was asked to sign LTOA agreement and the same was duly signed under duress and submitted in the office of Nigam on 24-11-2022 for the signatures of the Nigam Officers. Till now the petitioner has not received a copy of the same duly signed by the Nigam Officers and no objection has either been raised.

(vi) That the petitioner was asked by HVPNL to sign the connection agreement and for grid feasibility a sum of Rs 1,00,000/ was paid on 03-12-2020 vide letter no Giotech/19/2020 even though there was no provision in the power purchase agreement for the same.

(vii) The Haryana Electricity Regulatory Commission vide notification No 162-166/HERC/Tariff dated 15-04-2021, had issued a detail procedure for grant of connectivity and intra state open access, which provides that same is not required for Generators who have entered into PPA with HPPC. The relevant clause no 2.2 is reproduced as under for perusal of Hon'ble Commission.

Clause No 2.2:

Application for connectivity of generation project based on renewable energy sources shall be processed in two stages (except for the generators who have entered into an PPA with HPPC, Panchkula):

a) Stage-I Technical Feasibility

b) Stage-II Final Connectivity.

(viii) That since LTOA and Connection Agreement were not applicable, the petitioner is entitled to get refund of the above amount Rs. 2,38,805/- as LTOA charges and Rs.1,00,000/- as connectivity charges along with interest @19.5% with monthly rest as per MSME Act 2006.

2.11 Refund on account of SLDC Charges.

a) There is no clause in PPA or RfP which relates to payment of SLDC charges by the developer. Since there was no clause in the tender documents or Power Purchase Agreement for payment of SLDC charges therefore the same will amount to Change of Law as per Article 20 of PPA. Moreover, LTOA is not applicable on the petitioner, therefore SLDC charges cannot be levied on the petitioner.

b) That the petitioner has been receiving the demand for SLDC Charges in accordance with HERC order dated 30-01-2023. Whereas, the above said notification dated 30-01-2023 as well as LTOA is not applicable to the petitioner, as the petitioner is not using Discom's transmission line.

c) That the petitioner is entitled to get refund of Rs.25,822/- with interest @19.50% p.a. with monthly rest (as per MSME Act) from the date of payment to the date of reimbursement.

2.12 Telemetry System / Infrastructure requirements.

a) There is no clause in PPA/Tender documents that directs the developer to install telemetry. Hon'ble Haryana Electricity Regulatory Commission (HERC) vide order in case no HERC/PRO-42 of 2020 dated 08-03-2021 approved the procedure for Forecasting Scheduling and Deviation settlement of Solar Wind Generation. Since there was no clause in the tender documents or Power Purchase Agreement for providing of telemetry and the order of Hon'ble commission will amount to Change in law as the order of the Hon'ble Commission is dated 08-03-2021 and tender was applied in 2019. More over telemetry is not applicable on the petitioner, as the petitioner has installed 5 String Inverters and Real Time data of inverters is not technically possible.

b) That the petitioner sent a letter bearing no Giotech/115/2022-23 dated 18/04/2022 to SLDC asking for certain information about telemetering system but no reply was received.

c) That the petitioner under duress, even submitted the telemetering drawing to SLDC for approval and requested to approve the drawing. The petitioner was told that drawing is not being approved due to space constraint and the same is also there in procedure circulated by HVPN, Annexure -II (d) under the head notes and the same is reproduced below and also that the petitioner is not covered under telemetering.

"….Note(s):

Due to space constraint in SLDC Building as mentioned above, it shall not be binding upon the SLDC to consider/approve an independent telemetry system/infrastructure for each and every RTUs/SAS/RES vendor(s)/system integrator as proposed by them as an alternative to the above, RTUs/SAS/RES vendor(s)/system integrator(s) may use on shared basis, the existing data integration facilities as provided, as per the terms & conditions mutually agreed upon….".

d) That in the present case the petitioner has installed 5 small string inverters of 200 KVA each and it is technically impossible for the petitioner to provide the real time data at Inverters level so according to the above Forecasting, Scheduling and deviation settlement for Solar and wind generation Regulation 2019 are not applicable on the petitioner. Even, CERC Regulations circulated vide notification no L-1/94/CERC/2011 dated 6th February also exempts solar power plants upto 5MW from telemetering and scheduling and Dispatch code and the same is reproduced as under:-

"….Solar Generation Plants with capacity of 5 MW and above and connected at connection point of 33kv and above shall be subjected to Scheduling and Dispatch Code specified under Indian Electricity Grid Code (IEGC)—2010, as amended from time to time….".

(Chapter 1 clause no 11 at serial no. 4)

Under section 86 (1) (h) of the Act, State Commissions are mandated to specify Grid Code consistent with Grid Code specified by the Central Commission.

Even Hon'ble Supreme Court of India in civil appeal no 2014 of 2006 has duly recognized in its judgement dated 17/08/2017 that State commissions are mandated to specify grid codes consistent with Grid code specified by the Central commission in the matter of Central Power Distribution Company and Others Vs Central Electricity Regulatory Commission. Accordingly, the HERC and HVPN have also exempted plants with string inverters from the purview of telemetering.

e) That the petitioner wrote number of letters pleading that it has installed string inverters so Forecasting, Scheduling, and deviation settlement for Solar and wind generation Regulation 2019 do not apply to us. As the petitioner did not receive any reply to the letters, so the petitioner moved an application to then Managing Director vide letter no. Giotech/179/2022-2023 dated 16/07/2022 and Hon'ble Managing Director formed a committee to examine the proposal.

Accordingly, the petitioner was called to present its views to the committee on 16/07/2022 in the office of Director (Technical). The petitioner produced respective orders/regulations to the committee, and the petitioner was verbally told that it is exempt from telemetry. Accordingly, Hon'ble Director Technical conveyed the same to SLDC Panipat that they should not insist on telemetering and accordingly charging code was issued to the petitioner and the energy from the plant was injected into the Grid on 19/08/2022. The petitioner requested the committee to pass orders on its representation but the petitioner was told that since it is to be processed by the concerned department so it will take some time.

f) In case HPPC/UHBVN/HVPNL are still of the view that telemetry is must than the same will amount to Change of law and we must be reimbursed fixed and variable monthly charges as and when these are incurred by us against the receipts.

2.13 VCB at the Sub-station.

i. That it is submitted that as per Article No 6 of the Power Purchase Agreement, the petitioner was supposed to purchase and install VCB at sub-station, but the petitioner was not allowed to do the same rather was forced to use obsolete VCB at the sub-station.

ii. That the petitioner approached XEN (T.S.) Ambala and SSE Sub-station to allow us to install our VCB at sub-station as spare bay was available at sub-station (as per power purchase agreement Article no. 9). The petitioner was told that it will be allowed to synchronize the plant with the grid only if it buy old VCB from the respondent and pay the price of New One.

iii. That the petitioner vide letter no Giotech/188/2022-23 dated 03-08-2022 showed its inability to buy 2nd hand Old/discarded VCB and pay the price for new one.

iv. That thereafter the XEN (T.S.) and S.D.O. (SSE) agreed that as a stop gap arrangement, the petitioner will be allowed to synchronize the plant with old VCB and in the month of September 2022 new VCB will be provided as per specifications and having compatibility with the plant.

v. That the petitioner was asked vide memo no Ch-129/PT-27 dated 17-08-2022 of XEN (M&P) to deposit Rs.39,875/- as testing charges of old VCB, which were deposited on 17-08-2022.

vi. That the petitioner was not allowed to charge the plant on 17-08-2022 and was only allowed testing of the transmission line for short period even though charging code was obtained on 17-08-2022.

vii. That it was only on 19-08-2022, that the petitioner was allowed to charge the plant and inject energy into the grid after realization of the Draft.

viii. That since the petitioner was forced to connect the plant to underrated, discarded/written off VCB at the Sub-Station, so there were number of tripping of the plant, as a result the petitioner lost its revenue. All the data of the tripping on account of fault at the sub-station are there in MRI reports already submitted to the respondent on monthly basis. The petitioner is entitled to get reimbursed the production loss suffered on account faults of UHBVN/HVPNL due to these tripping with interest as per MSME Act 2006.

2.14 Reimbursement of expenses on account of blast at CT/PT enclosure at the Sub-station on account of non-approval of CT/PT ratio.

a) That the petitioner was forced to go in for lower CT/PT ratio i.e., 50/1/1 in violation of UHBVN sales circular no U-47/2017 circulated vide memo no Ch-5/TR-90/ROL/CE/C-1 dated 16-11-2017.

b) That instead of taking decision on the request of the petitioner seeking CT/PT of higher ratio as per the circulars quoted above, the matter was referred to Chief Engineer (Design). SE (Design), vide its letter no Ch-427/DGS-318 /R&I /Design dated 18/01/2023 has clearly stated that existing CT may be allowed to be replaced with CT of suitable ratio, so that tripping is avoided. Further SE /STU vide its letter bearing Memo No Ch-116/ISB-721 DATED 20-02-2023 addressed to Superintending Engineer/ M&P and Superintending Engineer/TS to replace the CT with appropriate ratio. However, the matter was being delayed on one count or another for reasons best known to the department. On 21-03-2023 only, the plant tripped six times as the current rose to 60 amp thus causing huge financial loss to the petitioner. Plant is tripping regularly due to inadequate CT/PT ratio.

c) Since the department did not allow change of CT and PT of a higher ratio, blast took place at CT and PT enclosure and the same was conveyed to XEN M&P C.C. Division, Dhulkote, Ambala on 02-11-2023 requesting them to remove the seal of the enclosures so that damage could be assessed and the damaged equipment could be replaced. Team of official of HVPNL/UHBVN visited the site on 06-11-2023 and removed the seals of the enclosure, CT and PT.

After the seal was removed it was found that following parts have been damaged.

i) CT.
ii) PT.
iii) Enclosure.
iv) Jointing Kits.

v) Metallic Thimble
vi) CMRI Metering Cable.
The total expenditures incurred on this same is Rs. 2,21,128.00.

Power generation loss from 06-11-2023 to 11-11-2023 i.e., for 6 days based on average daily production i.e. 5500 units comes to 33000 units. As such, 33000 units have been lost @2.999/- per unit amounting to Rs.98,967/- and a sum of Rs.2,21,128/ was spent on purchase and installation of New Equipment and incurred total loss aggregates to Rs.3,20,095/-.

As per Article 6 (6.1.5) of the PPA, the interconnection / metering point shall be located at the Sub-Station of Haryana Discom / STU. However, the petitioner was not allowed to install metering and CT/PT enclosure inside the building of Sub-Station rather was forced to install the same outside the building where there was accumulation of water and was low lying area having humidity, which is in violation of HERC notification no. 162-166/HERC/Tariff dated 15-04-2021 and also in violation of HERC orders in petition no. HERC/PRO-3 of 2021.

Again, HVPNL authorities were requested to allow to install metering CT/PT unit inside the sub-station but the same was not allowed. HVPNL authorities were also requested to install oil bound CT/PT metering unit on H-pole and with great difficulty were allowed to do the same. HVPNL authorities took nearly 10 days to approve for the change of CT/PT having the same specifications. Finally, the approval was obtained on 15-01-2024 and online and offline testing was got done and Plant was charged on 16-01-2024. A sum of Rs. 2,18,897 was incurred on replacement of new equipment.

Further generation of 55,000 units was lost in 10 days taking average generation of 5500 unit per day. Therefore, the financial loss due to loss of Generation comes to Rs.1,64,945/- apart from the amount of Rs.2,18,897/- spent on the purchase and installation of new equipment thus totaling Rs.3,83,842/-.

Thus, total loss amounting to Rs.7,03,937/- (Rs.3,20,095/-+ Rs.3,83,842/-) was incurred on account of the department, so the same be reimbursed to us with interest@19.5% with monthly rests as per MSME Act 2006.

2.15 Refund of Stand-Alone Generator charges.

a) There is no clause in PPA/Tender documents that directs the developer to appoint QCA / Stand-alone generator. The HERC, vide its order dated

08.03.2021 approved the procedure for Forecasting Scheduling and Deviation settlement of Solar and Wind Generation. Since there was no clause in the tender documents or PPA for Stand-Alone Generator/QCA, the order of Hon'ble Commission dated 08.03.2021 will amount to Change in law as the tender was applied in 2019.

The appointment of QCA involves huge recurring expenditure, as detailed below:

1) Monthly charges Rs.36,000/- per annum by QCA Agency as per quotation and the same will be enhanced by 5% on yearly basis.
2) Registration charges for Stand Alone Generator amounting to Rs 10,000/- plus Rs1800/- as GST.
3) QCA charges to open access amounting to Rs 23,600/- along with bank guarantee of Rs 20,000/-.
4) There is no internet connection available in the area where the plant is located in remote area and the petitioner will have to go for leased line.
5) No penalty should be levied as it is practically impossible to predict the weather and that too for 1 MW solar power plant and production gets adversely affected due to weather. Local conditions during harvesting season such as burning of residual crop also affect the production and it is practically impossible to predict weather conditions.

b) That even though approval of Stand-Alone Generator was not required in the case of the petitioner but still the petitioner applied as a stand-alone generator (under duress) on 09/08/2022 and deposited Rs.10,000/- as registration charges. All the documents as prescribed as per clause no 9 of HERC and clause no 9 of HVPN procedure for Forecasting Scheduling and Deviation settlement of Solar Wind Generation were submitted with the above application. As per clause no 9 para (vi) of the above regulations, time for registration of Stand-alone generator/QCA is 15 days from the date of receipt of all documents. Since no query was raised nor the petitioner was approved as stand-alone generator, so the petitioner visited Nigam/Discom office and it was verbally told to deposit Rs.1,800/- as GST and the same was deposited on 30/08/2022.

c) That in this regard the petitioner met the various officers attended the meeting office of S.E. (Design) SLDC at Panchkula and no concrete decision was received. Thereafter a meeting was held in the office of Chief Engineer HVPNL on 20/10/2022 and the following decisions were taken.

i) Since the petitioner has installed string inverters, so real time data of string inverters is not possible, and the plant level data be transferred to sub-station at Shahabad.

ii) That the petitioner had conveyed its difficulty for leased line as the plant is in remote area, so the mode of data transfer through GPRS (SIM) was discussed.

iii) That the petitioner was told that SE, SLDC Sh. Rajiv Kaushal will be providing all necessary guidance & help for approval and implementation of the same so that necessary data is transferred with minimum additional cost in accordance with HERC order dated 08-03-2021.

No guidance was ever given, and no decision was ever conveyed by HVPNL authorities on our above-mentioned points.

Central Electricity Regulatory Commission vide its notification no L-1/265/2022 /CERC dated 29-05-2023 on GRID CODE, has also held as under:

"ix) Provide Monthly Data:

x) For wind plants-average wind speed, average power generation for 15-min time block for each turbine.

*xi) For solar plants – average solar irradiation, average power generation at 15-min time block level for all inverter *>=1MW.*

- *If a solar plant uses only smaller string inverters, then data may be provided at the plant level."*

The petitioner complied with HERC/HVPN guidelines/procedures notified by the Hon'ble Commission on 08-03-2021 and submitted all the required documents for the approval of Stand-Alone Generator, but the approval has not been given on one account or another. Further, the petitioner was issued *"Notice Under Clause 16 of the "Procedure for Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation" Calling upon you to comply with the clause 9.1 of the said procedure failing which action may be initiated against you."* by Chief Engineer Commercial vide letter dated 23-11-2023 for registration as standalone generator/QCA. The petitioner, vide its letter no. Giotech/325/2023-24 dated 29-11-2023 informed that its request is pending with HVPNL since 09-08-2022. However, no reply has been received till now. The petitioner is prepared to appoint QCA agency provided the fixed and

variable monthly expenses are reimbursed by HPPC on monthly basis against bill raised by the petitioner.

As per CERC/HERC/Nigam/PPA guidelines string inverters are exempt from Telemetering and appointment of Stand-Alone Generator. The petitioner is supplying daily data to SLDC as per the PPA.

2.16 Capacity Utilization Factor (CUF).

a) That at the time of uploading the tender, the petitioner opted for 19% CUF keeping in view the fact that the petitioner is eligible to change the CUF till the financial closure as per the reply to the query no. 3 raised by potential bidders for long terms procurement of 300 MW Solar Power against NIT No. 77/CE/HPPC/Solar/300 MW dated 03-01-2019 as uploaded with the NIT.

b) That the petitioner wrote Letter dated 12-01-2021 for change of CUF before financial closure (date of financial closure is 24.03.2022). But the request for change in CUF was denied vide letter dated 08-02-2021. The tariff was not determined based on CUF rather the same was adopted by HPPC keeping in view competitive bidding by MoP for Solar Projects above 5 MW issued on 03-08-2017.

c) That as per clause no 2.2.6 of Power Purchase Agreement (PPA) all the *relevant Term and Conditions of the Request for Proposal (RfP) shall be construed as part of PPA.* As per RfP, Financial Closure has been defined as under the head Definitions:

"Financial Closure: *shall mean the execution of all the financing arrangements required for the power station & fulfilment of any of the conditions precedents for the initial draw down of funds there under."*

d) That CUF at 21% has also been permitted by the CERC in terms of its regulations of 23/06/2020.

e) That as such the petitioner is entitled for 21% CUF instead of 19% as per the tender document.

2.17 Price Preference of 2% as per Haryana Solar Policy duly amended 2019.

a) That on 14-07-2017, HPPC filed a petition bearing no. HERC/PRO-53 of 2017 before Hon'ble HERC for the procurement of 300 MW Solar Power for long term Grid connected Solar PV projects.

b) That Hon'ble HERC vide its orders dated 05-11-2018 approved the prayer of the petitioner (HPPC). Relevant clauses of above order are as under:

"Clause No.4:

HPPC, vide its memo no. Ch-26/CE/HPPC/SE/C&R-I/LTP-I/HERC/111 dated 04.04.2018 submitted revised RfP along with draft PPA prepared in line with Guidelines for Tariff Based Competitive Bidding process for procurement of power from Grid Connected Solar PV Power projects issued on 3.8.2017 by MoP with Rs. 3.00/kwh as fixed tariff for the PPA period of 25 years. Deviations in the proposed RfP vis-à-vis Ministry of Power Resolutions (MoP) dated 03.08.2017, were also enlisted by HPPC as under:-

Clause No.5:

The Commission sought certain additional information from HPPC regarding NIT clause no.2.3 vide memo no. 407/HERC/Tariff dated 17.05.2018. HPPC replied for the same vide memo no. Ch-32/CE/HPPC/SE/C&R-I/LTP-I/HERC/111 dated 07.06.2018. The same is reproduced as under: -

Sr. No.	*NIT Clause*	*MoP guidelines*	*HERC Observation*	*HPPC reply*
1.	*2.3. Capacity of each Project The procurement will be done in two categories. Category –I: Minimum :3 MW, Maximum: 240 MW (the maximum capacity assigned to any bidder limiting to 240 MW.)* *Category –II: Minimum: 1 MW, . Maximum: 2 MW (Total capacity will be procured in this category is 60 MW) The Solar plant will be set up in the State of Haryana in this category.*	*2.1.1. These Guidelines are being 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 ('Projects'), having size of 5 MW and above, through competitive bidding.*	*As per Clause 2.1.1 of the guidelines dated 3.8.2017, it is applicable only for solar power projects having size of 5 MW and above.*	*Haryana Solar Policy 2016 envisages purchase of solar power from small developers of 1 or 2 MW capacity.* *Hence, RfP contains Category II of 1 or 2 MW capacity in addition to category I.*
3.	*2.3. Capacity of each Project The procurement will be done in two categories.* *Category – I : Minimum :3 MW,* *Maximum: 240 MW* *(The maximum capacity assigned to* *any bidder limiting to 240 MW.)* *Category –II:* *Minimum : 1 MW, .* *Maximum: 2 MW* *(Total capacity will be procured in this category is 60 MW) The Solar plant will be set up in the State of Haryana in this category.*	*4.1. Bid Package: The bids will be designed in terms of a package. The minimum size of a package should be 50 MW, in order to have economies of scale. Notwithstanding this, on due consideration of availability of land and transmission facility, smaller bid packages can be kept in case of North -Eastern States, Special Category States, and Projects outside Solar Parks. The bidder has to quote for an entire package.* *2.1.1. These Guidelines are being 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. ('Projects'), having size of 5 MW and above, through competitive bidding.*	*Clause No. 4.1 of the guidelines regarding Bid package has not been incorporated in the proposed RfP.*	*1. The Term "package" is used in MoP guidelines in response to solar park.* *2. The minimum size of package i.e. 50 MW as per MoP guidelines has not been incorporated as 50 MW project requires about 250 acres, Haryana being agriculture State, possibility of availability of this much chunk of land at a single place is quite less.* *3. MoP guidelines dated 03-08-2017 are for 5 MW and above solar power projects.* *4. Haryana Solar Policy 2016 envisages purchase of solar power from small developers of 1 or 2 MW capacity*

Para no. 7:

On hearing the matter, the Commission observed that HPPC has kept separate category of 1MW to 2 MW capacities in order to comply with the provisions of Haryana Solar Policy, 2016. It has also become relevant in view of the fact that the Commission has not determined feed-in tariff (FiT) as envisaged for the Solar Power projects with capacity upto 5 MW."

c) That from the above it is clear that solar power plants with 1.00 or 2.00MW capacity were to be covered under Haryana Solar Policy 2016 (ANNEXURE – P-190) and not under Ministry of Power Guidelines for procurement of Power from Grid Connected Solar Power Plant issued on 03-08-2017 by M.O.P. with Rs.3.00/- Kwh as fixed tariff for PPA 25 years as these were for 5.00 MW and above solar power projects.

d) That although projects of 1.00 MW & 2.00 MW were be covered under Haryana Solar Policy 2016, but, all the terms & conditions of 5.00 MW & above projects as Ministry of Power guidelines (MoP) dated 03-08-2017 were imposed in the PPA.

e) That as per Haryana Solar Policy 2016 dated 14-03-2016 with amendment dated 08-03-2019 a price preference of 2% was to be given to Solar Power Generator with 1.00 to 2.00 MW Capacity.

f) That no price preference was given to 1 to 2 MW solar power plants as per the ibid policy. With 2% preference reverse bidding for 1 to 2 MW plants should have been from the tariff of Rs.3.06/- per unit instead of Rs.3.00/- per unit. Keeping in view the above, the tariff may be revised from Rs.2.999/- per unit to Rs.3.056/- per unit from the date of C.O.D.

2.18 Miscellaneous disputes:-

a) Sharing of charges of Meters at sub- station as per Haryana Solar Policy 2019 duly amended.

b) Earnest Money Deposit.

c) Import of Electricity / Grid Outages.

2.19 That the summary of claim raised is as under:-

Claim Nos.	Description	Approximate Amount (Rs.)
Claim No.1	Increase in Project Cost due to change in law/force majeure	1,01,20,940/-
Claim No.2 "A"	Payment of 1st Running Bill	1,90,509/-
"B"	Increase in GST (change in law)	20,85,714/-
	carrying costs interest upto January 2024)	9,23,579/-
"C"	Increase in O&M Expenses	81,949/-
"D"	(i) Refund of L.T.O.A. Expenses	2,38,805/-
	(ii) Connection Agreement Expenses	1,00,000/-
"E"	Telemetry/Infrastructure requirement	Rs……
"F"	Refund of SLDC Charges upto January 2024	25,822/-

"G"	VCB at Sub-station (loss due to tripping)	-
"H"	CT/PT at sub-station	7,03,397/-
"I"	Refund of Stand-alone Generator	11,800/-
"J"	Capacity Utilization Factor (CUF) 19% to 21%	Rs.
"K"	Price Preference @2%	Rs.
"L"	Import Energy Charges	68,182/-

2.20 That the Following Prayers has been made: -

(i) The respondents may kindly be directed to reimburse the increased Project Cost, as mentioned above, due to steep depreciation of INR vis-a-vis the USD, Increase in Container fare, increase in cost of other equipment as a consequence of Change in law, Force Majeure events and other faults of the respondents in not giving approvals as per the time frame approved by the regulatory commission, which also amounted to change in Law.

(ii) That or in alternatively the levellised tariff of the project may kindly be re-determined and increased after taking into account the increase project cost as mentioned above, due to steep depreciation of INR vis-a-vis the USD, Increase in Container fare, increase in cost of other equipment as a consequence of Change in law , Force Majeure events and other faults of the respondents in not giving approvals as per the time frame approved by the regulatory commission , which also amounted to change in Law.

(iii) That letter memo no.Ch-06/SAO/HPPC/333 dated 06-01-2023, sent by respondent No. 1 after a period of nearly 5 months from the date of submission of the bill, denying the payment of the First Running Bill on the ground that no payment can be made prior to the date of Commissioning of the plant and further that the energy supplied by the petitioner has been *considered as dump energy, may kindly be set aside and directions may be issued to the respondents to pay* 1st Running bill dated 17-09-2022 amounting to Rs.1,90,509.98/-, to the petitioner with interest @ 19.5% p.a.as per MSME act 2006.

(iv) That directions may be issued to the respondents to compensate the petitioner on account of increase in GST being Change in Law and also award the Carrying Costs @19.5% P.A. with monthly rest from the date of above payment of increased GST was made by the petitioner to the date of payment by the respondents.

(v) That direction may be issued to the respondents to compensate the petitioner due to Increase in O&M EXPENSES and Wages Due to Change of GST FROM 5% TO 12% as the same amounts to change of law.

(vi) That directions may be issued to the respondents to refund the Long-Term Open Access Charges paid by the petitioner as the petitioner is not required to take LTOA and thus the charges charged are totally wrong and illegal.

(vii) That the respondents may kindly be directed to refrain from asking for Telemetry System/Infrastructure Requirements as there is no clause in PPA/Tender documents that directs the developer to install telemetry as the real time data is not possible in case of String Inverters.

(viii) That necessary directions may kindly be issued to the respondents to refund the SLDC charges paid by the petitioner as there is no clause in PPA or RfP which requires that payment of SLDC charges has to be done by the developer.

(ix) That necessary directions may kindly be issued to the respondents to compensate the petitioner on account of cost of VCB as mentioned in the above said petition and further compensate the petitioner for the loss of generation of energy on account of tripping which happened due to underrated, discarded/written off VCB given by the respondent.

(x) That directions may kindly be issued to the respondents to compensate the petitioner for the loss of generation occurred due to tripping occurred due to installation of CT/PT of lower ratio instead of CT/PT required as per sales circular no U-47/2017 circulated vide memo no ch-5/TR-90/ROL/CE/C-1 dated 16-11-2017 and also did not allow us to install metering cubical at the sub-station.

(xi) That directions may kindly be issued to the respondents to refund stand-alone generator charges deposited by the petitioner under duress.

(xii) That the letter no. Ch-20/CE/HPPC/SEC & R-1/LTP-III/GSR dated 08-02-2021 sent by the respondents vide which the change of Capacity Utilization Factor was declined may kindly be set aside and the capacity utilization factor of the power plant of the petitioner may kindly be declared as 21%, as the petitioner has opted for the same before the financial closure;

(xiii) That the tariff of the project of the petitioner has to be increased by giving Price preference of 2% for solar power generator of 1.00 to 2.00 MW capacity as per Haryana Solar Policy 2016 with amendment dated 08-03-2019.

(xiv) That any other relief, order or direction which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case may also be awarded in favour of the petitioner, in the interest of justice.

Proceedings in the Case

3. The Commission heard the matter on various dates viz 10.04.2024, 11.07.2024, 13.08.2024, 13.11.2024, 16.12.2024, 18.02.2025, 23.4.2025, 20.05.2025, 09.07.2025, 04.09.2025 and finally on 16.12.2025.

4. HPPC (respondent no. 1) and HVPNL (respondent no. 3) filed a common reply, under an affidavit dated 06.06.2024 (HPPC) and 13.06.2024 (HVPNL), submitting as under:-

CLAIMS RAISED BY THE PETITIONER ARE SPECULATIVE IN NATURE AND AN AFTER-THOUGHT:

4.1 That the following table from the petition is reproduced:-

Sr. No.	Particulars	As per PPA	As per Actual
1.	Date of letter of intent	28-02-2020	28-02-2020
2.	Date of signing Power Purchase Agreement (PPA)	30-03-2020	19-06-2020
3.	Date of financial closure	29-03-2021	18-02-2022
4.	Date of C.O.D.	28-09-2021	01-09-2022

A perusal of the aforesaid table shows, that admittedly, the PPA was entered into by the petitioner after the Government of India had already notified COVID-19 as a Force-Majeure Event. Attention in this regard is brought towards the Office Memorandum ("O.M.") dated 19.02.2020 issued by the Ministry of Finance wherein it has been specifically clarified as under:

"2. A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC). In this regard it is clarified that it should be considered as a case of natural calamity and FMC may be invoked, wherever considered appropriate. Following the due procedure as above."

4.2 That the PPA was willingly entered into by the petitioner during the subsistence of Force Majeure event. Throughout the petition, the petitioner has made submissions with respect to rise in price of the components of the solar power plant, delay in shipments etc. and terming the same to be 'sudden', 'unforeseen' and 'unpredictable'. It is humbly submitted that in the present case, the petitioner had the option to take discharge from contractual obligations while relying on Force Majeure event. However, the petitioner waived its right to object at the relevant time and proceeded to sign the PPA with eyes wide open. As such, it can be safely assumed that the supervening circumstances were well within the contemplation of the petitioner at the time of signing of the contract**.** The petitioner had entered into a commercial transaction with complete knowledge of the risks involved. Reliance in this regard is placed on the following decisions:

a. In *Omaxe Ltd. v. Balvinder Kaur Nijjar [Law Finder Doc Id # 2437564; O.M.P. (COMM) 295 of 2021 Decided on 19.07.2023]*, the Hon'ble Delhi High Court held as under:

"78. This Court is of the view as per section 56 of the Contract Act as per the said Section the force majeure is an unprecedented event. The petitioner was already in the knowledge of the said event and therefore, the event cannot be covered under the garb of force majeure. Since, even before entering into Contract with the petitioner the respondent had knowledge that it requires the No- Objection Certificate from ASI. Therefore, the plea of force-majeure cannot be taken at this stage and the petitioner has committed a violation of the local laws by not adhering to the requirement of taking a No-Objection Certificate from the ASI which is mandated as per the local laws. I do not find any reason to interfere qua issues no. 1 and 6."

[Emphasis Supplied]

b. In *Energy Watchdog v. Central Electricity Regulatory Commission & Ors.*, [2017 SCC Online SC 378], the Hon'ble Supreme Court held that where the fundamental basis of the contract remains unaltered, any rise in the price will not absolve the party from performing its part of the contract as when they enter into a contract, they take such risk knowingly. Force Majeure clauses are to be narrowly construed and a mere rise in price rendering the contract more expensive or more onerous to perform will not constitute force majeure.

c. The Hon'ble Kerela High Court in the case of *Giju P Vijayan v. Travancore Devaswom Board [Law Finder Doc Id # 1860751; WP(C) No. 13525 of 2020 And WP(C) No. 16933 of 2020. D/d. 22.6.2021]* observed as under:

"10. Once a contract is entered into, unforeseeable events are likely to happen. An experienced contractor who enters into contract with eyes wide open, may sometimes incur loss. Sometimes, in some contracts, he may also earn handsome profits. The reason that contractors could earn good profit during a season do not fasten on them any liability to pay any portion of the profits to the Board and vice versa. The petitioners are not entitled to refund of licence fee."

4.3 That admittedly the petitioner achieved financial closure on 18.02.2022, as such, no foreseeable claims beyond the period of 18.02.2022 are admissible. Thus, the contentions raised by the petitioner throughout the present petition with respect to the un-foreseeability of the events is liable to be rejected being an afterthought. The present petition lacks *bonafides* and is merely speculative in nature.

PETITION BARRED ON ACCOUNT OF DELAY AND LATCHES:

4.4 That the present petition is liable to be dismissed at threshold on the sole ground of being time-barred. The cause of action, if any, accrued in the favour of the petitioner to approach this Hon'ble Commission at the time the alleged events took place. For instance, the cause of action, if any, for payment of the 1st running bill arose on the date when the infirm power was injected into the system i.e. prior to the date of Commercial Operation. Similarly, the cause of action, if any, with respect to increase in GST arose at the time of issuance of notification no. 8/2021 dated 30.09.2021. Further, the cause of action to challenge the charges payable under the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 ("DSM Regulations, 2019") arose at the time of notification of the DSM Regulations, 2019. As such, the present petition has been preferred by the petitioner only at this belated stage.

4.5 That the claims raised by the petitioner pertain to the year 2021/2022, however, the petitioner has not filed any application seeking condonation of delay and no 'sufficient cause' has been explained as to why the petitioner has approached the Hon'ble Commission belatedly. It is the case of the Answering respondents that the 'sufficient cause' is a sine-qua-non for maintainability of the present petition. Reliance in this regard is placed on the judgment in the case of *State of Haryana Vs. Hindustan Machine Tools Limited and others, [AIR 2015 Punjab 45] wherein the full bench of Hon'ble Punjab and Haryana High Court held as under:*

"6. Section 5 of 1963 Act enables the Court to admit an appeal or an application after the expiry of prescribed period of limitation on sufficient cause being shown for the delay. It is meant to condone the default of the party wherever it is able to satisfy that sufficient cause exists. Thus, sufficient cause is sine qua non for exercise of discretion for condoning delay under this provision. The discretion, however, is to be judicial and not arbitrary. "Sufficient cause" has not been defined by the legislature in the 1963 Act but is to be ascertained on the individual facts of each case."

[Emphasis Supplied]

Further, reliance is placed on Basawaraj and Anr Vs. Special Land Acquisition Officer *[(2013) 14 SCC 81]* wherein the Hon'ble Apex Court observed as under:

"9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious

man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee and Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena @ Bharti, AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629.)

…

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 24, p. 181:

"605. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a Defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches. (See: Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510; Rajendar Singh and Ors. v. Santa Singh and Ors., AIR 1973 SC 2537; and Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448).

14 In P. Ramachandra Rao v. State of Karnataka, AIR 2002 SC 1856, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in A.R. Antulay v. R.S. Nayak, AIR 1992 SC 1701.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

[Emphasis Supplied]

4.6 That the present petition is also liable to be rejected on the basis of the well-established legal maxims on which the law of limitation is based. The latin maxims "*interest reipublicae ut sit finis litium*" (it is for the general welfare that a period be put to litigation) and "*vigilantibus non dormant ibus jura subvenient*" (the Law helps those who are vigilant and not those who sleep over their rights). That the petitioner has been sleeping over his right and now, at such a belated stage cannot be allowed to approached this Hon'ble Commission as and when he wakes up. Reliance in this regard is placed on *Brijesh Kumar & Ors. Vs. State of Haryana & Ors*. [reported at (2014) 11 SCC 351], the relevant para of which are reproduced below:

"6. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained everyday by the courts. The law of limitation is enshrined in the legal maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. The Privy Council in General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim [(1939-40) 67 IA 416: (1941) 53 LW 212: AIR 1941 PC 6], relied upon the writings of Mr Mitra in Tagore Law Lectures, 1932 wherein it has been said that: (IA p. 426)

A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds,

enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.

8. In P.K. Ramachandran v. State of Kerala [(1997) 7 SCC 556: AIR 1998 SC 2276], the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under: (SCC p. 558, para 6)

"6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds."

Reliance in this regard is also placed on *Prabhakar vs. Joint Director Sericulture Department and Ors.* [reported in AIR 2016 SC 2984] wherein the Hon'ble Apex Court has observed that:

"*36. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats* equities".

[Emphasis Supplied]

4.7 That the attention is also brought towards Rule 3(7) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, which prescribes as under:

"3. Adjustment in tariff on change in law.-

(7) The generating company or transmission licensee shall, ***within thirty days of the coming into effect of the recovery of impact of change in law,*** *furnish all relevant documents along with details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges."*

That the intention behind the Rules is 'timely recovery'. However, in the present case delayed recovery is being sought. Thus, the claim of the petitioner is liable to be rejected outrightly being time-barred. Be that as it may, even if no limitation is prescribed by the Act or the Rules made therein, in such a scenario, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding, on account of law of limitation. Reliance in this regard is placed on the judgment of Hon'ble Apex Court in

the case of *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.* [(2016) 3 SCC 468], wherein it has been observed as under:

"In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Section 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time barred claims, there is no conflict between the provisions of the Electricity Act and Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation on account of provisions in Section 175 of the Electricity Act or even otherwise the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike Labour laws and Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view."

[Emphasis Supplied]

Reliance is also placed on the judgment of the Division Bench of Hon'ble Delhi High Court in the case of *M.S. Shoes East Ltd. Vs. M.R.T.P. [2004 (52) SCL 628]* where in the Hon'ble High Court held:

"26. … There are large number of similar Acts where the legislature in its wisdom has not specified a period of limitation. On proper analysis of various judgments of the Apex Court and the other courts, the ratio which clearly emerges is that all those cases where the legislature has not specified any statutory time limit, the claim has to be filed within reasonable time. In afore-mentioned judgments of the Apex Court particularly in the case of Corporation Bank (Supra) the Supreme Court observed that Act in which no statutory limitation has been prescribed that does not mean that claim petition can be entertained anytime. The ratio of the judgment is that the claim ought to be made within reasonable period. What is the reasonable time to lay a claim depends upon the facts of each case. In the legislative wisdom, three years period has been prescribed to lay a claim for money. The court observed that the period of

three years is the reasonable period to raise a claim in a matter of this nature. The claim of the petitioner is in the nature of a money claim and on the analogy of the Corporation Bank (Supra) the claim ought to have been filed within the statutory limit for filing such claims by way of civil suits, i.e., three years. In the Corporation Bank's (Supra) case their Lordships of the Supreme Court examined the facts of the case in detail and thereafter observed that the claim involved in that case was essentially for money. In this view of the matter, the court observed that the period of three years is the reasonable time to raise a claim in a matter of this nature. This is also in consonance with the provisions of the Limitation Act."

[Emphasis Supplied]

As such, the present petition is liable to be dismissed at the threshold since the claims raised therein are time-barred.

SUBMISSION WITH RESPECT TO REIMBURSEMENT OF INCREASED PROJECT COST AS A CONSEQUENCE OF CHANGE IN LAW AND FORCE MAJEURE EVENTS:

4.8 That the averments as regards increase in project cost are an afterthought as the same were never raised prior to the letter No. Giotech/205/2023-24 dated 08.06.2023. This is apparently because the terms of the extension granted by the Answering respondent-HPPC were clear. In fact, the letter dated 08.06.2023 as well as the present petition is inflicted with malafides and has been filed only to demand unjust cost from the State Exchequer and further to harass the procurer.

4.9 That as such, the alleged increased cost would have factored in by the petitioner. Be that as it may, with the advancement in technology, the capital cost of the Solar Power Projects and the rates of Solar Energy has reduced significantly over the years. Attention in this regard is brought towards article dated 08.09.2020 in the Forbes Magazine as per which 'Solar Prices Sink in the Age of COVID'.

4.10 That the Scheduled Date of Commissioning ("SCOD") of the project had been extended from 19.12.2021 to 01.09.2022 keeping in view the difficulties faced by the petitioner due to COVID-19 in terms of the notifications/ O.M.s issued by the Ministry of New and Renewable Energy from time to time ("MNRE").

4.11 The cost of the project cannot be linked to Force Majeure conditions as the same is dependent on various factors such as market dynamics, financial practices followed by the developer, commercial prudence etc., which were well-within the control of the petitioner. Once the PPA was signed by the petitioner voluntary at the time of subsistence of restrictions imposed on account of COVID-19, the petitioner cannot be permitted to turn-around and seek compensation/ reimbursement on account of the same. In the matters relating to tenders/ contracts the parties are governed by

the principals of commercial prudence and to that extent the principles of equity and natural justice have to stay at a distance. Reliance in this regard is placed on the decision in case of Jagdish Mandal v. State of Orissa and Others [(2007) 14 SCC 517].

4.12 That it is further submitted that MNRE vide its Office Memorandums ("O.M.") specifically provided that the time extension owing to COVID-19 is given without any claim for an increase in project cost. As such, the extension granted to the petitioner, does not entitle the petitioner to claim any compensation whatsoever for cost and time-overrun. Reference in this regard is also made to the MNRE Office Memorandum dated 12.05.2021 wherein it has been stated that:

"While applying for such time-extension, RE developers shall undertake that the time extension shall not be used as a ground for claiming termination of Power Purchase Agreement (PPA) or for claiming any increase in project cost, including Interest During Construction (IDC) or upward revision of tariff."

Further, in Office Memorandum dated 15.09.2021 it has been specifically mentioned as under:

"a) The time-extension given vide MNRE's OMs dated 12.05.2021 and 29.06.2021, referred at (i) and (ii) above respectively, is an out-of-contract concession extended by MNRE to facilitate Renewable Energy projects. This time-extension is optional and can be claimed by Renewable Energy Project Developers/ EPC contractors provided they do not claim any increase in project cost on account of this time extension of 2.5 months. This increase in project cost includes any possible impact due to any change-in-law event which would not have been there had this optional time-extension was not claimed."

4.13 That as per Clause 17.3 of the PPA relating to 'Force Majeure', the party invoking the clause is required to give a written notice within seven days to the other party. Whereas, no such notice within 7 days was given to the Answering respondent. As a matter of fact, no such notice could have been given, as the petitioner was already well-aware of the ongoing scenario and had proceeded to enter into the PPA as per its own commercial prudence. Be that as it may, it is well-settled that when contract prescribes a thing to be done in a particular manner, it should be done in the particular manner only. As such, in the absence of any notice in terms of Clause 17.3, no relief is liable to be granted to the petitioner.

4.14 That it is submitted that in the present case, Clause 17.2 relating to 'Force Majeure Exclusions', reproduced below, comes into play:

"17.2 Force Majeure Exclusions

Force Majeure shall not include (i) any event or circumstances which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequence of an event of Force Majeure:

a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumable for the Power Project;

b) Delay in the performance of any contractor, sub-contractor or their agents;

….

e) Insufficiency of finances or funds or the agreement becoming onerous to perform."

It is reiterated that the prevalent conditions were within the knowledge and reasonable control of the petitioner. As such, such a claim of the petitioner is liable to be rejected.

4.15 That the petitioner has also alleged that there was delay on the part of the Answering respondents to grant clearances/ approvals for setting up the power plant. In this regard, it is submitted that such allegations are nothing but an afterthought. The allegations are vehemently denied being highly frivolous and contrary to the terms and conditions of the PPA. Clause 3.11 of the PPA obligates the developer to obtain all consent, clearances, and permits, and make adequate arrangement to connect the power projects with the switchyard with the interconnection facilities at the delivery point. The relevant clauses of the PPA (at page 244 of the petition) are reproduced below:

"3.1.1. The company shall have obtained all Consents, Clearances and Permits required for supply of power to HPPC as per the terms of this Agreement.

3.1.2. In case the Bidder is a Bidding Company and wishes to incorporate a Project Company, all such Consents, Clearances and Permits if obtained in the name of a company other than the Project Company, the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder."

Thus, it is the sole responsibility of the petitioner to obtain all consent, clearances and permits required for supply of power to the Answering respondent. The responsibility of the petitioner in this regard was also clearly spelled out in the pre-bid clarifications. Even otherwise, as a matter of well settled principle of law, the Answering respondent cannot be burdened with any cost which is not on account of reasons attributable to the Answering respondent.

SUBMISSIONS WITH RESPECT TO RE-DETERMINATION OF LEVELLISED TARIFF:

4.16 That Clause 4.3 of PPA provides as under:

"4.3 The Tariff payable by the DISCOM will be inclusive of all taxes, duties and levies, to be borne by the Solar Power Developer. The above tariff and applicable conditions would remain constant for the period of operation of project considering the life of the project is 25 years, subject to provision of "Change in Law" provided in Article 20."

Once the parties have agreed upon a fixed tariff for the entire term of the Contract, the petitioner cannot be permitted to seek interpretation/amendment/novation of the terms of the Contract subsisting between the parties. Reliance is placed on the judgement of the Hon'ble Apex Court in *Gujarat Urja Vikas Nigam Ltd. Vs. M/s. Acme Solar Technologies [Civil Appeal Nos. 5978-5979 of 2014. D/d. 9.11.2016]* wherein it has been observed as follows:

"7. We have taken note of the elaborate arguments advanced on behalf of the rival parties. When the parties were bound by the terms and conditions of the PPA dated 31st May, 2010 and Supplemental PPA dated 24th March, 2011 we do not think that it was proper on the part of either the State Commission or the Appellate Tribunal to travel beyond the said terms and conditions to determine the liability of the first respondent to pay liquidated damages or the period thereof. …"

[Emphasis Supplied]

Further, in *Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL) and Anr.* [(2018) 11 SCC 508], the Hon'ble Apex Court observed as under:

"72. We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to implied terms of contract. In the current day and age, making of contracts is a matter of high technical expertise with legal brains from all sides involved in the process of drafting a contract. It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. Thus, normally a contract should be read as it reads, as per its express terms. The implied terms is a concept, which is necessitated only when the Penta-test referred to aforesaid comes into play. There has to be a strict necessity for it. In the present case, we have really only read the contract in the manner it reads. We have not really read into it any 'implied term' but from the collection of clauses, come to a conclusion as to what the contract says. The formula for energy charges, to our mind, was quite clear. We have only expounded it in

accordance to its natural grammatical contour, keeping in mind the nature of the contract."

[Emphasis Supplied]

SUBMISSIONS WITH RESPECT TO INCREASE IN GST:

4.17 That though the 'constant tariff' is subject to 'Change in Law' as provided under Article 20 of the PPA, however, the only 'Change in Law' alleged by the petitioner is w.r.t the increase in GST. As per notification dated 30.09.2021, applicable rate of GST on the Contract for supply of goods has increased from 5% to 12%. In this regard, it is submitted that the GST notification was issued way back in September, 2021, however, the present petition has been filed in March, 2024 i.e. after a lapse of 2 ½ year. As such, the claim is liable to be rejected outrightly having been raised after a substantial delay.

4.18 That, without prejudice to the objection with respect to the maintainability of the change of law claim being time-barred, it is submitted that the GST Notification dated 30.09.2021 provides as under:

"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."

…

Accordingly, if there is supply of services in addition to supply of goods namely renewable energy devices in terms of the explanation, the Rajasthan Appellate Authority for Advance Ruling vide decision dated 11.01.2022 in the case ***of*** *M/s. Utsav Corporation* has clarified that if the supply Contract entered into by the petitioner involves supply of Solar power based devices including carrying out the activity of erection, installation, commissioning of such system, it will fall under composite supply of works contract. In such a case,

a) The value of goods is to be taken as 70% of the gross consideration

b) The value of services is to be taken as 30% of the gross consideration.

The tax incidence on goods is at 12% and the services is at 18%. Accordingly, 12% will be applicable only on 70% of gross consideration charged and 18% on remaining 30% of the gross consideration.

4.19 That however, where there are two separate contracts one for supply of goods and one for erection for services etc. the supply of goods will attracts GST of 12% and supply of services will attract GST of 18%. In case of composite works contract, subject to admissibility of Notification dated 30.09.2021 as Change in Law, any increase in rate of GST which the petitioner can claim as per Notification dated 30.09.2021 is only for the increase of GST from 5% to 12% on goods (which constitutes 70% of the gross consideration) there being no increase in tax on service part of 30% as per the said Notification.

4.20 That without prejudice to the above, it is submitted that the extent to which relief admissible to the petitioner on account of Notification dated 30.09.2021 of GST (if any) is subject to examination and verification of documents by the Answering respondent to be submitted by the petitioner. However, the petitioner has failed to furnish the relevant details including date of delivery of goods, invoices, date on which invoices were raised, Statutory Auditor's Certificate etc. to substantiate the impact of the change in rate of GST in terms of the above Notification on the specified renewable energy devices and parts for their manufacture. The claim of the petitioner is also devoid of the following details:

a. Date of Purchase Order;
b. Date of raising of Invoice by the Supplier;
c. Date of handing over of the goods to the common carrier/delivery date;
d. Date at which Goods were installed at site;
e. Date of Bill of Lading in case of imported goods;
f. Date of Custom clearance in case of imported goods;
g. Date of arrival of the goods at the project site;
h. Date of rendering of the actual services;
i. The GST/Tax Invoice raised;
j. Supporting document in rest of each above documents

The aforesaid documents are necessary to establish the one-to-one correlation between the project and the supply of goods against which change in law is claimed. Reliance in this regard is also placed on the Order dated 25.01.2021 in petition No.211/MP/2019 in the matter of *RattanIndia Solar 2 Private Limited Vs. Solar Energy Corporation of India Limited & Others* and connected matters, wherein the Hon'ble APTEL held as under:

"59. Our decisions in this Order are summed up as under:

The introduction of the GST Laws w.e.f. 01.07.2017 is covered under Change in Law in terms of Article 12 of the PPA. <u>The Commission directs the petitioner to make available to the respondents all relevant documents exhibiting clear and one to one</u>

correlation between the project and the supply of imported goods till the COD as per PPA or till the COD upon extension of SCOD in terms of PPA, duly supported by relevant invoices and Auditor's Certificate. The respondents are directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to the petitioner. The quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 should be discharged by the respondents within 60 days from the date of issue of this Order or from the date of submission of claims by the petitioner, whichever is later, failing which it shall attract late payment surcharge at the rates provided for in the PPA. Alternatively, the petitioner and the respondents may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over a period not exceeding the duration of the PPA as a percentage of the tariff agreed in the PPA."

[Emphasis Supplied]

4.21 That be that as it may, it is trite law that mere filing of invoices is not sufficient and the content of the same needs to be proved. Reliance in this regard is placed upon the judgment of the Hon'ble Bombay High Court in the matter of *Oil and Natural Gas Corporation Ltd. v. Dolphin Drilling Limited 2012(4) BCR 640 (Decided on 09.05.2012)* wherein it was held by the Court as under: -

"Para 26. There is nothing placed on record by DDL to show that regular payments were made to Drill-quip as per the invoice before raising invoices in question. It appears that there was no payment made to the sub-contractor by the respondents and, therefore, the invoices so relied and referred and the claim so raised without placing any supporting material on record and as accepted by the Arbitral Tribunal, in my view, is also unsustainable. Mere filing of invoices are not sufficient. The parties whosoever want to claim any amount on such invoices need to prove the same and its contents, basically when the disputes were raised within time on all the invoices for wellheads, running tools and services. There is nothing in the contract and/or pointed out that it was agreed by the petitioner that such charges and/or invoices would be paid to Dril-quip, instead of DDL.

Para 27. In that I have also observed that though provisions of Evidence Act are not strictly followed nor the provisions of Code of Civil Procedure (Civil Procedure Code), yet the basic principle of assessment and/or re-assessment of the breach committed by the party and quantum of claim on the foundation of mitigation and other surrounding circumstances including proof of the contents of the documents as those invoices were never admitted goes to show that the amount so awarded was not based upon the strict proof of the quantum of its claim. Admittedly, as recorded, payments were not made by DDL to the sub-contractor. The external payment

vouchers and/or such invoices cannot be treated as proof of payment. The Bank credit invoices or external payment vouchers in no way sufficient to accept the case that actual payments have been made. The witness-Robert (CW 2) admitted in cross-examination that documents such as Exhibit "MM (Mr. Ken Fraser compilation internal document). Some of the credit advices have no particulars and/or accompanying credit documents. As recorded, DDL failed to show the prior payment for rental of wellhead, running tools and services as contemplated in clause 7.1 itself. All the invoices and its contents were specifically challenged at every stage of the proceedings. The award based upon such invoices, therefore, in the facts and circumstances, is therefore, impermissible and contrary to the record and law. The witness and/or evidence just cannot be relied upon to support the lacuna and/or fill the gaps if the documents as well as its contents are itself not proved as required under the law, specially when the petitioner never agreed and/or accepted and/or admitted such mode of payment based upon the unpaid invoices of DDL."

[Emphasis Supplied]

4.22 That it is submitted that under the GST Law regime, any registered person can avail credit of tax paid on the inward supply of goods or services or both which is used or intended to be used in the course or furtherance of business. In fact, uninterrupted and seamless chain of input tax credit ("ITC") is one of the key features of Goods and Services Tax. ITC is a mechanism to avoid cascading of taxes. Cascading of taxes, in simple language, is 'tax on tax'. Under the earlier system of taxation, credit of taxes being levied by Central Government was not available as set-off for payment of taxes levied by State Government, and vice versa. One of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Government would be part of the same tax regime, credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage. However, the petitioner has failed to provide any details whatsoever of the ITC claimed/ would be claimed and used as set-off against the total liability.

4.23 That, the communication dated 12.03.2020 and 23.03.2020, issued by MNRE, with regard to the aspect of Change in Law on account of imposition of GST vide, inter-alia, provides that impact of GST/Safeguard Duty shall be recovered in annuity basis and that the rates of recovery shall be as per the norms of this Hon'ble Commission.

4.24 That Clause 3 of the Change in Law Rules also provides for additional payment for change in law by adjustment in monthly tariff. There are various precedent holding annuity basis method as well-recognized mode of payment. Reliance in this regard is placed upon the Order dated 05.09.2019 passed by the Hon'ble CERC in M/s

Renew Wind Energy (TN2) Private Limited v NTPC and Order dated 20.08.2021 in petition No. 536/MP/2020.

4.25 That as regards claim of the petitioner for carrying cost on the Change in Law Compensation, it is submitted that the carrying cost, if allowed shall be lower of the normative or actual carrying cost, which is line with the principle of reasonability. Reliance in this regard is placed upon the Order of Hon'ble CERC in petition no. 227/MP/2021 dated 31.01.2024, wherein after considering all aspects and similar arguments as is raised by the petitioner, the change in law claims of the petitioner were allowed in following manner -

" *…*

b) Compensation at the discount rate of 9% and annuity period of 15 years shall be the appropriate methodology towards change in law compensation in petition No. 226/MP/2021 and discount rate of 9.12% and annuity payment of 15 years as the appropriate methodology towards change in law compensation in petition No. 227/MP/2021. The liability of SECI/ Discoms for 'Monthly Annuity Payment' shall start from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the petitioners, whichever is later. Late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

c) ***The petitioners shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the petitioners for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPAs, whichever is the lowest. Once a supplementary bill is raised by the petitioners in terms of this order, the provision of Late Payment Surcharge in the PPAs would kick in if the payment is not made by the respondents within the due date.***

d) In view of the restitution clause in the PPAs the directions issued in this Order so far as they relate to additional compensation for the period pre-COD (including carrying cost) claims only shall be enforced. However, in view of the Hon'ble Supreme Court Order dated 12.12.2022 (as quoted above) the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post Commercial Operation Date of the projects shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in Telangana Northern Power Distribution Company Limited &Anr. V. Parampujya Solar Energy Pvt. Limited & Ors, and connected matters."

(Emphasis Supplied)

SUBMISSIONS WITH RESPECT TO REIMBURSEMENT OF 1ST RUNNING BILL AMOUNTING TO RS.1,90,509.98/- ALONGWITH INTEREST @19.5% P.A. AS PER MSME ACT, 2006.

4.26 That the bill raised by the petitioner is not tenable, being contrary to the terms and condition of the RFP as well as the PPA. The said bill has been raised for the infirm energy injected into the state grade prior to the Commercial Operation Date of the power plant i.e. for the period 19.08.2022 to 31.08.2022.

4.27 That the events that led to the delay in the declaration of COD are not attributable to the Answering respondents. The said events are well within the knowledge of the petitioner, however, the same are detailed below for the perusal of the Hon'ble Commission:

a) On the request dated 24.08.2022 of the petitioner, a committee of officers of Answering respondent-HPPC was constituted to witness trial run of 1 MW solar power plant. Accordingly, the committee visited the plant on 25.08.2022.

b) At the site, it was found that the accuracy of meter system was not tested by the M&P wing, whereas it was incumbent upon the petitioner to get the same tested prior to offering the witness of trial run of the plant on account of non-testing of the metering system. The commissioning of the plant could not be done on 25.08.2022.

c) Thereafter, the petitioner vide email dated 30.08.2022, supplied the CMRI data of meters installed at the delivery point and intimated that the meter system polarity was found to reverse resulting in excessive import units in comparison to the export units. The matter was taken up with the HVPNL, for taking necessary action for correction of the fault in the meter.

d) Vide another email dated 01.09.2022, the petitioner had intimated regarding the rectification of the polarity of the meter. Accordingly, the committee constituted for commissioning of the plant once again visited the plant on 01.09.2022. Subsequent to the same, the COD certificate was issued on the same date-01.09.2022 after verification of the requisite documents in terms of the PPA, such as the CEI report, synchronization certificate, JMR, M&P report, etc.

In view of the foregoing, it is evident that the issuance of COD certificate was delayed owing to the reasons attributable only to the petitioner. There was no delay on the part of the Answering respondents. Attention in this regard is also brought towards Clause 2.3.1 of RFP as per which- *the solar power source shall be duly certified by HPPC. The certificate in this regard will be provided by SPD at the time of*

synchronisation. During the reply to the queries/ clarifications sort by the prospective bidders regarding clause 2.3.1, HPPC had clarified as under:

Sr. No.	*Questions raised by the Bidders*	*Suggestions by Bidders*	*HPPC Reply*
3.	*As per clause no. 2.3.1 "Solar power source shall be duly certified by HPPC. The certificate in this regard will be provided by SPD at the time of synchronisation." Kindly clarify the certification process and the requirements of the same.*		*It Is clarified that commissioning shall be witnessed by HPPC or its authorised representatives. Hence, no changes required.*

The terms of the RFP and the pre-bid clarifications duly form, the part of the PPA in accordance with Clause 2.2.6 of the PPA.

4.28 That Article 19 of the PPA provides for the "Commissioning Procedure". A bare perusal of the sad procedure establishes that commissioning can be said to be effected only on the issuance of Synchronisation and Commissioning Certificate. A plain reading of the certificate shows that the flow of energy under the PPA can only be considered from the date mentioned in the certificate itself. Clause 19.3, which explicitly states that the issuance of Synchronisation and Commissioning Certificate is mandatory in nature, is reproduced below for ready reference:

"19.3 Synchronisation and Commissioning Certificate as per prescribed format, (Annexure-III & IV) shall be issued by respective STU/DISCOM for ascertaining injection of power into grid and after verification of technical parameters of the project."

Further, clause 4.1 of the PPA provides that the purchase of power at Tariff will become applicable from the Date of Commercial Operation of the project. Clause 4.1 is reproduced below:

"4.1 All the Delivered Energy add the Interconnection Point for sale to DISCOM will be purchased at the Tariff provided for in Clause 4.2 from and after the Date of Commercial Operation of the project and limited to capacity of the project only and title to Delivered Energy purchased shall pass from the Solar Power Developer to the DISCOM at the Interconnection Point."

That on an harmonious reading of the terms of the RFP and the PPA relating to the synchronisation and issuance of commissioning certificate, establishes that energy flow under the PPA can only be considered with effect from COD. In fact, the Clause 2.2.3 of the PPA stipulates that the clauses of the PPA are to be read and interpreted in an harmonious manner so as to give effect to each part.

4.29 That the petitioner had wrongly referred only the definition of the 'Commercial Operation Date' in isolation to contend that COD was achieved on 19.08.2019. It is submitted that <u>firstly,</u> the provisions of RFP and PPA cannot be read in isolation to arrive at a unilateral interpretation favouring the case of the petitioner, more so, when the provisions with respect to commissioning are contained in several parts.

Secondly, even a plain reading of the definition of 'Commercial Operation Date' demolishes, the interpretation made by the petitioner. The expression 'delivery of power' is qualified by the expression 'as per terms and conditions of the PPA'. Thus, the definition itself refer to all the relevant terms and condition of the PPA, which, if read together leaves no room for doubt that the COD can only be said to have affected on the issuance of Commissioning Certificate. As such, any claim for payment of the amount for power injected into the great before the issuance of commissioning certificate is illegal, unjustified, untenable, and against the terms of the PPA.

SUBMISSIONS WITH RESPECT TO CHANGE IN CAPACITY UTILISATION FACTOR FROM 19% TO 21%:

4.30 That the petitioner is, in essence, seeking relaxation of a particular term of the Contract. In the present case the RFP was floated and the bids were called for from the prospective bidders. In case any term of the contract is changed afterwards i.e. after the award of the tender to the successful bidder, the same would be amount to favourable treatment to the one particular bidder. It is submitted that there may be a case where certain unresponsive bids would qualify had the relaxation of CUF granted to them. It is submitted that the Government entitles are required to grant fair and equal treatment to all parties. However, in case, the present claim raised by the petitioner is allowed, the same would amount to unjust treatment to the unsuccessful bidders.

4.31 That HPPC vide its letter dated 08.02.2021 and 26.04.2021 had expressly clarified to the petitioner that the quoted tariff was accepted with the CUF @ 19% and the same cannot be altered at the belated stage. It is submitted that the dispute which was set to rest vide letters issued by the Answering respondent dating back to the year 2021 has been raised again after a lapse of several years. The claim for alteration of CUF cannot be accepted, at this stage, at the same would tantamount to change in the bid specifications after the execution of contract, which is impermissible under law.

4.32 That further, it is relevant to highlight that the actual CUF of the petitioner is in fact higher than 19%. In this regard, respondent is placing on record the actual generation figures which shows that the actual CUF is 19.8435% during FY 2023-24. This amply explains the obvious reasons as regards non-revision of CUF by the petitioner in terms of PPA. Suffice to state that the claim for CUF has been *malafidely* raised belatedly in an attempt to make undue gains.

4.33 That even otherwise, the basic rule of contract law is that, the promisor must perform exactly, what he/it has undertaken to do. The obligation to perform is absolute, as held in the case of *Magnum Films v. Golcha Properties Pvt. Ltd.* [AIR 1984 Delhi 162].

SUBMISSIONS WITH RESPECT TO CLAIMS RAISED BY THE PETITIONER WHILE RELYING ON THE HARYANA SOLAR POLICY, 2016:

4.34 That it has been wrongly contended by the petitioner that the provisions of the Haryana Solar Policy, 206 is applicable to its case. The following claims raised by the petitioner are an after-thought and worthy of no credence in the eyes of law:

a) Reimbursement of Metering Charges
b) Reimbursement of Power Evacuation Charges
c) Earnest Money (Refund of part of Bank Guarantee Charges)
d) Exemption of Electricity Duty, Taxes and Cell, wheeling, transmission & distribution cross-subsidy charges and reactive power charges.
e) Reimbursement on account of price preference
f) Reimbursement of account of non-clearance of approvals for setting up of 1 MW and 2 MW solar power plants.

The Haryana Solar Policy, 2016 is in no manner applicable to the present PPA. The terms of RFP and PPA clearly do not make any reference to the said policy. Needless to state that neither any objection as regards the non-reference of Haryana Solar Policy in PPA was ever raised by the petitioner at the relevant time nor any clarification was sought in this regard until the Commissioning of the Plant. The PPA was validly executed without any protest or even a vague objection on the part of the petitioner. It, therefore, does not now lie in the mouth of the petitioner to allege that Haryana Solar Policy is applicable to PPA and raise frivolous claims in this regard. It is submitted that serious objection to the act and conduct of the petitioner is liable to be taken which is sufficient to expose the falsity of belated claims raised by way of the present petition.

4.35 That it is further submitted that the petitioner has wrongly referred to Clause 2.3 of RFP to raise a fanciful contention belatedly regarding the applicability of the Haryana Solar Policy, 2016. Clause 2.3 of RFP reads as under:

"2.3 Capacity of each Project

The procurement will be done in two categories.

Category-I:

The capacity of each Solar Power Project shall be minimum 3 MW. Any bidder can apply for minimum 3 MW and in the multiple of 1 MW. Maximum capacity of the plant

can be 240 MW. There is no limit on the No. of projects and the maximum capacity assigned to any better limiting to 240MW.

Category II:

Capacity of each solar power project in this category will be 1 MW or 2 MW only. Total capacity will be procured in this category is 60 MW. The Solar plant will be set up in the State of Haryana in this category."

The inclusion of Category-II in the RFP has been utterly misconstrued by the petitioner to contend that projects of 1.00MW and 2.00MW capacity are covered under Haryana Solar Policy 2016 instead of MoP guidelines issued vide notification dated 03.08.2017. In this regard, firstly, the reference to Haryana Solar Policy, 2016 was made by Answering respondent-HPPC only with regard to the specification of capacity of 1MW to 2 MW Plants. The categorization of small solar power plants in RFP was justified by taking a clue from the Policy. However, this does not *ipso facto* make the policy applicable to Developers without any term in the PPA to that effect. The terms and conditions of the supply of power along with the tariff to be discovered in the bid was explicitly mentioned in the NIT. Developers after considering all the terms and conditions of the NIT participated in the bid and accordingly, the tariff was discovered through tariff-based competitive bidding. Secondly, presuming but not conceding that the statement of Answering respondent-HPPC referred to the applicability of the Haryana Solar Policy, it is submitted that the said statement, by itself, does not override the terms and conditions of the PPA, which are sacrosanct and binding on the parties. Even otherwise, the claim of the petitioner cannot be considered being time-barred.

4.36 That at this stage, it is also relevant to deal with the allegations relating to 'duress' raised by the petitioner. In this regard, it is submitted that such allegations casts an intense burden of proof on the petitioner. However, in the present case mere allegations have been raised without placing on record even a single document in support of the same. Attention in this regard is brought towards the decision in *National Insurance Company Limited v. Boghara Polyfab Private Limited* [(2009) 1 SCC 267] wherein the Hon'ble Apex Court observed that:

"23. The present, in our opinion, appears to be a case falling in the category of exception noted in Boghara Polyfab (P) Ltd. [(2009) 1 SCC 267: (2009) 1 SCC (Civ) 177] (p. 284, para 25) as to financial duress or coercion, nothing of this kind is established prima facie. <u>Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractor clearly</u>

shows that "no-claim certificates" were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily."

PRELIMINARY SUBMISSIONS WITH RESPECT TO THE DISPUTES/ ISSUES RAISED BY THE PETITIONER RELATINGTO HVPNL:

SUBMISSIONS W.R.T. REFUND OF LONG TERM OPEN ACCESS ("LTOA") CHARGES SOUGHT BY THE PETITIONER:

4.37 That Clause 2.7.2 of the RFP provides as under:

"2.7.2 The bidder shall be required to obtain Long Term Open Access (LTOA) as per the regulation of the Centre/ State Regulators, as the case may be, from the State or Regional Load dispatch Centre (RLSC) and/or the state/ central transmission utilities."

Attention of the Hon'ble Commission is also brought towards order dated 17.10.2023 was passed by the Hon'ble Commission in *M/s Utrecht Solar Pvt. Ltd. & Ors. v. Managing Director, Haryana Vidyut Vitran Nigam Ltd & Ors.* wherein the Hon'ble Commission had specifically observed that:

"The petitioners further alleged that they are connected to the distribution network of the State and, therefore, they shall not be asked to apply for Open Access Connectivity to HVPNL.

The counsel for the respondent, on this aspect, referred to the terms and conditions of the PPA which mandates the generator to comply with all the statutory laws as well as the direction of the SLDC, clause 8.10 of the PPA was referred to.

6.6. The Reliance by the petitioners on 'Procedure for Intra-State Short term Open Access of Transmission and/or Distribution System of the HVPNL/UHBVN and DHBVNL' to contend that the existing generating company shall be allowed to continue as per the existing arrangement is incorrect as the said procedure is applicable to short term open access consumers only.

6.7. The Commission observes that the alleged financial burden is uncalled for in view of the binding conditions of the PPA as well as the Regulations. In a recent judgement dated 06.04.2023 rendered by the Hon'ble Supreme Court in Haryana Power Purchase Centre vs. Sasan Power Ltd. & Ors. (Civil Appeal No. 11826 of 2019), it was held that "in a case where the matter is governed by express terms of

the contract, it may not be open to the Commission even donning the garb of a regulatory body to go beyond the express terms of the contract."

The Supreme Court by its judgment delivered on 13.04.2023 in Civil Appeal No. 3480-3481 of 2020 (Gujarat Urja Vikas Nigam Limited and Ors. v. Renew Energy Private Limited and Ors. has settled that a Power Purchase Agreement is sacrosanct and binding on the parties. In the case of GUVNL v Solar Semiconductor, (2017) 16 SCC 498 the Supreme Court reiterated that the terms of the PPA are binding and cannot be reopened."

[Emphasis Supplied]

Thus, in view of the specific and binding terms of the Contract subsisting between the parties as well as in view of the fact that issue already settled by the Hon'ble Commission, the petitioner was liable to be pay the LTOA charges.

4.38 That vide Memo No. Ch-20/ISB-721 dated 26.04.2021 the Answering respondent-HVPNL had duly informed the petitioner that- *"x. The grant of connectivity shall not entitle to inter-change any power with the grid unless it obtains Long Term Open Access in accordance with the provisions of HERC Open Access Regulations, 2012."* As such, the petitioner cannot be permitted to raise any grievance at such a belated stage. The submissions with respect to LTOA are liable to be rejected being hopelessly time-barred.

4.39 That the LTOA already stands granted to the petitioner vide letter bearing Memo No. Ch-59/ISB-721 dated 15.07.2022; as such, the petitioner is estopped from raising any claims with respect to grant of LTOA.

SUBMISSIONS WITH RESPECT TO INSTALLATION OF TELEMETRY SYSTEM:

4.40 That the petitioner is required to adhere all the terms & conditions laid in the Connectivity Approval issued by HVPNL vide Memo No. Ch-20/ISB-721 dated 26.04.2021 whereby the petitioner was duly informed that:

"iii. The Main and standby telemetry for real time data communication shall be provided with SLDC before commissioning of the generator.

iv. Provision of data link to SLDC, Panipat shall be ensured before commissioning of the generator."

Further, HVPNL while granting LTOA approval to the petitioner, vide letter dated 15.07.2022, specifically mentioned as under:

"vii. The Main and standby telemetry for real time data communication shall be provided with SLDC before commissioning of the generator and M/s Giotech Power

Pvt. Ltd. shall take necessary action for registration as per QCA Regulation before commissioning of the generator."

The relevant terms of the PPA are also reproduced below for ready reference:

"6.1 SYNCHRONIZATION AND INTEGRATED OPERATIONS

…

6.1.3 The entire cost of transmission including the cost of line, Bay, metering and protection system etc. along with Transmission charges, losses etc. up to Haryana (STU periphery/ DISCOMs substation) will be borne by the Project Developer.

…

6.2 SYNCHRONIZATION AND INTERCONNECTION FACILITIES:

6.2.1 The synchronization equipment will be installed by the SPD at its generation facility at its own cost. ***The SPD shall synchronize its system with the Nigam's system only after the grant of approval of synchronization scheme by competent authority of DISCOM/ Nigam and checking/ verification is made by the concerned authority of DISCOM/ STUs****. The SPDs has delivered to the TRANSCO/ DISCOM a list of plant equipment showing the make, model, serial number and certified the installed capacity of the plant before synchronization.*

…

6.2.3 The Company shall provide step up transformers/ other stepping up equipment i.e. Grid Tie Inverter, panels, kiosks, protection & metering equipment at the generation facility and fully equipped line bay(s) in its switchyard for termination of interconnection transmission line(s)/ substation of the DISCOM. ***Company shall also provide proper & reliable communication between the generation facility & Grid substation of Nigam/ Discom/ STU, to ensure better data transfer, the cost of these works will be borne by the Company****.*

…

9.1 The company shall provide necessary protective equipment and interlocking devices at generating system (like inverter with anti-islanding etc.), so that no adverse effect is caused to the Nigam's Grid system. The company shall obtain approval of the competent authority of Nigam/ DISCOM for the protection logic of the solar energy system and synchronization schemes any modifications thereto prior to commissioning of the project."

4.41 That the petitioner was duty bound to comply with the Haryana Grid Code (HGC) Regulations, 2009, the relevant provisions of which are reproduced below:

"*4.11 Data Communication Facilities*

Reliable and efficient speech and data communication systems shall be provided to facilitate necessary communication and data exchange, and supervision/control of the grid by the SLDC, under normal and abnormal conditions. All agencies including ***CGSs who are allowed open access shall provide systems to telemeter power system parameter such as flow, voltage and status of switches/ transformer taps etc. in line with interface requirements and other guidelines made available to SLDC. The associated communication system to facilitate data flow up to SLDC, as the case may be, shall also be established by the concerned agency as agreed by STU/transmission licensee in the Connection Agreement****. All agencies in coordination with STU shall provide the required facilities at their respective ends and at SLDC as agreed in the Connection Agreement."*

4.42 That the Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation as approved by the Hon'ble Commission in accordance with Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019, provides as under:

"4. Role & Responsibilities of Stand-alone Generators

vi) Stand-alone Generator shall provide real time data for power generation parameters and real time generation data (turbine and inverter level) and weather data wherever available as per Annexure-II.

……

ix) In case of non-availability of Real Time Data (at Turbine Level /inverter Level), Generator shall maintain and provide time block wise generation data at (turbine and inverter level) and weather data on Weekly basis:

For wind plants, at the turbine level: Average wind speed, Average power generation at time block 'level (15-min or lesser, as the case may be)

For solar plants, for all inverters >= 1 MW: Average Solar Irradiation, Average power generation at time block level (15- min or lesser, as the case may be)*

** If a solar-plant uses only smaller string inverters, then data may be provided at the plant level."*

4.43 That before the issuance of RFP by the Answering respondents, the Ministry of Power vide its letter bearing No. 23/13/2017-R&R dated 06.04.2017, has sought action to be taken regarding "Renewable Energy generation data communication system" as under:

"2. However, it has been observed that the data communication system for Discom embedded Renewable Energy generators, (Solar, Wind Roof-Top Solar etc.) is not available in a number of cases, because of which real time generation data is not

available. The availability of data communication system is very vital considering Grid security aspects.

3. To have easy availability of the Generating Capacity (including RE capacity) in the country, it is desirable that a data Registry-at State as well as National level be put in place for compilation of generation data of all kind of Generators (Conventional, Non-conventional, Non-captive, Captive, ISGS or InSGS).

……."

4.44 That similarly, the Central Electricity Authority ("**CEA**") had in exercise of its power conferred by Section 7 and clause (b) of Section 73 read with Sub-section (2) of Section 177 of Electricity Act, 2003, notified the *Central Electricity Authority (Technical Standards for Connectivity to Grid) Regulations, 2007* on 21.02.2007. These Regulations are inter-alia applicable to all the generating projects including the renewables, which are getting connected to the grid at voltage level of 33 kV and above. The pertinent Clauses 6(3) and 6(4)(b) of General Connectivity Conditions of the said Regulations are reproduced below for ease of reference:

"6(3) The requester and user shall provide necessary facilities for voice and data communication and transfer of on-line operational data, such as voltage, frequency, line flows, and status of breaker and isolator position and other parameters as prescribed by the Appropriate Load Despatch Centre.

6(4) The requester and user shall cooperate with the Regional Power Committee, and Appropriate Load Despatch Centres in respect of the matters listed below, but not limited to:

(b) agree to maintain meters and communication system in its jurisdiction in good condition."

Subsequently, CEA had also notified the Central Electricity Authority (Technical Standards for Connectivity of the Distributed Generation Resources) Regulations, 2013 on 30.09.2013. These Regulations are applicable for distributed generation resource which means a generating station feeding electricity into the system at voltage level of below 33 kV. These regulations also cover the renewable projects connected to the distribution licensee system at voltage level of below 33KV. The relevant Clause 4(4) of General Connectivity Conditions of the said CEA Regulations is reproduced below for ready reference:

"4(4) The applicant and the user shall provide necessary facilities in the distributed generation resource for communication and storage of data and other parameters as may be stipulated by the appropriate licensee in a non-discriminatory manner."

Attention is in this regard, is also brought towards the letter dated 12.04.2017 whereby CEA had directed as under:

"3. In view of the relevant Clauses of the CEA Regulations cited above, it is obligatory for all the grid connected renewable generators to provide necessary facilities for data-communication and data-storage and other parameters as maybe stipulated the said CEA Regulations also places onus on the generating plants including renewables to co-ordinate with appropriate licensee on issues including but not limited to protection safety and metering.

5. With the above perspective as emerging from the CEA Regulations in force, the SLDCs are requested to take up the matter with all the renewable generators to ensure transfer of data to the appropriate Load Despatch Centre, so that the real time generation data is available with them for centralized monitoring.

Please indicate the present status in this regard and the action plan with definite time frame to ensure real time data telemetry from all the grid connected Renewable Generators/Plants to the SLDCs."

4.45 That it can be safely assumed that the aforesaid conditions were well-within the knowledge of the petitioner at the time of submission of bid. It would be relevant to reproduce the observation of the Hon'ble Apex Court in the case of *West Bengal State Electricity Board v. Patel Engineering Co. Ltd. & Ors.* [Civil Appeal No. 4921 of 2000, decided on 15.01.2001] which is applicable to the facts and circumstances of the present case:

"It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works."

Taking que from the aforesaid observation, it is submitted that the petitioner must have been submitted by the bid only after evaluation of the conditions that may require compliance. Such an evaluation must be undertaken with the assistance of the experts in the field. As such, at this stage, the petitioner cannot be permitted to plead ignorance to state that there is no clause in the PPA/tender document that directs the petitioner to install telemetry system.

4.46 That a Memo no. Ch-95/ISB-721 dated 05.01.2023 was addressed to the petitioner with respect to the non-submission of the copy of approvals of synchronization scheme, SLDC telemetry equipment etc. The reminder to the same was sent vide Memo No. Ch-101/ISB-721 dated 11.01.2023**.** It is further submitted that vide Memo No. Ch-14/PC-99/SLDC/OP dated 29.12.2023, the Answering respondent had served upon the petitioner a notice under Clause 16 of the DSM Procedure calling

upon the petitioner to comply with the DSM Procedure failing which action may be initiated against the petitioner. The Answering respondent had specifically informed the petitioner that- *"In this matter, your attention is brought towards this office e-mail dated 14/10/2022, Ch-6/PC-98/SLDC/Op dated: 14.11.2022 & XEN/Open Access, HVPNL office letter memo no. Ch-101/ISB-721 dated: 11.01.2023 regarding the subject cited above vide which it was requested to provide real time telemetry data at SLDC Panipat."* and the petitioner was once against asked to comply the procedure in place. The reminder to the aforesaid notice has been sent recently to a number of generators including the petitioner herein vide Memo no. Ch-153/ISB-711/Vol.I dated 12.03.2024.

SUBMISSIONS W.R.T. REFUND OF STATE LOAD DISPATCH CENTRE ("SLDC") CHARGES SOUGHT BY THE PETITIONER:

4.47 That the Hon'ble Commission had notified the Regulation No. HERC/46/2019, the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 (for brevity "MYT Regulations, 2019"). The relevant provisions of the MYT Regulations, 2019 in accordance to which the petitioner is liable to pay SLDC Charges is reproduced below:

"16. COMPONENTS OF TARIFF FOR TRANSMISSION AND SLDC BUSINESS

…

16.2 SLDC charges, to reflect the cost of operating the State Load Dispatch Centre (SLDC) including the cost of owning & maintaining it. These shall be levied as SLDC charges to the beneficiaries of the services of SLDC in accordance with the provisions of these Regulations.

…

52. RECOVERY OF CHARGES BY SLDC FROM BENEFICIARIES

"The annual charges of SLDC determined as per Regulations 6 and 16, shall be recovered as a single composite charge from the beneficiaries as under:

(1) Intra-State transmission licensee	*8% of Annual SLDC Charges*
(2) Generating stations and sellers	*46% of Annual SLDC Charges*
(3) Distribution licensee and buyers	*46% of Annual SLDC Charges*

(i) The SLDC charges shall be levied by the Transmission licensees / STU, also designated as the SLDC, on the basis of weighted average of the lines (Ckt. km) owned by the Intra State Transmission Licensee(s) as on the last day of the month prior to billing of the month."

4.48 That attention in this regard is also brought towards the following clauses of the PPA dated 19.06.2020:

"ARTICLE 8

GENERATION FACILITIES OPERATION & MAINTEANCE

…

8.4 Company shall meet with all statutory laws as applicable.

…

8.9 For matters relating to grid operations and load dispatch, the directions of the State Load Dispatch Centre shall be strictly complied with, by the company. Any dispute on this account shall be settled by the parties amicably. If the dispute is not settled during such discussion, then either party may refer the same to HERC."

Be that as it may, the SLDC Charges were notified under the MYT Regulations, 2019, however, the present petition has been filed belatedly i.e. after lapse of over 3 years from the date of coming into force of the MYT Regulations, 2019. As such, the present claim being hopelessly time-barred is liable to rejected. Even otherwise, the petitioner alone cannot be permitted to claim any deviation from the Regulations in vogue, especially when the charges were paid by the petitioner at the relevant time without any demur.

SUBMISSIONS W.R.T. COMPENSATION ON ACCOUNT OF COST OF VCB AND LOSS ON ACCOUNT OF TRIPPING SOUGHT BY THE PETITIONER:

4.49 That the petitioner has alleged that he was *'forced to use obsolete VCB at the sub-station.'* At the outset, it is submitted that the submission with respect to any 'force' on the petitioner is vehemently denied. It is further vehemently denied that the VCB in place was 'obsolete'. In this regard, it is submitted that petitioner having capacity of 1 MW, the open access feeder was approved to be connected from 66 KV Sub Station HVPNL, Nalvi at 11KV voltage level.

On 22.07.2022 vide memo no Giotech/182/2022-23 (Annexure P-129 at page no. 1026 of the petition), the petitioner had requested to allocate 01 no. VCB panel for aforesaid solar power plant. During the said period, only a single spare 11 KV VCB panel, CGL make, YOM -2010, provided on 12.5/16 MVA 66/11 KV T/F T-3 was available for providing connectivity to above mentioned feeder. The said fact was duly intimated to the petitioner. Even otherwise, there was no space in the existing control room building to adjust additional 11 KV VCB panel. It is submitted that the work for extension of control room building at 66 KV Sub Station was already approved and

construction activities were under progress. The petitioner had deposited the cost of 11 KV VCB panel for s/cited 11 KV Independent feeder which was calculated on the basis of latest rate list of electrical equipment. It is pertinent to mention here that only cost of 11 KV VCB panel was taken from the petitioner. Accordingly, 11 KV Independent feeder was got connected on available spare 11 KV VCB panel and the same energized on dated 17.08.2022 at 21:30 Hrs. It is the case of the Answering respondents that at the relevant time i.e. way back in July, 2022, the petitioner did not raise any objection regarding the age of the 11 KV VCB panel or the same was obsolete etc.

4.50 That further, insofar as the allegation of tripping which occurred on the above mentioned 11 KV VCB panel are concerned, the same were due to overloading/fault in the 11 KV Giotech Power feeder. As per approved installed capacity (1 MW) of 11 KV Power feeder, the protection settings of numerical relay provided on 11 KV VCB panel allocated for providing connectivity to 11 KV Power feeder was got carried out by HVPNL on 17.08.2022 as per suitability of approved capacity and the all testing results were found in order. Further, on 26.08.2022, the online testing of 11 KV CT/PT unit, SEM was witnessed by HVPNL and UHBVN, in the presence of the petitioner and the accuracy testing of aforesaid equipment were found in order. Thereafter, answering respondent-HVPNL vide memo no 2164/SSC-2 dated 18.08.2022 addressed to O/o Executive Engineer, TS Division, Ambala with a copy to the petitioner intimated that whenever new 11 KV VCB panel set will be allocated to 66 KV S/Stn HVPNL, Nalvi against old 11 KV VCB panels provided on 12.5/16 MVA 66/11 KV T/F T-2, the new 11 KV VCB panel will be provided to petitioner.

4.51 That in the meanwhile, the special estimate of Rs. 47,04,166 for providing new 11 KV VCB panel set, which was in process and was got sanctioned by the Answering respondent. Accordingly, on 31.03.2023, the 11 KV Giotech Power feeder shifted on newly commissioned 11 KV VCB panels on 12/5/16 MVA 66/11 KV T/F T-2 at 66 KV Sub Station HVPNL, Nalvi. It is the case of the Answering respondent that the petitioner having waived its right to raise any objection at the relevant time, is estopped from raising any grievance by way of the present petition. It is submitted that waiver is intentional withdrawal of a known existing right which bars the petitioner to seek any relief in future. Reliance in this regard is placed on the decision of Division Bench of Hon'ble Punjab High Court in *Inder Singh v. Deputy Commissioner and others* [AIR 1957 Punjab 60], wherein a Division Bench of the Punjab High Court was pleased to observe that-

"…failure of a party to object when it had a right to do so before the trial Court constitutes a waiver of the right to object and precludes him from exercising the said

right in the appellate Court. Such waiver or estoppel may arise from mere silence or inaction or from inconsistent conduct or statements or from admission, concession, consent or acquiescence or from acceptance of the benefits of a ruling of the trial Court or its judgment or decree or from an error which was invited by the party itself."

4.52 That the petitioner had further alleged that there were a number of tripping on account of the old VCB being used. In this regard, a table showing details of trippings/ breakdowns is annexed as Annexure R-1/13**.** A perusal of the same shows that the Tripping continued even after the new VCB was installed. The reasons of such tripping are evidently owing to over-generation or poor earthing. It is therefore, incorrect to aver that the tripping occurred owing to old VCB. As such, the allegations of the petitioner with respect to the tripping on account of an old VCB are baseless and worthy of no credence. It is further submitted that line of 11 KV emanating from 66 KV S/STn HVPNL, Nalvi is being maintained by the petitioner himself and a number of times the shutdown was availed by the petitioner for maintenance to be carried out. A table showing the details of shutdowns availed by the petitioner himself is annexed as Annexure R-1/14.

SUBMISSIONS W.R.T. REFUND OF STAND-ALONE GENERATOR CHARGES:

4.53 That the petitioner had prayed that- *"directions may kindly be issued to the respondents to refund the stand-alone generator charges deposited by the petitioner under duress."* In this regard, it is submitted that the said charges were recovered from the petitioner in view of the applicability of the DSM Regulations, 2019 and the procedure made thereinunder. In this regard Regulation 4 of the DSM Regulations, 2019 reproduced below:

"4 Applicability

4.1 These Regulations shall apply to all Wind and Solar Energy Generators in Haryana connected to the Intra-State Transmission /Distribution System, including those connected through Pooling Sub-Stations, and using the power generated for self-consumption or sale within or outside the State:

Provided that the combined installed capacity of the Solar or Wind Generators connected to a particular Pooling Sub-Station, or that of an individual Generator connected to some other Sub-Station, shall not be less than 1 MW."

4.54 That the 'Procedure for Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation' (for brevity "DSM Procedure"), was approved by this Hon'ble Commission, vide its order dated 08.03.2021 in Case no. HERC/PRO–42 of 2020, after calling for objections/comments from all the stakeholders/ general public. Now the DSM Procedure is in force and is applicable to all Wind and Solar Energy

Generators, having combined installed capacity not less than 1 MW, in Haryana connected to the Intra-State Transmission/ Distribution System, including those connected through Pooling Sub-Stations, and using the power generated for self-consumption or sale within or outside the State. As such, the Procedure is fully applicable to the petitioner and the same is required to be complied with by the petitioner.

4.55 That Clause 9.1 of the DSM Procedure relates to the 'Registration as a Stand-alone Generator/ QCA". The relevant clause is reproduced hereunder:

"9. Registration and De-Registration Procedure for Stand-alone generator/ QCA:

9.1 Registration as a Stand-alone generator/ QCA:-

The procedure for registering a Stand-alone generator/ QCA is as follows:

i. *The prospective Stand-alone generator/ QCA shall submit application accompanied with prescribed fee as per the performa (Annexure-VI) for registration. After operationalization of the SLDC's web-based software, the application should be submitted online through web-based Software and copy of printed application shall be supplied to SLDC along with required documents.*

ii. *The QCA shall submit separate application for each Pooling Station. For each Pooling Station only one application shall be accepted from the QCA.*

iii. *The Application for Registration shall be accompanied by a non-refundable processing fee of Rs. 10,000/- (Ten Thousand Rupees Only) for Stand-alone generators/ Rs. 20,000/- (Twenty Thousand Rupees Only) for QCA (for each pooling station) payable through RTGS/ NEFT.*

In case of deposit/ receipt of less amount than the prescribed fee, the application shall not be processed until full payment is received in the account. Bank Charges, if any, shall be borne by the Stand-alone generator/QCA.

iv. *Each application for registration shall be accompanied with the following documents:-*

a. WTG's/Inverter's static data and pooling Stations details as per Annexure-IA, IB & IC. Further, if there is any change in the information furnished, then the updated information shall be furnished to the SLDC within 7 working days.

b. Undertaking on Non-Judicial Stamp paper of value notified by the State Government from time to time (attested by Notary) in regard to compliance for HERC Regulations and its procedure as per Annexure-IV B.

c. Certified PPA rates (in case of inter-state transaction) on notarized affidavit as per

Annexure-IVA, for the purpose of Deviation charge account preparation to SLDC supported by copy of the PPA.

d. Copy of Board Resolutions for Authorized Signatory/ Power of Attorney/ Authorization Letter, duly certified/ attested by Company Secretary/ C.A. in respect of the signing authority of QCA and Generator(s).

In case of QCA, following documents are also required in addition to the aforementioned documents: -

e. Consent letters from all the pool generators connected to the respective pooling station and beneficiary (ies). A performa consent letter attached as Annexure-V.

f. CA audited balance sheets/Financial Statements/Audit reports of the previous year showing net worth of QCA.

g. Experience certificates in respect of Sr.no. 6 (iii) & (iv) above.

Note: All the photocopies supplied along with the application shall be self-attested by authorized signatory.

v. All applications for registration complete in all respects, shall be submitted in the following office: -

Chief Engineer/SO & Comml., HVPNL
Shakti Bhawan, Sector-6
Panchkula-134109
(E-mail: "cesocomml@hvpn.org.in")

vi. The time period for registration of Stand-alone generator/ QCA shall be (15) working days from the date of receipt of all the documents & information complete in all respect by SLDC.

vii. Within one week from the date of registration, Bank Guarantee of Rs. 20,000/- (Twenty Thousand Rupees only) per MW for Solar Generation and Rs. 50,000/- (Fifty Thousand Rupees only) per MW for Wind Generation towards payment security shall be submitted by the Stand-alone generator/ QCA. The same shall be initially valid for 2 years and revalidated/ recouped as per requirement from time to time.

If the Stand-alone generator/ QCA fails to pay deviation charges within Sixty (60) days from the issue of the accounts and billing, the Bank Guarantee shall be encashed by SLDC.

In case of expired Bank Guarantee, Stand-alone generator/ QCA shall revive Bank Guarantee within seven (7) days from receipt of such information from SLDC. Failure to revive Bank Guarantee within prescribed time limit, the Wind/Solar generation shall not be scheduled.

viii. Once the application supplied by Stand-alone generator/ QCA along with the requisite documents is found in order and Bank Guarantee is received, the same may be accepted by the SLDC, and the generator/ QCA may be allowed to schedule power for its constituent generators/pooling stations for which the necessary Registration ID (login ID and password for IT enabled communication & software) shall be provided by SLDC for accessing the further activities such as uploading of day ahead/ Intra-day ahead / week ahead scheduling/revisions.

ix. Incomplete application shall be liable for rejection. The reason for rejection shall be communicated to the applicant."

4.56 That as per Clause 16 relating to the '*Mechanism for Ensuring Compliance*' of the DSM Procedure, non-compliance of any of the terms & conditions/ rules outlined under the Procedure shall constitute breach by the Generators. It is submitted that on account of the non-compliance on the part of the petitioner and also after the order dated 17.10.2023 was passed by the Hon'ble Commission in *M/s Utrecht Solar Pvt. Ltd. & Ors. v. Managing Director, Haryana Vidyut Vitran Nigam Ltd & Ors.* vide which the Hon'ble Commission held that the DSM Regulations are applicable to Solar Plants of 1 MW, the Answering respondent- HVPNL had issued letters/ notices to the petitioner to come forward to comply with conditions prescribed under the DSM Regulations and Procedure. The following letters/ notices had been issued by the Answering respondent:

a. Memo no. Ch51/ISB-711 dated 26.03.2021,
b. Memo No. Ch-65/ISB-711/Vol.-I dated 09.06.2021,
c. Memo No. Ch-67/ISB-711/Vol.-I dated 21.06.2021,
d. Memo No. Ch-91/ISB-711/Vol.-I dated 21.09.2021,
e. Memo No. Ch-97/ISB-711 dated 22.04.2022,
f. Memo No. Ch-111/ISB711A/OI.-I dated 01.06.2022
g. Memo No. Ch-126/ISB-711A/Vol.-I dated 07.10.2022,
h. Memo No. Ch-131/ISB-711A/Vol.-I dated 12.01.2023,
i. Memo No. Ch-146/ISB-711 dated 23.11.2023, and
j. Memo No. Ch-153/ISB-711A/Vol.-I Dated: 12.03.2024.

4.57 That attention in this regard is also brought towards the relevant terms of the RFP as well as the PPA as per which the petitioner was duty-bound to comply with the DSM Regulations, 2019, reproduced below for ready reference:

*"*RFP dated 03.01.2019:

2.7.6 SPD shall be required to schedule its power as per applicable Regulation/ requirement/ guidelines of HERC/CERC/SLDC/RLDC or any other competent agency and the same being recognised by SLDC or any other competent authority/ agency as per applicable regulation/law/direction and maintain compliance to the applicable codes/ grid code requirement/ directions if any, as specified by any SLDC/

RLDC from time to time. Any deviation from the schedule will attract the provision of applicable regulation/ direction/ guidelines and any financial implication on account of this shall be on account of SPD. SPD shall comply CERC/ HERC regulations as forecasting, scheduling & deviation settlement as applicable and are responsible for all liabilities related to connectivity."

PPA dated 19.06.2020:

"5.11 SPD shall be required to schedule its power as per applicable Regulation/ requirement/ guidelines of HERC/CERC/SLDC/RLDC or any other competent agency and the same being recognised by SLDC or any other competent authority/ agency as per applicable regulation/law/direction and maintain compliance to the applicable codes/ grid code requirement/ directions if any, as specified by any SLDC/ RLDC from time to time. Any deviation from the schedule will attract the provision of applicable regulation/ direction/ guidelines and any financial implication on account of this shall be on account of SPD. SPD shall comply CERC/ HERC regulations as forecasting, scheduling & deviation settlement as applicable & its amendment thereto from time to time and are responsible for all liabilities related to connectivity.

…

8.9 For matters relating to grid operations and load dispatch, the directions of State Load Dispatch Centre shall be strictly complied with, by the company. Any dispute on this account shall be settled by the parties amicably. If the dispute is not settled during such discussion, then either party may refer the same to HERC."

As such, the present claim is liable to be dismissed being against the terms of the PPA as well as the Regulations in vogue.

4.58 That the allotment letter dated 28.02.2020 issued in the favour of one Gurmitinder Kaur Randhawa. However, the said person has not been arrayed as party to the present case. As such, the present petition is liable to be dismissed on the sole ground of non-joinder of necessary parties.

4.59 That it is denied that the plant of the petitioner was commissioned on 19.08.2022. It is submitted that the Commercial Operation Date of the Plant is 01.09.2022 i.e. beyond the scheduled date of commissioning. Further, the Commissioning certificate appended by the petitioner also reflects the date of commissioning as 01.09.2022.

4.60 That a perusal of the Udyam Registration Certificate shows that the petitioner has been registered as an MSME only after the PPA was entered into between the parties. As such, no benefit can be granted to the petitioner on account of any transactions which took place prior to grant of MSME status to the petitioner.

5. The petitioner filed its rejoinder to the reply filed by HPPC (respondent no. 1) and HVPNL (respondent no. 3), under an affidavit dated 22.08.2024, submitting as under:-

REPLY TO PRELIMINARY OBJECTIONS WITH RESPECT TO MAINTAINABILITY OF THE PRESENT PETITION:-

5.1 That the Office Memorandums mentioned by the respondents are not applicable to the petitioner as the Memorandums are simply saying that in case there is disruption of the Supply Chains due to Spread of Corona Virus then the Force Majeure Clause can be raised. The office memorandum no. 18/4/2020-PPD dated 19th February 2020 is addressed to various Secretaries of the Central Government and refers only to purchase and sale organizations. Further it has been stated that corona virus be considered as a case of natural calamity and FMC be invoked, wherever considered appropriate, following the due procedure. It was the Ministry of New and Renewable Energy which was to issue Notification regarding Solar Power Plants.

The MNRE Office Memorandum dated 13.05.2020, is also not applicable on the Petitioner and refers to WORK CONTRACTS and not the SOLAR POWER GENERATORS. Further it has been stipulated in Para 4 that the same is applicable where an application is made by a contractor who is not in default of any contractual obligations.

All the circulars regarding force majeure in case of solar power plants issued by MNRE bearing no 283/18/2020-Grid Solar dated 12th May 2021, 283/18/2020-Grid Solar dated 29th June 2021, 283/18/2020-Grid Solar dated 15th September 2021, were issued much later than the last date of submission of bid i.e. 05-08-2019 and PPA was signed on 19-06-2020.

5.2 That the restrictions issued by Central/State Govt. through notifications/circulars under Disaster Management Act will amount to change of law as per Article No. 20 of Power Purchase Agreement. The relevant clause no 17.5 of Article 17 of PPA is reproduced as under:

"If the Force Majeure or its effect continues to be present beyond a period of 12 months, either party shall have the right to cause termination of the agreement. In such an event, this agreement shall terminate on the day of termination notice without any further liability on either party from the date of such termination".

Further, the Respondents either delayed, modified the CONSENTS, CLEARANCES and PERMITS or never gave the same in violation of RFP/PPA/ Regulatory Notifications/Guidelines which amounted to change of Law. If the approvals would have been received in time by the Petitioner than the project could have been

implemented without any over run in Project Cost. The Respondents also violated Clause. No. 26 of the PPA and the same is Reproduced as under:

"… "Where ever either HPPC or Company approvals are required in this agreement, it is understood that such approvals shall not be unreasonably withheld".

The details of Permissions/approvals applied and the dates on which these were accorded are as under: -

Sr. No.	Particulars	Date of Applying	Date of Approval	Remarks
1.	Grid Connectivity	03-12-2020 (Annexure -P-81)	22-04-2022 (Annexure -P-334)	1. As per the HERC notification dated 11-01-2012 bearing no HERC/25/2012 Grid Connectivity is to be given within 45 days, whereas the same was given to us after 120 days. (ANNEXURE -P-32). 2. As per clause no 2.2 of notification no162-166/HERC/Tariff dated 15-04-20221 technical and final connectivity are not required (clause no 2.2) if generator has entered into PPA with HPPC and insisting on the same amounts to Change in Law. (ANNEXURE -P-33).
2.	Financial Closure approval	21-12-2021 (Annexure -P-195)	24-03-2022 (Annexure -P-34)	No letter of having financial closure was given but only letter bearing Memo No. Ch-56/HPPC/SEC&R-1/LTP-III/GSR dated 24-03-2022 stating that documents for financial closure has been received (ANNEXURE - P-34). in violation of Article 3 of the PPA Article 3 (ANNEXURE - P-4)
3.	Connection Agreement	31-12-2021 (Annexure -P-196)	13-05-2022 (Annexure -P-35)	Connection agreement duly signed was received after a lapse of around 165 days vide letter Memo No. Ch-27/ISB-721 dated 13-05-2022 (ANNEXUR P-35)., whereas plant was to be commissioned by 17-08-2022.
4.	Long Term Open Access Approval	03-12-2020 and again applied on 15-01-2022(Annexure -P-81)	15-07-2022 (Annexure -P-83)	Long term open access was to be given within a period of 40days as per clause no 4.3(i) notification no162-166/HERC/tariff dated 15-04-2021(ANNEXURE-P-33). Further as per clause no. 11(2) 3 a of HERC notification no HERC/25/2012 dated 11-01-2012 (ANNEXURE - P-32). The same was to be given within a period of 40 days. However, we received LTOA approval after a gap of 20 months i.e., on 15-07-2022 whereas the plant was to be commissioned on 17-08-2022.
5.	Long Term Open Access Agreement	24-11-2022 (Annexure -P-36)	Nil	L.T.O.A. Agreement after signatures of the Petitioners was submitted to the Respondents for their signatures but have not received signed copy till date (ANNEXURE-P-36). Petitioner has to get the bank guarantee extended every year and has to pay bank guarantee charges to the bank and same is extra financial burden on the petitioner.
6.	Stand Alone Generator Approval	09-08-2022(Annexure -P-37)	No approval given	Stand Alone Generator approval was to be given in 15 days as per the HERC Procedure for Forecasting, Scheduling and Deviation settlement dated 08-03-2021 para17 clause no 9-9.1 (ANNEXURE-P-96)
7.	CT /PT ratio	19-04-2022 (Annexure -P-144)	16-01-2024 (Annexure -P-369)	Respondent allowed the petitioner to install underrated CT ok 50/5 instead of 100/5 for petitioners 1MW Solar Power Plant in violation of UHBVN Sales Circular no U-47/2017 dated 16-11-2017. 1mw will be equivalent to 1111 KVA with 0.9 power factor and CT should be of 100/5 instead of 50/5. (Annexure -P-141).
	VCB at the Sub Station	22-07-2022 (Annexure -P-305)	31-03-2023 (Annexure -P-312)	Petitioner provided Obsolete and written of and underrated VCB to the Petitioner in violation of Article 6 clause 6.1.3. of PPA as the same was to be Purchased by the Petitioner. Portioner suffered losses due to frequent tripping of the VCB.

The Respondents have violated the Notifications /Procedure of Hon'ble HERC and their own circulars as stated above and the same amounted to change of Law as per Article 20 of PPA.

a. That the judgment referred by the respondents No. 1 & 3 in the case of Omaxe Ltd. Vs. Balvinder Kaur Nijjar is not applicable in the present case being having totally different facts. In the said case the Hon'ble Court has said that the event involved in the said case was not a Force Majeure. But in the present case it is admitted position that COVID-19 was a force majeure event and by treating the same as Force Majeure Event the respondents have extended the SCOD of the project in question. Petitioner applied for extension of period of submission of bank guarantee on 20-03-2020 on account of Corona Virus and the same was extended by the Respondent on 04-06-2020.

b. That the judgment referred by the respondents in the case of Energy Watchdog V.s CERC is not applicable in the present case. The petitioner did not stop performing its part of the contract and rather completed the project within the prescribed period of time. It is not the case of the petitioner that rise in price is force majeure event.

c. That the judgment relied upon by the respondents in the case of Giju P Vijayan Vs. Travancore Devaswom Board is not appliable in the present case. The petitioner has entered into the contract with the respondents with open eyes. But COVID-19 could not be forecasted by anybody in whole word even by keeping the eyes open.

5.3 That the Petitioner at the time of bidding i.e. 03-08-2019 for the project in question has taken into account the value of the Solar Modules and other equipment as prevailing at the time of bidding and also taken into consideration normal increase in price within a reasonable period. However, due to COVID-19 the Commissioning period was extended up to 17-08-2022 and as the approvals were not given by the Respondents in time the Project Cost increased due to unprecedented, unforeseen and uncontrollable depreciation of the Indian Rupee ("INR") vis-à-vis United States Dollar ("USD") and increase in container fare and increase in rates of other equipment of Solar power Plant. Non-giving of Approvals by the Respondent amounted to change of Law of Change in law as per Article 20 of PPA. The delay in giving approvals is in violation of regulatory guidelines also amounts to change of law. The change in law has been mentioned in clause 20 of the PPA and same is reproduced as under: -

"Article "20.1". 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.

20.1.2. 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".

It is further submitted that the term "Law" has also been defined in clause 2.1.29 of the PPA and same is as under: -

"2.1.29 "Law" means any act, law, legislation, statute, rule, regulation, notification, directive, order, policy, by law, administrative guideline, ruling, treaty or any interpretation thereof."

Govt of India and other State Governments issued notification and orders relating to complete lockdown, partial lockdown and social distancing etc. under Section 10(2) (l) of the Disaster Management Act, 2005 and this also amounted to change of law.

5.4 That the date of financial closure was inadvertently mentioned as 18-02-2022 as HPPC letter no Memo no Ch/56/HPPC/SEC&R -1/LTP-111/GS Dated 24-03-2024 only acknowledged the receipt of the documents pertaining to financial closure but never issued a letter that financial closure has been achieved and did not certify that the documents submitted are in order. As per Article 3 clause 3 of the PPA Financial closure has to be achieved within 12 months and next 6 months are for implantation of the Project. All the claims can be Quantified only after C.O.D of the Project has been achieved and not on the date of financial closure as stated by the Respondent. There is no need for the petitioner to file any application for condonation of delay as the petition has been filed within the limitation period as the Project was commissioned 17-08-2022 and the petition has been filed on 06-03-2024. Petitioner after quantifying, raised the claims vide letter no Giotech/305/2023-2024 dated 08-06-2023. The claims were declined by Respondent vide their letter no CH-03/CE/HPPC/SE/C&R-1/LTP-111/Giotech/L dated 09-08-2023. Therefore, cause of action started from the date of refusal of Claims by the Respondent i.e., 09-08-2023 and the Petition has been filed with Hon'ble HERC on 27-02-2024 and the same is within the limitation period of three years.

5.5 That there is no delay or latches on the part of the petitioner. There was outbreak of COVID-19 in March, 2020 and due to this reason the SCOD of the project was extended. The project of the petitioner was commissioned on 19-08-2022. The petitioner is not challenging the DSM Regulations-2019 and as such the date of its notification has no meaning as Petitioner is only challenging charges being levied on the Petitioner. Even the Hon'ble Supreme Court of India through Suo Moto Writ Petition(C) No-3/2020 has also extended by order dated 23.03.2020, 06.05.2020 and thereafter on 10.07.2020 all periods of limitations w.e.f. 15th March, 2020 till further orders and this continued up to June, 2022.

5.6 That the petitioner submitted the 1st running bill on 17-09-2022 vide letter no Giotech/225/2022-23 and 11 reminders were sent thereafter. The respondent denied the payment of the bill vide letter no Ch-06/SAO/HPPC/333 dated 06-01-2023 on the ground that no payment can be made before the commissioning of the Plant as per terms of PPA. We requested the Respondent to quote the clause of PPA according to which the same was considered as dump energy but no reply for the same was given. Since cause of action starts from the date of refusal of payment i.e. on 06-01-2023 and the petition was filed on 06-03-2024 so the claim is well within limitation period.

5.7 That GST was paid in the month of March 2022 for the purchase of Panels and inverters. The claims can be quantified only after the purchase of Equipment and after GST has been paid and COD has been achieved and not from the date of Notification. Therefore, the claims of the Petitioner are well within the Limitation period.

SUBMISSION WITH RESPECT TO REIMBURSEMENT OF INCREASED PROJECT COST AS A CONSEQUENCE OF CHANGE IN LAW AND FORCE MAJEURE EVENTS:

5.8 That the solar plant of the petitioner was commissioned on 19-08-2022. Only thereafter the petitioner could ask the respondents to compensate after quantifying for the overrun in cost of the project. It is totally denied that the averments regarding increase in cost are an afterthought and were never raised earlier. The petitioner wrote many letters to the respondents for timely approvals and informing them that the prices are increasing and the cost of the project would also increase. The petitioner specifically informed that due to delay in clearances there would be a delay in commissioning of plant and Project cost would also increase. Petitioner vide letter No Giotech/125/2022-23 dated 20-04-2022 requested the Respondent to supply list of information/documents to be supplied to HPPC and other departments before

commissioning of the plant but no reply was received. The details of the other letters sent by the petitioner regarding increase in Project Cost areas under: -

Sr. No	Letter No.	Dated	From	To	Relevant Paragraph	Annexures
1.	Giotech/30 / 2021-22	23-04-2021	Giotech Power Pvt. Ltd.	The Chief Engineer/HPPC, Panchkula,	Prices of plant & machinery have gone up considerably due to escalation in prices.	Annexure P 24 & Annexure – P-85
2.	Giotech/62 / 2021-22	28-01-2022	Giotech Power Pvt. Ltd.	The Chief Engineer/HPPC, Panchkula,	Project cost is increasing and project will become unviable.	Annexure – P-85
3.	Giotech/63 / 2021-22	31-01-2022	Giotech Power Pvt. Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Project cost is increasing and Project will become unviable.	Annexure – P- 25
4.	Giotech/64 / 2021-22	31-01-2022	Giotech Power Pvt. Ltd.	XEN/OA&C, HVPNL, Panchkula (Open Access)	Project cost is increasing due to increase in cost of Solar Panels	Annexure– P-86
5.	E-mail	15-02-2022	Giotech Power Pvt. Ltd.	The Chief Engineer/HPPC, Panchkula,	Informed the Respondent that Project cost have gone upto Rs 4.35 crores	Annexure– P-26
6.	Giotech/72 / 2021-22	28-02-2022	Giotech Power Pvt Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Project Cost going upend project will become unviable and we will be incurring huge losses.	Annexure – P-27
7.	Giotech/82 / 2021-22	17-03-2022	Giotech Power Pvt. Ltd.	The Chief Engineer/HPPC, Panchkula,	Project Cost is increasing daily and has gone exceptionally high.	Annexure– P-28
8.	Giotech/83 / 2021-22	17-03-2022	Giotech Power Pvt Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Project Cost going up daily due to rise in prices.	Annexure– P-88
9.	Giotech/10 6/2022-23	12-04-2022	Giotech Power Pvt Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Project Cost going up daily and we might not be able to complete the project in time.	Annexure – P -29
10.	Giotech/13 8/2022-23	09-05-2022	Giotech Power Pvt Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Project Cost going up	Annexure – P -30
11.	Giotech/13 9/2022-23	10-05-2022	Giotech Power Pvt Ltd.	The Superintending Engineer/System Operation, UTTAR HARYANA BIJLI VITRAN NIGAM Office C-16, Vidyut Sadan, Sector-6, Panchkula.	We are suffering huge losses due to increase in Prices of Equipment and loss of revenue stream for no fault of ours.	Annexure – P - 91
12.	Giotech/13 9/2022-23	10-05-2022	Giotech Power Pvt Ltd.	The Chief Engineer/HPPC, Panchkula,	Project Cost going up	Annexure – P - 91
13.	Giotech/16 8/2022-23	30-06-2022	Giotech Power Pvt Ltd.	The Chief Engineer/HPPC, Panchkula,	We are burdened with heavy costs on account of increase in prices of Equipment	Annexure– P – 93
14.	Giotech/23 4/2022-23	11-10-2022	Giotech Power Pvt. Ltd.	The XEN, T/S, HVPNL, Ambala,	Project Cost going up	Annexure–P – 133
15.	Giotech/27 7/2022-23	13-01-2023	Giotech Power Pvt. Ltd.	XEN/OA&C HVPNL, Panchkula	-do-	Annexure – P– 197

From the perusal of letters of HPPC, it is clear that there was no Terms as stated by the Respondent in the time Extension approval letter stating that no claim can be

raised by the Petitioner on account of Change of law /Force Majeure or on account of faults /defaults on the part of Respondent.

5.9 That the Respondent has given a generalized statement that cost of the Project is dependent on market dynamics, financial practices followed by the developer, commercial prudence etc., which were well-within the control of the Petitioner. Respondent has failed to illustrate even a single market dynamics, financial practice or commercial prudence which was in the control of Petitioner but has not followed the same nor the Respondent has given any reference of their letter advising Petitioner on the same. Since the Project cost has increased due to faults/defaults of the Respondents as stated above and the same amounted to change of Law therefore Petitioner is well within its rights to claim the increase in the Project Cost.

5.10 That the Petitioner vide letter dated 20-03-2020 along with Ministry of Finance Memorandum dated 19-02-2020 requested the Respondents to extend the date of submission of bank guarantee on account of COVID 19. Respondents vide their letter no ch-7/CE/HPPC/SE/C&R-1/300MW dated 04-06-2020 extended time of submission of bank guarantee on the ground of COVID 19 i.e. Force Majeure. So, once the respondents have accepted the force majeure and extended the time themselves, now they cannot raise a plea of notice.

5.11 That as soon as the ministry of New and Renewable Energy guidelines came, the petitioner again invoked force majeure clause and the same was accepted by the Respondents and no objection was ever raised. Notice was sent to the Respondents in view of Govt. of India Ministry of Renewal Energy vide Notification dated F.No.283/18/2020 Grid Solar dated 17-04-2020 that directed that spread of Corona Virus be treated as “Force Majeure” and blanket time extension in schedule commissioning date of Renewable Energy Projects be allowed as per the above notification.

5.12 That the Ministry of Renewal Energy vide Notification dated F.No.283/18/2020 Grid Solar dated 29-06-2021 allowed extension on account of Second Wave of Covid-19 as force majeure*.*

5.13 That the Petitioner accordingly, invoked the *Article 17 FORCE MAJEURE* of Power Purchase Agreement (PPA) and requested Haryana Power Purchase Centre (HPPC)/Respondent to extend time line of the project vide following letters:

Sr. No.	Letter No.	Date	From	To	Annexure
1.	Giotech/31/2021-22	28-04-2021	Giotech Power Pvt. Ltd.	The Chief Engineer, HPPC, Panchkula,	Annexure - P-40.
2.	Giotech/37/2021-22	06-10-2021	Giotech Power Pvt. Ltd.	The Chief Engineer, HPPC, Panchkula,	Annexure - P-41.

5.14 That the Petitioner vide letter no Giotech/38/2021-22 dated19-10-2021 reminded the Respondent to extend COD of the project as per MNRE memorandum No. 283/18/2020 dated 29-06-2021.

5.15 That treating the Covid-19 as a force majeure event and keeping in view the above-mentioned request letters of the Petitioner the Respondent Haryana Power Purchase Centre (HPPC) extended the date of C.O.D. of project vide memo no. Ch-33/CE/HPPC/SEC&R-1/LTP-III/GSR dated 18/05/2021 up to 18-05-2022 due to Force Majeure. It was further extended by HPPC vide memo no. Ch-95/CE/HPPC/SEC&R-1/LTP-III/GSR dated 12/11/2021 up to 17-08-2022 due to Force Majeure.

5.16 That Hon'ble Delhi High Court in case of MEP Infrastructure developer Ltd. vs South Delhi Municipal Corporation and Ors. (Citation of judgment) has held that *"When the Notification has been issued the Force Majeure clause under the agreement immediately becomes applicable and notice for the same would not be necessary."*

5.17 That the petitioner is claiming increase in project cost is due to faults and defaults of the respondents of not giving approvals as laid down by Hon'ble HERC and asking for new /delayed or not giving approvals amounted to Change of law. It is further submitted that Corona Virus and its affects were beyond the imagination and control of whole world and supply chain was completely disrupted internationally.

5.18 That it is further submitted that reply of the Respondents is not based on the facts and is in violation of various clauses of PPA and RfP. The definition of "Consents, Clearance and Permits" as per the RfP, is as under: -

"Consents, Clearance and Permits" shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgments, agreement, or concessions required to be obtained by bidder from or provided by any concerned authority for the purpose of setting up of the generation facilities and/or supply of power…".

Further Respondent has quoted clause no *3.1.2. of the PPA and the same is reproduced as under.*

"..3.1.2 In case the Bidder is a Bidding Company and wishes to incorporate a Project Company, all such Consents, Clearances and Permits if obtained in the name of a company other than the Project Company, the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder."

Above clause is applicable in case the bidder is a company and the same is not applicable to us in our case project was allotted to individual and not a company.

The petitioner is covered under RFP **Clause No.2.8.2.2. Consents, Clearance and Permits. And the same is reproduced as under.**

"…..*in case the Bidder is an Individual/Sole proprietor / partnership firm, he will incorporate a Project Company and shall be responsible to get these Consents, Clearances and Permits in the name of Project Company in the event of being selected as the Successful Bidder…"*

Project was allotted in the name of Gurmitinder Kaur Randhawa and she incorporated a company in the name of M/S Giotech Power Pvt Ltd as per clause no 2.9 of the RfP and the same is reproduced as under:

" i.)….In case of the Successful Bidder, it will, within thirty days of the Letter of Intent, incorporate a Project Company (in case of Bidding Consortium / Individual / Sole Proprietor / Partnership firm) provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid. In case the Project Company has already been incorporated prior to the submission of the Bid, the Bidder must intimate about the same at the time of bid submission and such Project Company shall be responsible to execute the RFP Documents.

ii) The Project Company shall execute the RFP Documents and be responsible for supply of power to the procurer(s) as per the provisions of the PPA.

iii) All stamp duties payable for executing the RFP documents shall be borne by the successful bidder.

iv) If the selected bidder wishes to execute the project through a Project Company, the MoA/AoA of the Project Company highlighting the object relating to Power / Energy/ Renewable Energy / Solar Power plant development has to be submitted prior to signing of PPA.

v) Minimum Equity holding / Equity Lock in the Project Company.
The aggregate equity shareholding capital of the selected bidder.

i) In the issued and paid-up equity share capital of the Seller if such seller is a company shall not be less than 51% up to the period of one year after commencement of supply of power and,

ii) In case of Bidding Individual/ Bidding Sole Proprietorship shall not be less than 51% in the Project Company from the effective date up to the period of one year after commencement of supply of power.

As per the tender documents bidder incorporated the company within thirty days of the allotment and is having 51% of share in the company and PPA was executed by the company on 19-06-2020. Petitioner got the above clearances with in time limits as prescribed in the tender documents.

All the above approvals were obtained within 30 days of the letter of intent.

5.19 That PPA Clause No.26: APPROVALS provides as under: -

"Wherever either HPPC or Company approvals are required in this agreement, it is understood that such approvals shall not be unreasonably withheld."

From the above it is clear that Respondents were duty bound to give the approvals as per the time frame and in case there is no time frame fixed than within reasonable time.

The Respondent cannot escape its responsibility by merely stating that it was the responsibility of the petitioner to obtain clearances. Petitioners' responsibility is to apply for the clearances and send the reminders and still if the Respondents are neither giving clearances nor are raising any queries than it will be better for the Respondent to suggest any other legal way to get the clearances which the Petitioner has not followed. Respondents cannot blame the Petitioner on account of their inefficiencies.

5.20 That the Project cost has increased on account of the following delayed /non-approvals on the Part of Respondents:

a) Delayed Approval of Grid Clearance/Grid Connectivity:
b) Delayed /Non-Approval of Financial Closure.
c) Delayed Approval of Connection agreement.
d) Delayed Approval of Long-Term Open Access approval.
e) Non approval of Long-Term Open Access Agreement.
f) Non approval of Stand-Alone Generator.
g) Non approval of CT/PT ratios of metering unit.
h) Non approval of Telemetry Drawings submitted by the Petitioner.

5.21 That the details of each and every delay on account of the Respondent which contributed to increase in PROJECT COST and also amounted to Change of Law, are detailed hereunder:

5.21.1 Delayed Approval of Grid Clearance /Grid Connectivity:

Sr. No.	Particulars	Date of Applying	Date of Approval	Remarks
1.	Grid Connectivity	03-12-2020	28-04-2022	1. As per the HERC notification dated 11-01-2012 bearing no HERC/25/2012 Grid Connectivity is to be given within 45 days, whereas the same was given to us after 120 days. (ANNEXURE -P-32). 2. Moreover, as per clause no 2.2 of notification no162-166/HERC/Tariff dated 15-04-20221 technical and final connectivity are not required (clause no 2.2) if generator has entered into PPA with HPPC and insisting on the same amounts to Change in Law. (ANNEXURE -P-33).
2.	Financial Closure approval	21-12-2021	24-03-2022	No letter of having financial closure was given but only letter bearing Memo No. Ch-56/HPPC/SEC&R-1/LTP-III/GSR dated 24-03-2022 stating that documents for financial closure has been received (ANNEXURE - P-34) in violation of Article 3 of PPA.

3.	Connection Agreement	31-12-2021	13-05-2022	Connection agreement duly signed was received after a lapse of around 165 days vide letter Memo No. Ch-27/ISB-721 dated 13-05-2022 (ANNEXUR P-35)., whereas plant was to be commissioned by 17-08-2022.
4.	Long Term Open Access Approval	03-12-2020 and again applied on 15-01-2022	15-07-2022	Long term open access was to be given within a period of 40days as per clause no 4.3(i) notification no162-166/HERC/tariff dated 15-04-2021(**ANNEXURE-P-33)**. Further as per clause no. 11(2) 3 a of HERC notification no HERC/25/2012 dated 11-01-2012(**ANNEXURE-P-32)** the same was to be given within a period of 40 days. However, we received LTOA approval after a gap of 20 months i.e., on 15-07-2022 whereas the plant was to be commissioned on 17-08-2022.
5.	Long Term Open Access Agreement	24-11-2022	Nil	Not yet signed (**ANNEXURE-P-36)**
6.	Stand Alone Generator Approval	09-08-2022	No approval given	Not yet approved as per HERC notification no. HERC /PRO-42 of 2020 dated 08-03-2021 (**ANNEXURE-P-96)** the same was to be approved in 15 days (**ANNEXURE-P-37)**
7.	Non approval of CT/PT ratios of metering unit	19-04-2022	16-01-2024	Petitioner was forced to purchase/instal CT/PT of 50:1:1 instead of 100:1:1 in violation of UHBVN Sales circular no Ch-5/TR-90/ROL/CE/C-1 dated 16-11-2017 **(Annexure -P-141)**
8.	Non approval of Telemetry Drawings submitted by the Respondent	10-06-2022	01-12-2022	The plant was commissioned on 17-08-2022 and Petitioner applied under duress but was not given any addressing for the installation of Telemetry till 01-12-2022. As per notification no. HERC /PRO-42 of 2020 dated 08-03-2021 (**ANNEXURE-P-96) the same is not applicable on the Petitioner.**

Efforts put in by the Petitioner to mitigate the losses on account of Increase in project cost.

Petitioner wrote the following letters to the Respondent to approve the Grid Feasibility but no reply was received to the same.

Sr. No.	Letter No.	Dated	From	To	Remarks	Annexures
1.	Giotech/19 /2021-22	03-12-2020	Giotech Power Pvt. Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Applied for Grid Feasibility along with Rs.100000/- as Grid Feasibility Charges.	Annexure – P -81
2.	Memo No. Ch-04/ISB-721	08-12-2020	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	The Chief Engineer/PD & C, HVPNL, Panchkula, C.C.: Giotech Power Pvt. Ltd, D.G New and Renewable energy and HAREDA C.E HPPC, C .E PDC,SPS to Director Technical	Grid Connectivity approval	Annexure – P-200
3.	Giotech/23 /2021-22	12-01-2021	Giotech Power Pvt. Ltd.	The Chief Engineer/PD & C, HVPNL, Panchkula, CC: D.G New and Renewable energy HAREDA, C.E /SO&COMMERCIAL, CE HPPC, CE/UHBVN, SPS to DIRECTOR TECHNICAL HVPN, Panchkula	Reminder for Grid connectivity approval as project to be completed in time bond manner. Applied on 03-12-2020	Annexure – P-201
4.	Ch-5/HAP-217	21-01-2021	The Superintending Engineer,	The Chief Engineer/TS, HVPNL, Panchkula, C.C: SE/TS , XEN/TS AMBALA,	In continuation of memo no ch-2/HAP-217 Dated again sent Reminder for Grid Feasibility approval.	Annexure – P-202

			Planning ,	XEN/OA &C, HVPNL, Giotech Power Pvt. Ltd.		
5.	Giotech/24 /2021-22	02-03-2021	Giotech Power Pvt. Ltd.	The Chief Engineer/PD & C, HVPNL, Panchkula, CC: D.G New and Renewable energy HAREDA, C.E /SO & COMMERCIAL, CE /HPPC, CE/UHBVN, SPS to DIRECTOR TECHNICAL HVPN, Panchkula	Issue Grid Feasibility otherwise date of Financial Closure will be affected without any fault on our part.	Annexure – P-203
6.	Ch-15/ISB-721	04-03-2021	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	The Chief Engineer/PD & C, HVPNL, Panchkula, C.C.: Giotech Power Pvt. Ltd.	Sent urgent reminder for Grid connectivity approval	Annexure – P-204
7.	Giotech/27 /2021-22	12-04-2021	Giotech Power Pvt. Ltd.	The Chief Engineer/SO & Commercial, HVPNL, Panchkula, C.C: D.G New and Renewable energy HAREDA, C.E /SO& COMMERCIAL, CE HPPC, CE/ PD&C UHBVN, SPS to DIRECTOR TECHNICAL HVPN, EE/OP UHBVN PEHOWA	You will appreciate that our bank is asking for Grid Clearance before sanctioning of the loan, so it will be not possible for us to do financial closure in time as more than four months have passed since we applied for the same but no action has been taken in this regard.	Annexure – P-205
8.	Giotech/29 /2021-22	12-04-2021	Giotech Power Pvt. Ltd.	The Chief Engineer/PD & C, HVPNL, Panchkula,	Holding of the approval grid feasibility is violation of Clause 26 of the PPA. Not possible to do the financial closure as bank is asking for grid connectivity approval before disbursal of the loan. Kindly approve grid feasibility.	Annexure – P-206
9.	Ch-28/CE/HPPC/ SEC&R-I/LTP-III/LR Energy (Roop)	20-04-2021	Chief Engineer, HPPC, Panchkula.	Giotech Power Pvt. Ltd.	Grant of feasibility / connectivity pertains to HVPNL.	Annexure – P-207
10.	Memo No. Ch-20/ISB-721	26-04-2021	The Chief Engineer/SO & Commercial, HVPNL, Panchkula,	Giotech Power Pvt. Ltd.	As per condition at sr. no.7 the physical execution of the work can be started after execution of connection agreement. Approved Grid connectivity but technical feasibility was still awaited from UHBVN.	Annexure – P - 80
11.	Letter Memo No. Ch-06/SE-SO-320	14-02-2022	SE/System Operation, UHBVN,	SE/Operation, Circle, UHBVN, Kurukshetra C.C to SPS to DIRECTOR/PROJECTS UHBVN, C.E/PD&C UHBVN,	Submit Grid Connectivity report	Annexure – P - 208

			Panchkula	CE/SO COMMERCIIAL, CE/OP UHBVN, CEHPPC		
12.	Letter Memo No. Ch-12/SE-SO-320	07-03-2022	SE/System Operation, UHBVN, Panchkula	SE/Operation, Circle, UHBVN, Kurukshetra & C.C: Giotech Power Pvt. Ltd., SPS to DIRECTOR /PROJECTS UHBVN, CE PD&c UHBVN, CE/ SO & COMMERCIAL	Reminder- 3 Grid connectivity report.	Annexure – P - 209

Grid clearance was applied on 03-12-2020 and the same was given after approval of WTD of UHBVN on 22-04-202. The Respondent has violated Regulatory notifications and the same amounts to Change of Law as per clause 20 of PPA.

5.21.2 Delayed Approval of Long Term Open Access approval.

Long Term Open Access was applied on 03-12-2020 and the approval of the same was received on 15-07-2022 after a lapse of 19 months and COD date of the Project was 17-08-2022. Respondent violated Regulatory guidelines for approval of Long Term Open Access approval within the time limit prescribed by the Regulator as detailed under.

Sr. No.	Particulars	Date of Applying	Date of Approval	Remarks
1.	Long Term Open Access Approval	03-12-2020 and again applied on 15-01-2022	15-07-2022	Long term open access was to be given within a period of 40days as per clause no 4.3(i) notification no162-166/HERC/tariff dated 15-04-2021(**ANNEXURE-P-33)**. Further as per clause no.11(2) 3 a of HERC notification no HERC/25/2012 dated 11-01-2012(**ANNEXURE-P-32)** the same was to be given within a period of 40 days. However, we received LTOA approval after a gap of 20 months i.e., on 15-07-2022 whereas the plant was to be commissioned on 17-08-2022.

Petitioner wrote numerous letters regarding LTOA but neither any query was raised nor approval was given till15-07-2022.

5.21.3 Delayed \ Non Approval Of Financial Closure

Financial Closure was applied by the Petitioner vide letter no Giotech/51/2021-22 on 21-12-2021 followed by numerous reminders. However, the approval of the same was not received. The Respondent (CE/HPPC), letter dated 24-03-2022 has simply stating that papers/documents for financial closure have been submitted without any confirmation that the same are in order or not and without giving any explicit approval. As per PPA article no 3 relevant clauses under the head conditions subsequent Para 3.1 (Satisfaction of condition by the Solar Power Developer at the time of financial closure) read as under.

"3.1.1:The company shall have obtained all Consents, Clearances and Permits required for supply of power to HPPC as per the terms of this Agreement.

3.1.4: The project company shall have achieved Financial Closure within Twelve (12 Months) and has provided a certificate to HPPC from the banker/financial institution to this effect regarding tie up of funds.

3.1.5.5: The project company shall provide evidence that the required land for project development @1.5 Hectares / MW or (as per requirement of the project) is under clear possession of the project developer. In this regard, the project developer shall be required to furnish the following documentary evidences.

3.1.6: Grid feasibility letter obtained from Discom/HVPNL."

Loan from the bank was sanctioned on 21-12-2021 vide sanction letter no UBI/ADV/SEC-35C/GPPL/2021-22. Bank was insisting on letter of from the Respondent that financial closure has been achieved by the Petitioner as Financial Closure letter confirms that all the Approvals have been obtained as per Article 3 of the PPA. Since Respondent did not give letter of financial closure letter so the disbursement of Loan got delayed and amounted to increase in Project Cost.

5.21.4 Delayed Approval Of Connection agreement:

Connection agreement duly signed by the Petitioner was sent to the Respondents for their signatures on 31-12-2021 and the same was received back duly signed on 13-05-2022 after a lapse of 5 months and the Project was to be commissioned by 17-08-2022.

As per Respondent letter no Memo no Ch-20/ISB-721dated 26-04-2021**,** regarding approval of Grid Connectivity clause no vii under the head terms and conditions reads that "Physical Execution of work cannot be started before the execution of connection agreement."

Petitioner wrote the numerous letters for supplying copy of the connection agreement duly signed by the Authorised officers of the Respondents so that Execution of the work could be started. No reply was received from the Respondents on our below mentioned letters nor copy of duly signed Connection Agreement was given by the Respondent to the Petitioner till 13-05-2022.

5.21.5 NON APPROVAL OF LONG TERM OPEN ACCESS AGREEMENT:

The Petitioner applied for Long Term Open Access on 03.12.2020 and again on 15.01.2022 followed by numerous reminder letters regarding LTOA approval but neither any quarry was raised nor approval was given till 15-07-2022. The Long Term Open Access Agreement duly signed by the Petitioner was submitted to the Respondent on 24-11-2022 and the copy of the same duly signed has not been received by the Petitioner till date.

5.21.6 Apart from the above the following NON /Delayed APPROVAL which contributed for increasing cost of the Project are discussed under the respective heads:

a) Non approval of CT/PT ratios of metering unit.
b) Non approval of STAND-ALONE GENERATOR.
c) Non approval/delayed approval of Telemetry Drawings submitted by the Petitioner.

5.22 Equipment which contributed mainly in increase in the PROJECT COST

- Project cost for 1.0 MW DC and 1MW AC at the time of submission of bid i.e., on 05-08-2019: Rs.3.00 crore.
- Project cost for 1.0 MW DC and 1MW A/C at the time of at the time signing of PPA i.e., on 19-06-2020 as per Quotation of VIKRAM solar: Rs.3.00 Crore.
- Project cost for 1.2 MW DC and 1MW AC at the time of at the time signing of PPA i.e., on 19-06-2020: Rs.3.48 crore without GST @5% on Panels and Inverters.
- Project cost for 1.2 MW DC and 1MW AC on 17-11-2021 Ware Solar: Rs.4.56 crore without GST. GST extra as applicable.
- Project cost for 1.2 MW DC and 1MW AC actually incurred in 2022 with GST@ 12% on Panels and Inverters: Rs.5,04,00,000/-
- Project cost for 1.2 MW DC and 1MW AC actually incurred in 2022 without GST: Rs.4,49,20,940/-
- Therefore, there was increase in project cost of Rs. 101,20,940/ in 2022 as compared to June 2020 without GST.

That the Solar panels prices increased by nearly Rs.55,96,000/ from August 2020 to 20thJan 2022. The increase in Solar Panel cost was due to devaluation of Indian rupee against the dollar and the same was unprecedent, uncontrollable and unforeseen. There was increase of Rs.18, 94,301.20 on account of devaluation of Indian Rupee. There was also increase in Project cost due to increase in container fares. The above increase has been reported by FBX Globle container fare index. Rest of the increase in rates of Panels was due to the increase in rates of various materials used for the installation of Sola Power Plant. Kindly refer to whole Sale Price Index as Published by Office of Economic Advisor Government of India for the year 2020 and 2022 proves that rates of all the commodities/items used in Sola Power Plant increased many folds. Rates of the inverters also increased considerably. Rates of balance of systems increased by nearly Rs.45,24,940/-.

5.23 That as a proof of having incurred project cost of Rs 5,04,62,640/-, the following documents have been attached which confirms that Project cost incurred by the Petitioner: -

a) Copies of all the Purchase bills including GST and the same can be verified from GST Site.
b) Capital Cost of the Project duly certified by CA.
c) C A certified Balance Sheet certifying the cost of the PROJECT
d) Whole Sale price index of the year 2019 and 2022 as published by the office of Economic Advisor Govt of India certifying the increase in cost of balance of systems.
e) EPC Quotation BVG clean energy Ltd dated 07-01-2022 Rs.51/- watt excluding GST.
f) EPC Quotation A SUN dated 10-01-2022 Rs 50.50/- watt excluding GST
g) Petitioner purchased imported Canadian solar panels @Rs.23.33/-per watt from Ornate Agencies Pvt. Ltd. in 2022
h) Solar quoted a rate of Rs 26.50/- watt for domestic solar panels. Thus, Canadian solar panels were cheaper than the domestic panels and were having better specifications.
i) Cost of the Project in 2019 at the time of closure of Bids/Signing of PPA i.e., JUNE 2020 was the same.
j) Project cost in 2020 as per the Quotation obtained from M/S Vikram Solar for 1.20MW D/C and 1MW A/C was Rs3.48crore without GST and Rs 3.65 Crore with GST @5%.

5.24 That as per the Power Purchase Agreement Article 20 clause no 20.1.2 under change of Law reads as under:

"20.1.2: *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."

From the above it is absolutely clear that Delayed /Modifications /New Approvals are in violation of Hon'ble HERC Regulations after the last date of submission of Bids i.e., 05-08-2019 amounted to Change of Law and the Petitioner need to be compensated with Rs 1,01,20,940/- alongwith interest as per MSME act 2006 for the same and brought to the same financial position as it would have been had it not been for the

occurrence of Change Of Law, the Solar Power Developer shall be entitled compensation by the other Party i.e., Respondents as per the provisions of Article 20 clause no 20.1.1 under the head of Change of Law of PPA.

Hon'ble supreme Court in In India Energy Watchdog Vrs CERC (2017)14 SCC 80 has held as under.: -

"Any change in any Consent, Approval or Licence available or obtained for the Project, otherwise than for the default of the seller, which results in any change in any cost of the business of selling Electricity is change of Law "

Submissions with Respect to Re-Determination of Levellised Tariff:

5.25 That the Respondents be directed to compensate the Petitioner either in Lumpsum with interest as per MSME act alternatively Tariff be increased to Rs 5.29 /unit as per the calculations of the Petition done on the Parameters approved by HERC Notification /Regulation no HERC/40/2018 dated 24-07-2018**.**

The Petitioner places Reliance on the following Judgement dated 3.12.2021 passed by the APTEL in Appeal No. 129 of 2020 titled as NRSS XXXI (B) Transmission Limited vs CERC & Ors.

"We are of the view that the Central Commission erred in denying Change in Law relief to the Appellant for IDC and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant's Project in accordance with the TSA. Therefore, the impugned order passed by the Central Commission is liable to be set aside as the same is in contravention of settled law laid down by the Hon'ble Supreme Court (Supra) and also the previous orders passed by the Central Commission in Petition Nos. Judgment in A.No.129 of 2020 & 276 of 2021 73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the Commission differently. In view of these facts, the Appellant is entitled for the change in law relief as prayed for in the instant Appeal. The issue is thus, decided in favour of the Appellant."

The Petitioner also places reliance upon the following judgments. The Petitioner places reliance upon the following judgment dated 13th MAY, 2024 passed by the CERC in PETITION No. Petition No. 87/MP/2022 in the matter of Fatehgarh-Bhadla Transmission Limited VS Adani Renewable Energy Park Rajasthan Limited & Ors. The relative paragraphs are reproduced as under: -

Force Majeure Relief 112.

"We have already allowed the extension of SCOD for the transmission system of the Petitioner till 1.8.2021 on account of the Change in Law and force majeure events. The Petitioner has claimed additional IDC/IEDC on account of the delay in

implementation of the project on account of the force majeure and Change in Law events. In this regard, the Petitioner has submitted as under:

(a) Due to force majeure [Article 11 of the TSA] and Change in Law Events [Article 12 of the TSA], there was a substantial delay, thereby leading to an increase in cost, which the Petitioner could not at all fathom at the time of the bid`s submission.

(b) Once the events qualify as force majeure, the Petitioner become entitled to the IDC and IEDC qua the delay in the SCOD in the elements of the transmission project.

*(c) Article 11.7 of the TSA provides for relief in the event of occurrence of force majeure events. The term "relief" under the said Article has vide scope; as such, it would not only include an extension of SCOD but would also allow the Petitioner to seek compensatory/ monetary relief as claimed in the Petition. Furthermore, Article 11.7 of the TSA also provides that the party suffering from force majeure events is excused/ discharged from performing its obligations under the said agreement**. The term relief is to be construed in a manner that fulfils the intent of Article 11.7, i.e., to be able to properly offset/ redress the grievance of the contracting party on account of the occurrence of events beyond control and that the above term cannot be given any restrictive meaning so as to render the same otiose.***

*(d) The issue of claiming the IDC & IEDC on account of the force majeure and Change in Law events is no more res-integra on account of the passage of various orders/ judgments by this Commission, as well as by the APTEL. In this regard, reliance has been placed on the judgment dated 3.12.2021 passed by the APTEL in Appeal No. 129 of 2020 titled NRSS XXXI (B) Transmission Limited vs CERC & Ors. and judgment dated 20.10.2020 passed by the APTEL in Appeal No. 208 of 2019, titled as Bhopal Dhule Transmission Company Limited v. Central Electricity Regulatory Commission & Ors. The Petitioner has also relied on the order dated 11.3.2023 in Petition No. 333/MP/2019 (POWERGRID NM Transmission Ltd. v. IL&FS Tamil Nadu Power Co. Ltd. &Ors**.). Therefore, the principle for awarding the IDC and IEDC is that the Project must suffer from a 'delay' that is not attributable to the Project Developer, i.e., it should be on account of Change in Law and/ or force majeure.***

(e) In this regard, the Petitioner has also relied on transmission tariff orders of the Commission in Petition Nos. 141/TT/2015, 267/TT/2015, 685/TT/2020 and 60/TT/2017 to contend that whenever the project implementation is delayed due to force majeure and Change in Law events, the delay factor is compensated/remunerated in the form of IDC and IEDC.

(f) The Petitioner was awarded the transmission project through the TBCB route. The Hon'ble Supreme Court in the Energy Watchdog Judgment, [reported in (2017) 14

SCC 80] has held that regulatory powers are available in the event the above bid governing documents are silent on an issue.

The Hon'ble Supreme Court, in a recent judgment, titled Haryana Power Purchase Centre v. Sasan Power Ltd. and Others [reported in 2023 SCC OnLine SC 577], has again endorsed the fact that the regulatory powers are wide and are available to this Commission in appropriate cases.

g) Therefore, for the delay caused due to force majeure and Change in Law events, the Commission has adequate regulatory powers under Section 79(1)(c) and 79(1)(d) of the Act, read with Sections 61 and 62, to compensate the Petitioner qua IDC, other incidental costs IEDC, etc., on actual basis.

(h) The principle of the grant of IDC and IEDC for a transmission project, on account of the occurrence of force majeure events, which are termed as uncontrollable events, has been recognized by the Commission under Regulations 3(25) and 22 of the CERC Tariff Regulations, 2019. The said Regulations apply to Section 62 projects, which can be referred by the Commission while granting relief in the present Petition on account of force majeure/ change in scope for which there is no specific provision either in the TSA or the bidding guidelines, and as such, powers under Section 62 are required to be invoked. The Petitioner has claimed consequential relief of IDC and IEDC for delay in implementation of the project due to events beyond its control.

(i) Article 4.4.2 of the TSA provides for the extension of SCoD on account of any force majeure events as per Article 11. Hence, relief of extension of SCoD is granted to the TSP under Article 4.4.2 of the TSA in case the TSP is affected by the Force Majeure events under Article 11. Additionally, it is to be noted that Article 11.7 provides for relief for a Force Majeure event which should be seen separately from the extension of SCoD allowed under Article 4.4.2 of the TSA. Article 11.7 (b) of the TSA says FBTL is entitled to seek 'relief' on account of force majeure events. ***Relief is a wide term as interpreted by the APTEL in the case of Parampujya Solar Energy Pvt. Ltd. Case (Supra) (Parampujya Judgment).***

(j) The Commission ought to invoke its regulatory powers under the above principle to compensate the Petitioner on account of the occurrence of force majeure events and Change in Law events."

In The summary of our decision in Petition No. 87/MP/2022 CERC has allowed.

1.NOC from Defence Aviation Allowed both as Force Majeure and Change in law event in terms of Para 58 and 62 Of the judgment.

2. Increase in tariff on account to comply with Defence aviation NOC conditions Truncation of Tower Height.

The Petitioner places reliance upon the following judgment Maharashtra State Electricity ... vs Adani Power Maharashtra Limited on 20 April, 2023 IN THE SUPREME COURT OF INDIA

The relevant paragraphs are reproduced as under: -

"*11.13. The purpose of change in law relief/compensation is to restore the affected party to the same economic position as if the change in law had not occurred. In the instant case, this would involve compensating Adani Rajasthan for the cost incurred in purchasing alternate coal to meet the non availability of domestic coal promised under the NCDP 2007. The MoP letter of 31.07.2013 as well as the Revised Tariff Policy of 2016 support the principle of compensation to the generators for the additional cost incurred in procuring alternate coal. The methodology proposed by Adani Rajasthan prima facie appears to be consistent with the principle/basis of compensation for shortfall/non- availability of domestic coal given by the MoP and we do not find any reason to interfere with the same." 8.13* ***In the aforesaid case, the principle which was considered by us is that to restore the affected party to the same economic position as prevailing at the time of bid submission, the affected party shall be compensated for any additional cost incurred in procuring alternate coal to mitigate the non-availability/shortfall of coal from the bid-identified source.*** *Since the bid identified source of coal in the aforesaid case was linkage coal, the compensation allowed by the Tribunal was the difference between alternate coal cost and linkage coal cost.*

Submissions with Respect to Increase In GST:

5.26 That the respondents have themselves quoted a judgment wherein it has been mentioned that where there is no limitation prescribed then the limitation has to be taken 3 years. Then how the claim of the petitioner is time barred is not clear. Even the Hon'ble Supreme Court of India through Suo Moto Writ Petition(C) No-3/2020 has also extended by order dated 23.03.2020, 06.05.2020 and thereafter on 10.07.2020 all periods of limitations w.e.f 15th March, 2020 till further orders and this continued upto June, 2022. Thus, the Petitioner is entitled to be compensated on account of increase in G.ST along with carrying cost and interest as per MSME act 2006.

5.27 That due to change in GST rate from 5% to 12%, the petitioner paid Rs.20,85,714.42/- more as GST on Solar Panels and Inverters. A Certificate issued by a Chartered Accountant regarding difference in G.S.T. amounting to Rs.20,85,714.42/- (difference due to increase from 5% to 12%) is annexed along with copies of the bills of Solar Panels/ Modules and Inverters. If any other information is required the respondents could have asked the petitioner to supply when the petitioner requested the

Respondent to compensate the petitioner on account of increase in GST. But the respondents never asked for any documents and rather denied the genuine claim of the petitioner. Now just to cover their own lapses the respondents are raising the issue of details.

5.28 That the Respondent has stated that 70% of the goods supplied will attract GST @ 12% and 30% supply of services will attract GST@18%. Respondent has further stated that the petitioner can claim increase in GST on 70%. The following are the calculations based on the above assertion of the RESPONDENT.

In the case of Petitioner cost of the Project is Rs.5,04,62,640/- that means that total value of supply of goods and services is Rs.5,04,62,640/- and 70% of the above cost comes to Rs.3,53,23,848/- and on 70% component GST increased from 5% to12% i.e. increase of 7% and the same amounts to Rs.24,72,670/-. Petitioner is entitled to be compensated with Rs.24,72,670/- on account of increase in GST amounting to Change of Law with interest as per MSME act 2005 along with carrying costs from the date of investment made by the Petitioner to date of realization of the same from the Respondents.

Therefore, it is requested that our claim of GST be amended from Rs.20,85,714.42/- to Rs.24,72,670/-.

5.29 That the details as sought by the respondents is as under: -

a. Date of Purchase Order in case of Solar Panels is 20-01-2022 and the same is enclosed with the original Petition of the Petitioner.
b. Date of Raising of Invoices by the Supplier of Solar Panels is: 08-03-2022 and 09-03-2022 and bills are attached with the original Petition.
c. Date of handing over of the goods to the common carrier/delivery date; in case of Solar Panels 08-03-2022,14-03-2022,18-03-2022
d. Date at which Goods/Solar panels were installed at site; In the month of July and August 2022.
e. Date of Bill of Lading in case of imported goods; bill of lading attached.
f. Date of Custom clearance in case of imported goods; goods were imported by M/S Ornate Agencies Pvt Ltd authorized distributor of Canadian Solar.
g. Date of arrival of the goods at the project site:19-03-2022
h. Date of rendering of the actual services: N.A
i. The GST/Tax Invoice raised in case of Panels: Yes, attached with the Petition.
j. Supporting document in rest of each above document: Banks Certificate confirming that payment has been made to the suppliers directly by debiting loan account of the Petitioner for Solar Panels and inverters.

For String Inverters (Sungrow) no 5

a) Date of Purchase Order; 07-04-2022, (Annexure P-237)

b) Date of raising of Invoice by the Supplier; 31-03-2022 (Annexure P-238)

c) Date of handing over of the goods to the common carrier/delivery date:07-04-2022.

d) Date at which Goods were installed at site: August 2022.

e) Date of Bill of Lading in case of imported goods: N.A

f) Date of Custom clearance in case of imported goods: NA

g) Date of arrival of the goods at the project site; 07-04-2022.

h) Date of rendering of the actual services; was installed in August 2022.

i) The GST/Tax Invoice raised; Yes, attached as (Annexure P- 55) of petition.

5.30 That the petitioner is attaching certificate of the bank confirming the payment to suppliers of Panels and Inverters against the bills mentioned above. That the judgements referred by the respondents are not applicable in the present case as bills of the Panels/inverters contain the complete specifications and the equipment was verified by the Respondents before commissioning of the Plant and the same has been confirmed in Annexure-II of the commissioning certificate dated 01-09-2022 issued by the Respondents.

5.31 That the respondents even did not deem it proper to go through the documents attached with the petition. It is submitted that the Input credit standing in the account of the petitioner could be kept for a specified period as per the provisions for the GST Act, 2017. The petitioner has specifically mentioned in the petition that it has transferred a sum of Rs. 53,74,292/- standing as Input credit in GST Portal on account of the purchase of Plant & Machinery to GST Deptt. on 20-03-2023.

SUBMISSIONS WITH RESPECT TO REIMBURSEMENT OF 1ST RUNNING BILL AMOUNTING TO RS.1,90,509.98/- ALONGWITH INTEREST @19.5% P.A. AS PER MSME ACT, 2006.

5.32 That the SLDC Panipat was given 60 days advance notice as per Article no 19.4 of Power Purchase Agreement for synchronization of the Plant. Petitioner wrote various letters to the Respondents for the Payment of 1st running bill.

5.33 That there is no clause in the PPA which authorizes the Respondent to treat any energy supplied by the Petitioner at the interconnection point as dump energy. Rather clauses in PPA and RFP clearly state that Solar Power Plant will be considered as commissioned once the energy flows into the grid. Clause no 2.1.7 of Power Purchase Agreement provides as under:-

"*.2.1.7 Commercial Operation Date" (COD) means the dates on which the Project achieves the Commercial operation and such date as specified in written notice given to HPPC at least 60 days in advance.".*

It is submitted that the Commercial operation was achieved on 17-08-2022 and written notice was given to HPPC vide our letter dated Giotech/123/2022-2023 dated 20-04-2022. The petitioner vide letter no Giotech/177/2022-23 dated 14-07-2022 as per Article no 19.4 of PPA for synchronisation of the Plant submitted all the purchase orders alongwith all the bills, Project Report test certificate of all the equipment to Chief Engineer HPPC for their perusal.

5.34 That the perusal of the reply filed by the respondents would also show that Plant was charged on 17-08-2022 and commercial operation was obtained.

"Accordingly, 11 KV Independent feeder was got connected on available spare 11 KV VCB panel and the same energized on dated 17.08.2022 at 21:30 Hrs."

Hon'ble Supreme Court in a case of M/S Madhya Pradesh Power Management Company Limited and Another Versus Dhar Wind Power Projects Private Limited in Civil Appels Nos. 9218-19 of 2018 with Nos. 9220-23 of 2018 decided on July 25, 2019 has held as under:

"On reviewing the documentary material on the record, we are not prepared to accept the view which has weighed with the High Court, namely, that the commissioning of the project was completed by 31-03-2016. The certificate of commissioning which has been issued by the Superintending Engineer is belied by the objective factual data available from the SLDC which is a statutory body constituted under Section 31 of the Act. The objective data on the record indicates that the injection of power into the grid took place on 01-04-2016. Hence, we are of the view that this should be basis on which the claim for the entering into a PPA should be founded."

From the above Judgement of Hon'ble Supreme court, it is absolutely clear that it is the injection of power into the Grid which decides the date of commissioning and not COD certificate.

5.35 That the clarification mentioned by clause No. 2.3.1, clarifies that at the time of Synchronisation the certificate of COD will be provided by HPPC (due to topographical mistake the same has been mentioned as SPD). It nowhere says that energy supplied by the petitioner before Commissioning certificate by the respondents would be dealt with as dump energy and would not be paid.

Submissions with Respect to Change In Capacity Utilisation Factor From 19% To 21%:

5.36 That at the time of uploading the tender the Petitioner opted for 19% CUF keeping in view the fact that the Petitioner is eligible to change the CUF till the financial closure

as per the Reply to the queries raised by Potential bidders for long terms procurement of 300 MW Solar Power against NIT No. 77/CE/HPPC/Solar/300 MW dated 03-01-2019. Petitioner wrote Letter bearing no. Giotech/22/2020-21 dated 12-01-2021 for change of CUF before financial closure. But the request for change in CUF was denied vide letter no. Ch-20/CE/HPPC/SEC & R-1/LTP-III/GSR dated 08-02-2021. It is submitted here that tariff was not determined based on CUF rather the same was adopted by HPPC keeping in view competitive bidding by MOP for Solar Projects above 5 MW issued on 03-08-2017.

5.37 That the petitioner achieved a CUF of 19.97% from 31-03-2023 to 31-03-2024 and shortfall was due to the faults and defaults of the respondent as the plant remained shut on account of lower specifications of CT/PT and VCB at the sub-station and also because we were forced to install the meters outside the control room at S/station in low lying area where water got accumulated and excess of humidity. Due to under rated CT/PT and VCB blasts occurred at the metering point twice causing huge losses to Petitioner.

Submissions with Respect to Claims Raised by the Petitioner while Relying on The Haryana Solar Policy, 2016:

5.38 That plants upto 2 MW will be covered under Haryana Solar Policy and accordingly on the basis of the undertaking given by Respondents NIT No. 77/CE/HPPC/Solar/300 MW dated 03-01-2019 in Petition no HERC/PRO-53 of 2017 was approved by Hon'ble HERC. Respondents have committed contempt of court by not adhering to the undertaking given before the Hon'ble commission regarding covering upto 2MW plants under Haryana Solar Policy on the basis of which Petition was approved.

5.39 That the Respondents have failed to abide by the written submissions made by them before the Hon'ble commission in the above case that too when the same were approved by Hon'ble commission before floating of tender.

Submissions with Respect to The Disputes/Issues Raised by The Petitioner Relating to HVPNL:

5.40 Submissions W.R.T. Refund of Long-Term Open Access ("LTOA") Charges Sought by the Petitioner:

5.40.1 The clause 2.7.2 of the RfP states that LTOA will be applicable as per the Centre /State Regulation, but it does not mean that same is applicable to the Petitioner. Respondent has not quoted any State/Centre regulation applicable at the time of bidding which binds the petitioner to go for Long Term Open Access. Respondent has placed the reliance on the Judgment of this Hon'ble Commission in the case of M/s Utrecht Solar Pvt. ltd. in which this Hon'ble Commission has relied upon the

judgment of the Hon'ble Supreme Court in the case of Civil Appeal No. 3480-3481 of 2020 (Gujarat Urja Vikas Nigam Limited and Ors. v. Renew Energy Private Limited and Ors. which also says that that the terms of the PPA are binding and cannot be reopened. It is submitted that the above judgement also speaks about the clauses of Power Purchase Agreement but there is no express clause in the present PPA which binds the petitioner to go in for LTOA.

5.40.2 That the respondents have also failed to produce on record any regulation of Centre /State applicable at the time of bidding which binds the petitioner to go for LTOA. HERC open access regulations 2012 do not make it mandatory for developer to go for long term open access rather it states that these regulations will apply only if an application has been made for the Open access.

5.40.3 That the eligibility conditions as per HERC open access regulations 2012 are as under: -

"…8. Eligibility and other conditions for open access. –

(1) Any licensee, generating company, captive generating plant and consumer/ person other than consumer of the distribution licensee, having a demand of 1 MW and above and connected at 11 KV or above, shall be eligible for availing open access to the intra-State transmission of STU and or transmission licensee other than STU and or distribution system of the distribution licensee on payment of various charges as per chapter VI of these regulations.

(2) Any consumer of the distribution licensee having a contracted demand of 1 MVA or above and connected to the distribution system of the licensee at 11 kV or above, shall be eligible for seeking open access provided he is connected through an independent feeder emanating from a grid sub-station. Provided that the Commission may consider allowing open access to individual consumers with contracted demand of less than 1 MVA at such time it may consider feasible having regard to operational constraints and other factors.

(3) A group of two or more consumers of the distribution licensee having a combined contracted demand of 1 MVA or above and connected to the distribution system of licensee at 11 kV or above through an independent feeder emanating from a grid sub-station, shall also be eligible for seeking open access if all such consumers collectively apply for open access through a group leader to be nominated by all such consumers on that feeder and also agree to the rostering restrictions that may have to be imposed by the utility. Provided that a person covered by a policy of the State Government, existing on the date of coming into force of these regulations, relating to captive generation or generation from non-conventional energy sources, shall be eligible to avail open access irrespective of contract demand.

(4) The consumers with contracted demand of 1 MVA or above who are not on independent feeders shall be allowed open access subject to the condition that they agree to the system constraints as well as the power cut restrictions imposed by the utility serving them. In such cases the duty of the distribution licensee shall be of a common carrier providing non – discriminatory open access as per section 42 (3) of the Act.

(5) A person having been declared insolvent or bankrupt or having outstanding dues against him for more than two months billing of the distribution / transmission licensee at the time of application shall not be eligible for open access…".

From the perusal of the above eligibility conditions, it is clear that the above regulations were not bidding on the Petitioner as stated by the Respondent. These were applicable only to consumers having demand of 1MW and above and whereas in our case the petitioner is supplier and not consumer of the respondents and so these regulations are not applicable on the Petitioner. Further procedure for grant of Long-Term Open Access is reproduced here under for ready reference: -

"…13. Procedure for grant of long-term open access involving intra-State transmission system and distribution system. –

(1) The application for grant of long-term open access shall contain details such as name of the entity or entities from whom power is proposed to be procured along with the quantum of power, point of injection into the grid and point of drawl from the grid and such other details as may be laid down by the STU in the detailed procedure:"

From the above regulation also, it is absolutely clear that the same was not binding on the Developers. Moreover, the letter quoted by the Respondent Memo No ch-20/ISB-721 dated 26-04-2021 will amount to new clearances under the head Change of Law as per Article 20 of PPA as bid was closed i.e. 05-08-2019. In case the Respondent still feels that LONG TERM OPEN ACCESS is mandatory now then the same will amount to change of law and the Petitioner needs to be compensated as requested in the Petition.

Petitioner also wrote 43 letters to the Respondents to approve LTOA but no reply was received by the Petitioners and the same was approved on 15-07-2022. Respondent has till date not supplied the LTOA agreement duly signed by Respondents and we are asked to extend the bank Guarantee every time and we are incurring losses on account of renewal of Bank Guarantee which otherwise would have been returned to us since long.

In order to ensure that Project is completed in time and escalation in Project cost is avoided petitioner applied for Long Term Open Access on 03-12-2020. Petitioner received LTOA approval after a gap of 20 months i.e., on 15-07-2022 whereas the plant was to be commissioned on 17-08-2022 and Respondent has till now not signed the LTOA agreement.

5.41 SUBMISSIONS WITH RESPECT TO INSTALLATION OF TELEMETRY SYSTEM:

5.41.1 That the letters issued by HVPNL vide Memo No. Ch-20/ISB-721 dated 26.04.2021 & LTOA approval letter dated 15.07.2022 are contrary to the provisions of regulations framed by this Hon'ble Commission and are not binding upon the petitioner. In the case of Petitioner, Main and Check meters are installed at the metering point at sub-station as per PPA; so, it is the respondent who is responsible to supply the data to SLDC.

Moreover, the above letters are dated 26-04-2021 and 15-07-2022 are much after the date of submission of bid and the same will amount to new approvals and thus will be covered under Change of Law as per P.P.A.

5.41.2 The petitioner has installed 5 string inverters of 200kw each and these are located at different places so real time data of inverters is not possible and due to this reason. The petitioner is supplying the data to SLDC as per Article 10 of the PPA and as per HERC regulations. We have already complied with clause no 6.1, 6.2. and 9.1 of the PPA.

Petitioner under duress even applied for the approval of drawings for Telemetry vide letter no Giotech/160/2022-2318-04-2022**.** However, neither the approval was given nor any query was raised for the reasons best known to the Respondents.

Petitioner wrote the number of letters to Respondent to clarify the applicability of Telemetry keeping in view CERC/HERC /HVPNL regulations /notifications but no reply was received to the specific query.

Since petitioner was to commission the PLANT, so under duress applied for telemetry on 10-06-2022 vide letter no Giotech/160/2022-23 alongwith all the drawings and number of reminders were sent but neither any objection was raised nor the Drawings of telemetry were approved up to the date of commissioning of the plant. This clearly proves that Telemetry was not applicable on the Petitioner and the plant was allowed to be commissioned without Telemetry. More over on our representation the then Managing Director HVPNL formed a committee and Petitioner was called to attend the meeting of the said committee and every member of the committee agreed that Telemetry is not applicable on the Petitioner and the plant was allowed to be charged without Telemetry.

Haryana Electricity Regulatory Commission Notification Bearing No.44/2019/HERC dated 29th April 2019 clause 5.1, provides as under: -

"..5.10. Meters shall be installed for energy accounting in accordance with the relevant provisions of the Central Electricity Authority (CEA) Regulations governing metering, along with telemetry/ communication and Data Acquisition Systems for the transfer of information to the SLDC by the QCA".

As per Central Electricity Authority (CEA) Notification no 502/70/CEA/DP&D dated 17-03-2006 Regulations 7 under the head Location of Meters, Main and Check meters have to be installed at outgoing feeder of the Generating Station end and the relevant clause is reproduced as under.

"7. *Locations of meters. - (1) The location of interface meters, consumer meters and energy accounting and audit meters shall be as per the Table given below: Provided that the generating companies or licensees may install meters at additional locations in their systems depending upon the requirement.*"

Table

Sr. No.	Stage	Main Meter	Check Meter	Standby Meter
A.	Generating Station	On all outgoing feeders.	On all outgoing feeders.	(i) High Voltage (HV) side of Generator Transformers (ii) High Voltage (HV) side of all Station Auxiliary Transformers
Explanation: The location of main, check and standby meters installed at the existing generating stations shall not be changed unless permitted by the Authority.				
B.	Transmission and Distribution System	At one end of the line between the substations of the same licensee, and at both ends of the line between sub-stations of two different licensees. Meters at both ends shall be considered as main meters for respective licensees.	-	There shall be no separate standby meter. Meter installed at other end of the line in case of two different licensees shall work as standby meter.
C.	Inter-Connecting Transformer (ICT)	High Voltage (HV) side of ICT.	-	Low Voltage (LV) side of ICT.
D.	Consumer directly connected to the Inter-State Transmission System or Intra State Transmission System who have to be covered under ABT and have been permitted open access by the Appropriate Commission or Any other system not covered above	As decided by the Appropriate Commission.		

Ministry of Power (CEA) Notification no 12/X/STD(CONN)/GM/CEA dated 21-02-2007 clause no 4, provides as under:-

4 Metering:

- Meters shall be provided as specified in the Central Electricity Authority (installation and operation of Meters) regulation 2006.

Ministry of Power (CEA) Notification no 12/X/STD(CONN)/GM/CEA dated 15-10-2013, clause no 2 provides as under: -

2(b) in clause (14) the following paragraph shall be added at the end namely: -

"In case of Solar Photo voltaic generation, each inverter along with associated modules will be reckoned as a separate generating unit".

2(d) "inverter means a device that changes direct current power into alternating current power".

In our case each inverter is of 200KW and therefore each generating unit is of 200KW and not 1MW.

Ministry of Power (CEA) Notification No. 23/47/2014-R&R (Vol. III) dated 26-11-2014 clause no 4(d) provides as under:

4. In the principal regulations, in regulation 7, in sub regulation 2, after clause (c), the following clause shall be inserted, namely: -

"(d) The location of Renewable Energy. Meters shall be as specified_ below:

Metering arrangement	***Location of Renewable Energy Meter***
Feed in Tariff metering: - Renewable Energy Plant is connected to the grid to inject the entire electricity generated to the grid	*Outgoing feeder from Renewable Energy Plant.*
Net metering: - Renewable Energy Plant is connected to the load bus of the owner to consume electricity generated primarily by the owner of the plant and excess electricity, if any, is injected to the grid.	*In case of first installation for the purpose of Renewable Energy Metering, the 'Renewable Energy Meter" shall be installed at the location specified for consumer meter and in case of existing consumers, the consumer meter shall be replaced with "Renewable Energy Meter".*

CEA Notification no CEA-GO-13-15/3/2019-DPR Division dated 23-12-2019 Regulations 7 provides as under: -

In regulation 7 of the said regulations: -

(i) In sub-regulation (1), for Table -1, the following Table shall be substituted, namely: -

"Table-1

Sr. no.	***Stages***	***Main Meter***	***Check Meter***	***Standby Meter***
(1)	***(2)***	***(3)***	***(4)***	***(5)***
1.	*Generating Station*	*On all outgoing feeders including bus sectionalizer or tie line between two stages of generating stations having different tariffs or different ownership or both.*	*On all outgoing feeder including bus sectionalizer or tie line between two stages of generating stations having different tariffs or different ownership or both*	*(i)* ***High Voltage (HV) side of Generator Transformers*** *(ii) High Voltage side of all Station Auxiliary Transformers.*
2.	*Transmission and Distribution System*	*(i) At one end of the line between the sub-stations of the same licensee:* *(ii) At both ends of the line between*		*(i) There shall be no separate standby meter.* *(ii) Meter Installed at other end of the line in case of two*

		substations of two different licensees: Provided that meters at both ends shall be considered as Main meters for respective licensees.		*different licenses shall work as standby meter*
3.	*Inter-Connecting Transformer (ICT)*	*High Voltage (HV) side of ICT.*		*Low Voltage (LV) side of ICT.*
4.	*Consumer directly connected to the Inter-State Transmission System or Intra-State Transmission System who has been permitted open access by the Appropriate Commission or any other system not covered above.*	*As decided by the Appropriate Commission".*		

Further regulation 14 at Sr no 11 of the above notification reads as under: -

"(1) Interface Meters: (a) It shall be the responsibility of the Generating Company or the licensee, in whose premises the meter has been installed, to download the meter data, record the metered data and furnish such data to various agencies as per the procedure laid down by the Appropriate Commission:

Provided that the responsibility of maintaining database of all the information associated with the Interface Meters and verifying the correctness of the metered data shall be in accordance with the procedure laid down by the Appropriate Commission.

(b) The metered data shall be communicated to the respective Load Despatch Centre by using a secured and dedicated communication system".

Since the above meters are installed in the Premises of the Respondent so it is the Responsibility of the Respondent to provide required data to SLDC and there is no Metering Point at the Generating Station as per PPA. The Respondent has violated all the above notifications by providing both the ABT meters i.e., Main and Check at the Sub Station rather than on H.T side at the Plant and there is no meter at the Plant as per the terms and conditions of PPA. In the absence of any meter at the plant as per the PPA it is practically impossible to record and supply the real time data at the Plant Level. Installing any new meter at the Plant will be in violation of the PPA.

Even CERC in their notification no L-1/265/2022/CERC dated 29-05-2023 regarding GRID CODE under the head definitions has stated that String Inverters in a solar power plant be considered as Generating unit. Relevant portion of the notification is reproduced as under:

Sr. No.	Particulars	Definition
62.	'Generating Unit'	means a) A unit of a generating station (other than those covered in sub-clauses (b) and (c) of this clause) having electrical generator coupled to a prime mover within a power station together with all plant and apparatus at the power station which relate exclusively to operation of that turbo-generator; b) **an inverter along with associated photovoltaic modules and other equipment in respect of generating station based on solar photo voltaic technology;** c) a wind turbine generator with associated equipment, in respect of generating station based on wind energy; d) in respect of RHGS, combination of hydro generator under sub-clause (a); or solar generator under sub-clause (b) or wind generator under sub-clause (c) of this clause;

That since the petitioner has employed 5 string inverters of 250 kw each so our Generating Unit is less than 1mw and therefore the Telemetry is not applicable on the Petitioner.

The petitioner is supplying the data as per the Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation as approved by Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019, and the relevant clause reads as under:

"4. Role & Responsibilities of Stand-alone Generators

vi) Stand-alone Generator shall provide real time data for power generation parameters and real time generation data (turbine and inverter level) and weather data wherever available as per Annexure-II.

……

ix) In case of non-availability of Real Time Data (at Turbine Level /inverter Level), Generator shall maintain and provide time block wise generation data at (turbine and inverter level) and weather data on Weekly basis:

For wind plants, at the turbine level: Average wind speed, Average power generation at time block 'level (15-min or lesser, as the case may be)

For solar plants, for all inverters >= 1 MW: Average Solar Irradiation, Average power generation at time block level (15- min or lesser, as the case may be)*

**** If a solar-plant uses only smaller string inverters, then data may be provided at the plant level**."*

(Underline supplied)

The petitioner is complying with Hon'ble HERC regulations as prescribed above for Solar power plants with small string inverters as real time inverter data is not possible in case of String inverters. There is no metering point at the PLANT and ABT meters

are installed at the GRID therefore Respondent is responsible to supply requisite data to SLDC. Since Main and Check meters are at the Respondents Sub -Station so it the responsibility of the Respondent to supply the data to SLDC.

5.41.3 That in case of string inverters real time data at inverter level is not possible so the petitioner is supplying plant level data on daily basis to SLDC. It is further submitted that the petitioner is complying with the above regulation of HERC for Solar power plants with small string inverters as real time inverter data is not possible in case of String inverters and also Article 10 of the PPA and supplying data on daily basis rather than on weekly basis to SLDC.

5.41.4 That the respondents are trying to confuse the issue by only referring to "Real Time Data" and not "Real Time Data at inverter level" as specified in all the regulations. In case of small string inverters, the real time data at inverter level is not possible that is why the PPA and HERC regulations have stipulated that data be supplied on weekly basis. Moreover, a letter of Ministry of Power bearing No. 23/13/2017-R&R dated 06.04.2017 addressed to Chairperson Central Electricity Authority is regarding real time data generation and has advised CEA to formulate the guidelines for the same and the same is not a notification that directs the Solar Power Developers to provide real time generation at string Inverter level so the same is not applicable on the Petitioner.

5.41.5 That the regulations mentioned by the respondents are not applicable on the Petitioner rather these are inter-alia applicable to all the generating projects including the renewables, which are getting connected to the grid at voltage level of 33 kV and above. It is submitted that these *are not applicable on the Petitioner as the petitioner is connected at voltage level of 11kv. Regarding* Central Electricity Authority (Technical Standards for Connectivity of the Distributed Generation Resources) Regulations, 2013 and letters dated 12-04-2017 and *08-05-2017* (Annexure R-1/8, R-1/9) it is submitted that these are not applicable on the Petitioner because at that time Solar Power Plants were having only Central inverters and String inverters were not there. String inverters are of very small capacity and located at different locations at the Plant. We reproduce clause no 6(3) as produced by the Respondent in Para 45 of their Reply.

The requester and user shall provide necessary facilities for voice and data communication and transfer of on-line operational data, such as voltage, frequency, line flows, and status of breaker and isolator position and other parameters as prescribed by the Appropriate Load Dispatch Centre.

6(4) The requester and user shall cooperate with the Regional Power Committee, and Appropriate Load Dispatch Centers in respect of the matters listed below, but not limited to:

(b) agree to maintain meters and communication system in its jurisdiction in good condition."

The above clause refers to the users in our case Respondents are the users and main and check meters are at Respondent end.

The relevant regulations of Central Electricity Authority which are applicable on the Petitioner is bearing NO CEA-GO-13-15/3/2019-DPR Division dated 23-12-2019. The relevant clauses which are applicable on the Petitioner are as under: -

Clause no 7 (iii)

(iii) in sub-regulation (3), in clause (i), after sub-clause (a), the following provision shall be inserted, namely: -

"Provided that in case of Renewable energy generating station, the meter shall be installed at the inverter Alternating Current (AC) output terminals.".

As per Article no 10 clauses no 10.6 o PPA, the meters are installed at the interconnection point.

As per the PPA the DELIVERY POINT/INTERCONNECTION point is defined as under.

2.1.11 "Delivery Point" shall be the interconnection point at which solar power developer (SPD) shall deliver the power to the Haryana STU /DISCOM substation in case project is in Haryana and Haryana STU in case project is outside Haryana. The metering shall be done at this point of interconnection. A11 transmission charges and losses upto the delivery point shall be borne by SPD'.

5.41.6 In the Petitioner case string inverters have been installed and as per and it is technically impossible to get real time data at string inverter level as these are located at different places in the plant and capacity of each inverter is 200KW. As per Ministry of Power Notification no 12/X/STD/CONN/GM/CEA dated 15-10-2013 at serial no 2 sub clause b2(b) in clause no 14 the following paragraph has been added at the end, namely: -

"In case of Solar Photo Voltaic generating station, each Inverter along with its associated modules will be reckoned as a separate generating unit".

Therefore, in Petitioner case each generating unit is of 200KW much less than 1MW. The Generation period, running period and Availability factor of each String inverter is different and therefore real time data at inverter level is not possible.

5.41.7 That the petitioner has given representation to Hon'ble Managing Director HVPNL vide letter no. Giotech/179/2022-23 dated16-07-2022(Annexure-P-95) regarding

applicability of Telemetry keeping in view Article 10 of the PPA and procedure for Forecasting, Scheduling and deviation settlement of Solar and Wind generation as approved by HERC and adopted by HVPNL and adopted by HVPNL. The Managing Director formed a committee to look into the matter. We were called by the committee and they were convinced that the same is not applicable to and accordingly directions were issued to give us a charging code and the same was issued to us. The petitioner is unable to understand as to why the Respondents are forcing us to violate the above-mentioned clauses of PPA, HERC regulations and their own procedure for Forecasting, Scheduling and deviation settlement of Solar and Wind generation. Now again, the respondents are issuing letters to install telemetering with the threat that connection agreement and connectivity will be cancelled. Further a meeting was held with Chief Engineer HVPNL in his office at 11.00 AM on 20/10/2022 and the following decision were taken:

A) Since developer has installed string inverters, so real time data of string inverters is not possible, and the plant level data be transferred to sub-station at Shahabad.

B) We had conveyed our difficulty for leased line as the plant is in remote area, so the mode of data transfer through GPRS(SIM) was discussed.

C) We were also told that SE, SLDC Sh. Rajiv Kaushal will be providing all necessary guidance & help for approval and implementation of the same so that necessary data is transferred with minimum additional cost in accordance with HERC order dated 08-03-2021.

D) We were also assured that no verbal instructions were given for disconnection of power from Solar Power Plant and the issue has come up due to communication gap.

5.41.8 Thereafter Petitioner was called for a meeting by the Chief Engineer /SO& commercial and Chief Engineer /PD &C was also present in the meeting. Chief Engineer /SO& commercial asked the Petitioner to submit copies of Single Line Diagram and Transmission line diagram to Chief Engineer/P&D for approval. Petitioner vide letter no Giotech/280/2022-23 submitted Single line diagram of the Plant approved by the chief Electrical Inspector and transmission line approved by Whole Time Directors of the UHBVN for further approval from Chief Engineer PD&C.

5.41.9 That it was also mentioned that line diagram of transmission line stands approved by WTDs of UHBVNL. However, no such approval has been received.

5.42 SUBMISSIONS W.R.T. REFUND OF STATE LOAD DISPATCH CENTRE ("SLDC") CHARGES SOUGHT BY THE PETITIONER:

5.42.1 That clause 2.3 of the MYT regualtions-2019 relied upon by the respondents, shall not apply for tariff determination of Renewable Energy Projects. The clause 2.3 of the above said regulations are reproduced here under for ready reference: -

"…2.3 These Regulations shall not apply for tariff determination of renewable energy generation projects. The tariff for such generation projects shall be determined as per Haryana Electricity Regulatory Commission (Terms & Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 as amended from time to time…".

Further Clause no 4(4.1) of the above notification PART 11 -Multi Year Tariff Financial Principles reads as under.

"..4.1 the commission in specifying these Regulations, is guided by the provisions of section 61 and 62 of the Electricity Act, 2003, the National Electricity Policy and National Tariff Policy notified by Central government under section 3 of the act as amended from time to time as well as the relevant Regulations notified by central govt. ".

From the above it is absolutely clear that these regulations do not apply where the tariff has been determined under Section 63 of the act. In the present case tariff has been determined under section 63 of the Act.

Respondent has increased the charges vide memo no Ch-14/SE/RA/N/F-54/Vol.16 dated 27-03-2023giving reference of Sales Circular no U-02/2023 as per HERC MYT Regulations-2019. The same amounts to change of law being new notification.

Even if for arguments sake it is presumed that the SLDC charges are applicable on the petitioner then it is submitted that the SLDC Charges were notified under the MYT Regulations, 2019, on 31 October 2019 much later than the dated of closure of the tender i.e. 05-08-2019 and the same will amount to Change Of Law as per Article 20 of the Power Purchase Agreement the petitioner is entitled to be compensated on account of Fixed and Variable expenses as and when incurred against the bills submitted by the Petitioner.

5.42.2 That the petitioner is not challenging the MYT Regulations, 2019 and so there arises no question of counting limitation from the date of notification of MYT Regulations.

Since the above Regulation is not applicable on the Petitioner so the same amounts to new consent and will amount to change of Law.

5.43 <u>SUBMISSIONS W.R.T. COMPENSATION ON ACCOUNT OF COST OF VCB AND LOSS ON ACCOUNT OF TRIPPING SOUGHT BY THE PETITIONER:</u>

5.43.1 That as per Article 6 clause no 6.1.3 of PPA under the head SYNCHRONISATION AND COMMERCIAL OPERATIONS it is absolutely clear that purchase of VCB at the

Sub Station was in the scope of Developer and the relevant clause is reproduced as under.

"..6.1.3 The entire cost of transmission including cost of construction of line, Bay, metering and protection system etc. along with Transmission Charges, Losses etc. up to Haryana (STU periphery/ DISCOMs Sub Station) will be borne by the Project Developer. .."

5.43.2 It VCB at the Sub Station was not only Obsolete but also the CT ratio was 60/30-5-5 and the same was under rated and the relay setting for the same was done at 50 amp and our current used to reach till 65 amp. Thus, the under rated VCB tripped number of times as and when current exceeded 50 amp and Respondent in their reply confirms the same. The petitioner also came to know that said VCB was also written off from the books of the HVPNL (M&P Department). There is no provision in the RfP/ PPA that VCB at the Sub- Station of the Solar Power Developer will be purchased by the Respondents. The above act of the Respondents is in violation of PPA/RfP and moreover we understand that there is no provision in the acts of the Discom/HVPNL that they can act as suppliers of equipment to the SOLAR POWER DEVELPOERS. Above letters written to the Respondents in this regard prove that the act of the Respondents was in utter violation of clause of PPA/ RfP and have caused huge loss to Petitioner.

5.43.3 That there was no overloading on M/S Giotech feeder and the same is an afterthought and the fault was at the VCB end. The

5.43.4 That the Respondent has failed to prove the authority / regulations or any Clause of PPA which empowers the Respondents to acquire VCB of his choice for the Petitioner.

5.43.5 That the Respondents have agreed that tripping continued even after the installation of new VCB. The same was also due to faults and defaults of the Respondents and not due to earth faults as claimed by the Respondent. Since the petitioner was forced to install METERING CT/PT of ratio 50:1:1 instead of 100:1:1 in violation of their own circular issued by UHBVN bearing no Ch-5/TR-90/ROL/CE/C-1. S.E (STU) on behalf of Chief Engineer P&D HVPNL to Chief Engineer SO & Commercial HVPNL vide letter bearing no ch-21/ISB-721/VOL1 dated 29-03-2023 also advised that metering CT/PT be replaced with suitable ratio.

5.44 <u>SUBMISSIONS W.R.T. REFUND OF STAND-ALONE GENERATOR CHARGES:</u>

5.44.1 That the Petitioner under duress and applied for Stand Alone Generator Approval/QCA and wrote various letters regarding approval of name but neither the approval was given nor any query was raised for the reasons best known to the Respondents.

5.44.2 That other regulatory commissions exempted Solar Plants up to 5 MW form the purview of DSM Regulations because plants up to 5MW use only String Inverters and REAL TIME DATA of Inverters is not technically possible. DSM Regulations were made applicable in 2021 much later than the dated of closure of the tender i.e., 05-08-2019 and the same will amount to Change of Law as per Article 20 of the Power Purchase Agreement. The petitioner is entitled to be compensated on account of Fixed and Variable expenses as and when incurred against the bills submitted by the Petitioner.

5.44.3 That the petitioner submitted complete application vide letter no Giotech/199/2022-23 dated 09-08-2022 for the approval of Petitioner Name for acting as stand-alone generator and submitted the complete documents as prescribed by the Hon'ble commission. As per the clause no. 9 sub clause vi the time period for registration of Stand-alone Generator is 15 days from the date complete documents have been received. Respondent never processed our application and even no query was raised and no approval was also given.

5.44.4 That on 30-08-2022 petitioner visited HVPNL office and was told to deposit GST amount of Rs 1800/- and was assured that name for Stand-alone Generator will be approved immediately. An amount of Rs 1800/- i.e. GST amount was paid on 30-08-2022 and thereafter also our name was not approved by the Respondent as Stand - Alone Generator.

5.44.5 That the Respondent in order to cover its delay in granting approval asked for certain documents vide e-mail dated 14-10-2022 and the same were not required as per DSM procedure for approval of Stand-Alone Generator. This amounts to modification of the existing law and amounts to change of law as per Article 20 clause 20.1.2 of the PPA.

5.44.6 That Since the Petitioner name was not approved as Standalone Generator so no bank guarantee was submitted as the same has to be submitted within 7 days of approval of name as standalone Generator. Now, the respondent is stating that approval for Stand Alone Generator cannot be accorded because telemetry drawing is not approved.

5.44.7 That only two letters at serial no (i) bearing no Memo No. Ch-146/ISB-711 dated 23.11.2023 and (j) bearing no Memo No. Ch-153/ISB-711A/Vol.-I Dated: 12.03.2024, out of the 10 letters mentioned by the respondents in its reply, were received by the Petitioner and rest of the letters were never received by the Petitioner. Respondents have neither attached these letters as Annexures with their reply nor they have given any proof of mode of dispatch to the petitioner such as through registered letter/e-mail/ delivered by hand against the receipt etc.

5.44.8 That the provisions of RfP clearly specify that SPD shall comply CERC/HERC regulations as applicable. Since DSM Regulations were made applicable in 2021 much later than the date of closure of the tender i.e. 05-08-2019 so the same will amount to Change of Law as per Article 20 of the Power Purchase Agreement. Thus, the Petitioner is entitled to be compensated on account of Fixed and Variable expenses as and when incurred against the bills submitted by the Petitioner during the tenure of PPA.

Commission's Analysis and order

6. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The petitioner as well as the respondents herein, mainly reiterated the contents of their written submissions, which for the sake of brevity have not been reproduced here. At the outset, the Commission clarifies that the present petition has been instituted under Section 86(1)(b) / Section 86(1)(f) of the Electricity Act, 2003, seeking settlement of disputes/claim compensation against the respondents, and not for seeking relaxation of any regulatory provisions. In consequence, the scope of determination in the present list is confined strictly to the powers vested in this Commission under the Electricity Act, 2003 and the Rules/Regulations framed thereunder. Any reference to, or reliance upon, the Regulations framed by the Hon'ble CERC is therefore only of persuasive value and cannot be treated as determinative for the issues arising in this matter. The Commission shall accordingly adjudicate the claims strictly in accordance with the statutory framework, the applicable HERC Regulations, and the contractual provisions governing the parties (PPA).

The Commission observes that the petitioner herein has raised various issues, which are analyzed and decided as under:-

6.1 **Issue No. 1: Whether the petitioner is entitled to the reimbursement of increased project cost:-**

The Commission has carefully examined the claim of the petitioner for reimbursement of the increased project cost and rival contention on the same as well as the terms of the duly executed contract between the parties (PPA) along with the regulations occupying the field. The petitioner asserts that the rise in its project cost was caused by the COVID-19 pandemic in 2020, which, according to it, constituted both a "Change in Law" and a "Force Majeure" event, entitling it to additional compensation and/or extension of time under the PPA. Per-contra, the respondents have vehemently argued against the claim of the petitioner being against the express

provisions of the PPA, MNRE guidelines and absence of any change in law event leading to alleged increase in project cost.

The petitioner has argued that upon the outbreak of COVID-19 in the year 2020, the Government of India issued various notifications under section 10(2)(l) of the Disaster Management Act, 2005 imposing Nationwide / State-wise lockdowns, which amounts to change in law / force majeure events. It has been contended that these events amount to both change in law and force majeure, having delayed the commercial operation date (CoD) by nearly one year and thereby increasing the overall project cost. The petitioner also alleges that the respondents compelled it to obtain new set of approvals which were sought by them under duress or otherwise were never issued by the respondents in the prescribed timelines.

The Commission has taken note of the following relevant milestones pertaining to the project of the petitioner: -

1. Last date for submission of bid: 05.08.2019
2. Date of execution of PPA: 19.06.2020
3. Time limit of achieving CoD: 18.12.2021
4. Time limit of achieving CoD Extended up to: 17.08.2022
5. CoD actually achieved: 01.09.2022

In order to effectively adjudicate the claims raised by the petitioner, the Commission considers it appropriate to examine the following sub-issues: -

Sub Issue No. 1: Whether the outbreak of COVID-19 in the year 2020 is a 'Force Majeure Event' in the present case.

The primary contention raised by the petitioner is rise in project cost emanated from disruptions caused by the COVID-19 pandemic. Therefore, it has become imperative to examine that the outbreak of COVID-19 pandemic in the year 2020 qualifies as a 'force majeure events' within the meaning of the PPA, and more importantly, whether it is a force majeure event for the purpose of this particular contract.

It is at this point apposite to notice the relevant provisions under the duly executed PPA dated 19.06.2020, which provides as under: -

"17.1 If any party hereto is wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through such as lightning, earthquake, drought, volcanic eruption, landslides, typhoon or tornado, radioactive contamination, fire, floods, invasion, insurrection, rebellion, mutiny, tidal wave, civil unrest, riot, epidemics, explosion, the order of any court, judge or civil authority, change in state or national law, war, any act of God or the public enemy or any other

similar cause beyond its exclusive control and not attributable to its neglect or any failure or non-available of the Grid, not attributable to a default or negligence of the buyer then and in any such event, such party shall be excused from whatever performance is prevented by such event to the extent so prevented and such party shall not be liable for any damage, sanction or any claim for any loss resulting there from.

17.2 Force Majeure Exclusions

Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;

b) Delay in the performance of any contractor, sub-contractor or their agents;

c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d) Strikes at the facilities of the Affected Party;

e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and

f) Non-performance caused by, or connected with, the Affected Party's:

i) Negligent or intentional acts, errors or omissions;

ii) Failure to comply with an Indian Law; or

iii) Breach of, or default under this Agreement.

g) In case, project is located outside the state of Haryana, Delay in Commercial operation date of project on account of commissioning of Transmission line or Grant of long-term open access shall not considered as Force Majeure.

17.3 The party invoking this clause shall satisfy the other party of the existence of such an event and give written notice within Seven (7) days to the other party and take all possible steps to revert to normal conditions. In case of failure to intimate within specified period, the event shall not be treated as force majeure event.

17.4 To the extent not prevented by a Force Majeure Event pursuant to Article 17.1, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable. The affected party shall give the other party regular reports on the progress of those remedial measures & such other information as the other party may reasonably request about the force majeure event.

17.5 If the force majeure event or its effect continues to be present beyond a period of 12 months, either party shall have the right to cause termination of agreement. In

such an event, this agreement shall terminate on the date of termination notice without any further liability to either party from the date of such termination."

Article 17.1 of the PPA provides for 'force majeure events' as the events where any party to the PPA is prevented from performing its obligations under the PPA by reason of events such as lightning, earthquake, drought, volcanic eruption, landslides, typhoon or tornado, radioactive contamination, fire, floods, invasion, insurrection, rebellion, mutiny, tidal wave, civil unrest, riot, epidemics, explosion, the order of any court, judge or civil authority, change in state or national law, war, any act of God or the public enemy or any other similar cause beyond its exclusive control and not attributable to its neglect.

The various advisories issued by the Government of India has already acknowledged the event of outbreak of Covid-19 pandemic as 'force majeure event'. Ministry of Finance, Government of India, in its Office Memorandum dated 19.02.2020 has specifically clarified as under: -

"Attention is invited to para 9.7.7 of the "Manual for Procurement of Goods, 2017" issued by this Department, which is reproduced as under:

"A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organization only. In such a situation, the purchase organization is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

2. A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC). In this regard it is clarified that it should be considered as a case of natural

calamity and FMC may be invoked, wherever considered appropriate. Following the due procedure as above."

A plain reading of Article 17.1 of the PPA along with the Office Memorandum dated 19.02.2020 issued by the Ministry of Finance, Government of India, confirms that the outbreak of Covid-19 pandemic was a 'Force Majeure Event'.

Now, the Commission has proceeded to examine its applicability in the present case. The Commission observes that the Power Purchase Agreement (PPA) was executed between the petitioner and respondent No. 1 (HPPC) on 19.06.2020, during the continuance of the pandemic and after the issuance of the above-mentioned government advisories. In this regard, the Commission has also referred the decision of the Hon'ble Delhi High Court dated 19.07.2023 in Omaxe Ltd. v. Balvinder Kaur Nijjar [O.M.P. (COMM) 295 of 2021, wherein it has been held that a circumstance known to the parties at the time of entering into the contract cannot subsequently be invoked as a force majeure event. The relevant part of the judgement is reproduced, here under:

*"78. **This Court is of the view as per section 56 of the Contract Act as per the said Section the force majeure is an unprecedented event. The petitioner was already in the knowledge of the said event and therefore, the event cannot be covered under the garb of force majeure**. Since, even before entering into Contract with the petitioner the respondent had knowledge that it requires the No- Objection Certificate from ASI. Therefore, the plea of force-majeure cannot be taken at this stage and the petitioner has committed a violation of the local laws by not adhering to the requirement of taking a No-Objection Certificate from the ASI which is mandated as per the local laws. I do not find any reason to interfere qua issues no. 1 and 6."*

[Emphasis Supplied]

Further, clause 17.3 of the PPA provides that the party invoking 'Force Majeure Clause' shall give written notice within seven days to the other party of existence of such an event and the failure to intimate within specified period shall not be treated as force majeure event. It implies that the 'Force Majeure Event' should have arisen after entering into the contract; a notice in respect of which is to be given by the petitioner to HPPC, within seven days of such an event coming into existence. As per the relevant clause of the PPA, a failure of giving such a notice shall not be treated as force majeure event. A known, ongoing circumstance at the time of signing the contract cannot trigger Article 17.3.

In line with the ibid judgement read with clause 17.3 of the PPA, in the present case, The COVID-19 pandemic was already in full force at the time of signing the PPA on 19.06.2020 and the petitioner was fully aware of the pandemic and its consequences. In the present case, the petitioner had the option to back out from the bids submitted on 05.08.2019 and not to enter into a PPA on 19.06.2020 by taking discharge from contractual obligations. However, the petitioner relinquished its rights at the relevant time and proceeded to sign the PPA with full knowledge of the prevailing circumstances. Thus, the petitioner had entered into a commercial transaction with complete knowledge of the risks involved and accepted the risk associated with the pandemic.

In view of the above factual matrix, the Commission answers the issue in negative i.e. the outbreak of COVID-19 in the year 2020 although a 'Force Majeure Event' in general is not a 'Force Majeure Event' for the purpose of this contract, which was executed during the continuation of such an event, with full knowledge of its existence and implications.

Sub Issue No. 2: Whether the generator is entitled to increased project cost on account of 'Force Majeure Event'.

The Commission has already held that the outbreak of COVID-19 during the year 2020 does not constitute a 'Force Majeure Event' in the present case, the Power Purchase Agreement (PPA) having been executed on 19.06.2020 during the subsistence of the pandemic. Consequently, adjudication of the present issue is, to a large extent, academic. Nonetheless, the Commission proceeds to examine the contractual framework governing claims of increased project cost.

It is well established that claims arising out of PPA cannot be tested on the anvil of majoritarian morality but only on morality set by the terms and conditions of PPA.

In this regard, the Commission has examined Article 17 of the PPA dated 19.06.2020, reproduced earlier in this order. Article 17.1 of the ibid PPA expressly provides that the parties to the PPA effected by such event shall not be liable for any damage, sanction or any claim for any loss resulting there from. Article 17.2 of the ibid PPA further provides that the 'Force Majeure' shall not include 'changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project'. Article 17.2 of the ibid PPA further provides that 'if the force majeure event or its effect continues to be present beyond a period of 12 months, either party shall have the right to cause termination of agreement. In such an event, this agreement

shall terminate on the date of termination notice without any further liability to either party from the date of such termination.'

Article 11.2 of the ibid PPA provides for the levy of penalties including encashment of Performance Bank Guarantee, for not achieving the commercial operation date as per the schedule.

Thus, the combined reading of Article 17 and Article 11 of the ibid PPA, makes it amply clear that in case of 'Force Majeure event', the project developer is exempt only from the penalties for delay in achieving CoD and is afforded the option of termination without liability. No provision exists for compensating or reimbursing any increase in project cost on account of such an event.

Similarly, Ministry of Finance, Government of India, in its Office Memorandum dated 19.02.2020 has specifically clarified that 'if the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure (FM) for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.'

In line with the office memorandum dated 19.02.2020 issued by Ministry of Finance, the Ministry of New and Renewable energy (MNRE) also issued its Office Memorandum dated 12.05.2021 clarifying that *"While applying for such time-extension, RE developers shall undertake that the time extension shall not be used as a ground for claiming termination of Power Purchase Agreement (PPA) or for claiming any increase in project cost, including Interest During Construction (IDC) or upward revision of tariff."*

Further, in Office Memorandum dated 15.09.2021, MNRE has specifically mentioned that the time-extension granted in achieving CoD, is an out-of-contract concession extended by MNRE to facilitate Renewable Energy projects, which is optional and can be claimed by Renewable Energy Project Developers/ EPC contractors provided they do not claim any increase in project cost on account of this time extension.

The Commission has considered the submissions of the respondent (HPPC) that the petitioner has failed to substantiate the increase in project cost over and above the sanctioned loan and source of financing such escalated cost. The petitioner has itself contended in its letter dated 31.01.2022 that rates will increase from 01.04.2022. However, the petitioner had already placed orders prior thereto on M/s. Ornate Solar. It is not out of the place to mention that there are various other similarly placed solar power developers which were selected under bidding in 2019 but were commissioned in 2022 due to COVID related delays. However, no comparable claims for increased project cost on account of force majeure have been brought before this Commission. Moreover, HPPC's recent bidding for 1 MW solar power discovered a tariff of

₹2.99/kWh in 2025, which is nearly identical to the tariff of ₹2.999/kWh discovered in 2019. This demonstrates that technological advancements and market trends have largely absorbed inflationary effects and that no systemic or extraordinary cost escalation is reflected in the sector.

In view of the above, the Commission answers the issue in negative i.e. the generator is not entitled to any increase in the project cost, if any, on account of the alleged 'Force Majeure Event'.

Since the generator is not entitled to such compensation even assuming force majeure, which has, in fact, not been upheld in the present case, the Commission has not examined the detailed cost claims, including the cost as on the last date of bid submission or the actual cost incurred by the petitioner.

Sub Issue No. 3: Whether the generator was forced to obtain new set of approvals which were sought by the petitioner under duress amounting to 'Change in Law'.

The petitioner has averred that it was compelled to obtain the following new approvals for the project, which were not given by the respondents in the set timeframe: -

Sr. No.	Particulars	Date of Applying	Date of Approval	Remarks
1.	Grid Connectivity	03-12-2020	28-04-2022	1. As per the HERC notification dated 11-01-2012 bearing no HERC/25/2012 Grid Connectivity is to be given within 45 days, whereas the same was given to us after 120 days. 2. Moreover as per clause no 2.2 of notification no 162-166/HERC/Tariff dated 15-04-2021 technical and final connectivity are not required (clause no 2.2) if generator has entered into PPA with HPPC and insisting on the same amounts to Change in Law.
2.	Financial Closure approval	21-12-2021	24-03-2022	No letter of having financial closure was given but only letter bearing Memo No. Ch-56/HPPC/SEC&R-1/LTP-III/GSR dated 24-03-2022 stating that documents for financial closure has been received.
3.	Connection Agreement	31-12-2021	13-05-2022	Connection agreement duly signed was received after a lapse of around 165 days vide letter Memo No. Ch-27/ISB-721 dated 13-05-2022, whereas plant was to be commissioned by 17-08-2022.
4.	Long Term Open Access Approval	03-12-2020 and again applied on 15-01-2022	15-07-2022	Long term open access was to be given within a period of 40 days as per clause no 4.3(i) notification no162-166/HERC/tariff dated 15-04-2021. Further as per clause no. 11(2) 3 a of HERC notification no HERC/25/2012 dated 11-01-2012 the same was to be given within a period of 40 days. However, we received LTOA approval after a gap of 20 months i.e., on 15-07-2022 whereas the plant was to be commissioned on 17-08-2022.
5.	Long Term Open Access Agreement	24-11-2022	Nil	Not yet signed
6.	Stand Alone Generator Approval	09-08-2022	No approval given	Not yet approved

Per-contra, HPPC has averred denied all the allegations of the petitioner, contending that the same are contrary to the terms and conditions of the PPA. Clause 3.11 of the PPA places the responsibility squarely on the developer to obtain all consent,

clearances, and permits, and make adequate arrangement to connect the power projects with the switchyard with the interconnection facilities at the delivery point. It has been further argued that the alleged delay in grant of approvals is neither a 'Change in Law' nor a 'Force Majeure Event'. The case tried to be made by the petitioner on account of delayed approvals does not stand to logic as well, as the same has not resulted in delaying the installation of power project of the petitioner, as tabulated below: -

Approval of gird clearance/grid connectivity	Approval of connectivity didn't in any manner hamper the progress of works. The connectivity was required before the trial run. The same was accorded before that. Moreover, Connectivity Approval was given on 26.04.2021.
Approval of financial closure	There is no approval under the PPA for Financial Closure. The generator has to submit the requisite documents as per the terms of the PPA. As soon as the complete documentation were submitted on 07.03.2022, HPPC acknowledged receipt of documents for Financial Closure vide letter dated 24.03.2022.
Approval of long-term open access agreement	Approval of LTOA was required before the trial run. The same was accorded before that.
Approval of stand-alone generator; CT/PT ratios of metering unit; & telemetry drawings	This delay is misleading and has been elucidated in detail under relevant claims. However, the same had no impact on the progress of works. The Petitioner had still not complied with all requirements of the approval and therefor till date, approval of standalone generator has not been obtained.

The Commission has examined the provisions of the duly executed PPA dated 19.06.2020, pertaining to 'Change In law', which provides as under: -

"20.1 CHANGE IN LAW:

20.1.1. 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.

20.1.2. *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.

20.2. Relief for Change in Law

20.2.1. The aggrieved party shall be required to approach the State Commission (HERC) for seeking approval of change in law and consequent impact on tariff.

20.2.2. The decision of State Commission to acknowledge a Change in law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the parties."

The examination of the above clause makes it abundantly clear that enactment of any new law or an amendment/modification of an existing law or the requirement to obtain a new consent/permit/license or any modification to the prevailing conditions prescribed for obtaining a consent/permit/license, not owing to any default of the Solar Power Generator or any change in the rates of any Taxes, shall only amount to change in law. Thus, the delay, for whatever reason, in obtaining the approvals/consent/permit/license are not covered under change in law. Under the duly executed PPA, the project developer was obligated to obtain all consents/ clearances/permits etc. and make adequate arrangement to connect the power projects with the switchyard with the interconnection facilities at the delivery point, by providing requisite information/documents to the respondents. The clause unequivocally establishes that only a change in the legal or regulatory framework qualifies as a 'Change in Law'. Mere delay in grant of approvals, or insistence on approvals already required under existing regulations, does not constitute such a change.

In this regard, it is pertinent to note the relevant clauses of the RFP and PPA, reproduced hereunder:

Clause 2.7.2 of the RfP

"2.7.2 The bidder shall be required to obtain Long Term Open Access (LTOA) as per the regulation of the Centre/ State Regulators, as the case may be, from the State or Regional Load dispatch Centre (RLSC) and/or the state/ central transmission utilities."

Clause 5.10 and 5.11 of the PPA

"5.10 Transmission Charges and Losses

All transmission charges, transmission losses and other open access charges (if any applicable) and scheduling charges for any SLDC/RLDC upto the delivery point shall be payable by the seller in compliance of CERC/HERC regulations amended from time to time.

5.11 SPD shall be required to schedule its power as per applicable Regulation/ requirement / guidelines of HERC/CERC/SLDC/RLDC or any other competent agency and the same being recognized by SLDC or any other competent authority / agency as per applicable regulation / law / direction and maintain compliance to the applicable codes / grid code requirement / directions if any, as specified by any SLDC / RLDC from time to time. Any deviation from the schedule will attract the provisions of applicable regulation/ directions / guidelines and any financial implication on account of this shall be on account of SPD. SPD shall comply CERC/HERC regulations as forecasting, scheduling & deviation settlement as applicable & its amendment thereto from time to time and are responsible for all liabilities related to connectivity."

The clauses reproduced above explicitly mentions that the petitioner has to obtain long term access as per the prevailing regulations. The fact was made known to the petitioner well before bidding and it was part of the RfP floated by HPPC.

The Commission has perused the connectivity agreement executed on 13.05.2022 between the petitioner, UHBVNL (R-2) and HVPNL (R-3). The relevant clauses are reproduced hereunder: -

"1.2 General Condition for Connectivity

(b) Parties shall abide by HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and HERC as well as HERC (Terms & Conditions for determination of Tariff from Renewable Energy sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017, as amended from time to time."

"2.2 Agreement to pay Additional costs:

The applicant shall pay the cost towards modification / alterations of existing infrastructure to be carried out by HVPNL and DISCOMs for facilitating the connectivity."

"2.4 Agreement to pay charges for construction of Bays:

Connection charges: The applicant shall pay "connection charges" to the STU/HVPN & DISCOMs as provided in HERC (Terms and condition for grant of connectivity and open access for intra-state transmission and distribution system) Regulation 2012 as amended from time to time. Connection charges shall be applicable as per HERC

Multi Year tariff (MYT) Regulations & HERC Open Access Regulations, 2012 as amended from time to time.

The dedicated line along with all associated bay works for injection of Power will be constructed by applicant at their own cost. The other expenditure involved in giving connectivity and Open Access shall also be borne by the applicant."

The clauses of connectivity agreement reproduced above explicitly mentions that the petitioner was required to comply with the provisions of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 as well as to pay the applicable cost.

The Commission has also examined the relevant provisions of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), as amended from time to time, reproduced hereunder: -

"2. Scope and extent of application: *These regulations shall apply where an application has been made for grant of connectivity for the purpose of open access to the intra-State transmission and/or distribution system and/or where an application has been made for long-term open access, medium-term open access or short-term open access for use of the intra-State transmission and/or distribution system or where an application has been made for obtaining no objection or standing clearance, as the case may be, of the STU for open access to inter-State transmission system when the intra-State transmission and distribution system is to be used in conjunction with inter-State transmission system.*

Provided that a generating station, including captive generating plant, or a consumer/person shall not be eligible to apply for long term or medium term or short term open access unless he has the connectivity or he applies for connectivity to the intra-State transmission or distribution system as the case may be:

Provided further that a person may apply for connectivity as well as long term or medium term or short term open access simultaneously.

These Regulations shall also apply in case of supply of electricity by a generation company or a captive generating plant to consumer(s) over dedicated transmission line(s) as also in case of supply of electricity to a consumer from a person other than distribution licensee in whose area of supply he is located, irrespective of whether he

avails such supply through transmission / distribution network of the licensee or not. In all such cases, an application would need to be filed for open access under these regulations."

"6 (13) The grant of connectivity shall not entitle an applicant to interchange any firm power with the State grid unless it obtains long-term open access, medium-term open access or short-term open access in accordance with the provisions of these regulations."

The extracts of the HERC OA Regulations, reproduced above, clearly provides that a generator is required to obtain connectivity along with open access.

The Commission has further perused the 'Procedure for making application for grant of connectivity in Transmission/Distribution System', approved by this Commission, vide letter no. 162-166/HERC/Tariff dated 15-04-2021. The relevant clauses are reproduced hereunder: -

"1.1 This procedure is in accordance with the provisions of the "HERC (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012" notified on 11.01.2012 (HERC/25/2012) & HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 with their amendments issued from time to time, herein after referred to as "the Regulations".

1.2 This procedure shall apply to the applications made for the grant of connectivity to the transmission/distribution lines or associated facilities with such lines on the Haryana State Transmission/Distribution System, received by nodal agency (STU) i.e. HVPNL after notification of this procedure by State Commission."

"2. Eligibility for grant of connectivity can be made by

2.1 A consumer or a person seeking connectivity for a load of 10 MW and above or a generating station or a captive generating plant having installed capacity of 10 MW and above shall be eligible to obtain connectivity at 33 kV or above. A consumer or a person seeking connectivity for a load of less than 10 MW or a generating station or a captive generating plant having installed capacity of less than 10 MW shall be eligible to obtain connectivity at 33 kV or below.

The petitioner has further averred that technical and final connectivity was not required, under clause no 2.2 of the ibid procedure, in respect of the generators who have entered into PPA with HPPC. The relevant clause is reproduced hereunder: -

"2.2 Applications for connectivity of generation projects based on renewable energy sources shall be processed in two stages (except for the generators who have entered into an PPA with HPPC, Panchkula):

a) Stage-I Technical Feasibility
b) Stage-II Final Connectivity"

The Commission has examined the cited clause no. 2.2 and observes that the generators who have entered into PPA with HPPC, were not required to obtain two-part approval viz. Technical Feasibility and Final Connectivity. However, this does not mean that such generators were exempted from obtaining connectivity. But, the relaxation was granted from processing of such an application in two stages and such generators were required to apply for and obtain connectivity.

The Commission observes that the Hon'ble APTEL as well as Hon'ble Supreme Court, in its various judgements has held that PPA is a sacrosanct document and binding upon the parties. Therefore, the supremacy of the provisions of the duly executed PPA is no longer res-integra.

Further, all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Accordingly, provisions of HERC OA Regulations along with the 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission on 15.04.2021, is plain & simple and the same by no stretch of imagination is open to more than one interpretation, which may require interference of the Commission or any court of competent jurisdiction to choose the interpretation which represents the true intent of the said Regulation. Hence, the effect of the same has to be necessarily given to it irrespective of the consequences.

In view of the above, the Commission answers the issue framed in negative i.e. the generator was not forced to obtain new set of approvals amounting to 'Change in Law'.

Having held as above, the Commission is dismayed with the lackadaisical approach of the respondents in grant of final connectivity and long-term open access to the petitioner. There ought not to have been any occasion for the petitioner to run from pillar to post to obtain grid connectivity and long-term open access as well as other approvals required under the terms of PPA read with the regulations notified by this Commission. Nonetheless, the petitioner

was compelled to enter into prolonged correspondence with the respondents and face administrative inertia. The respondents are accordingly directed to strictly adhere to the timelines provided in the procedures for grant of connectivity and long-term open access, failure of which shall entail proceedings under Section 142/146 of the Electricity Act, 2003. The Respondents are further directed to conduct a joint enquiry into the delay that has occurred in the grant of the requisite approval. The Respondents shall submit an Action Taken Report (ATR) to the Commission within a period of two (2) months from the date of issuance of this Order.

6.2 **Issue No. 2: Whether the petitioner is entitled to the payment of 1st Running bill for the period prior to the date of CoD, amounting to Rs.1,90,509.98/-.**

The petitioner has averred that HPPC has denied payment of the 1st Bill amounting to Rs.1,90,509/- for the period from 19-08-2022 to 31-08-2022, by treating the energy supplied as dumped energy, on the ground that no payment can be made prior to the date of Commissioning of the plant in view of terms and conditions of PPA.

Per-contra, HPPC has submitted that Article 2.2.6, Article 4.1 and Article 19 of the PPA signed between the parties read with clause 2.3.2 of the RFP along with the pre-bid clarification issued, expressly provides that Discoms shall purchase the energy supplied by the petitioner after the Date of Commercial Operation of the project. The project was successfully commissioned on 01.09.2022 and a certificate to this effect was issued by HPPC which is jointly signed by the petitioner. Whereas, the said bill has been raised for the infirm energy injected into the state grid prior to the Commercial Operation date of the power plant i.e. for the period 19.08.2022 to 31.08.2022. The petitioner made a request to witness the trial run on 24.08.2022. The committee of officers of HPPC visited the plant on 25.08.2022. However, the committee found that the accuracy of meter system was not tested by the M&P wing, whereas it was incumbent upon the petitioner to get the same tested prior to offering the witness of trial run of the plant. Thus, on account of non-testing of the metering system, the commissioning of the plant could not be done on 25.08.2022. Thereafter, the petitioner vide email dated 30.08.2022, supplied the CMRI data of meters installed at the delivery point and intimated that the meter system polarity was found to reverse resulting in excessive import units in comparison to the export units. The matter was taken up with the HVPNL, for taking necessary action for correction of the fault in the meter. The petitioner, vide its email dated 01.09.2022, intimated regarding the rectification of the polarity of the meter. Accordingly, the committee constituted

for commissioning of the plant once again visited the plant on 01.09.2022. Subsequent to the same, the COD certificate was issued on the same date 01.09.2022 after verification of the requisite documents such as the CEI report, synchronization certificate, JMR, M&P report, etc.

In order to examine the issue, the Commission referred to the Article 2.2.6, Article 4.1 and Article 19 of the PPA reproduced hereunder: -

"2.2.6 All the relevant Term and Conditions of the Request for Proposal (RfP) shall be construed as part of PPA."

"4.1 All the Delivered Energy add the Interconnection Point for sale to DISCOM will be purchased at the Tariff provided for in Clause 4.2 from and after the Date of Commercial Operation of the project and limited to capacity of the project only and title to Delivered Energy purchased shall pass from the Solar Power Developer to the DISCOM at the Interconnection Point."

"ARTICLE NO. 19

COMMISSIONING PROCEDURE

19.1. The SPD shall submit the status of installation of equipment to HPPC as per prescribed format Annexure-I, at least 15 days prior to the synchronization.

19.2. SPD shall ensure Connectivity to the grid from concerned /STU/ DISCOM and Grid connectivity report (Annexure-II) shall be issued by competent Authority of DISCOM/STU. Electrical inspector report shall be made a part of the commissioning certificate. It would be the responsibility of the SPD to collect the certificate and submit the same to HPPC.

19.3. Synchronization and Commissioning Certificate as per prescribed format (Annexure-III & IV) shall be issued by respective STU/DISCOM for ascertaining injection of power into grid and after verification of technical parameters of the project.

19.4. SPDs shall give to the concerned RLDC/SLDC & HPPC at least sixty (60) days advance preliminary written notice, of the date on which it intends to synchronize the Power Project to the Grid System. SPD shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in turn affect the Commissioning Schedule of the Project.

19.5. A solar PV project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid.

19.6. SPD shall ensure that equipment upto the rated capacity has been installed and completed in all respects before scheduled commission date. The same shall be

verified by competent authority of DISCOM during their visit to project and documented as per prescribed format.

19.7. Electrical inspector report shall be made a part of commissioning certificate. It would be the responsibility of SPD to collect the certificate and submit the same to the HPPC.

19.8. Joint Meter Reading (JMR) shall be taken at Delivery Point at the time of connectivity/synchronization of the Project with Grid. This shall include information of Main, check meters installed at delivery point.

19.9. A snapshot of the plant from various angles shall be taken for covering installation of important components of solar power plants and made part of installation report."

Further, clause 2.3.2 of the RfP forming part of PPA as per Article 2.2.6 of the PPA, provides as under: -

"2.3.2 Solar power source shall be duly certified by HPPC. The certificate in this regard will be provided by SPD at the time of synchronisation."

The Commission has also considered the following reply of the HPPC to the queries/ clarifications sought by the prospective bidders regarding clause 2.3.1: -

SN.	*Questions raised by the Bidders*	*Suggestions by Bidders*	*HPPC Reply*
3.	*As per clause no. 2.3.1 "Solar power source shall be duly certified by HPPC. The certificate in this regard will be provided by SPD at the time of synchronisation." Kindly clarify the certification process and the requirements of the same.*		*It Is clarified that commissioning shall be witnessed by HPPC or its authorized representatives. Hence, no changes required.*

The Commission has examined the submissions of petitioner as well as respondents herein and observes that Article 19 of the PPA reproduced above, cast an obligation on the petitioner to submit the status of installation of equipment to HPPC as least 15 days prior to the synchronisation. Further, the petitioner is bound to give to the concerned RLDC/SLDC & HPPC at least sixty (60) days advance preliminary written notice, of the date on which it intends to synchronize the Power Project to the Grid System. Whereas, in the present case application to witness the trial run is given on 24.08.2022 and that too without testing the accuracy of meter system. After getting the meter testing and removing the fault in the meter, the certificate of commissioning was given on 01.09.2022. The interpretation of Article 19.3 of the PPA is that the commissioning and flow of energy shall be effective from the date of issuance of Synchronisation/Commissioning Certificate. Further, Article 4.1 of the PPA provides that the purchase of power at tariff will become applicable from the date of Commercial Operation of the project.

In view of the above, the harmonious reading of the terms of the RFP and the PPA establishes that energy flow under the PPA can only be considered with effect from the date of issuance of certificate of commercial operation of the project.

The judgement of Hon'ble Supreme Court dated 25.07.2019 in a case of M/S Madhya Pradesh Power Management Company Limited and Another Versus Dhar Wind Power Projects Private Limited (Civil Appeal Nos. 9218-19 of 2018 with Nos. 9220-23 of 2018), relied upon by the petitioner is not relevant in the present case, as in the cited case the procedure of commissioning was not laid down in the duly executed PPA between the parties. In the cited case, Superintending Engineer (S.E.) of the Discoms had issued commissioning certificate on 31.03.2016, whereas as per SLDC the energy started flowing in the grid on 01.04.2016 and the dates were significant for the applicability of tariff as it was changed w.e.f. 01.04.2016. Thus, in the cited case, there was no clear commissioning procedure in the PPA and the dates of physical injection and issuance of certificate differed in a manner determinative of tariff applicability. Whereas, in the instant case, Article 19 of the PPA has laid down the exhaustive procedure of commissioning including the provision for Joint Meter Reading (JMR) which shall be taken at delivery point at the time of connectivity / synchronization of the project with grid and mandatory documentation tying the start of purchase obligations to the issuance of the commissioning certificate. This shall include information of main as well as check meters installed at delivery point.

In view of the above, the Commission answers the issue in negative i.e. the petitioner is not entitled to the payment of 1st Running bill for the period prior to the date of CoD, amounting to Rs.1,90,509.98/-.

6.3 **Issue No. 3: Whether the petitioner is entitled to compensation on account of increase in GST being change in law & carrying cost as per clause 20 of the PPA.**

The petitioner has claimed compensation of Rs.20,85,714/- along with carrying cost @ 19.50% p.a. as per MSME Act, 2006 under Article 20 of the PPA dealing with 'change in law', on account of increase in GST from 5% to 12% on solar panel & inverters, vide Govt. of India notification no. 8/2021 Central Tax "Rate" dated 30.09.2021, which came after the last date of bid submission which was 02.08.2019. Per-contra, HPPC vehemently argued that the claim of change in law arising out of notification dated 30.09.2021, has been filed in March, 2024 i.e. after a lapse of 2 ½ year. As such, the claim is liable to be rejected outrightly having been raised after a

substantial delay. Further, the extent to which relief admissible to the petitioner on account of notification dated 30.09.2021 is subject to examination and verification of documents by the answering respondent. However, the petitioner has failed to furnish the relevant details including date of delivery of goods, invoices, date on which invoices were raised, statutory auditor's certificate etc. to substantiate the impact of the change in rate of GST in terms of the above Notification on the specified renewable energy devices and parts for their manufacture. The claim of the petitioner is also devoid of the following details:

a. Date of Purchase Order;
b. Date of raising of Invoice by the Supplier;
c. Date of handing over of the goods to the common carrier/delivery date;
d. Date at which Goods were installed at site;
e. Date of Bill of Lading in case of imported goods;
f. Date of Custom clearance in case of imported goods;
g. Date of arrival of the goods at the project site;
h. Date of rendering of the actual services;
i. The GST/Tax Invoice raised;
j. Supporting document in rest of each above documents

The aforesaid documents are necessary to establish the one-to-one correlation between the project and the supply of goods against which change in law is claimed.

Further, the carrying cost, if allowed should be lower of the normative or actual carrying cost, which is line with the principle of reasonability.

HPPC has further averred that instead, as on the date of submission of bid, the prevalent safeguard duty was 20%. However, as on the date of purchase of modules i.e. February, 2022, SGD Notification dated 29.07.2020 had lapsed and therefore, the prevalent safeguard duty was nil. Thus, there was immense cost saving to the Petitioner owing to reduction in Safeguard duty, for which HPPC reserves its right to raise claim for change in law compensation on account of the same in accordance with law. The claim for alleged increase in project cost was not raised within the timelines prescribed under Rule 3(7) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 which provides that the generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charge. Admittedly, the claim for increase in project cost was

raised for the first time, vide letter dated 08.06.2023. Averments as regards increase in project cost are an afterthought as the same were never raised prior to the letter dated 08.06.2023 i.e. even after 9 months after commissioning.

The Commission has already examined the provisions of the duly executed PPA dated 19.06.2020, pertaining to 'Change In law', reproduced earlier in this order. Indubitably, the clause 20 of the PPA stipulates a Change in Law event relevant for purposes of the restitutionary principle incorporated therein with reference to a specific cut-off date i.e. last date of bid submission which was 02.08.2019 (in processes under Section 63 of Electricity Act). The claim of the petitioner towards increase in rate of GST from 5% to 12% on solar panel & inverters w.e.f. 30.09.2021, is prima facie covered by the said clause. The contract envisages both possibilities wherein a Change in Law may result in increase in the cost for the generating or reduce it. The clause permits either party to approach the Appropriate Commission for determination of the quantum and mechanism of compensation, and places an obligation on the aggrieved party to notify and prove the impact. The prime obligation to notify the Change in Law is placed at the door of the petitioner, such notice to be issued at the earliest opportune date, after having become aware of the Change in Law event and its impact. HPPC, as prayed by it, is also allowed to raise its claim qua the abolition of safeguard duty.

The Commission has also examined the following case laws referred in this regard:-

Hon'ble CERC, in its order dated 17.05.2023 (petition No. 174/MP/2022), titled as M/s. Clean Solar Power (Jodhpur) Private Limited Versus Solar Energy Corporation of India Limited and others, has held as under:-

"….36. In view of the above, the petitioner shall be entitled for compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA along with carrying cost on account of Change in Law event upto the date of reimbursement by the respondents. The petitioner, in the instant petition shall be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations, 2017 or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the petitioner 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.

37. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure on account of introduction of Amendment Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate. The Commission further directs that the respondent JBVNL is liable to pay to SECI all the above reconciled claims that SECI has to pay to the petitioner. However, payment to the petitioner by SECI is not conditional upon the payment to be made by JBVNL to SECI…".

[Emphasis Supplied]

Hon'ble APTEL, in its order dated 25.01.2021 (petition no. 211/MP/2019), in the matter of *Rattan India Solar 2 Private Limited Vs. Solar Energy Corporation of India Limited & Others* and connected matters, wherein the Hon'ble APTEL held as under:

"59. Our decisions in this Order are summed up as under:

The introduction of the GST Laws w.e.f. 01.07.2017 is covered under Change in Law in terms of Article 12 of the PPA. The Commission directs the petitioner to make available to the respondents all relevant documents exhibiting clear and one to one correlation between the project and the supply of imported goods till the COD as per PPA or till the COD upon extension of SCOD in terms of PPA, duly supported by relevant invoices and Auditor's Certificate. The respondents are directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to the petitioner. The quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 should be discharged by the respondents within 60 days from the date of issue of this Order or from the date of submission of claims by the petitioner, whichever is later, failing which it shall attract late payment surcharge at the rates provided for in the PPA. Alternatively, the petitioner and the respondents may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over a period not exceeding the duration of the PPA as a percentage of the tariff agreed in the PPA."

[Emphasis Supplied]

Hon'ble CERC, in its order dated 31.01.2024 (petition no. 227/MP/2021), after considering all aspects and similar arguments as is raised by the petitioner, allowed the change in law claims of the petitioner, in following manner -

" *…*

b) Compensation at the discount rate of 9% and annuity period of 15 years shall be the appropriate methodology towards change in law compensation in petition No. 226/MP/2021 and discount rate of 9.12% and annuity payment of 15 years as the appropriate methodology towards change in law compensation in petition No. 227/MP/2021. The liability of SECI/ Discoms for 'Monthly Annuity Payment' shall start from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the petitioners, whichever is later. Late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

c) The petitioners shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the petitioners for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPAs, whichever is the lowest. Once a supplementary bill is raised by the petitioners in terms of this order, the provision of Late Payment Surcharge in the PPAs would kick in if the payment is not made by the respondents within the due date.

d) In view of the restitution clause in the PPAs the directions issued in this Order so far as they relate to additional compensation for the period pre-COD (including carrying cost) claims only shall be enforced. However, in view of the Hon'ble Supreme Court Order dated 12.12.2022 (as quoted above) the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post Commercial Operation Date of the projects shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors, and connected matters."

The jurisprudence confirms that where a Change in Law event is established, a generator may be entitled to compensation on production of invoices and an auditor's certificate showing project-specific impact; and that carrying cost may be allowed subject to verification and reasonableness, with the carrying cost rate anchored to actual interest paid or a normative benchmark, whichever is lower.

Having held that the petitioner is allowed to be reimbursed on account of 'change in law' impact of increase in GST rate, post submission of bid, the

Commission directs the petitioner to make available to HPPC all relevant documents exhibiting clear and one to one correlation between the initial project cost and supply of goods along with the additional impact of GST till COD as per PPA or till the COD upon extension of SCOD in terms of PPA, duly supported by relevant invoices and Auditor's Certificate. The respondents are directed to reconcile the claims for additional GST on receipt of the relevant documents. The quantum of compensation on account of additional impact of GST should be discharged by the HPPC within 60 days from the date of issue of this Order or from the date of submission of claims by the petitioner, whichever is later.

The Commission has also perused the provisions of Section 173 and 174 of the Electricity Act, 2003, reproduced hereunder:-

"173. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

174. Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Thus, the reference made by the petitioner to MSME Act in their claim of carrying cost of 19.50%, is not maintainable in view of the fact that the Electricity Act, 2003 along with Rules or Regulations made thereunder have an overriding effect over the provisions of any other Act.

Regulation 19 of the HERC RE Regulations, 2021 in vouge provides as under:-

"19. Late payment surcharge. –

(1) Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

(2) The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late

Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:

Provided that the rate at which Late Payment Surcharge shall be payable shall not be higher than the rate specified in the agreement, if any.

Provided further that, if a distribution licensee has any payment including Late Payment Surcharge outstanding against a bill after the expiry of seven months from the due date of the bill, it shall be debarred from procuring power from a power exchange or grant of short-term open access till such bill is paid.

Whereas;

"base rate of Late Payment Surcharge" means the marginal cost of funds based lending rate (MCLR) for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify;

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

"due date" means the date by which the bill for the charges for power supplied by the generating company are to be paid, in accordance with the Power Purchase Agreement, Power Supply Agreement, as the case may be, and if not specified in the agreement, forty-five days from the date of presentation of the bill by such generating company.

"Late Payment Surcharge" means the charges payable by the distribution company to a generating company for power procured from it on account of delay in payment of monthly charges beyond the due date."

The Commission further observes that there is considerable delay on the part of the petitioner, to lodge claim in respect of 'change in law' (in respect of even occurred on 30.09.2021, the claim is lodged on 08.06.2023, whereas CoD was achieved on 01.09.2022). In this regard, it is relevant to note Rule 3(7) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified on 22.10.2021. The relevant portion of Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under:

"2(c) "change in law", in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the

determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

(i) -------

(ii) -------

(iii) ---------

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.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount."

The Commission observes that although the ibid rules were notified after the 'change in law' event has occurred, the objective of timely settlement of additional cost incurred due to 'change in law' cannot be undermined. The ibid rules requires from the generator to serve a three weeks prior notice to the other party about the proposed impact in the tariff or charges, to be recovered from such other party. The applicability of ibid rules have been upheld by Hon'ble CERC in its judgement dated 06.12.2021 (Petition No. 228/MP/2021, in the matter of Mahindra Renewables Private Limited vs. SECI).

In view of the above discussions, the Commission is of the view that the vulnerable electricity consumers of the State cannot be allowed to be burdened with the impact of carrying cost due to late submission of claim by the generator. Therefore, the petitioner is allowed carrying cost on the amount payable on account of additional impact of GST, since date when the claim was lodged i.e. 08.06.2023 till the date of actual payment at the actual rate of interest paid by the petitioner for arranging funds (supported by Auditor's Certificate) or the late payment surcharge provided in the HERC RE Regulations, 2021 or the late payment surcharge rate as per the PPA, whichever is the lowest.

In view of the above, the Commission answers the issue in affirmative i.e. the petitioner is entitled to compensation on account of increase in GST being change as per clause 20 of the PPA along with the carrying cost discussed in the preceding paragraphs.

6.4 **Issue No. 4: Whether the petitioner is allowed to raise claim on account of recurring increase in O&M expenses and wages due to change in law.**

The Commission has examined the claim of the petitioner amounting to Rs.81,950/ per year from the year 2022-23, towards increase in O&M expenses due to change of GST rates from 5% to 12% (Rs.14,900/-) and increase in wages by Haryana Government notification no I.R-2/2019/28489-590 Dated 12-09-2019 the wages of unskilled and other workers (Rs.67,050/-), amounting to change in law.

In this regard, the Commission has carefully examined clause 20 of the duly executed PPA dated 19.06.2020, pertaining to 'Change In law'. The clause is reproduced earlier in this order, which unlike the clause of 'Change In law' in many other PPAs signed with solar power developers does not cover 'additional recurring/ non-recurring expenditure' under Change in Law" events.

(Emphasis supplied)

The Commission is of the considered view that when the terms of a contract specify particular purpose, the contract should be interpreted in a way that aligns with those stated purposes. This means that the contract's language should be understood in the context of the objectives the parties intended to achieve so as to prevents unintended consequences from arising due to unintentional reading of the terms the contract. The PPA executed between the parties does not cover *'additional recurring expenditure'*. In case, the same would have been incorporated in the PPA, the economics of other potential bidders might have also changed and prompted them to bid competitively. At the same tile, the procurer (HPPC) also would have been more vigilant in the selection of bidders. In the power procurement process through competitive bidding, the bidder does not disclose the price break-up, operational and technical mechanism/ parameters under which it shall operate, while offering the bid price. The procurer (HPPC) cannot be vulnerable to disadvantageous action of the generator. It is the generator which has to decide the most economical method of carrying out its operations, particularly after offering a rate under bidding. The bidder is supposed to account for future inflation in the recurring expenses as well. Haryana Government notification increasing the minimum wages in the State of Haryana is intended to cover the inflation, which otherwise is covered under Dearness Allowance for Government employees.
It is difficult to allow impact of such fluctuations in recurring expenditure as 'change in law'; which in case allowed, will open the Pandora box for all generators, who can probably raise claim on facts which are very difficult to verify.

In view of the above discussions, the Commission answers the issue framed in negative i.e. the petitioner is not entitled to raise claim on account of recurring increase in O&M expenses and wages due to change in law.

6.5 **Issue No. 5: Whether the generator was forced to sign Long term open access as well as connectivity agreement not provided in the PPA / regulations in**

vogue leading to refund of Long-Term Open Access/Connection Agreement Charges.

The Commission has examined the claim of the petitioner towards refund of Rs. 2,38,805/- as LTOA charges and Rs 1,00,000/- as connectivity charges along with the applicable interest, on account of forced signing of Long-term open access as well as connectivity agreement, which were not applicable to the petitioner.

The Commission observes that the petitioner in its earlier claims has averred that it was required to obtain Long Term Open Access and Connectivity, as provided in the regulations framed of this Commission as well as procedures approved there under. The claim of the petitioner was there have been delays in grant of the same by the respondents. Having admitted that long term open access and connectivity was required, it is not open for the petitioner to argue in that another claim that it was not required at all. The Commission is of the considered view that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Accordingly, meaning/interpretation of HERC OA Regulations along with the 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission on 15.04.2021, is plain & simple and the same by no stretch of imagination is open to more than one interpretation, which may require interference of the Commission or any court of competent jurisdiction to choose the interpretation which represents the true intent of the said Regulation. Hence, the effect of the same has to be necessarily given to it irrespective of the consequences.

In this regard, the Commission in the preceding paras of this order has already examined and decided that the generator was not forced to obtain new set of approvals amounting to 'Change in Law'. Accordingly, the Commission answers the issue in negative i.e. the generator was not forced to sign Long term open access as well as connectivity agreement as the same is in agreement with the duly executed PPA / regulations in vogue. Therefore, the petitioner is not entitled to refund of Long-Term Open Access/Connection Agreement Charges.

6.6 **Issue No. 6: Refund on account of SLDC Charges**.

The petitioner has claimed refund of SLDC charges amounting to Rs. 25,822/- along with interest thereon, under Article 20 of the PPA dealing with 'Change in Law' events. The petitioner has argued that the SLDC charges were paid without any extant clause

in PPA/RfP or regulations of this Commission. The petitioner has averred that provisions of MYT Regulations, 2019, are not applicable to renewable energy projects particularly when the tariff is not being determined under Section 62 and 64 of the Electricity Act, 2003. Further, as LTOA is not applicable on the petitioner, therefore SLDC charges cannot be levied on the petitioner.

The Commission has examined arguments of the parties herein. It has already been examined and decided that LTOA is applicable on the petitioner. Accordingly, the argument taken by the petitioner that as LTOA is not applicable on it, therefore, SLDC charges cannot be levied, does not sustains.

Regarding, the applicability of SLDC charges provided in MYT Regulations, 2019, on the petitioner, the Commission has considered it appropriate to examine regulation clause 2 (scope of application), clause 4 (General, Part II – Multi Year Tariff Financial Principles), clause 16.2 (SLDC charges) and clause 52 (recovery of charges by SLDC from beneficiaries). The extract of these regulation clauses are reproduced hereunder: -

"2. SCOPE OF APPLICATION

2.1 These Regulations shall be applicable to all existing and future Generating Companies, Transmission Licensees / SLDC and Distribution Licensees and their successors/assignees, if any, and shall apply where the Commission determines: -

(i) tariff for supply of electricity by a generating company to a distribution licensee under section 62 and 64 of the Act;

(ii) tariff for intrastate transmission of electricity by a transmission licensee to a distribution licensee or to open access consumers under section 62 and 64 of the Act;

(iii) State Load Dispatch Centre (SLDC) fees and charges under section 32(3) of the Act;

(iv) tariff for wheeling, distribution & retail supply of electricity by a distribution licensee under Section 62 and 64 of the Act;

(v) tariff in all other cases where the Commission has the jurisdiction for tariff determination; and

(vi) Cross-subsidy Surcharge in addition to the charges for wheeling under the first proviso to sub- section (2) of section 42 of the Act, in accordance with the Open Access Regulations.

(vii) Additional Surcharge in addition to the charges for wheeling under sub-section (4) of section 42 of the Act, read with the HERC Open Access Regulations, to meet the stranded fixed cost of such distribution licensee arising out of its universal obligation to supply.

2.2 In case the tariff has been determined through transparent process of tariff based competitive bidding in accordance with the guidelines issued by the Central Government as per Section 63 of the Electricity Act, 2003, the Commission shall adopt such tariff in accordance with the provisions of the Act;

2.3 These Regulations shall not apply for tariff determination of renewable energy generation projects. The tariff for such generation projects shall be determined as per Haryana Electricity Regulatory Commission (Terms & Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 as amended from time to time."

(Emphasis supplied)

The examination of above cited clause clearly establishes that provisions of MYT Regulations, 2019 are applicable on all the generators except in case of tariff determination of RE generation projects. The tariff for RE generators is determined under the norms/parameters specified in RE Regulations. The applicable fee and charges which State Load Dispatch Centre (SLDC) is allowed to collect from generating companies under section 32(3) of the Act, is also specified in MYT Regulations, 2019 as amended from time to time.

"PART II - MULTI YEAR TARIFF FINANCIAL PRINCIPLES

4. GENERAL

4.1 The Commission, in specifying these Regulations, is guided by the provisions of Sections 61 and 62 of the Electricity Act, 2003, the National Electricity Policy and the National Tariff Policy notified by the Central Government under Section 3 of the Act as amended from time to time as well as the relevant Regulations notified by the Central Commission.

……..."

Clause 4 of the MYT Regulations, 2019 specifies the financial principles to be considered while determining tariff under Section 62 and Section 64. This does not restrict the ambit of the ibid regulations to determination of tariff for Non-RE generators; rather transmission, SLDC and retail supply tariff of DISCOMs are also governed by the principles laid down in the ibid regulations.

"PART III - COMPONENTS OF ARR AND TARIFF FOR GENERATION, TRANSMISSION AND DISTRIBUTION BUSINESS

16. COMPONENTS OF TARIFF FOR TRANSMISSION AND SLDC BUSINESS

16.1 The following charges shall be recovered for the use of intra-state transmission system:

(a) Transmission tariff or network usage charges, to reflect the cost of owning (Capital Investment), servicing and maintaining the transmission assets in order to transfer bulk power to and from different locations. The network usage charges or transmission tariff, payable by the beneficiaries of the transmission system shall be designed to recover the Aggregate Revenue Requirement of the transmission licensee approved by the Commission for each year of the control period;

(b) Reactive energy charges, to reflect the voltage related drawl of reactive energy as provided in the Regulations hereinafter.

(c) Short-term open access consumers shall pay the charges for usage of Transmission system in terms Rs per kWh as specified in third proviso of regulation 50 (b).

16.2 SLDC charges, to reflect the cost of operating the State Load Dispatch Centre (SLDC) including the cost of owning & maintaining it. These shall be levied as SLDC charges to the beneficiaries of the services of SLDC in accordance with the provisions of these Regulations.

……..

16.5 Connection charge- A consumer or a person seeking connectivity to the transmission system for Open Access shall pay 'connection charge' to the transmission licensee as provided in HERC (Terms and condition for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 as amended from time to time. Connection charges relate to cost of assets installed solely for the use by an individual user and cost of such assets shall not be considered for determination of transmission tariff."

(Emphasis supplied)

Thus, the ibid regulations also provides for determination and levy of SLDC charges as the cost of operating, owning & maintaining the State Load Dispatch Centre (SLDC) to be levied on the beneficiaries of the services of SLDC.

52. RECOVERY OF CHARGES BY SLDC FROM BENEFICIARIES

"The annual charges of SLDC determined as per Regulations 6 and 16, shall be recovered as a single composite charge from the beneficiaries as under:

(1) Intra-State transmission licensee	*8% of Annual SLDC Charges*
(2) Generating stations and sellers	*46% of Annual SLDC Charges*
(3) Distribution licensee and buyers	*46% of Annual SLDC Charges*

(i) The SLDC charges shall be levied by the Transmission licensees / STU, also designated as the SLDC, on the basis of weighted average of the lines (Ckt. km)

owned by the Intra State Transmission Licensee(s) as on the last day of the month prior to billing of the month.

……

(vi) For the purpose of recovery of SLDC charges from the entity which has entered into a long term open access / Medium Term open access agreement with STU, shall be considered under the category in which it has applied/signed the Long Term/Medium Term Open Access agreement i.e. generator/supplier or distribution licensee/buyer".

Thus, SLDC charges determined under MYT Regulations, 2019 are applicable on generators as well as entities availing long term open access.

The contention of the petitioner that MYT Regulations, 2019 were notified on 31 October 2019 much later than the date of closure of the tender i.e. 05.08.2019 and the same will amount to Change of Law as per Article 20 of the Power Purchase Agreement, does not sustains as similar provisions were existing on 05.08.2019 as well, under the duly notified erstwhile MYT Regulations, 2012. The extract of the relevant regulation clauses, are reproduced hereunder: -

"2. SCOPE OF APPLICATION

2.1 These regulations shall be applicable to all existing and future Generating Companies, Transmission Licensees and Distribution Licensees and their successors/assignees, if any, and shall apply where the Commission determines tariff: -

……

(iv) in all other cases where the Commission has the jurisdiction for tariff determination".

"PART III - COMPONENTS OF ARR AND TARIFF FOR GENERATION, TRANSMISSION AND DISTRIBUTION BUSINESS

16. COMPONENTS OF TARIFF FOR TRANSMISSION AND SLDC BUSINESS

16.1 The following charges shall be recovered for the use of Intra-state transmission system:

a) Transmission tariff or network usage charges, to reflect the cost of owning (Capital Investment), servicing and maintaining the transmission assets in order to transfer bulk power to and from different locations. The network usage charges or transmission tariff, payable by the beneficiaries of the transmission system shall be

designed to recover the Aggregate Revenue Requirement of the transmission licensee approved by the Commission for each year of the control period;

b) Reactive energy charges, to reflect the voltage related drawl of reactive energy as provided in the regulations hereinafter.

16.2 SLDC charges, to reflect the cost of operating the State Load Dispatch Centre (SLDC) including the cost of owning & maintaining it. These shall be levied as SLDC charges to the beneficiaries of the services of SLDC in accordance with the provisions of these regulations"

"52. RECOVERY OF CHARGES BY SLDC FROM BENEFICIARIES

(a) The annual charges of SLDC, as determined as per regulations 6 and 16, shall be apportioned between system operation function and market operation function as mentioned below:

System operation function	*80% of annual charges*
Market operation function	*20% of annual charges*

(b) Collection of system operation charges

(i) System operation charges shall be collected from the beneficiaries as given below:

(1) Intra-State transmission licensee	*10% of operational charges*
(2) Generating stations and sellers	*45% of operational charges*
(3) Distribution licensee and buyers	*45% of operational charges*

(ii) The system operation charges shall be levied on the intra-State transmission licensees on the basis of the ckt.- km of the lines owned by them as on the last day of the month prior to billing of the month;

(iii) The system operation charges from the generating companies and sellers (which excludes short term open access consumers) shall be collected in proportion to their installed capacity or contracted capacity, as the case may be, as on the last day of the month prior to billing of the month;

(iv) The system operation charges from distribution licensees and buyers (which exclude short term open access consumers) shall be collected in proportion to the sum of their allocations or contracted capacities, as the case may be, as on the last day of the month prior to billing of the month."

The Commission has also perused regulation clause 2.2 of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable

Energy Certificate) Regulations, 2010 (HERC RE Regulations, 2010), reproduced hereunder: -

"(2)

All other expressions used herein but not specifically defined herein but defined in the Act shall have the meaning assigned to them in the Act. The other expressions used herein but not specifically defined in the regulations or in the Act but defined under Haryana Electricity Reform Act, 1997 (Act 10 of 1998) or the Indian Electricity Grid Code or the Haryana Grid Code or the Haryana Electricity Regulatory Commission (Terms and conditions for determination of Generation Tariff) Regulations, 2008 shall have the meanings assigned to them respectively in the Haryana Electricity Reform Act, 1997 (Act 10 of 1998) or the Indian Electricity Grid Code or the Haryana Grid Code or the Haryana Electricity Regulatory Commission (Terms and conditions for determination of Generation Tariff) Regulations, 2008 as amended from time to time, provided that such definitions in the Haryana Electricity Reform Act, 1997 are not inconsistent with the provisions of the Electricity Act, 2003;"

(Emphasis supplied)

Similar provision is contained in HERC RE Regulations, 2021, notified on 30.04.2021, reproduced hereunder: -

"All other expressions used herein but not specifically defined herein but defined in the Act shall have the meaning assigned to them in the Act. The other expressions used herein but not specifically defined in the regulations or in the Act but defined under Haryana Electricity Reform Act, 1997 (Act 10 of 1998) or the Indian Electricity Grid Code or the Haryana Grid Code or the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff) Regulations, 2019, as amended / reenacted from time to time, shall have the meanings assigned to them respectively in the Haryana Electricity Reform Act, 1997 (Act 10 of 1998) or the Indian Electricity Grid Code or the Haryana Grid Code or any other relevant Regulations in vogue , provided that such definitions in the Haryana Electricity Reform Act, 1997 are not inconsistent with the provisions of the Electricity Act, 2003;"

From the examination of the above, it is apparent that where ever there is vacuum in the HERC RE Regulations, the provisions of Electricity Act, Haryana Electricity Reforms Act, Indian Electricity Grid Code, Haryana Grid Code and HERC MYT Regulations, as amended from time to time shall be applicable. HERC RE

Regulations has primarily set out the norms/principles for determination of tariff of renewable energy projects. Other norms/guidelines/procedure/principles, such as connectivity, open access, metering / safety standards, SLDC charges, transmission losses & charges, scheduling, deviation settlement etc. have been set out under other regulations, which are evenly applicable to renewable energy projects.

It is pertinent to note that Section 32 (3) of the Electricity Act, 2003 empowers SLDC to levy and collect fee and charges from generating companies. The relevant provision is reproduced hereunder: -

"(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission."

Article 8 of the PPA duly executed between the parties on 19.06.2020, specifically provides as under: -

"ARTICLE 8

GENERATION FACILITIES OPERATION & MAINTEANCE

…

8.4 Company shall meet with all statutory laws as applicable.

…

8.9 For matters relating to grid operations and load dispatch, the directions of the State Load Dispatch Centre shall be strictly complied with, by the company. Any dispute on this account shall be settled by the parties amicably. If the dispute is not settled during such discussion, then either party may refer the same to HERC."

In view of the above discussions, it is conclusively established that the petitioner is liable to pay SLDC charges determined by the Commission in accordance with Section 32 (3) of the Electricity Act, 2003 read with MYT Regulations, 2012 and RE Regulations, 2010.

6.7 **Issue No. 7: Telemetry System / Infrastructure requirements.**

The petitioner has prayed for issuance of directions to the respondents to refrain from seeking Telemetry System/Infrastructure requirements, in absence of specific clause in PPA/Tender documents to this effect as the real time data is not possible in case of 5 nos small string inverters of 200 KVA each installed by the petitioner. In its support, the petitioner has cited regulation clause 11 of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012, which

exempts solar power plants up to 5 MW from scheduling and Dispatch code specified in IEGC, 2010. The petitioner has further averred that HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 as well as Forecasting & Scheduling procedure framed thereunder permit plant-level reporting where only small string inverters are used. Also, SLDC/HVPN internal notes recognize space/technical constraints and allow shared data-integration facilities; meters (main & check ABT meters) are at respondent's substation and hence respondent must supply SLDC data. The petitioner is providing plant-level data and daily reports in support of the mandated telemetry requirement. The petitioner has argued that imposing inverter-level telemetry now would amount to change-in-law warranting reimbursement of charges.

Per-contra, HPPC has vehemently argued that reliable data-communication /telemetry up to SLDC is required in terms of Article 6 of the duly executed PPA, conditions laid down while granting approval for connectivity as well as open access, Clause 4.11 of Haryana Grid Code (HGC) Regulations, 2009, Clause 4 of the Procedure For Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation as approved by the Commission in accordance with Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 and references made by Ministry of Power.

Upon hearing the arguments of the parties and perusal of the records of the case, the Commission observes that the issue in hand is whether the Petitioner can be directed to install/operate telemetry at inverter (string) level as insisted upon by the Respondents, or whether the Petitioner's plant having multiple small string-inverters may be permitted to provide aggregated/plant-level telemetry/data in the manner presently being provided. In order to examine the same, the Commission has considered it appropriate to examine Article 6 & 10 of the PPA as well as Clause 4 of the 'Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation' as approved by the Commission in accordance with 'Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019'. The extract of the clauses are reproduced hereunder: -

Article 6 of the PPA duly executed between the parties on 19.06.2020, provides as under: -

"6.2 SYNCHRONIZATION AND INTERCONNECTION FACILITIES:

6.2.1 The synchronization equipment will be installed by the SPD at its generation facility at its own cost. The SPD shall synchronize its system with the Nigam's system only after the grant of approval of synchronization scheme by competent authority of DISCOM/ Nigam and checking/ verification is made by the concerned authority of DISCOM/ STUs. The SPDs has delivered to the TRANSCO/ DISCOM a list of plant equipment showing the make, model, serial number and certified the installed capacity of the plant before synchronization.

…

6.2.3 The Company shall provide step up transformers/ other stepping up equipment i.e. Grid Tie Inverter, panels, kiosks, protection & metering equipment at the generation facility and fully equipped line bay(s) in its switchyard for termination of interconnection transmission line(s)/ substation of the DISCOM. Company shall also provide proper & reliable communication between the generation facility & Grid substation of Nigam/ Discom/ STU, to ensure better data transfer, the cost of these works will be borne by the Company."

Thus, as per Article 6.2 of the PPA, the petitioner was obligated to install the synchronization equipment at its generation facility at its own cost as well as to provide proper & reliable communication between the generation facility & grid substation of Nigam/Discoms/STU, to ensure better data transfer.

Article 10 read with Article 6.1.1 of the PPA duly executed between the parties on 19.06.2020, provides as under: -

"10.1 Special Energy meters (main & check)- Export & Import shall be ABT compliant having 0.2S accuracy class or better accuracy and feature having kWh, kVAh, kVAr facility shall be installed at interconnection point by the solar power producer at its own cost, capable of recording and storing 15 minutes average of all the electric parameters for a minimum of 45 days. The interface metering shall conform to Central Electricity Authority (Installation and operation of Meters) regulation 2014 and amendment thereto. Dedicated CTs and PTs of 0.2S accuracy class or better accuracy shall also be made available by the power producer for their respective meters at the interconnection point. The following parameters shall be measured, displayed and recorded/logged. Daily plotting of graphs for various parameter shall also be available on demand i) 15 minute, Daily, monthly & Annual energy generated by the solar system (kWh) ii) Solar system temperature iii) Ambient temperature iv) Solar irradiation/isolation v) AC and DC side voltage and currents vi) Power factor on AC side vii) DC injection into the grid (one time measurement at the time of

installation) viii) Total Current Harmonics distortion in the AC side ix) Total Voltage Harmonic distortion in AC side x) Efficiency of the inverter xi) Solar system efficiency xii) Display of I-V curve of the solar system xiii) Any other parameter considered necessary by supplier of the solar PV system based on prudent practice."

"6.1 SYNCHRONIZED AND INTEGRATED OPERATIONS
6.1.1 The concerned Discom shall allow the Company to interconnect its generating system at its switch yard and operate it in synchronization with the Discom's system subject to the terms and provisions of this agreement. The company shall run the plant as a part of integrated system to generate power in synchronization with the grid and shall inject three phase 50 Hz (nominal) AC Supply into DISCOM'S system at an appropriate voltage level."

A co-joint reading the above Articles of the PPA construes that the petitioner was obligated to install meter, capable of recording and storing 15 minutes average of all the electric parameters for a minimum of 45 days, at the interconnection point.

Clause 4 of the Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation as approved by Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019, provides as under:
"4. Role & Responsibilities of Stand-alone Generators
vi) Stand-alone Generator shall provide real time data for power generation parameters and real time generation data (turbine and inverter level) and weather data wherever available as per Annexure-II.
……
ix) In case of non-availability of Real Time Data (at Turbine Level /inverter Level), Generator shall maintain and provide time block wise generation data at (turbine and inverter level) and weather data on Weekly basis:
For wind plants, at the turbine level: Average wind speed, Average power generation at time block 'level (15-min or lesser, as the case may be)
For solar plants, for all inverters >= 1 MW: Average Solar Irradiation, Average power generation at time block level (15- min or lesser, as the case may be)*
**** If a solar-plant uses only smaller string inverters, then data may be provided at the plant level**."*

(Emphasis supplied)

Thus, the "Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation", approved by the Commission provides that in case of solar-plant using smaller string inverters, then data may be provided at plant level, which evidently shall not be real-time. The PPA and the connectivity/LTOA letters require a data link/telemetry to SLDC before commissioning. Those contractual and regulatory obligations are not in dispute. However, where the Forecasting & Scheduling Procedure (approved by HERC) expressly permits aggregated/plant-level reporting when only smaller string-inverters are used, that procedural carve-out is directly applicable and must be read into the practical application of the PPA/connection approvals for plants of this nature. The Petitioner's case squarely falls within that carve-out: they have multiple small string inverters and have been providing plant-level data. Therefore, the condition to this respect contained in the Connectivity Approval accorded by HVPNL vide Memo No. Ch-20/ISB-721 dated 26.04.2021 as well as in LTOA approval accorded vide letter dated 15.07.2022, shall not be applicable on the petitioner. The contemporaneous records (telemetry logs and daily reports filed by the Petitioner and the Joint Meter Reading (JMR) from DHBVNL) establish that the system operators had visibility of the injections; the telemetry and daily reporting indicate that data was reaching SLDC / connected substation. However, the Respondent No. 3 (HVPNL) may, if so desires, prepare and implement a telemetry/data-integration plan for plant-level data transfer, at its cost, in order to meet the objective of real-time visibility and grid security.

6.8 **Issue No. 8: Compensate the cost of VCB as well as the loss of generation at the Sub-station**.

The petitioner has sought compensation for supply of under-rated and obsolete VCB by HVPNL by charging the cost of new VCB along with compensation for loss of generation due to tripping.

Per-contra, HVPNL has admitted that an old/spare VCB panel was used for initial connectivity with the consent of the Petitioner without any coercion as there was no space available to install an additional panel at that time, and that the VCB and associated equipment were tested and found in order before commissioning. Respondents further state that a new VCB panel (special estimate Rs.47.04 lakh) was sanctioned and the feeder was shifted to the newly commissioned VCB panel on 31.03.2023. Respondents attribute the tripping to over-generation/poor earthing/feeder faults and point out that tripping due to these faults continued even

after the new VCB was installed. Respondents also rely on the assertion that the petitioner waived objections (estoppel) by not raising them earlier.

Upon hearing the arguments of the parties and perusal of the records of the case, the Commission observes that the issue in hand is whether the Petitioner is entitled to compensation for cost of VCB and loss of generation/revenue caused by repeated tripping allegedly on account of an under-rated / discarded / written-off VCB supplied/installed by the Respondent.

The Commission observes that Article 6.1.3 of the PPA places the responsibility on the generator to bear the transmission costs up to STU/DISCOM sub-station periphery but the PPA also contemplates interconnection, protection and metering approvals by the concerned DISCOM/STU authority. Further, Article 6.1.3 does not provide for the compensation, when a component installed/used in the respondent's premises malfunctions. Liability for loss of generation requires establishment of defect/unsuitability/under-rating of the equipment actually used and connection between that defect and the quantum of generation lost. The petitioner could not substantiate such connection. Whereas, the respondent (HVPNL) has given the details of tripping/ breakdowns with the reasoning that these trippings were due to over-generation or poor earthing, which continued even after the new VCB was installed. Further, the respondent has produced details of shutdowns availed by the petitioner for maintenance of 11 KV line emanating from 66 KV S/STn HVPNL, Nalvi. The testing of 11 KV CT/PT unit, was successfully carried out on 26.08.2022 and duly witnessed by HVPNL and UHBVN, in the presence of the petitioner. The energy injections commenced on 19.08.2022 and a spare VCB panel from the sub-station was used for initial connectivity. However, a new VCB panel has been commissioned on 31.03.2023 and the petitioner has not raised any issues post installation of new VCB panel; whereas, the respondent has given details of tripping after commissioning of new VCB panel also which may be due to over-generation or poor earthing or shutdown availed by the Petitioner for the purpose of maintenance etc. Thus, in absence of sufficient evidence of loss of generation due to faulty VCB, placed on record by the petitioner, the Commission is not inclined to hold the Respondents liable for the same. However, HVPNL is directed to examine CT/PT ratio records, relay settings, VCB ratings, earthing records and feeder-

side faults to take corrective technical measures within 30 days from the date of this order, so that tripping incidents are minimized.

6.9 **Issue No. 9: Reimbursement of expenses on account of blast at CT/PT enclosure at the Sub-station on account of non-approval of CT/PT ratio**.

The petitioner has sought for the loss of generation occurred due to tripping occurred due to installation of CT/PT of lower ratio instead of CT/PT required as per sales circular no U-47/2017 dated 16.11.2017.

Upon hearing the arguments of the parties and perusal of the records of the case, the Commission observes that sales circular no. U-47/2017 dated 16.11.2017 referred by the petitioner provides for the CT ratio for load up to 1000 KVA as 50/5 and for load above 1000 KVA as 100/5. Therefore, for 1 MW power plant of the petitioner CT ratio of 50/5 has been specified in the ibid Sales Circular. the Petitioner has failed to carry out requisite investigation to assess the reason for over current in the system. HVPNL has granted approval to the petitioner for installing higher CT-PT ratio in order to safeguard the operation of the Plant; which cannot form the basis for additional claim. Further, in absence of sufficient evidence of loss of generation due to lower CT/PT ratio, placed on record by the petitioner, the Commission is not inclined to hold the Respondents liable for the same. However, as directed earlier, HVPNL shall examine CT/PT ratio records, relay settings, VCB ratings, earthing records and feeder-side faults to take corrective technical measures within 30 days from the date of this order, so that tripping incidents are minimized.

6.10 **Issue No. 10: Refund of Stand-Alone Generator charges**.

The petitioner has sought refund of stand-alone generator charges deposited by the petitioner under duress, arguing that the HERC DSM Regulations, 2019 along with the procedure was made applicable in 2021 much later than the date of closure of the tender i.e. 05.08.2019; therefore, the same amounts to Change of Law as per Article 20 of the Power Purchase Agreement.

Per-contra, the respondents have vehemently argued that DSM Regulations, 2019 notified on 29.04.2019 and the DSM Procedure approved by the Commission on 08.03.2021 are applicable to Wind and Solar Generators having combined installed capacity not less than 1 MW. The charges were levied in accordance with the DSM Procedure. Further, the RfP and PPA expressly obligate the SPD to comply with

applicable HERC/CERC/SLDC regulations (scheduling/forecasting/DSM etc.), and therefore there is no change-in-law claim that absolves the Petitioner from compliance obligations.

The Commission has considered the pleadings, the DSM Regulations, 2019 along with the DSM Procedure approved vide Commission Order dated 08.03.2021, the RfP, the PPA provisions and the factual matrix as placed on record by the parties.

Regulation 4 of the DSM Regulations, 2019 makes these Regulations applicable to Wind and Solar generators connected to the intra-state system where the combined installed capacity at a pooling station or of an individual generator is not less than 1 MW. The Petitioner's plant falls within the scope of the DSM Regulations. The relevant regulation clause is reproduced as under: -

"4 Applicability

4.1 These Regulations shall apply to all Wind and Solar Energy Generators in Haryana connected to the Intra-State Transmission /Distribution System, including those connected through Pooling Sub-Stations, and using the power generated for self-consumption or sale within or outside the State:

Provided that the combined installed capacity of the Solar or Wind Generators connected to a particular Pooling Sub-Station, or that of an individual Generator connected to some other Sub-Station, shall not be less than 1 MW."

The clause 9.1 of the 'Procedure for Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation' (for brevity "DSM Procedure"), duly approved, vide order dated 08.03.2021 (Case no. HERC/PRO–42 of 2020), after calling for objections/comments from all the stakeholders/ general public, provides as under: -

"9. Registration and De-Registration Procedure for Stand-alone generator/ QCA:

9.1 Registration as a Stand-alone generator/ QCA: -

The procedure for registering a Stand-alone generator/ QCA is as follows:

6.1.1. The prospective Stand-alone generator/ QCA shall submit application accompanied with prescribed fee as per the performa (Annexure-VI) for registration. After operationalization of the SLDC's web-based software, the application should be submitted online through web-based Software and copy of printed application shall be supplied to SLDC along with required documents.

6.1.2. The QCA shall submit separate application for each Pooling Station. For each Pooling Station only one application shall be accepted from the QCA.

6.1.3. *The Application for Registration shall be accompanied by a non-refundable processing fee of Rs. 10,000/- (Ten Thousand Rupees Only) for Stand-alone generators/ Rs. 20,000/- (Twenty Thousand Rupees Only) for QCA (for each pooling station) payable through RTGS/ NEFT.*

In case of deposit/ receipt of less amount than the prescribed fee, the application shall not be processed until full payment is received in the account. Bank Charges, if any, shall be borne by the Stand-alone generator/QCA.

6.1.4. *Each application for registration shall be accompanied with the following documents: -*

a) *WTG's/Inverter's static data and pooling Stations details as per Annexure-IA, IB & IC. Further, if there is any change in the information furnished, then the updated information shall be furnished to the SLDC within 7 working days.*

b) *Undertaking on Non-Judicial Stamp paper of value notified by the State Government from time to time (attested by Notary) in regard to compliance for HERC Regulations and its procedure as per Annexure-IV B.*

c) *Certified PPA rates (in case of inter-state transaction) on notarized affidavit as per Annexure-IVA, for the purpose of Deviation charge account preparation to SLDC supported by copy of the PPA.*

d) *Copy of Board Resolutions for Authorized Signatory/ Power of Attorney/ Authorization Letter, duly certified/ attested by Company Secretary/ C.A. in respect of the signing authority of QCA and Generator(s).*

In case of QCA, following documents are also required in addition to the aforementioned documents: -

e) *Consent letters from all the pool generators connected to the respective pooling station and beneficiary (ies). A performa consent letter attached as Annexure-V.*

f) *CA audited balance sheets/Financial Statements/Audit reports of the previous year showing net worth of QCA.*

g) *Experience certificates in respect of Sr.no. 6 (iii) & (iv) above.*

Note: All the photocopies supplied along with the application shall be self-attested by authorized signatory.

6.1.5. *All applications for registration complete in all respects, shall be submitted in the following office: -*

Chief Engineer/SO & Comml., HVPNL

Shakti Bhawan, Sector-6
Panchkula-134109
(E-mail: "cesocomml@hvpn.org.in ")

6.1.6. *The time period for registration of Stand-alone generator/ QCA shall be (15) working days from the date of receipt of all the documents & information complete in all respect by SLDC.*

6.1.7. *Within one week from the date of registration, Bank Guarantee of Rs.20,000/- (Twenty Thousand Rupees only) per MW for Solar Generation and Rs. 50,000/- (Fifty Thousand Rupees only) per MW for Wind Generation towards payment security shall be submitted by the Stand-alone generator/ QCA. The same shall be initially valid for 2 years and revalidated/ recouped as per requirement from time to time.*

If the Stand-alone generator/ QCA fails to pay deviation charges within Sixty (60) days from the issue of the accounts and billing, the Bank Guarantee shall be encashed by SLDC.

In case of expired Bank Guarantee, Stand-alone generator/ QCA shall revive Bank Guarantee within seven (7) days from receipt of such information from SLDC. Failure to revive Bank Guarantee within prescribed time limit, the Wind/Solar generation shall not be scheduled.

6.1.8. *Once the application supplied by Stand-alone generator/ QCA along with the requisite documents is found in order and Bank Guarantee is received, the same may be accepted by the SLDC, and the generator/ QCA may be allowed to schedule power for its constituent generators/pooling stations for which the necessary Registration ID (login ID and password for IT enabled communication & software) shall be provided by SLDC for accessing the further activities such as uploading of day ahead/ Intra-day ahead / week ahead scheduling/revisions.*

6.1.9. *Incomplete application shall be liable for rejection. The reason for rejection shall be communicated to the applicant."*

Further, the Commission in its order dated 17.10.2023 (Petition No. 21 of 2023) in the case of M/s Utrecht Solar Pvt. Ltd. & Ors. v. Managing Director, Haryana Vidyut Vitran Nigam Ltd & Ors., has declined to relax the provisions of DSM Regulations as are applicable to Solar Plants of 1 MW capacity.

The Commission has also observed that the provisions of RfP (cl.2.7.6) and the PPA (cl.5.11 and cl.8.9) require the SPD to comply with HERC/CERC/SLDC/RLDC

regulations and directions from time to time. These contractual clauses unambiguously make the SPD liable to comply with applicable regulations as they stand from time to time. The PPA therefore contemplates compliance with subsequent regulatory changes that are applicable by law. The relevant terms of the RFP as well as the PPA as per which the petitioner was duty-bound to comply with the DSM Regulations, 2019, reproduced below for ready reference:

*"*RFP dated 03.01.2019:

> *2.7.6 SPD shall be required to schedule its power as per applicable Regulation/ requirement/ guidelines of HERC/CERC/SLDC/RLDC or any other competent agency and the same being recognised by SLDC or any other competent authority/ agency as per applicable regulation/law/direction and maintain compliance to the applicable codes/ grid code requirement/ directions if any, as specified by any SLDC/ RLDC from time to time. Any deviation from the schedule will attract the provision of applicable regulation/ direction/ guidelines and any financial implication on account of this shall be on account of SPD. SPD shall comply CERC/ HERC regulations as forecasting, scheduling & deviation settlement as applicable and are responsible for all liabilities related to connectivity."*

PPA dated 19.06.2020:

> *"5.11 SPD shall be required to schedule its power as per applicable Regulation/ requirement/ guidelines of HERC/CERC/SLDC/RLDC or any other competent agency and the same being recognised by SLDC or any other competent authority/ agency as per applicable regulation/law/direction and maintain compliance to the applicable codes/ grid code requirement/ directions if any, as specified by any SLDC/ RLDC from time to time. Any deviation from the schedule will attract the provision of applicable regulation/ direction/ guidelines and any financial implication on account of this shall be on account of SPD. SPD shall comply CERC/ HERC regulations as forecasting, scheduling & deviation settlement as applicable & its amendment thereto from time to time and are responsible for all liabilities related to connectivity.*
>
> *…*
>
> *8.9 For matters relating to grid operations and load dispatch, the directions of State Load Dispatch Centre shall be strictly complied with, by the company. Any dispute on this account shall be settled by the parties amicably. If the dispute is not settled during such discussion, then either party may refer the same to HERC."*

Upon hearing the arguments of the parties and perusal of the records of the case, the Commission observes that where a PPA expressly requires compliance with statutes / regulations and their amendments, a change in law argument cannot succeed. The Petitioner has not shown that the DSM Procedure is a new levy outside the ambit of the PPA. On the basis of materials before this Commission, it is found that the DSM Regulations / DSM Procedure apply to generators meeting the threshold and that the PPA obligated the Petitioner to comply with such regulatory requirements. Accordingly, the Petitioner's broad contention that the DSM Procedure is an impermissible "change of law" which absolves it of compliance duties, is not accepted.

6.11 **Issue No. 11: Whether the petitioner is allowed to increase Capacity Utilization Factor (CUF) from 19% to 21%?**

The petitioner has prayed that letter no. Ch-20/CE/HPPC/SEC & R-1/LTP-III/GSR dated 08-02-2021 sent by the respondents vide which the change of Capacity Utilization Factor was declined may be set aside and the capacity utilization factor of the power plant of the petitioner may be declared as 21%, as the petitioner has opted for the same before the financial closure in line with the reply of HPPC to query raised by the potential bidders wherein it was clarified that CUF may be changed till financial closure of the project provided that CUF in any case shall not be less than 19%.

Per-contra, the Respondents have strongly opposed the revision of the CUF, arguing that the claim is untenable, illegal, and against the terms of Articles 4.4 to 4.8 of the Power Purchase Agreement (PPA) and Clause 2.6 of Request for Proposal (RfP).

The Commission has considered it appropriate to refer to relevant clauses of RfP as well as PPA, reproduced hereunder: -

Clause 2.6 of the RfP provides as under:-

"2.6 Criteria for Generation

- ***The SPD will declare the CUF for the whole life of his Project at the time of bidding.***
- ***The declared annual CUF shall in no case be less than 19%.***
- ***It will be mandatory for the bidder to maintain generation so as to achieve annual CUF at declared value with minus five percent (-5%) variation.***

- ***The generation done beyond the declared CUF shall be considered as excess generation.***
- ***While the SPD would be free to install DC solar field as per his design of required output to meet the AC rating at delivery point, including his requirement of auxiliary consumption,***

2.6.1 Shortfall in generation

SPD shall maintain generation so as to achieve minus five percent (-5%) variation of the declared value of CUF. The Solar Power Generator will be liable to pay to the Procurer, penalty for the shortfall in availability below such contracted CUF level. The amount of such penalty will be in accordance with the terms of the PPA, which shall ensure that the Procurer is offset for all potential costs associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty-five per cent) of the cost of this shortfall in energy terms, calculated at PPA tariff. However, this compensation shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of solar power by SPD

2.6.2. Excess generation

In case the availability is more than the maximum CUF specified, the Solar Power Generator will be free to sell it to any other entity provided first right of refusal will vest with HPPC in case HPPC purchases the excess generation, the same will be done at 75% (seventy-five per cent) of the PPA tariff."

(Emphasis supplied)

Articles 4.4 to 4.8 of the Power Purchase Agreement (PPA), provides as under:-

4.4 <u>DISCOM, at any time during a contract year will purchase electricity at the Tariff mentioned at Clause 4.2 above from the Solar Power Developer up to the declared CUF of 19%.</u> Beyond the said quantum; the electricity will be purchased at 75% of the Tariff mentioned at Clause 4.2 for the entire agreement period. The Solar Power Generator will be free to sell excess power to any other entity provided first right of refusal will vest with HPPC.

4.5 The Solar Power Developer shall be free to undertake expansion of the Project, provided that the rights and obligations under this agreement shall remain unaffected.

4.6 SPD shall maintain generation so as to achieve minus five percent (-5%) variation of the declared value of CUF. The Solar Power Generator will be liable to pay to the Procurer, penalty for the shortfall in availability below such

contracted CUF level. The amount of such penalty will be in accordance with the terms of the PPA, which shall ensure that the Procurer is offset for all potential costs associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty-five per cent) of the cost of this shortfall in energy terms, calculated at PPA tariff. However, this compensation shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of solar power by SPD.

4.7 In case the availability is more than the maximum CUF specified, the Solar Power Generator will be free to sell it to any other entity provided first right of refusal will vest with HPPC. In case HPPC purchases the excess generation, the same will be done at 75% (seventy-five per cent) of the PPA tariff.

4.8 The Solar Power Generator shall be permitted for full commissioning of the Project even prior to the SCOD. In cases of early commissioning, till SCOD, the Procurer may purchase the generation till SCOD, at 75% (seventy-five per cent) of the PPA tariff."

(Emphasis supplied)

From the examination of Clause 2.6 of RfP along with Articles 4.4 to 4.8 of the PPA, it is evident that the SPD was required to declare the CUF for the whole life of his Project at the time of bidding and the same was 19%.

The petitioner has vehemently argued that during pre-bid conference, at point no. 3, HPPC has clarified that CUF may be changed till financial closure of the project. The relevant clarification is reproduced here under:-

Sr. No.	*Queries raised by the Bidders*	*Suggestion by the Bidders*	*HPPC Reply*
3	*Criteria for Generation: The SPD will declare the CUF for the whole life of his Project at the time of bidding.*	*The Bidders will declare the annual CUF of the Projects at the time of submission of response to RfP, and the SPDs will be allowed to revise the same once within first year of COD. Thereafter, the CUF for the Project shall remain unchanged for the entire term of the PPA.*	*It is clarified that CUF may be changed till financial closure of the project provided that CUF in any case shall not be less than 19%.* *Hence, no change is required.*

The Petitioner has submitted that the bidding for the project was conducted on 05.08.2019, followed by the execution of the Power Purchase Agreement (PPA) on 19.06.2020. The Petitioner thereafter achieved financial closure on 21.12.2021, which was subsequently approved on 24.03.2022, and the plant was finally commissioned on 01.09.2022. It has been further submitted that the Petitioner applied for change of CUF on 12.01.2021, i.e., prior to the date of financial closure approval (24.03.2022). Despite the application having been

filed well before financial closure, at a stage when such change could have been operationally and contractually accommodated, the request was wrongly rejected by HPPC vide its letter dated 08.02.2021.

Having considered the pleadings, submissions and documents placed on record by both the parties, the Commission observes the duly executed PPA between the parties, being a binding contractual instrument, does not incorporate or even refer to any clarification purportedly issued by HPPC during pre-bid conference. It is an admitted position that the Petitioner voluntarily quoted a CUF of 19% at the time of bidding, and the tariff was discovered and adopted strictly on the basis of the bid parameters submitted by the Petitioner and accepted by HPPC. The Petitioner's request for revision of CUF was duly examined and rejected by HPPC vide letters dated 08.02.2021 and 26.04.2021, both of which were issued well before the commissioning of the project. The Petitioner, having accepted the said decision without demur and having thereafter proceeded to implement the project and commence supply of power, is precluded from re-agitating the same issue at this belated stage. The principle of estoppel is squarely applicable in the present context.

The Commission further observes that any alteration of CUF after execution of the PPA containing mutually agreed terms & conditions, would tantamount to modification of the PPA itself, which is impermissible in law. The RfP/PPA provisions (Clauses 2.6 and 4.4 to 4.8) unequivocally provide that the CUF declared at the time of bidding shall remain firm and unchanged for the entire term of the PPA. The reliance placed by the Petitioner on CERC Regulations prescribing 21% CUF is misconceived, as such norms are applicable only for the purpose of determining generic tariff and cannot override or dilute a tariff discovered and adopted under Section 63 of the Electricity Act on the basis of competitive bidding process.

In light of the foregoing discussions, the Commission finds no merit in the Petitioner's plea to interfere with HPPC's decision and accordingly rejects the same for revision of CUF to 21%. The CUF shall continue to remain 19% as originally declared by the petitioner and duly adopted under the competitive bidding framework.

6.12 **Issue No. 12: Whether the tariff discovered in the bidding is required to be increased by 2% as per Haryana Solar Policy duly amended in 2019.**

The petitioner has prayed for increase in the tariff of the solar power project of the petitioner, retrospectively from CoD, by giving Price preference of 2%, as per Haryana Solar Policy 2016 as amended on 08.03.2019, which provides a price-preference of 2% for in-state projects of 1–2 MW.

Per-contra, HPPC has submitted that Haryana Solar Policy provision for "price preference" is an evaluative mechanism used to determine award at the bidding stage (i.e., to give advantage to in-state bids for evaluation/allocation) and does not create a right to inflate or augment the final contracted tariff post discovery. HPPC further submits that the Policy only provides for consideration of 2% preference over L-1 for the purpose of evaluation/award and does not mandatorily entitle every in-state bidder to 2% higher tariff than the discovered/contracted tariff. HPPC points out that L-1 in the 300 MW process was much lower (Rs. 2.73/unit) than the Petitioner's quoted price and the Petitioner could not have benefitted even after adding 2%. HPPC maintains that the PPA terms govern final tariff and the Petitioner executed the PPA without objection.

Upon hearing the arguments of the parties and perusal of the records of the case, the Commission observes that the Haryana Solar Policy clause cited by the Petitioner provides for a price preference of 2% in favour of solar generators of 1–2 MW for the purpose of allocation/promotion of small in-state developers. The language of the Policy, the object of the provision and its contemporaneous use in procurement practice indicate that such price preference operates as an evaluative/selection advantage i.e., it is taken into account while evaluating bids to determine the order of preference or allocation rather than as an automatic uplift to the final contracted tariff irrespective of the bidding outcome.

The RfP and the draft PPA are the operative documents that determine the rights and obligations of the parties after bid discovery. If the RfP had expressly provided that every eligible in-state bidder shall be paid a tariff higher by 2% (i.e., that the discovered tariff shall be enhanced by 2% for the purpose of payment), a different conclusion might follow. No such express provision is contained in the RfP or PPA executed in this procurement. The RfP expressly

reflected HPPC's attempt to accommodate the State Policy by creating a separate category (1–2 MW) in the tender; this is also evident from the Commission's order dated 05.11.2018 which noted that HPPC had kept a separate category to comply with Haryana Solar Policy. The approval of the RfP and the formation of a category for 1–2 MW does not, by itself, create an unqualified right in favour of each successful or unsuccessful bidder to demand a 2% uplift to a tariff that was discovered by reverse bidding.

In view of the above discussions, the Petitioner's prayer for increase of tariff by 2% (i.e., revision of tariff from ₹2.999/kWh to ₹3.056/kWh) lacks merit and is hereby rejected.

6.13 **Issue No. 13: Whether the Petitioner is entitled for refund/reimbursement of tariff charged on power imported during shutdown/start-up/ synchronization?**

The petitioner has claimed refund of an amount of Rs.68,182.36/-, on account of energy purchased from distribution licensee during shutdown, start-up, synchronization or other emergencies. The petitioner has submitted that under Clause 5.7 of the PPA, the Solar Power Developer (SPD) is entitled to draw power from the distribution/transmission licensee network during shutdown, start-up, synchronization or other emergencies, and such supply "shall be billed at the tariff applicable to HT industry at the time of raising the bill". However, no dedicated HT connection was ever provided by DISCOM/HVPNL, and the SPD does not use their transmission line; therefore, charging HT industry tariff is unjustified. Further, UHBVNL, vide its memo dated 27.03.2023, has informed that HT Industrial tariff has been increased to Rs.8.06/-kWh from Rs.7.59/-kWh, which amounts to Change in Law under Article 20 of the PPA, and therefore the excess charged should be refunded. The Petitioner asserts that energy is being purchased from the SPD at Rs.2.999/-kWh, whereas the same SPD is billed at Rs.7.59/–Rs.8.06/-kWh for startup power. The Petitioner imported 14,011.10 units from Sept, 2022 to Jan 2024, for which it paid @ ₹7.59/- @ ₹8.06/-. The Petitioner claims refund of ₹68,182.36/- earlier, but now states the excess is ₹9,080.26/-, with interest under MSME Act.

Per-contra, HPPC has submitted that the claim was never raised in the main Petition. It appears only in Written Arguments and a vague figure in Synopsis. Therefore, the claim is beyond pleadings and cannot be adjudicated. The Petitioner initially claimed Rs. 68,182.36/- without basis; now claims Rs. 9,080.26/- without break-up. This

shows the claim is afterthought and unsubstantiated. Any change in HT tariff is a part of the tariff variability that was expressly agreed to. There is no Change in Law, as tariff revisions are periodic and expressly contemplated in Article 5.7 of the PPA. The Petitioner cannot seek refund after 4 years. Further, there is no provision in PPA allowing reimbursement of import power charges.

After hearing both sides and perusing the record, the Commission notes that the main Petition did not contain any prayer for reimbursement of import energy charges. There was no factual narration, no break-up, and no grounds pleaded. A vague figure was mentioned only in a table in the synopsis, without explanation. The detailed claim appeared for the first time in Written Submissions. It is settled law that a claim cannot be adjudicated when not pleaded, as the opposing party has no opportunity to respond. Therefore, the Commission holds that the claim is procedurally defective and beyond pleadings. However, since tariff disputes are quasi-judicial matters affecting ongoing contractual performance, the Commission proceeds to examine the issue on merits also, to avoid multiplicity of litigation.

In order to examine the claim of the petitioner, the Commission has perused provisions of Article 5.7 of the PPA, reproduced hereunder: -
"Supply availed shall be billed at the tariff applicable to HT industry at the time of raising the bill."

Thus, when the PPA expressly provides that tariff, applicable to HT Industry, prevailing at the time of raising the bill shall be levied, on the energy supplied to the petitioner, it is not open for more than one interpretation. Retail supply/HT tariffs are revised annually under the MYT framework and cost structures. Such periodic revision (upward/downward variation in HT consumer tariffs) is not a "change in law" as provided under Article 20 of the PPA, but an inherent and expected part of the regulatory structure.

Accordingly, the Commission answers the issue framed in negative i.e. the Petitioner is not entitled for refund/reimbursement of tariff charged on power imported during shutdown/startup/ synchronization.

Before parting with the order, the Commission observes that the petitioner has made a passing reference to certain miscellaneous disputes concerning the Earnest Money

Deposit and the sharing of meter charges at the sub-station under the Haryana Solar Policy, 2019. However, the petitioner has neither articulated these issues in detail nor substantiated them with specific pleadings. Furthermore, these matters were not pressed by either party during the course of the proceedings. Accordingly, the Commission does not deem it appropriate to render any findings on these issues at this stage.

7. In terms of the above discussion, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 27.02.2026.

	Sd/-	**Sd/-**	**Sd/-**
Date: 27.02.2026	**(Shiv Kumar)**	**(Mukesh Garg)**	**(Nand Lal Sharma)**
Place: Panchkula	**Member**	**Member**	**Chairman**