

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
**Tel. 022 22163964/65/69**  
**Email: mercindia@merc.gov.in**  
**Website: [www.merc.gov.in](http://www.merc.gov.in)**

**Case No. 104 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Manwat, Tal – Manwat, District – Parbhani) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 105 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Nagarwadi, Tal – Karanja, District - Wardha) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 107 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Goregaon, Tal – Sengaon, District - Hingoli) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 108 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Aarali Budruk, Tal – Tuljapur , District - Osmanabad) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 109 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Bhendala, Tal- Ghansawangi, District - Jalana) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 110 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Kok, Tal- Jintur, District- Parbhani) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 111 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Pedgaon, Tal- Hingoli, District-Hingoli) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 112 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Pimpranwadi, Tal- Loha, District- Nanded) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

**Case No. 113 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Rani Unchegaon, Tal: Ghansawangi, Dist.: Jalna) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

&

**Case No. 145 of 2023**

**Petition of M/s. Karnataka Resco Rooftop Solar Pvt. Ltd. (KRRSPL) (Location- Hatta. Tal: Sengaon, Dist: Hingoli) seeking relief on account of Change in Law due to the increase in Goods and Service Tax (GST) rates in terms of the Power Purchase Agreements (PPA) dated 13 January 2020.**

M/s. Karnataka Resco Rooftop Solar Pvt. Ltd (KRRSPL)

..... Petitioner

Maharashtra State Power Generation Company Ltd (MSPGCL)

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

}  
..... Respondent

**Coram**  
**Sanjay Kumar, Chairperson**  
**Anand M. Limaye, Member**  
**Surendra J. Biyani, Member**

Appearance:

For the Petitioner : Mr. Aditya Singh (Adv.)

For the Respondents : Mr. Dhruv Sharma (Adv)  
Mr. Rahul Sinha (Adv)

**COMBINED ORDER**

**Date: 20 February 2024**

1. M/s. Karnataka Resco Rooftop Solar Pvt. Ltd (KRRSPL) has filed the present Petitions under Article 8 of the Power Purchase Agreement (PPA) dated 13 January 2020 seeking approval of 'Change in Law' and an appropriate mechanism for grant of an adjustment/ compensation to offset financial/ commercial impact of Change in Law event(s). These Petitions have been filed on following dates:

Case No.	Case Registered Date
Case No. 104 of 2023	28 February 2023
Case No. 105 of 2023	28 February 2023
Case No. 107 of 2023	27 February 2023
Case No. 108 of 2023	27 February 2023
Case No. 109 of 2023	27 February 2023
Case No. 110 of 2023	28 February 2023
Case No. 111 of 2023	28 February 2023
Case No. 112 of 2023	28 February 2023
Case No. 113 of 2023	28 February 2023
Case No. 145 of 2023	05 June 2023

2. Initially, the Commission heard the matters separately and reserved for Orders on following dates:

Case Nos	Date of Hearing
Case No. 104 of 2023, Case No. 105 of 2023, Case No. 107 of 2023, Case No. 108 of 2023 & Case No.109 of 2023	8 December 2023
Case No. 110 of 2023, Case No. 111 of 2023, Case No. 112 of 2023, Case No. 113 of 2023 & Case No.145 of 2023	2 January 2024

Considering similarity in facts of the cases and pleadings, the parties during the hearing held on 2 January 2024 requested to pass a common Order for all cases. Based on request made by Parties, the Commission is passing this common Order in these 10 cases.

**3. Prayers of Petitioner are as follows:**

***Case No.104 of 2023:***

“

- a) *Hold and declare that notification no. 24 of 2018 dated 31.12.2018 and notification NO. 8 of 2021 dated 30.09.2021 issued by Ministry of Finance which has increased the applicable Goods and Services Tax rate on the solar modules and solar cells as well as other solar power generator equipment, from 5% to 12% and the implicit increase in GST composite rate from 5% to 13.8% qualifies as ‘Change in Law’ in terms of Article 8 of the Power Purchase Agreement dated 13.01.2020 executed between the Petitioner and Maharashtra State Power Generation Company Limited for the development of the Project at Manwat, Tal-Manwat, Distrcit- Parbhani, Maharashtra is entitled to consequent relief thereunder;*
- b) *Hold and declare that the Petitioner is entitled to a sum of Rs.3,23,66,106/- (Rupees Three Crore Twenty Three Lakhs Sixty Six Thousand One Hundred and Six only) out of which Rs. 3,07,56,140/- (Rupees Three Crores Seven Lakhs Fifty-Six Thousand One Hundred and Forty only for the Project due to increase in rates of GST along with the interest of Rs.16,09,967/- (at one year SBI MCLR + 1.25% in line with the provisions of the PPA, which shall be revised until the actual payment of compensation) applicable thereon on account of the impact of such Change in Law event on the Project under this Petition;*
- c) *Direct Maharashtra State Power Generation Company Limited to make payment of the sum of Rs.3,23,66,106 (Rupees Three Crore Twenty Three Lakhs Sixty Six One Hundred and Six only) including carrying costs of Rs.16,09,967/- (at one year SBI MCLR + 1.25% in line with the provisions of the PPA, which shall be revised until the actual payment of compensation) towards compensation for such Change in Law event to the Petitioner for the Project under this Petition;*
- d) *Further, Direct Maharashtra State Power Generation Company Limited to consider and make payment upon request made by the Petitioner against additional demand or notice received, if any received, during the assessment of GST from the authorities on rate of GST applied on module or inverter or on SPGS and upon payment of such amounts as demanded or raised as part of assessment over and above the amount paid herein above towards the GST and Respondents to adopt similar principle set out by the Hon’ble Commission for such additional GST payments made thereto;*

Similar prayers have been made in Case No.105 of 2023, Case No.107 of 2023, Case No.108 of 2023, Case No.109 of 2023, Case No.110 of 2023, Case No.111 of 2023, Case No.112 of 2023, Case No.113 of 2023 and Case No.145 of 2023. The claimed amount is also exactly same. Only difference is locations of project. Hence for brevity prayers of these cases are not reproduced here.

**4. KRRSPL in its Petitions stated as below:**

The facts mentioned in the Petition are same and hence captured combinedly.

**4.1. Major events in bidding process and subsequent development are presented as below:**

<b>Date</b>	<b>Event</b>
14.06.2017	Government of Maharashtra (GoM) vide Government Resolution (G.R) dated 14 June 2017 (and its amendment dated 17 March 2018) has promulgated the prestigious ‘Mukhyamantri Saur Krishi Vahini Yojana’ (MSKVY) and designated MSPGCL and MSEDCL as implementation / Nodal agencies.
27.11.2017	MSPGCL issued its Expression of Interest (EoI) for calling the interested developers/landowners for setting up solar power plant/plants of capacity up to 100 MW cumulative at different locations on private land in Vidarbha, Marathwada, Western and Northern Regions of Maharashtra on pilot basis.
04.06.2018	KRRSPL submitted the EMD of Rs. 5 Crores and participated in the Reverse Auction conducted by MSPGCL and quoted a competitive tariff of Rs. 3.19/kWh. Pursuant to the Reverse Auction, the tariff was further revised to Rs. 3.10/kWh on request from MSPGCL.
29.11.2018	The Commission vide its Order in Case No. 308 of 2018 has adopted the Tariff of Rs. 3.10/kWh.
11.09.2019	The Commission vide its Order in Case No. 112 of 2019 has allowed certain amendments to the PPA conditions/bid conditions based on the merits notified by MSPGCL including inter alia split of the awarded capacity into 10 different Projects and timeline for SCOD as (18) months.
23.10.2019	KRRSPL has been declared successful bidder and MSPGCL issued Letter of Award (LOA) on 23 October 2019 (read together with amendment dated 11 December 2019) for development of solar power plants consisting of total (10) projects of 10 MW each at 10 discrete locations in Maharashtra and sale of entire electrical energy produced to MSPGCL and back-to-back sale to MSEDCL.

<b>Date</b>	<b>Event</b>																																												
13.01.2020	KRRSPL and MSPGCL entered into a PPA. Location of PPA and capacity of plants are as under: <table border="1"> <thead> <tr> <th><b>Sr. No</b></th> <th><b>Location</b></th> <th><b>District</b></th> <th><b>Plant Capacity</b></th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Shirpur</td> <td>Amravati</td> <td>10 MW</td> </tr> <tr> <td>2</td> <td>Sonkhas</td> <td>Yavatmal</td> <td>10 MW</td> </tr> <tr> <td>3</td> <td>Ner</td> <td>Jalna</td> <td>10 MW</td> </tr> <tr> <td>4</td> <td>Terka</td> <td>Washim</td> <td>10 MW</td> </tr> <tr> <td>5</td> <td>Argadevhan</td> <td>Jalna</td> <td>10 MW</td> </tr> <tr> <td>6</td> <td>Somnathnagar</td> <td>Washim</td> <td>10 MW</td> </tr> <tr> <td>7</td> <td>Utavad</td> <td>Jalna</td> <td>10 MW</td> </tr> <tr> <td>8</td> <td>Asthi</td> <td>Jalna</td> <td>10 MW</td> </tr> <tr> <td>9</td> <td>Rani Unchegaon</td> <td>Jalna</td> <td>10 MW</td> </tr> <tr> <td>10</td> <td>Antrawali Tembhi</td> <td>Jalna</td> <td>10 MW</td> </tr> </tbody> </table>	<b>Sr. No</b>	<b>Location</b>	<b>District</b>	<b>Plant Capacity</b>	1	Shirpur	Amravati	10 MW	2	Sonkhas	Yavatmal	10 MW	3	Ner	Jalna	10 MW	4	Terka	Washim	10 MW	5	Argadevhan	Jalna	10 MW	6	Somnathnagar	Washim	10 MW	7	Utavad	Jalna	10 MW	8	Asthi	Jalna	10 MW	9	Rani Unchegaon	Jalna	10 MW	10	Antrawali Tembhi	Jalna	10 MW
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29.11.2021	PPA is amended to change the location of Plant. New plant locations are as under: <table border="1"> <thead> <tr> <th><b>Sr. No</b></th> <th><b>Old Location</b></th> <th><b>New Location</b></th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Shirpur, District- Amravati</td> <td>Manwat, District- Parbhani</td> </tr> <tr> <td>2</td> <td>Sonkhas, District-Yavatmal</td> <td>Nagarwadi, District-Wardha</td> </tr> <tr> <td>3</td> <td>Ner, District- Jalna</td> <td>Goregaon, District-Hingoli</td> </tr> <tr> <td>4</td> <td>Terka, District-Washim</td> <td>Aarali (Bk), District- Osmanabad</td> </tr> <tr> <td>5</td> <td>Argadevhan, District- Jalna</td> <td>Bhendala, District- Jalna</td> </tr> <tr> <td>6</td> <td>Somnathnagar, District- Washim</td> <td>Kok, District- Parbhani</td> </tr> <tr> <td>7</td> <td>Utavad, District- Jalna</td> <td>Pedgaon, District-Hingoli</td> </tr> <tr> <td>8</td> <td>Asthi, District- Jalna</td> <td>Pimpranwadi, District- Nanded</td> </tr> <tr> <td>9</td> <td colspan="2">No Change of Location in Case No.113 of 2023</td> </tr> <tr> <td>10</td> <td>Antrawali Tembhi, District- Jalna</td> <td>Hatta, District- Hingoli</td> </tr> </tbody> </table>	<b>Sr. No</b>	<b>Old Location</b>	<b>New Location</b>	1	Shirpur, District- Amravati	Manwat, District- Parbhani	2	Sonkhas, District-Yavatmal	Nagarwadi, District-Wardha	3	Ner, District- Jalna	Goregaon, District-Hingoli	4	Terka, District-Washim	Aarali (Bk), District- Osmanabad	5	Argadevhan, District- Jalna	Bhendala, District- Jalna	6	Somnathnagar, District- Washim	Kok, District- Parbhani	7	Utavad, District- Jalna	Pedgaon, District-Hingoli	8	Asthi, District- Jalna	Pimpranwadi, District- Nanded	9	No Change of Location in Case No.113 of 2023		10	Antrawali Tembhi, District- Jalna	Hatta, District- Hingoli											
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#### 4.2. **Impact of Notification dated 31 December 2018:**

4.2.1 Under Notification No. 01/2017- Integrated Tax (Rate) dated 28 June 2017 the GST applicable on solar modules and solar cells as well as other solar power generator system was 5%.

4.2.2 Ministry of Finance (MoF), Government of India vide Notification No. 24/2018- Central Tax (Rate) dated 31 December 2018, has issued clarification in reference to the solar

projects executed on EPC basis. For such projects, a composite rate assuming 70% towards supplies and 30% towards services would be applicable.

4.2.3 Accordingly, the GST on Solar Power Generating Systems for execution through an EPC Contract increased from 5% on bid date to 8.9% from 31 December 2018 onwards.

4.3. **Impact of Notification dated 30 September 2021:**

4.3.1 The Central Government vide its Notification No. 08/2021–Integrated Tax (Rate) dated 30 September 2021 has increased the applicable GST rate on the solar modules and solar cells as well as other solar power generator equipment, from 5% to 12%.

4.3.2 Accordingly, the composite GST rate under EPC Contracts for Solar Power Generating Projects pursuant to Notifications dated 31 December 2018 read together with Notification dated 30 September 2021, increased further from 8.9% to 13.80%. This has resulted into an increase from 5% (bid submission date rate) rate to 13.80%.

4.4. Article 8 of the PPA provides for the relief available to the affected party against consequences of a Change in Law event.

4.5. As per the provision dealing with Change in Law under the PPAs:

4.5.1 A Change in Law event is any of the events enumerated in Article 8 of the PPA. Enactment of a new law and any change in rate of taxes which have a direct effect on the Solar Power Project are listed as events under change in law.

4.5.2 Such Change in Law event must have occurred after the last date of bid submission i.e., 04 June 2018 in the present case.

4.5.3 Acknowledgment of Change in Law and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Commission.

4.6. Considering the stipulations under PPA, KRRSPL is entitled to receive appropriate compensation so as to be restored to the same economic position as if such Change in Law events had not occurred. The same is reasonable in so far as KRRSPL is mandatorily obliged to pay increased GST on procurement of solar modules and other solar equipment because of a Change in Law.

4.7. The Change in Law clause under a PPA has a statutory mandate attached to it and is restitutive in nature. The principles of restitution read with Section 70 of the Indian Contract Act, 1872 and other applicable laws demand that KRRSPL should be

compensated for all the necessary and reasonable extra costs including carrying cost and/or interest on the additional cost incurred on account of Change in Law event being issuance of GST Notification. Therefore, it is pertinent to highlight that unless there is an express provision under the PPA prohibiting the grant of restitution on account of increase/change in GST rates, the affected Party would be legally entitled to be restored to the same economic position that it would have been but for the Change in Law event. The increased financial burden due to the impact of increase in GST rates is Change in Law event as per the said provision of the PPA which entitles KRRSPL to seek restoration which is a legal right available under the PPA. The PPA provides that the affected party shall approach the concerned authorities in accordance with the provisions of the PPA for notification and claim towards compensation for Change in Law impact.

4.8. The issuance of the GST Notification is after the submission of the bid i.e., 04 June 2018. Further, the adverse impact of Change in Law due to change in rates of GST owing to the enforcement of GST Notification could not have been envisaged prior to / during the tendering / bidding process and were not accounted for while deriving and submitting the final bid. Therefore, the issuance of the GST Notification qualifies as a Change in Law event in terms of the PPA and the applicable laws.

4.9. In furtherance thereof, on 14 October 2021, KRRSPL issued a Notice under Change in Law and intimation to the MSPGCL citing impact of GST Notification as a material event affecting the implementation of the Project.

4.10. Issuance of GST notification would qualify as a Change in Law as per Article 8.1.1 (i) and (v) of the PPA. The impact due to increase in taxes, for the project is summarized in the table below:

Name of the Component	Base Cost (excluding Taxes)	GST Liability as on the bid Date #	GST actually Paid / payable*	Module GST Impact Due to Change in Law	Interest @ SBI MCLR + 1.25% till 31 Oct 2022	Total Claim under Change in Law
		<b>A</b>	<b>B</b>	<b>C=B-A</b>	<b>D</b>	<b>E= C+D</b>
Modules	2,81,23,55,907	14,06,17,795	33,74,82,709	19,68,64,913	1,12,50,227	20,81,15,140
EPC other than Modules	1,33,68,59,504	6,68,42,975	17,75,39,458	11,06,96,483	48,49,440	11,55,45,923
<b>Total EPC Price</b>	<b>4,14,92,15,411</b>	<b>20,74,60,771</b>	<b>51,50,22,167</b>	<b>30,75,61,397</b>	<b>1,60,99,667</b>	<b>32,36,61,064</b>
Per Project	41,49,21,541	2,07,46,077	5,15,02,217	3,07,56,140	16,09,967	3,23,66,106

4.11. The computation as mentioned above is based on the additional taxes and costs thereon incurred by KRRSPL and it reserved its right to submit the final computation of the



additional cost when the entire amount of GST pertaining to Change in Law and interest thereon until the settlement or payment of amounts in full.

- 4.12. KRRSPL referred to the Appellate Tribunal for Electricity (APTEL) Order dated 14 August 2018 passed in Appeal No. 111 of 2017 in *GMR Warora Enemy Limited Vs. Central Electricity Regulatory Commission and Ors.*, wherein it held that any tax levied through an Act of Parliament after the cut-off date which results in additional expenditure, the same is covered as Change in Law.
- 4.13. KRRSPL has established 10 MW<sub>AC</sub> / 13.50 MW<sub>DC</sub> solar power generating system at each location cumulatively, 100MW<sub>AC</sub> / 135MW<sub>DC</sub> in all 10 (ten) locations, by deploying significant capital via debt and equity. Considering the significant amount invested by KRRSPL while developing the respective Project, in case the compensation to KRRSPL is denied on account of Change in Law event, it will have cascading effect on the servicing of debt which can potentially lead to increase in the cost, making the Projects financially unviable.
- 4.14. As per Article 8.2.1 of the PPA, it is an obligation on KRRSPL herein that in case it is affected by a Change in Law event and wishes to claim Change in Law under the said Article, it shall be required to approach the Commission for seeking approval of Change in Law. Article 8.2.2 of the PPA provides that acknowledgement of a Change in Law and the date from which it will become effective and relief for the same shall be decided by the Commission.
- 4.15. The Hon'ble Appellate Tribunal for Electricity in plethora of Cases having similar issues such as Appeal No. 210 of 2017, 193 of 2017 and 111 of 2017, allowed carrying cost upon the amount allowed as compensation for 'Change in Law' events. For that the regulatory powers of the Commission should be exercised to do complete justice to the claims for compensation and KRRSPL should be put to the same economic position as the change in law has not occurred.
- 4.16. Carrying cost is the compensation for time value of the money. Any compensation for Change in Law is incomplete if it does not come with carrying cost that is inherent in the very provision. The mandate of Change in Law provisions across all PPAs (standard documents drafted by the government) is restitution i.e. relief be granted in a manner so as to place an affected party in the same economic position as if a Change in Law had not occurred. Restitution is therefore inherent in compensation.
- 4.17. KRRSPL referred to the Commission's Order dated 22 June 2020 in Case No. 8 of 2020 for mechanism of carrying costs. In said Order the Commission has allowed carrying costs on

the basis of the late payment surcharge as provided under clause 5.4 of the PPA i.e. at 1.25% excess of 1-year MCLR of State Bank of India.

- 4.18. The principles of restitution read with Section 70 of the Indian Contract Act, 1872 and other applicable laws demand that KRRSPL should be compensated for all the necessary and reasonable extra costs including carrying cost and/or interest on the additional cost incurred on account of Change in Law event being issuance of GST Notification. Therefore, it is pertinent to highlight that there is no express provision under the PPA prohibiting the grant of restitution on account of increase/change in GST rates, the affected party therefore would be legally entitled to be restored to the same economic position that it would have been but for the Change in Law event.
- 4.19. KRRSPL placed the reliance on the Judgment dated 28 August 2020 passed by the Hon'ble Appellate Tribunal in Appeal Nos. 21 of 2019 and 73 of 2019 (*Talwandi Sabo Power Limited v Punjab State Electricity Regulatory Commission & Anr. and Batch*) for emphasizing aspect of regulatory certainty. Further, reference is made to Hon'ble Supreme Court passed in *Union of India v. D N Revri & Co. and Ors.* (1976) 4 SCC 147 which explains concepts of the interpretation of contract.
- 4.20. Hon'ble Supreme Court in *Shivashakti Sugars Ltd. V. Shree Renuka Sugar Ltd. Cited as, (2017) 7 SCC 729*, sets out the need for business efficacy and the importance of applying both law and economics while examining various contractual facets. PPA is a standard form agreement. Provisions of the PPA are to be interpreted in accordance with business efficacy and commercial parlance. Such provisions cannot be interpreted narrowly or literally. *Principle of legitimate expectation* applies in cases where investments are invited on the basis of policy directions.

**5. MSEDCL in its submission dated 05 December 2023 and 21 December 2023 stated as below:**

- 5.1 KRRSPL has no privity of contract with the MSEDCL. It is pertinent to mention that the PPA 13 January 2020 is categorically between KRRSPL and MSPGCL and thus, MSEDCL cannot be made party to the said PPA with the present Petition. MSEDCL is not a necessary party to the present proceedings, which is categorically based upon the Change in Law clause provided under Article 8 of the PPA.
- 5.2 Change in Law Notice regarding the impact of the Notification No. 24 of 2018 dated 31 December 2018 and Notification No. 8 of 2021 dated 30 September 2021 was given only on 14 October 2021 by KRRSPL to MSPGCL i.e. after a delay of 2 years and 10 months approx. and further, the claim under the said Notifications has been filed before the Commission only by way of the present Petition on 28 February 2023 i.e. after a delay of

1 years 4 months i.e in total aggregating to 4 years 2 months approx. from the date of Change in Law notice.

- 5.3 The Change in Law Notice stating impact of GST notifications dated 31 December 2018 and 30 September 2021 was issued by MSPGCL to MSEDCL only on 16 November 2022. The delay on part of KRRSPL to make its claim under Change in Law and Article 8 of the PPA would be barred by the *Doctrine of Delay and laches*.
- 5.4 It is important to note that the Doctrine of Laches emanates from the principle that the Courts will not help people who sleep over their rights and helps only those who are aware and vigilant about their rights. A party is said to be guilty of laches when they come to the Court to assert their rights after a considerable delay in that respect.
- 5.5 The Supreme Court in a catena of Judgments have clearly laid down that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such persons cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
- 5.6 The case of KRRSPL does not even fall within the concept of 'Reasonable time' to present its claim before the Commission. For sufficing the arguments, MSEDCL referred to the Hon'ble Supreme Court Judgement in the matter of *Nilesh S/O Ravindra Varode Versus State of Maharashtra and Others (2020 SCC Online Bom 6)*.
- 5.7 The Change in Law Claim documents submitted along with Petition are under scrutiny. Further, MSEDCL need following additional documents to evaluate the Change in Law claims:
- a. EPC Contract and Agreement for Module and Other material;
  - b. Lorry receipt, E way Bills and Material receipt Note;
  - c. CA/CMA Certified material utilization certificate and closing stock report as on COD to verify whether all material procured are utilized for said project or not;
  - d. Bank Account statement reflecting the payments made to EPC contractor;
  - e. To verify GST payment, GST payment challans and GSTR-1, GSTR-2B are required.
- 5.8 KRRSPL has approached the Commission with a substantial delay of more than 3 years, for the adjudication of Change in Law event and compensation. Accordingly, effect of such

delay cannot be attributed to MSPGCL or to MSEDCL and its consumers. Thus, carrying cost in the present case may be rejected in view of the delay caused by KRRSPL to approach the Commission.

5.9 If the Commission allows the Change in Law due to GST then KRRSPL should establish a one-to-one co-relation between the equipment installed on site as part of the project and the solar equipment imported and all other relevant documentary proof.

**6. MSPGCL in its Reply dated 7 December 2023 and 29 December 2023 stated as below:**

6.1 It is important to highlight that the role of MSPGCL under the 100 MW cumulative capacity solar projects is that of an ‘Intermediary procurer’ and not the ‘End Procurer’. The power purchased from these 100 MW Solar projects of the Petitioner is sold to MSEDCL under the Power Sale Agreement (PSA) dated 14 January 2020.

6.2 Article 8 of the said PSA refers and relates to Change in Law and reads as under:

“

*8.1.1 "Change in Law" means the occurrence of any of the following after the last date of bid submission resulting into any reduction or additional recurring/ non-recurring expenditure by MSPGCL/ SPD or any income to MSPGCL / SPD.*

*8.2 Relief for Change in Law:*

*8.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.”*

6.3 KRRSPL has only referred to the clauses under its PPA with MSPGCL. However, considering MSPGCL’s role as an intermediary procurer, the relief for Change in Law are directly and intrinsically linked to the PSA between MSPGCL and MSEDCL.

6.4 Therefore, if any of the claims raised by KRRSPL are approved, the same needs to be allowed as pass-through from KRRSPL to MSEDCL under the related PSA provisions.

6.5 Thus, referring to the provisions under Article 8 of PSA between MSPGCL and MSEDCL, MSPGCL requested to consider the present application by KRRSPL as the application also for approval of Change in Law claims as provided under Article 8 of the PSA.

6.6 The imposition of higher GST on solar goods occurred after the tariff adoption by the Commission and thus such change may amount as Change in Law. MSPGCL has no objection on the admissibility of the present Petition.

- 6.7 However, the claim amounts submitted by KRRSPL should not be accepted merely on the basis of timelines for notifications. MSPGCL requested the Commission to ensure following while adjudicating the matter.
- 6.7.1 All responsible utility undertakings must endeavor to supply power to the consumers at the least possible rate.
- 6.7.2 Accordingly, firstly it needs to be established that the actions of KRRSPL regarding procurement of equipment subject matter of the Change in Law were acquired in a timely manner with adequate efforts to avoid or minimize the impact of the possible tax implications caused by the Notification No. 24/2018 dated 31 December 2018 and Notification No. 08/2021-Integrated Tax (Rate) dated 30 September 2021.
- 6.7.3 Secondly, if the Commission holds that the Notifications did cause an increase in the tax rates from 5% to 13.8% and thus amounted to Change in Law then the computation of the actual claims and their veracity must be determined through the submission and examination of the relevant documents as submitted by KRRSPL.
- 6.8 As per the PPA, KRRSPL was to achieve financial closure within (12) months and the Scheduled COD within (18) months from the date of signing the PPA (i.e., financial closure by 12 January 2021 and COD by 12 July 2021). Notification regarding increase in the imposition of GST from 5% to 12% on solar equipment was issued on 30 September 2021 (Notification No. 08/2021-Integrated Tax (Rate)).
- 6.9 However, owing to the COVID-19 pandemic, the Ministry of New and Renewable Energy directed the grant of extension without penalty in the scheduled COD date to project proponents vide Office Memorandums O.M. No. 283/18/2020-GRID SOLAR dated 13 August 2020. Accordingly, MSPGCL communicated with MSEDCL and upon approval of MSEDCL granted extension to KRRSPL thereby extending the Scheduled COD by five months to 12 December 2021.
- 6.10 Consequently, it needs to be scrutinized, especially regarding the claim for increased tax rate, whether the applicability of such increased taxation could have been avoided if KRRSPL had made timely procurements and thus possibly taken an early action. Copies of the invoices and documents attached with the Petition show that they have been raised in the year 2022 i.e., past the Scheduled COD date.
- 6.11 Thus, MSPGCL requested the Commission to direct KRRSPL to submit authenticated copies of the relevant original documents towards their claim for increased financial impact.

- 6.12 MSPGCL requested the Commission to issue necessary guidelines and timelines for the verification of the actual documents and further quantification of allowable expenditure as the capital expenditure incurred on account of allowable Change in Law claims.
- 6.13 Regarding the mechanism of recovery of the approved “Change In Law” impact, the Petitioner has proposed the methodology of making payment of entire approved amount for the adverse financial impact, along with the carrying cost for the same.
- 6.14 MSPGCL is of the opinion that considering the fact that the PPA between MSPGCL and KRRSPL is linked to the PSA between MSPGCL and MSEDCL, it will be difficult for MSPGCL to undertake and honor any payment obligation to KRRSPL unless the same is received to MSPGCL from MSEDCL. Considering the financial crisis already faced by MSEDCL and hence by MSPGCL, payment of entire amount with carrying cost seems a difficult option.
- 6.15 Considering the practical difficulties, MSPGCL requests the Commission to issue appropriate order regarding mechanism of recovery of the approved Change in Law impact as the Commission may deem fit.
7. **KRRSPL in its Additional Written Submission dated 15 December 2023 stated as below:**

**Response to MSPGCL’s Submission**

- 7.1 MSPGCL in its Reply has specifically admitted that Notification No. 24 of 2018 and Notification No. 8 of 2021 are change in law. Section 58 of the Evidence Act, 1872 states that no fact need to be proved if it has been admitted by parties in pleadings. On the ground of admission alone, prayer of KRRSPL should be allowed.
- 7.2 KRRSPL highlighted that the Commission has on earlier occasion declared these GST notifications as a change in law in its following orders:
- a. **Notification No. 08 of 2021 dated 30 September 2021-** Order dated 28 November 2023 in Petition No. 34 of 2023.
  - b. **Notification No. 24 of 2018 dated 31 December 2018-** Order dated 04 May 2022 in Petition No. 147 of 2020.
- 7.3 Delay in procurement of modules:
- 7.3.1 MSPGCL vide its letter dated 29 September 2020 granted (5) months extension in SCOD till 11 December 2021 to KRRSPL that owing to Covid-19 pandemic situation. SCOD of

the project was revised (from 12 July 2021 to 11 December 2021) post occurrence of the Change in Law event i.e. MoF notification dated 30 September 2021.

- 7.3.2 India witnessed second wave of covid due to Delta Variant and its impact remained till July-2021. Again the ability of KRRSPL to execute the project was disrupted which was also recognised by MSPGCL and was granted further extension till 30 June 2022.
- 7.3.3 At last, MSPGCL vide letter dated 02 November 2022 extended the SCOD up to 29 July 2022 without any Liquidity Damages and accepted the full commissioning of the 10 x 10 MW solar projects.
- 7.3.4 Therefore, it is unreasonable on the part of MSPGCL to pray that KRRSPL could have procured modules and inverters prior to the date of the GST Notification. It was an impossibility in view of the lock downs and embargos imposed on movement of people and goods nationwide and also imports from China were also impacted due to ban/sanctions imposed by the Central Government.
- 7.3.5 Section 9 of the Central Goods and Services Tax Act, 2017 and Section 5 of the Integrated Goods and Services Tax Act, 2017 are charging sections. These sections in clear terms state that goods and services taxes will be applicable on supply of goods and services. Further, as per Section 12 and 13 of CGST Act, 2017, the liability to pay tax on goods shall arise at the time of supply of good/services.
- 7.3.6 All modules have been shipped nearer to the date of the Commissioning, therefore in terms of the afore-quoted relevant laws, invoices have been issued in the year 2022. KRRSPL has diligently placed order for modules around one year prior to revised SCOD, however it opted to initiate delivery of the modules closure to SCOD to avoid any degradation and warranty issues. Timelines of orders and delivery of modules are as below:

Particulars	Timeline	
	Modules	Inverter
Final Order Date	16.06.2021	28.10.2021
1 <sup>st</sup> Shipment receipt at Nhava Sheva Port, Navi Mumbai	07.02.2022	-
Final Shipment receipt at Nhava Sheva Port, Navi Mumbai	19.03.2022	-
Last Consignment to Sites	01.04.2022	02.05.2022

- 7.3.7 Hon'ble APTEL in its Judgement dated 10 October 2017 in IA No. 371 of 2017 in Appeal No. 343 of 2016 (*Balarach Renewable Energy Private Limited Vs HERC*) has recognised

that the solar panels could not be allowed to be left idling as it would result in degradation, and it will result in irreparable loss. Therefore, it will not be prudent for the generator to get modules/inverters delivered one year prior to scheduled commissioning date.

7.3.8 KRRSPL has procured modules/inverters suiting its commissioning timeline. The Commission has also recognised industrial practice of procuring modules nearer to the commissioning date of the generating station in matter titled '*ACME Heergarh Powertech Pvt. Ltd. Vs. Maharashtra Electricity Distribution Co. Ltd.*' (Case No. 175 of 2020).

7.3.9 KRRSPL also relied upon CERC in its Order dated 09 October 2018 in Case No. 188/MP/2017 categorically observed that test for providing relief is actual date of the commissioning not scheduled date of the commissioning.

#### 7.4 Authenticated copies:

7.4.1 KRRSPL has submitted authenticated copies of payment receipts, invoices raised by foreign and Indian Suppliers, Bill of Lading issued by shipping companies and tables reflecting claim amount.

7.4.2 Total 2,50,452 modules have been utilized in commissioning of 100 MW project. Further, KRRSPL furnished a CA Certificate reflecting module utilisation. KRRSPL also undertaken to provide any other documents as directed by the Commission.

#### 7.5 Direction to MSEDCL:

7.5.1 KRRSPL has no objection to the prayer of MSPGCL to declare these notifications as a change in law under PSA. However, the payment of the KRRSPL is not dependent on the payment by MSEDCL to MSPGCL. There is no back to back agreement between KRRSPL and MSEDCL.

7.5.2 KRRSPL referred to CERC Order in Case No.388/MP/2018 wherein it has categorically held that payment to the Petitioner by trader is not dependent upon the payment of trader by beneficiary.

#### **Response to MSEDCL's Submission:**

7.6 KRRSPL does not seek any relief against MSEDCL. However, MSEDCL is a beneficiary to the power supplied by KRRSPL. Therefore, it has made MSEDCL as a party respondent to the Petition.

#### 7.7 Delay in issuance of Change in Law Notice:



- 7.7.1 MSEDCL in its Reply contended that there is delay in issuance of the Change in Law Notice and also delay in filing of the Change in Law Petition. It is a matter of the record that PPA does not mandate issuance of the Change in Law Notice.
- 7.7.2 It is a settled law that Court cannot rewrite terms of the Contract, the said legal proposition is laid down in the case of *GUVNL Vs Solar Semiconductor, (2017) 16 SCC 498*. KRRSPL also referred to the Hon'ble Supreme Court Judgments of *M/s. Dhanrajamal Gobindram vs. M/s. Shamji Kalidas and Co. (1961) 3 SCR 1020* and *General Assurance Society Ltd. v. Chandumull Jain AIR 1966 SC 1644*.
- 7.7.3 Even, KRRSPL is not under an obligation to issue change in law notice, it has issued following Change in Law Notices on 14 August 2020, 5 February 2021, 14 October 202, 31 October 2022, and 2 January 2023.

## 7.8 **Delay in filing of the present Petition**

- 7.8.1 The Petition has not been filed with delay.
- 7.8.2 The present Petitions have been filed in month of February 2023. All 10 Projects have been commissioned in May, June and July 2022. Therefore, the present KRRSPL has approached the Commission within around 6-7 months from Commissioning of the Project. Therefore, there is no delay in approaching the Commission.
- 7.8.3 The Commission in its various Orders opined that KRRSPL should approach the Commission only post commissioning of the Plant when the financial impact is ascertained. KRRSPL referred to the Commission's Order dated 24 June 2019 in Case No. 46 of 2019.
- 7.8.4 The doctrine of laches is used by the courts to deal with an inordinate delay that is occurring in filing a petition or complaint. In the instant case, KRRSPL took around 7 months to file Petition from date of commissioning due to time taken in ascertainment of final liability for payment of taxes. Period of 6-7 months cannot be considered laches and also when KRRSPL was perusing with Respondents for reconciliation of claim.

## 7.9 **Relevant Documents**

- 7.9.1 KRRSPL has furnished following documents as a part of the Petition:
- a) Bill of Entry.

- b) Table reflecting details of modules and Services date wise giving reference to invoice number and Bill of Lading Number.
- c) Bill of Lading issued by Shipping Company.
- d) Invoices of Domestic and International Supplier/Service Provider.

7.9.2 KRRSPL has also provided details of Module matching Bill of Lading and Bill of Entry Number. MSEDCL and MSPGCL can match these details one-to-one with the Bill of Lading and Bill of Entry. Further, KRRSPL submitted CA certificate evidencing utilisation of 2,50,452 modules. This Report gives project wise utilization. KRRSPL further undertaken to furnish any document as may be directed by the Commission.

#### 7.10 **Carrying Costs**

7.10.1 MSEDCL contended for dismissal of the Carrying costs on the ground of delay. There is no delay in approaching the Commission, KRRSPL is entitled to claim carrying costs.

#### 8. **MSPGCL in its additional written submission dated 20 December 2023 stated as below:**

8.1 The PPA between KRRSPL and MSPGCL and the subsequent PSA between MSPGCL and MSEDCL were back-to-back agreements with MSEDCL being the end procurer and thus ultimate beneficiary of the same.

8.2 Therefore, MSEDCL remains a necessary party for the adjudication of the present dispute as the ultimate liability for Change in Law impact and compensation lies upon MSEDCL.

8.3 If any of the claims raised by KRRSPL are approved, the same needs to be allowed as pass-through from KRRSPL to MSEDCL under the related PSA provisions and the ultimate liability be attached to the beneficiary, MSEDCL.

8.4 KRRSPL has mentioned that final order for modules was placed on 15 June 2023 and for inverter on 28 October 2021. KRRSPL has not submitted any order copies to show that it indeed placed order for the requisite solar equipment prior to 11 December 2021. Same must necessarily be submitted to show that KRRSPL acted with adequate diligence and acquired the equipment in a timely manner to avoid or minimize the impact of the possible tax implications.

9. KRRSPL in its Rejoinders filed on 29 December 2023 in Case No.110 of 2023, 111 of 2023, 112 of 2023, 113 of 2023 and 145 of 2023 replied only to contentions raised by MSEDCL. No averments have been made against MSPGCL. But during the hearing held on 2 January

2024 it has been specifically prayed to consider all previous submission. Accordingly, pleading have been noted. KRRSPL in its Rejoinder annexed EPC Agreement, Module Supply Agreement, GST Challans for modules and GST details for EPC contractor. Apart from above, documents in relation to GSTR 2A, Bank Statements reflecting payments to EPC contractor, E-way bills, Lorry receipts, GR Numbers, GSTR-2A are provided through a link and CD drive.

**Commission’s Analysis and Rulings:**

10. The Present Petitions have been filed by KRRSPL claiming Change in Law compensation under the PPAs signed for cumulative 100 MW capacity of solar project (10 MW project at 10 Locations) under MSKVY, setup at following locations:

Sr. No	Location	Plant Capacity
1	Manwat, District- Parbhani	10 MW
2	Nagarwadi, District-Wardha	10 MW
3	Goregaon, District-Hingoli	10 MW
4	Aarali (Bk), District-Osmanabad	10 MW
5	Bhendala, District- Jalna	10 MW
6	Kok, District- Parbhani	10 MW
7	Pedgaon, District-Hingoli	10 MW
8	Pimpranwadi, District- Nanded	10 MW
9	Rani Unchegaon, District- Jalna	10 MW
10	Hatta, District- Hingoli	10 MW

KRRSPL has signed location wise PPAs with MSPGCL on 13 January 2020 and later got amended on 29 November 2021 to incorporate change in locations. It is evident that provisions of PPA are similar in nature. The Commission vide its Order dated 29 November 2018 in Case No. 308 of 2018 has adopted the Tariff of Rs. 3.10/kWh.

11. Before dealing with the issues raised in the present Petition, it is important to note the background of PPA and PSA. These agreements have been executed after the process of Expression of Interest (EoI). Important highlights of the process adopted are as below:

- 11.1 As implementing agency for ‘MSKVY’, MSPGCL had undertaken the development of solar projects by inviting ‘Expression of Interest’ (EoI). MSPGCL had published the EoI dated 27 November 2017 for calling the interested Bidders/Developers/landowners for setting up Solar Power Plant/Plants of capacity up to 100 MW Cumulative at different locations on private land to cater to the electrical load of AG feeders in Vidarbha, Marathwada, Western and Northern regions of Maharashtra on pilot basis.

- 11.2 After being qualified, KRRSPL participated in reverse bidding process which was conducted on 4 June 2018. Post reverse bidding, MSPGCL requested bidders to further negotiate tariff.
- 11.3 The Commission vide its Order in Case No. 308 of 2018 dated 29 November 2018 had adopted the tariff offered by M/s. Karnataka Resco Rooftop Solar Co. Pvt. Ltd. (100 MW) and M/s. Sri Sri Shetkari Urja Nirmiti Co-op Soc. Ltd (2 MW).
- 11.4 The Commission in its subsequent Order dated 11 September 2019 in Case No. 112 of 2019 (MSPGCL's Petition for approval of PPA to be signed with Solar Developers) had observed that for the projects selected through EoI mechanism, no detailed Tender document / RfP was floated by MSPGCL. Therefore, at the time of bidding, there was no specific reference document provided by MSPGCL that contained various clauses / provisions of the contract to be entered into with successful bidder. Under such circumstances, the Commission noted that it was expected that bidders participating in the process must have relied on policies / guidelines / orders relating to competitive bidding for similar type of solar projects. With these observations, the Commission approved the PPA proposed by MSPGCL with certain modifications.

Based on above chronology it is established that at the time of EoI process, there was no specific reference document provided by MSPGCL that contained various clauses / provisions of the contract to be entered into with successful bidder. Therefore, as stated by the Commission in its Order dated 11 September 2019 bidders participating in the process including KRRSPL must have relied on policies / guidelines / orders relating to competitive bidding for similar type of solar projects.

12. Considering above factual position, material placed on record and arguments made during hearing, the Commission frames following issues for its considerations in present matter:
  - a. Whether PPA dated 13 January 2020 and PSA dated 14 January 2020 are back-to-back contracts?
  - b. Whether the Notification dated 31 December 2018 & 30 September 2021 resulting increase in GST on Solar Power Generating Systems executed through an EPC Contract qualifies as Change in Law?
  - c. Whether claims of KRRSPL are not barred on account of delay in filing?
  - d. Ascertainment of principal GST claim amount (if A & B above are positive) and modalities for computation of carrying cost (if applicable)?
  - e. What should be the frequency for payment of the compensation amount (if applicable)?

The Commission is addressing the above issues in the following paragraphs.

**13. Issue A: Whether PPA dated 13 January 2020 and PSA dated 14 January 2020 are back-to-back contracts?**

- 13.1 MSEDCL contended that KRRSPL has no privity of contract with MSEDCL. The PPA dated 13 January 2020 is between KRRSPL and MSPGCL. Thus, MSEDCL cannot be made a necessary party to the present proceedings.
- 13.2 MSPGCL pointed out that it has signed PSA with MSEDCL as end procurer on 14 January 2020 for sale of power. This PSA was contingent upon and inextricably linked to the PPA between KRRSPL and MSPGCL. MSPGCL is in role of Intermediary procurer and not the End procurer. The contracts (PPA and PSA) are typical back-to-back agreements.
- 13.3 The Commission notes that the Government of Maharashtra (GoM) has undertaken 'MSKVY' vide GR dated 14 June 2017 and 17 March 2018 for supplying power to the agriculture sector during daytime. As per guidelines issued by GoM vide GR dated 17 March 2018, for this scheme MSPGCL and MSEDCL were designated as 'implementation agencies', which have to carry out the preliminary feasibility reports for the projects at different locations across Maharashtra and to carry out the Competitive Bidding for selection of solar projects and to enter into appropriate agreements including long term PPA. The relevant Para of GR dated 17 March 2018 reads as below:

“

७. प्रस्तावित ठिकाणी खाजगी गुंतवणूकदाराकडून सौर कृषी वाहिनी प्रकल्प उभारण्यासाठी अंमलबजावणी यंत्रणेकडून योग्य तो करार २५ वर्षांच्या अथवा विवक्षित कालावधीकरिता करण्यात येईल. त्यामध्ये वीज खरेदी करार (PPA) व त्याबाबतच्या अटी व शर्तीचा समावेश असेल. विकासकाकडून खरेदी केलेली वीज अंमलबजावणी यंत्रणा जर महानिर्मिती कंपनी असल्यास ती महावितरण कंपनीला विक्री करेल. अशी वीज महावितरण कंपनीला विक्री करताना त्यात महानिर्मिती कंपनीस अशा वीजेसाठी येणाऱ्या व्यवस्थापन खर्चाचा समावेश करून त्याप्रमाणे महानिर्मिती कंपनी व महावितरण कंपनी यांच्यात वीज विक्री करार (Power Sale Agreement) करण्यात येईल. अशा वीज खरेदी/विक्री करारास (PPA/PSA) व व्यवस्थापन खर्चास महानिर्मिती/महावितरण कंपनीकडून महाराष्ट्र विद्युत नियामक आयोगाची मान्यता घेण्यात येईल. महावितरण कंपनीद्वारा राबविण्यात येणाऱ्या प्रकल्पांमध्ये वीज विक्री करारास महावितरण कंपनी महाराष्ट्र विद्युत नियामक आयोगाची मान्यता घेईल. अंमलबजावणी यंत्रणेद्वारे करण्यात येणाऱ्या सर्व करारामध्ये शासनाचे हित जपण्याची दक्षता घेण्याची जबाबदारी अंमलबजावणी यंत्रणेची राहिल.

”

From above it is evident that the Government GR dated 17 March 2018 clearly identifies MSPGCL as implementing agency who will procure power from Solar power project developer and sell it to MSEDCL who is end power procurer.

- 13.4 The Commission vide its Order dated 11 September 2019 in Case No.112 of 2019 accorded its approval to deviations in the PPA and approved PSA. In said matter with regards to Change in Law Articles the Commission ruled as below:

“  
1) **The Commission approves the proposed modification/deviation in ‘Change in Law’ and ‘Scheduled COD’ to the already approved Power Supply Agreement and the same shall be incorporated in the Power Supply Agreement and Power Purchase Agreement for both 150 MW projects selected through Competitive Bidding and for 102 MW projects selected through Expression of Interest route.**  
...”

In above Order, the Commission has explicitly directed to capture approved modifications/deviations in PPA and PSA documents.

- 13.5 The provisions related to Change in Law in PPA dated 13 January 2020 between MSPGCL and KRRSPL, reads as below:

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

**“Indian Government Instrumentality”** shall mean the Government of India, Government of State(s), where the power projects, SELLER and MSPGCL are located and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any of the State Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) of India.  
...”

## **Article 8: Change in Law**

### **8.1 Definitions**

*In this Article 8, the following terms shall have the following meanings:*

**8.1.1 “Change in Law means the occurrence of any of the following after the last date of bid submission i.e. June 4, 2018 resulting into any reduction or additional recurring/ non- recurring expenditure by SELLER or any income to SELLER:**

- i) ***the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re- enactment or consolidation) in India, of any law, including rules and regulations framed pursuant to such law:***
- ii) *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such law, or any competent court of law;*
- iii) *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- iv) *a change in the terms and conditions prescribed for obtaining any consents, clearances and permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and permits; except due to any default of SELLER :*
- v) ***any statutory change in tax structure, i.e. changes in the rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of solar power project and supply of power from the project by the SELLER and has the direct effect on the project shall be treated as per terms of this agreement;***  
*but shall not include*
  - (i) *any change in any withholding tax on income or dividends distributed to the shareholders of SELLER (If Applicable), or*
  - (ii) *any change on account of regulatory measures by the appropriate commission for calculation of availability.*

## 8.2 Relief for Change in Law:

8.2.1 *The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.*

8.2.2 *The decision of the Appropriate 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.*

13.6 The provisions related to Change in Law in PSA dated 14 January 2020 between MSPGCL and MSEDCL, reads as below:

“

*Article 8 Change in Law*

*8.1 Definitions*

*In this Article 8, the following terms shall have the following meanings:*

*8.1.1 "Change in Law" means the occurrence of any of the following after the last date of bid submission resulting into any reduction or additional recurring/ non-recurring expenditure by MSPGCL/ SPD or any income to MSPGCL / SPD:*

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

...

v) *any statutory change in tax structure, i.e change in rates of Taxes, duties and cess, or introduction of any new tax made applicable for setting up of Solar Power project and supply of power from the project by the SPD and has direct effect on the project, shall be treated as per the terms of this agreement; but shall not include*

*(i) any change in any withholding tax on income or dividends distributed to the shareholders of MSPGCL / SPD (if applicable), or*

*(ii) any change on account of regulatory measures by the Appropriate Commission including calculation of availability.*

*8.2 Relief for Change in Law:*

*8.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.*

*8.2.2 The decision of the Appropriate 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."*

13.7 After combined reading of GoM's GR notifying roll-out of MSKVY, Commission's Order dated 11 September 2019 in Case No. 112 of 2019 and modalities of PPA and PSA documents, it is ample clear that PPA and PSA signed under MSKVY are Back-to-back contracts.

**14. Issue B: Whether the Notification dated 31 December 2018 & 30 September 2021 resulting increase in GST on Solar Power Generating Systems executed through an EPC Contract qualifies as Change in Law?**

14.1 The Commission notes that at the time of seeking EoI (27 November 2017) and subsequent E-reverse auction (04 June 2018), the MoF's Notification dated 30 December



2018 and 30 September 2021 clarifying applicability of GST resulting increase in GST on Solar Power Generating Systems executed through an EPC Contract were not in force.

- 14.2 The Commission notes that GST rates have been revised after last date of bid submission. On the last date of the bid submission, GST on Solar Power Generating Systems was 5%. Due to MoF Clarification Notification dated 31 December 2018, GST composite rates on EPC Contracts increased from 5% to 8.9%. Further, MoF vide its Notification dated 30 September 2021 increase in GST rate on procurement of Modules and other SPGS materials from 5% to 12%. Due to which GST composite rates on EPC Contracts increased from 8.9% to 13.8%.
- 14.3 The Commission notes that any event can be said to be a 'Change in Law Event', only if it satisfies the provisions stipulated under the PPA. A relevant part of PPA dealing with provisions of Change in Law is reproduced at Para (13.5) above.
- 14.4 The Commission notes that the Notification of MoF is subsequent to the last date of Bid submission. Under the provisions of PPAs, an event arising from the actions of an authority covered within the definition of 'Indian Governmental Instrumentality' would satisfy the requirement of 'Change in Law'. 'Indian Government Instrumentality' as defined under the PPA includes any Ministry of the Government of India. The Ministry of Finance being Ministry under the Government of India is satisfying the requirement of 'an Indian Government Instrumentality' under the PPAs.
- 14.5 Further, as per Article 8.1 of the PPA, notification of new law or amendment of existing law or introduction / change in tax, duty or cess subsequent to Bid Submission date qualifies as Change in Law. Admittedly, MoF's Notification dated 30 December 2018 and 30 September 2021 have been occurred subsequent to Bid Submission date of 04 June 2018. Hence, this Notification dated 30 December 2018 and 30 September 2021 are Change in Law events under the PPA.

**15. Issue C: Whether claims of KRRSPL are not barred on account of delay in filing the Petition?**

- 15.1 MSEDCL contended that Change in Law Notice regarding the impact of Notification No. 24 of 2018 dated 31 December 2018 and Notification No. 8 of 2021 dated 30 September 2021 was given only on 14 October 2021 by KRRSPL to MSPGCL i.e. after a delay of around 2 years and 10 months. Further, the claim under the said Notifications have been filed before the Commission only by way of the present Petition on 28 February 2023 i.e. after a delay of 1 years 4 months. The delay on part of KRRSPL to make its claim under Change in Law and Article 8 of the PPA would be barred by the Doctrine of Delay and latches.

- 15.2 KRRSPL in its rejoinder stated that it is not under an obligation to issue a Change in Law notice. Further, it has issued Change in Law events notices to MSPGCL vide its letters dated 14 August 2020, 05 February 2021, 14 October 2021, 31 October 2022 and 02 January 2023. Further, it requested MSPGCL to carry out reconciliation. Present Petitions have been filed in the month of February-2023. All (10) Projects have been commissioned in May, June and July 2022. Therefore, KRRSPL approached the Commission within 6-7 months from Commissioning of the Projects. Therefore, there is no delay in approaching the Commission.
- 15.3 Article 8.2 of PPA provides for Relief for Change in Law event, the same is reproduced at Para (13.5) and not repeated here for sake of brevity. The Commission notes that provision of PPAs under consideration do not contemplate service of Change in Law Notice. Further, for seeking relief for Change in Law, the aggrieved party is required to approach the Commission. From perusal of exchange of correspondences, it is evident that KRRSPL has been following up with MSPGCL intimating Change in Law events.
- 15.4 MSPGCL vide its letter dated 02 November 2022 has extended SCOD till 29 July 2022 and accepted commissioning of full capacity 10x10 MW. KRRSPL categorically stated that all (10) projects have been commissioned in May-2022, June-2022 and July-2022. But neither MSPGCL nor KRRSPL provided explicit dates of the project commissioning in their submissions. The present Petitions have been filed on 27 February 2023. Considering above, it can be concluded that KRRSPL approached the Commission (7-9) months post project commissioning.
- 15.5 Time is the very important factor for judging performance of contract. In the absence of the any expressed time frame for performance of certain act/obligation in any agreement or contracts, that act/obligation ought to be performed within a reasonable time. Now it is important to determine whether KRRSPL acted diligently and approached the Commission within a reasonable time. As Change in Law impact also encompasses carrying cost, this issue is of prime importance. Ideally, a reasonable time is that amount of time which is fairly necessary, conveniently, to do whatever is required to be done, as soon as circumstances permit.
- 15.6 The Commission notes that parties involved in this matter have failed to bring on record any regulatory precedence on aspect of what should be a reasonable time in context with power projects. Reasonable time gets defined based on facts of the case and nature of industry. In such scenario, it is appropriate to build analogy based on similarly placed other grid connected generators. The Commission notes that in case of Change in Law claims pertaining to conventional generators, MERC (State Grid Code), 2020 provides for following:

“  
**33.10 In case of claim for un-approved change of law, the Seller/Generating Company shall file Petition before the Commission with its claim for un-approved change of law for purpose of incorporation in the merit order stack within reasonable time period not exceeding period of one month from the date of its first occurrence with intimation to the concerned Buyer/Distribution Licensee, failing which the Commission may take appropriate view, while approving the claim of Seller/Generating Company towards principal component of claim of change of law or its claim of carrying cost thereof or both.”**

Above provision is amply clarifying that the Generator ought to approach the Commission within (1) month from the date of occurrence of Change in Law event.

15.7 Apart from above, in past the Commission in its various Orders have opined that in case of Change in Law claims the affected parties need not to approach the Commission seeking in-principle approval of such Change in Law event and instead shall approach the Commission only after commissioning of plant with exact quantification of Change in Law impact. Relevant part of one of such Order dated 24 June 2019 issued in Case No. 46 of 2019 is reproduced below:

*“13. In view of the above, the Commission is of the opinion that APTFPL’s present Petition claiming impact of Change in Law event on estimated basis is premature and hence needs to be dismissed. Further as regards the request of declaring the event in principle as Change in Law, the Commission is of the opinion that PPA has very clear provisions describing which event can be considered as Change in Law event. Accordingly, parties to PPA can interpret which event can constitute as Change in Law event and accordingly claim compensation on actual basis. If there is dispute between the parties at that time or for allowing compensation for Change in Law event, then parties to PPA can approach the Commission. Concept of in-principle approval or declaration of any event as Change in Law event and then final approval of compensation in subsequent proceeding based on actual impact is alien to PPA provision and if so required, needs to be used only under exceptional circumstance. Making it as regular practice would not be consistent with PPA provisions.”*

Thus, the affected party needs to approach the Commission with an actual computation of Change in law compensation which is possible only after commissioning of the project.

15.8 Further, as per Rule 47 of the CGST Rules, 2017, the invoices in respect of taxable supply of services have to be issued within 30 days. It means the invoices for services which have

been availed on date of project Commissioning can be raised up to (30) days from project Commissioning.

15.9 Considering above factual matrix, it is legitimate to expect that KRRSPL will receive all GST invoices for supply and services used for commissioning of the project within a month from date of commissioning and would be able to compute exact impact of increased GST rate on its project in a period of a month thereafter. Therefore, 2 months period post commissioning of project can be considered as reasonable period in present case to approach the Commission for Change in Law compensation. Whereas in present case, KRRSPL has filed this Petition within 6 to 9 months from date of commissioning of the project, hence there is delay of 4 to 7 months in filing the Petition.

15.10 MSEDCL has contended that for such delay in filing the Petition, entire claim of Change in Law compensation be rejected. In the opinion of the Commission, such approach would not be appropriate as it is a fact that KRRSPL has commissioned the project by incurring additional expenses on account of Change in Law event. As affected party is eligible for compensation on account of Change in Law, denying it entirely on account of delay in filing Petition, especially when there is no such express provision under the contract, would be against the spirit of contract signed between the parties. But at the same time, it would be not appropriate to pass on burden of increased carrying cost on such compensation which may accrued due to delay in filing the Petition. Therefore, the Commission finds it appropriate to allow eligible principal amount of compensation on account of Change in Law but disallow carrying cost on the period of delay in filing this Petition (4 to 7 months). As per settled law, carrying cost is to be allowed on Change in law compensation from date of incurring such excess expenses to the date of Order of the Commission allowing such compensation. While computing such carrying cost period of delay in filing this Petition (difference between date of filing this Petition and 2 months from date of commissioning of the project) needs to be deducted.

15.11 The Commission also notes that MSPGCL in its submission has contended that original SCOD of these projects was July 2021, which was subsequently extended on account of Covid, in case KRRSPL could have acted prudently to secure supply of material based on original SCOD, impact of increased GST on account of notification dated 28 October 2021 could have been avoided. In this regard, the Commission is of the opinion that it is industrial practice to schedule delivery of solar module and inverters at the project site during last phase of project execution. Also, GST invoices are raised on date of supply of Goods and Services based on GST rates prevailing on date of supply. Hence, even though KRRSPL could have contracted for supply of solar module and inverters prior to date of GST notification, GST would be levied based on date of supply which is near to date of project commissioning. Therefore, the Commission rejects this contention of MSPGCL.

**16. Issue D: Ascertainment of principal GST claim amount (if A & B above are positive) and modalities for computation of carrying cost (if applicable).**

16.1 The Commission notes that KRRSPL has carried out procurement of solar module and inverter assembly for 10 X10 MW project combinedly and accordingly billing has been carried out. Further, other EPC works are also billed as one project.

16.2 As per prayer clauses, KRRSPL is seeking sum of Rs.3,23,66,106/- (increase in rates of GST - Rs. 3,07,56,140/- + the interest of Rs.16,09,967/-). The amount prayed is for complete 10x10 MW project. Further, following project specific amount has been claimed in the Petition:

	<b>Base Cost (excluding Taxes)</b>	<b>Good and Services Tax Liability as on the bid Date #</b>	<b>Goods and Services Taxes actually Paid / payable*</b>	<b>Module GST Impact Due to Change in Law</b>	<b>Interest @ SBI MCLR + 1.25% till Oct 31, 2022</b>	<b>Total Claim under Change in Law</b>
		<b>A</b>	<b>B</b>	<b>C=B-A</b>	<b>D</b>	<b>E= C+D</b>
Per Project	41,49,21,541	2,07,46,077	5,15,02,217	3,07,56,140	16,09,967	3,23,66,106

It is observed that for project specific impact computation, KRRSPL has just divided the claim amount equally amongst 10 project locations.

16.3 MSPGCL sought copies of invoices to establish the Change in Law impact. MSEDCL highlighted that its scrutiny is underway and following additional set of documents are required for claim ascertainment:

- a. EPC Contract and Agreement for Module and Other material;
- b. Lorry receipt, E way Bills and Material receipt Note;
- c. CA/CMA Certified material utilization certificate and closing stock report as on COD to verify whether all material procured are utilized for said project or not;
- d. Bank Account statement reflecting the payments made to EPC contractor;
- e. To verify GST payment, GST payment challans and GSTR-1, GSTR-2B are required.

Based on contentions raised and to establish one-to-one correlation of module utilization, KRRSPL also furnished certain set of documents and undertaken to provide additional set of documents, if required.

16.4 The Commission notes that in adjudicatory proceedings under Section 86 (1)(f) of the Electricity Act, 2003, it is expected that the contesting parties will highlight disputes in claim ascertainment on which specific adjudication is required. But in present case, no such exercise has been done and instead certain set of record have been submitted to the Commission for perusal.

16.5 As far as invoicing is concerned, it is relevant to mention Section 12, 13, 14 and 31 of CGST Act, 2017, which reads as below:

“

***TIME AND VALUE OF SUPPLY***

*12. (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.*

*(2) The time of supply of goods shall be the earlier of the following dates, namely: -*

*(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or*

*(b) the date on which the supplier receives the payment with respect to the supply:*

*Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.*

*Explanation 1. — For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.*

*Explanation 2. — For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.*

*13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

(2) *The time of supply of services shall be the earliest of the following dates, namely:—*

(a) *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*

(b) *the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*

(c) *the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*

*Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.*

*Explanation. — For the purposes of clauses (a) and (b)—*

(i) *the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;*

(ii) *“the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

....

14. *Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—*

(a) *in case the goods or services or both have been supplied before the change in rate of tax,—*

(i) *where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or*

(ii) *where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or*

- (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax,—
- (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
  - (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
  - (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

*Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.*

*Explanation. —For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

....

## CHAPTER VII

### TAX INVOICE, CREDIT AND DEBIT NOTES

**31. (1) A registered person supplying taxable goods shall, before or at the time of,—**

**(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or**

**(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:**

*Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.*



***(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:***

*Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—*

*(a) any other document issued in relation to the supply shall be deemed to be a tax invoice;*

*or*

*(b) tax invoice may not be issued.”*

16.6 As per the provisions of GST Law quoted above, invoice for goods has to be issued at the time of supply of goods which invariably has to be before date of commissioning as without such supply of goods commissioning of the plant would have not been possible. With regards to supply of services, the Commission notes that as per Rule 47 of the CGST Rules, 2017, the invoices in respect of taxable supply of services have to be issued within 30 days:

“

*47. Time limit for issuing tax invoice.- The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:”*

16.7 As per Section 12 and 13 of CGST Act, 2017, the liability to pay tax on goods shall arise at the time of supply of good/services. The exercise of establishing one-to-one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services is pre-requisite for claim settlement. It is expected that parties will carry out the exercise of establishment of one-to-one correlation and point out areas of disagreement. Further, neither MSPGCL nor KRRSPL provided explicit dates of the project commissioning in their submissions. As already held in the earlier part of the order, GST invoices for supply of goods can be considered till date of commissioning and for supply of services, invoices which have been issued within 30 days from date of commissioning can be considered. But as the exact date of commissioning of the projects have not been submitted, the Commission cannot go into exact computation of Change in Law compensation.

16.8 During the course of hearing KRRSPL agreed to furnish the additional details if required. Accordingly, Parties are directed to sit together and scrutinize invoices a fresh, keeping in mind the Commission’s observations. Said exercise shall be completed within a month from date of this Order. Amounts so scrutinized shall be eligible as compensation for the Change in Law event of increased GST. In case of dispute in quantification of claim, aggrieved party may file appropriate Petition before this Commission for adjudication of dispute.

16.9 It is a well settled principle that compensation on account of Change in Law provisions has to be granted along with carrying cost so as to restore the affected party to same economic position as if such Change in Law event has not occurred. KRRSPL proposed carrying costs at the rate of 1.25% excess of 1-year MCLR of State Bank of India. The Commission considers the same as prayed. As noted in Para (15.10), the carrying cost is admissible from date of incurrence of additional expenditure up to date of this Order after deducting period of delay in filing this Petition.

**17. Issue E: What should be the frequency for payment of compensation amount (if applicable)?**

17.1 KRRSPL in its Petitions have not prayed that compensation for Change in Law event be either paid on lumpsum basis.

17.2 In this regard, the Commission notes that in similar matters of payment of compensation on account of Change in Law, the Commission had opined that lumpsum payment would avoid further carrying cost on account of deferred payment. Further, Generator may willingly offer some discount on lumpsum payment. Considering all these aspects, the Commission had provided liberty to MSPGCL/MSEDCL to decide whether it intends to opt for payment of the compensation on lumpsum basis or per unit basis over the PPA tenure. Accordingly, MSPGCL/MSEDCL shall communicate its option of paying Change in Law compensation to Petitioners within a month from date of this Order.

17.3 In case option of paying compensation amount over the PPA period is selected then per unit rate of compensation shall be computed based on the following methodology:

- a) Firstly, total amount of compensation (principal plus carrying cost till date of this Order) is to be determined. Such total amount shall be equally divided over each year of PPA tenure.
- b) Thereafter, carrying cost towards deferred payment shall be computed on the unrecovered part (average of opening and closing balance) of total compensation at the simple interest rate of @ 1.25% plus SBI MCLR per annum.
- c) Summation of installment of compensation computed at 'a' above and carrying cost towards deferred payment computed at 'b' above will be the amount which is to be paid to the Petitioners during that particular year.
- d) Per unit cost for a particular year shall be computed by dividing amount determined in 'c' above by energy to be supplied during that year from the project capacity at declared CUF. However, during the year of commissioning, availability of project only for the part of year shall be appropriately factored while computing energy to be supplied from the project.

- e) At the end of the Financial Year, MSPGCL/MSEDCL shall reconcile total amount paid through per unit charge as against total amount which is recoverable in that year as per 'c' above. Any over-recovery shall be adjusted in the payment for the month of March.
- f) Although per unit charge at the start of each financial year needs to be decided based on declared CUF, year-end reconciliation at end of each financial year shall be undertaken as per actual CUF within range  $\pm 10\%$  of declared CUF.
- g) Any under-recovery on account of lower generation shall be carried forward to next year and shall be payable without any additional carrying cost and only from the excess generation above declared CUF. Such unrecovered compensation, if any, at the end of PPA tenure shall be reconciled and paid in the last month of PPA tenure at no additional carrying cost.

18. Hence, the following Order:


**ORDER**

1. **Petitions in Case No. 104 of 2023, 105 of 2023, 107 of 2023, 108 of 2023, 109 of 2023, 110 of 2023, 111 of 2023, 112 of 2023, 113 of 2023 and 145 of 2023 are partly allowed.**
2. **Impact of Change in Law on account of increased GST vide notification dated 31 December 2018 and 30 September 2021 is allowed in principle**
3. **MSPGCL and MSEDCL shall jointly scrutinize the change in law claims in detail as directed in para (16) within a period of one month from the date of this Order.**
4. **MSEDCL shall communicate its option of payment of Change in Law compensation to MSPGCL and Petitioners as stated in para (17) above within a month from the date of this Order.**

Sd/-  
(Surendra J. Biyani)  
Member

Sd/-  
(Anand M. Limaye)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Dr. Rajendra G. Ambekar)  
Secretary

