



नई दिल्ली
NEW DELHI

याचिका संख्या./Petition No. 517/MP/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member
श्री रविंदर सिंह ढिल्लों, सदस्य/Shri Ravinder Singh Dhillon

आदेश दिनांक/ Date of Order: 27th of January, 2026

IN THE MATTER OF:

Petition seeking humble indulgence of this Hon'ble Commission invoking its regulatory and inherent powers under the applicable provisions of the Electricity Act 2003, read with Central Electricity Regulatory Commission (Conduct of Business) Regulations 2023, to issue appropriate order(s) / direction(s) to the Respondents to immediately comply with the directions passed by this Hon'ble Commission dated 01.01.2024 in Petition no. 176/MP/2019 and pass consequential orders.

AND IN THE MATTER OF:

Solairepro Urja Private Limited
Office No. 203, Level-2, Pentagon-3,
Magarpatta City, Hadapsar,
Pune – 411 013

... Petitioner

Versus

- M/s NTPC Limited**
NTPC Bhawan
Core-7, Scope Complex
7, Institutional Area, Lodhi Road

New Delhi-110 003

2. NTPC Vidyut Vyapar Nigam Limited

NTPC Bhawan, Core 7, Scope Complex
7 Institutional Area, Lodhi Road,
New Delhi – 110 003

3. Southern Power Distribution Company of AP Limited

#19-13-651 A
Srinivasapuram Tiruchanoor Road
Tirupati – 517503, Chittoor District
Andhra Pradesh

4. Eastern Power Distribution Company of AP Limited

50-27-5/1, P&T Colony,
Seethammadhara, Visakhapatnam -530013
Andhra Pradesh

... Respondents

Parties Present:

Shri Hemant Sahai, Advocate, SUPL
Ms. Molshree Bhatnagar, Advocate, SUPL
Shri Shaيدا Dass, Advocate, SUPL
Shri Venkatesh, Advocate, NTPC
Shri Akash Lamba, Advocate, NTPC
Shri Aniket Kanhava, Advocate, NTPC
Ms. Manyaa Chandhok, Advocate, APDISCOMs

आदेश/ ORDER

The Petitioner, M/s Solairepro Urja Private Limited, has set up a 250 MW Solar Power Generating System at the Kadapa Ultra Mega Solar Park, based on photovoltaic technology, in the State of Andhra Pradesh. The Petitioner had previously filed petition no. 176/MP/2019 seeking relief on account of a Change in Law event, viz., the imposition of Safeguard Duty by Notification No. 01/2018 Customs (SG) dated 30.07.2018 (*2018 SGD Notification*) issued by the Department of Revenue, Ministry of Finance, Government of India. This Commission vide Order dated 01.01.2024 allowed Petition No. 176/MP/2019, holding *inter alia* that the imposition of *2018 SGD Notification* is a “Change in Law” event under Article 12 of the Power Purchase Agreement (PPA)

and directed the Respondents to reconcile and pay the consequential compensation to the Petitioner within a time-bound manner. As per the Petitioner, the reconciliation of the amounts has yet to commence, even after more than six (06) months from the submission of documents to NTPC Limited. APDISCOMs have preferred an Appeal No. 253 of 2024, before the Appellate Tribunal for Electricity (the Tribunal), challenging the Order dated 01.01.2024. Vide interim Order dated 22.01.2024, the Tribunal has directed that the change in law compensation shall be paid, subject to the result of the main appeal. By way of the present petition, the Petitioner is seeking indulgence of this Commission towards compliance with the directions in the Order dated 01.01.2024, i.e., to reconcile the amounts and commence making payments towards the change in law compensation granted by this Commission in the Order dated 01.01.2024.

2. The Respondent No. 1, NTPC Limited (NTPC), is an intermediary procurer, which is using the trading license of Respondent No. 2 – NTPC Vidyut Vyapar Nigam Limited (NVVN), for supplying power on a back-to-back basis to APDISCOMs. NVVN is a wholly owned subsidiary of NTPC and an interstate trading licensee. NVVN sells power to various distribution licensees located in any State in India after bundling solar power with thermal power generated at NTPC's generating stations, in accordance with the allocation made by the Ministry of Power, Government of India.
3. Respondent Nos. 3 and 4 are the two distribution companies of the State of Andhra Pradesh, which have entered into a Power Sale Agreement (PSA) dated 11.12.2017 with NTPC for receiving 250 MW power from the Petitioner herein.
4. The Petitioner has made the following prayers:
 - a) *Allow the present Petition;*
 - b) *Hold and declare that the actions/inaction on part of NTPC in not making payments of the compensation amount to the Petitioner in terms of the Order of this Hon'ble Commission dated 01.01.2024 passed in Petition No. 176/MP/2019 is in non-compliance and defiance of the directions of this Hon'ble Commission;*
 - c) *Hold and declare that the actions/inactions of the APDISCOMs in not participating in the reconciliation process is contrary to and in non-compliance of the directions contained in the Order of this Hon'ble Commission dated 01.01.2024 passed in Petition No. 176/MP/2019;*

- d) Issue appropriate order(s)/ direction(s) to the Respondent No. 1 to forthwith make payments to the Petitioner in terms of the claims of the Petitioner and the directions of this Hon'ble Commission in the Order dated 01.01.2024 in Petition 176/MP/2019;
- e) Issue appropriate directions to the Respondent Nos. 2 and 3 (APDISCOMs) to participate in the reconciliation proceedings and conclude the same within 15 (fifteen) days from the date of the Order, the claims of the Petitioner and comply with the directions of this Hon'ble Commission in the Order dated 01.01.2024 in Petition 176/MP/2019;

Factual Matrix:

5. The brief facts of the case are as under:

Description	Dates
Project	250 MW Solar PV
Location	Kadapa Ultra Mega Solar Park, Andhra Pradesh
Guidelines for Selection of 3000 MW Grid-Connected Solar PV Power Projects under Phase II Batch-II of the National Solar Mission (<i>NSM Guidelines</i>)	March 2015
RfS was issued on	27.10.2016
Bid was submitted on	14.12.2016
e-Reverse Auction was held on	11.04.2017
PSA was executed between NTPC and APDISCOMs	11.12.2017
Letter of Intent (LoI) was issued	11.12.2017
PPA was executed between the Petitioner and NTPC	07.02.2018
MNRE also has issued Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (<i>MNRE Guidelines</i>)	02.04.2018
Scheduled Commercial Operation date (SCoD) of the project	09.02.2019
Petition No. 176/MP/2019 was filed	17.06.2019
Final Order Date in Petition Number 176/MP/2019	01.01.2024

6. The present petition was filed on 18.12.2024. The petition was listed for hearing on 28.01.2025, at which the Commission, after hearing the Petitioner's submissions, admitted the Petition. During the hearing held on 19.05.2025, time was given to the Respondents to file their respective replies. On 31.07.2025, the Petitioner submitted that APDISCOMs are not participating in the reconciliation process. Instead, the APDISCOMs in their reply dated 05.06.2025 have sought to raise twofold objections; viz. (i) NTPC has submitted bills pertaining to 350.813 MW solar panels imported by the Petitioner whereas the contracted capacity of the Project is merely 250 MW, and (ii) NTPC is responsible for making the requisite payment to the Petitioner under the PPA and in terms of the order dated 01.01.2024. The Petitioner urged that the Respondents be directed to commence payment of Change in Law compensation for at least 250 MWp of capacity. NTPC submitted that it is merely an intermediary and has written several letters to the APDISCOMs, requesting that they carry out the reconciliation in terms of the Commission's order. However, they have not carried out any reconciliation to date. Considering NTPC's request, the Commission adjourned the matter and directed APDISCOMs to participate in the reconciliation proceedings without prejudice to their rights and contentions. On 28.08.2025, the Petitioner submitted that NTPC refuted the claims of the Petitioner, primarily on the grounds that APDISCOMs have refused to participate in the reconciliation process and, in the absence of APDISCOMs' participation, NTPC expressed its inability to reconcile the amount and to make the compensatory payment. However, in the Order dated 01.01.2024, the Commission has clearly held that the payment liability of NTPC to the Petitioner is not conditional upon the payment to be made by the Discoms to NTPC. The Commission found it appropriate not to prolong the matter any further and, accordingly, while permitting the Petitioner and the Respondents to file their written submissions, if any, within two weeks, reserved the matter for order.
7. It is pertinent to mention here that in compliance with the Record of Proceedings dated 28.08.2025, NTPC filed the written submissions on 15.09.2025, whereas the APDISCOMs filed the written submissions on 16.09.2025.

Submissions of the Petitioner:

8. Briefly, the Petitioner has submitted as follows:
- a. This Commission has been vested with appropriate general regulatory and inherent powers under Section 79, Section 94, Section 142 and Section 146 of the Electricity Act,

2003, read with Regulation 65 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 2003.

- b. In furtherance of the National Solar Guidelines (NSM Guidelines), NTPC issued Request for Selection No. NTPC/2015-16/NSM/TI/AP/12(R) dated 27.10.2016 (RfS) for the purchase and sale of grid-connected solar power under the NSM Guidelines.
- c. Pursuant to the aforesaid bid process, the Petitioner emerged as the successful bidder for developing the Project in Andhra Pradesh for supplying the solar power generated at the Project to NTPC as per the NSM Guidelines.
- d. On 11.12.2017, APDISCOMs and NTPC entered into a PSA on a back-to-back basis.
- e. On 07.02.2018, the Petitioner executed a PPA with NTPC.
- f. On 30.07.2018, the Government of India issued the SGD Notification under Section 8B of the Customs Tariff Act, 1975, imposing Safeguard Duty on the import of solar panels and modules into India from the People's Republic of China and Malaysia for a period of two years from 30.07.2018 till 29.07.2020.
- g. On account of the SGD Notification, the Petitioner incurred additional expenditure to procure the solar modules. As a direct result of the imposition of the Safeguard Duty, the Petitioner also had to bear an additional financing cost and pay 5% Goods and Services Tax (hereinafter referred to as "GST") on the amount paid as Safeguard Duty. The additional expenditure incurred by the Petitioner in developing the Project on account of the issuance of the SGD Notification is INR 154,67,13,701/- (Rupees One Hundred and Fifty-Four Crore Sixty-Seven Lacs Thirteen Thousand Seven Hundred and One Only). Further, the GST paid by the Petitioner on the above Safeguard Duty amounts to INR 7,73,35,685/- (Rupees Seven Crore Seventy-Three Lacs Thirty-Five Thousand Six Hundred and Eighty-Five Only).
- h. On 27.08.2018, the Government of India issued a directive under Section 107 of the Act by which this Commission has been directed to inter alia take into account the impact of any change in domestic duties, levies, cess and taxes imposed by the Central Government, State Government/ Union Territories or by any government instrumentality, which leads to a corresponding change in the cost, as a Change in Law and to allow the same as a pass through in tariff.
- i. In addition to the aforesaid, the MNRE has also issued an Office Memorandum dated 02.04.2018, which clarifies that the term "taxes" appearing in Clause 5.7.2 of the aforesaid MNRE Guidelines includes duties and cess.

- j. On 09.02.2019, the Petitioner achieved Scheduled Commercial Operation of its entire Project.
- k. On 18.06.2019, the Petitioner herein approached this Commission *vide* Petition No. 176/MP/2019 seeking a necessary declaration and relief(s) on account of the occurrence of a Change in Law Event and consequent compensation as entitled under Article 12 of the PPA.
- l. On 01.01.2024, the Commission passed the final orders in Petition 176/MP/2019 and *inter alia* held as under:

50. The summary of our findings is as follows:

Issue No. I: *The Central Commission has the jurisdiction under the Electricity Act, 2003, to adjudicate the instant matter.*

Issue No. II & III: *The Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA due to the impugned 2018 SGD Notification. Where imported goods are liable to Safeguard Duty, the value for calculation of IGST includes the Safeguard duty amount and the same is allowed. Only the actual amount of the 'Safeguard Duty' imposed by the competent authority and paid by the Petitioner needs to be compensated.*

The liability of 'Monthly Annuity Payment' will start from the 60th (sixtieth) day from the date of the order or from the date of submission of claims, whichever is later. Late Payment Surcharge shall be payable if the payment is not made within the due date.

Issue No. IV: *The Petitioner, in the instant petitions, 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 prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date. The directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the projects in question as also towards carrying cost (pre-COD & post-COD) 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 Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors., and connected matters.*

51. The Petition No. 176/MP/2019 is disposed of in terms of the above."

- m. APDISCOMs filed an appeal against the Order dated 01.01.2024 before the Tribunal on the ground that APDISCOMs are not liable to make any compensatory payments to NTPC. No stay has been granted.

- n. The Tribunal vide its Order dated 20.05.2024 has explicitly recorded the statement of APDISCOMs and directed that the Change in Law compensatory payment is to be made, subject to the final outcome of the appeal.
- o. On 08.07.2024, the Petitioner vide its letter of the same date, submitted all necessary documents for reconciliation to NTPC, which included the actual amounts incurred on payment of Safeguard Duty and GST thereon and the details of carrying cost.
- p. On 01.08.2024, NTPC refuted the claims of the Petitioner, primarily on the grounds that APDISCOMs have filed an appeal against the Order dated 01.01.2024. NTPC further informed that APDISCOMs are also refusing to participate in the reconciliation process. In the absence of APDISCOMs' participation, NTPC informed of its inability to reconcile the amounts and make compensatory payments.
- q. Hence this Petition.

Submissions of NTPC

9. Briefly, NTPC vide its reply (filed on 08.05.2025) has submitted as under:
 - a) NTPC denies all the averments, allegations, and contentions raised by the Petitioner.
Re. NTPC is merely a trader in the given facts and circumstances:
 - b) NTPC has entered into a back-to-back agreement with APDISCOMs in terms of Clause 1.1 of the RfS issued by NTPC under the NSM Guidelines for Kadapa Ultra Mega Solar Park in the State of Andhra Pradesh.
 - c) Accordingly, in furtherance of Clause 1.1 of the RfS, NTPC entered into a PSA dated 11.12.2017 with the APDISCOMs.
 - d) Therefore, this pertinent fact may be kept in mind while adjudication of the present Petition, as the role of the NTPC is limited in the present Petition.
Re. Requirement of 'Reconciliation' of 'Claim Amount' is a prerequisite for Payment to be made to the Petitioner.
 - e) In the Order dated 01.01.2024 in Petition no. 176/MP/2019, the Commission explicitly directed that any relief sought on account of 'change in law' compensation *qua* the issuance of SGD Notification shall be subject to a reconciliation process to be conducted among the contracted parties and further subject to one-to-one correlation.
 - f) While the obligation of NTPC is on a back-to-back basis, in terms of the directions of this Commission at Para 47(of Order dated 01.01.2024 in Petition no. 176/MP/2019) to make the unconditional payment to the Petitioner, the same can only be made subject to the completion of the process of reconciliation. Order dated 01.01.2024 in Petition

no. 176/MP/2019 shall be complied with in letter and spirit when the claim amount gets reconciled among the parties with respect to the 'Change in Law' impact arising as a result of the 'SGD Notification', and only thereafter, the NTPC can make the requisite payments to the Petitioner.

- g) Furthermore, particularly in the letters dated 01.03.2024, 12.08.2024, 26.08.2024, 30.10.2024, 09.12.2024, and 10.01.2025, NTPC has also highlighted to the APDISCOMs/ Distribution Licensees that in case of delay in reconciliation of claim amount, Late Payment Surcharge will be made applicable.

Submissions by APDISCOMs:

10. APDISCOMs filed their reply on 05.06.2025, vide which they have briefly submitted as under:
- a) It is apparent from the directions of the Commission that NTPC is responsible for making the requisite payments to the Petitioner under the PPA and in terms of the Order. APDISCOMs, on the other hand, were required to participate in the reconciliation process with NTPC Limited to determine the quantum to be paid.
 - b) The correspondence exchanged between APDISCOMs and NTPC shows that NTPC has submitted bills pertaining to 350.813 MW solar panels imported by the Petitioner. This is despite the Project's contracted capacity being merely 250 MW, as evident from the record. To this effect, APDISCOMs on 16.05.2025 sent an email, inter alia, requesting NTPC Limited to clarify and reconcile the above discrepancy.
 - c) APDISCOMs have, in fact, been in constant correspondence with NTPC to determine the actual quantum required to be paid to the Petitioner in pursuance of the Order dated 01.01.2024. However, this reconciliation process has so far been inconclusive and is therefore preventing the Respondent from being compliant with the mandate of this Commission under the Order.
 - d) In view of the above, it is necessary that such reconciliation is undertaken under the aegis of this Commission for NTPC to furnish all requisite information and clarifications sought by APDISCOMs for determining the final quantum.

Rejoinder filed by the Petitioner:

11. The Petitioner filed its submission through Rejoinder on 05.07.2025, in which it briefly submitted as under:

- a) APDISCOMs' have not disputed the applicability of the SGD Notification as a Change in Law event, neither in their present reply nor in the Appeal filed before the APTEL bearing Appeal No. 253 of 2024, and their failure to challenge this core finding constitutes an unequivocal acceptance and estops them from raising any contrary plea at this stage. The legal and factual position regarding the Change in Law status of the SGD Notification is thus settled and binding on all parties.
- b) APDISCOMs' only purported ground for withholding payment of the Change in Law compensation is the alleged issue of "AC/DC ratio discrepancies". This objection does not, in any manner, affect the Petitioner's entitlement to compensation under Article 12 of the PPA. The compensation mechanism under Article 12 stipulates "*upon the occurrence of a Change in Law event, the affected party is entitled to be restored to the same economic position as if such event had not occurred, subject only to the submission of requisite supporting documents*".
- c) APDISCOMs' attempt to raise the AC/DC ratio issue at this stage is nothing but a clear afterthought, devoid of any contractual or regulatory basis, and is manifestly intended to delay and frustrate the implementation of this Commission's binding directions in the Order dated 01.01.2024. There is no valid or lawful ground for the APDISCOMs' continued refusal to reconcile and release the Change in Law compensation which is due to the Petitioner.
- d) NTPC, through its email dated 20.05.2025, sought clarification and relevant documents from the Petitioner in response to a query raised by the APDISCOMs. The query noted that upon verification of the claims, it appeared that the Petitioner had imported solar modules amounting to 350.813 MW and is claiming SGD for the entire 350.813 MW, despite the plant's contracted capacity being 250 MW
- e) In response, the Petitioner, through its email dated 20.05.2025, clarified that the plant's AC capacity is 250 MW while the DC capacity is 350 MW. The Petitioner also enclosed a letter dated 23.10.2019 from the Director of Electrical Safety and Chief Electrical Inspector to the Government of Andhra Pradesh, which provides clarification regarding the plant's DC and AC capacities.
- f) During the meeting convened by NTPC Limited on 22.05.2025 with participation from representatives of APDISCOMs and the Petitioner, a query was raised by APDISCOMs concerning the DC: AC ratio adopted by the Petitioner, specifically enquiring whether the Petitioner had installed a DC capacity exceeding the contracted AC capacity. The

Petitioner at the said meeting clarified that it has installed a 350 MWp (DC) capacity against a contracted 250 MW (AC) capacity, thereby maintaining a DC to AC ratio of 1:1.4, in full compliance with applicable regulatory and contractual provisions. The said configuration is backed by approval from the Chief Electrical Inspector to the Government (CEIG), Govt. of Andhra Pradesh, dated 23.10.2019. The oversizing has been undertaken strictly in line with MNRE guidelines dated 10.03.2015, and the terms of the RfS and PPA, using commercially established technologies and in accordance with Prudent Utility Practices.

- g) The issue of AC/DC ratio has already been conclusively settled by binding regulatory and judicial precedents, as well as by the applicable policy framework. The MNRE Advisory dated 05.11.2019 permits solar developers to install higher DC capacity than contracted AC capacity, provided they adhere to the committed AC output and CUF requirements
- h) Furthermore, it is a settled position of law that the DC overloading is a widely accepted industry practice for solar projects. In the absence of any restriction in the PPA regarding the DC capacity to be installed, generators are at liberty to set up projects with higher DC capacity, and that the solar generators who have installed a DC capacity higher than the AC capacity are entitled to Change in Law compensation for the entire installed DC capacity, and such compensation could not be restricted to the AC capacity alone. Accordingly, the APDISCOM's reliance on the AC/DC ratio issue is not only legally untenable but also amounts to a clear abuse of process.
- i) Therefore, the petitioner's installation of 350.813 MW DC capacity is permissible under the MNRE Advisory. The DC: AC ratio in the present case is consistent with industry norms to achieve the contracted CUF without exceeding the 250 MW AC cap. No PPA clause restricts DC capacity, and the scheduled power remains within the contracted AC limit.
- j) The Respondents clearly were made aware of the AC:DC ratio adopted by the Petitioner. The Chief Electrical Inspector Certificate dated 23.10.2019, marked to the Respondents, categorically recorded the same. However, neither NTPC nor APDISCOMs ever raised any objection. As such, any objection made now is time-barred and non est in law.
- k) It is further submitted that Section 70 of the Indian Contract Act stipulates "*when a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such person enjoys the benefit thereof, the latter is bound to make*

compensation to the former". Therefore, the Respondents herein are liable to pay to the Petitioner for all of its claims.

Written Submissions by NTPC on 15.09.2025:

12. NTPC has reiterated its submission made in the pleadings, and as such, the same are not being reproduced herewith for the sake of brevity. Additionally, NTPC has submitted as under:

Re. Alleged Non-Compliance with the Order dated 01.01.2024

- a) NTPC has fully complied with the directions contained in the Order dated 01.01.2024. NTPC has promptly forwarded all documents received from the Petitioner to APDISCOMs and has repeatedly urged them to participate in the reconciliation process.
- b) NTPC has no independent liability to make payments to the Petitioner in the absence of reconciliation and one-to-one correlation of the claim amount with APDISCOMs, as expressly directed by this Commission. The delay is solely attributable to the non-cooperation of APDISCOMs. NTPC has diligently coordinated with both the Petitioner and the APDISCOMs and has continuously followed up on the reconciliation. In these circumstances, NTPC cannot be saddled with any liability or treated as being in willful non-compliance with the Order.

Re. Reliance on Regulatory Certainty

- c) While NTPC does not dispute the importance of regulatory certainty, such certainty cannot override or bypass the express directions contained in the Order dated 01.01.2024 in Petition No. 176/MP/2019. This Commission has clearly mandated reconciliation and one-to-one correlation of claims as a precondition for payment.
- d) Instead of fastening liability on NTPC, this Commission may consider directing APDISCOMs to act in compliance with the said Order and complete the reconciliation process, thereby giving effect to the regulatory framework without undermining procedural safeguards.

Re. Alleged Liability for Penalty under Section 142 of the Act

- e) NTPC has not acted in defiance of the Order dated 01.01.2024 in Petition No. 176/MP/2019. On the contrary, NTPC has taken proactive steps to commence the reconciliation process as directed. The reliance placed by the Petitioner on *Maninderjit Singh Bitta v. Union of India* is misplaced, as the said case pertains to judicial contempt. In contrast, in the present matter, NTPC is not in violation of any directions issued by this Commission.

f) NTPC has already forwarded all documents received from the Petitioner to APDISCOMs for reconciliation and one-to-one correlation vide email dated 13.02.2024. Further, NTPC has written as many as 10 letters to APDISCOMs between February 2024 and January 2025, persistently requesting them to carry out reconciliation in accordance with the directions of this Commission. These facts demonstrate NTPC's due compliance and diligence, leaving no occasion for any penalty to be imposed.

Re. Powers of the Commission and Alleged Wilful Non-Compliance

- g) NTPC has taken all necessary steps to comply with the Order dated 01.01.2024. NTPC has repeatedly requested APDISCOMs to convene meetings to reconcile the claim amount, but these requests have gone unanswered. Despite repeated communications, APDISCOMs have failed to act in accordance with the timelines prescribed by this Commission, thereby creating the present bottleneck.
- h) NTPC has forwarded all relevant documents received from the Petitioner to APDISCOMs and has consistently urged them to complete reconciliation. As such, NTPC cannot be held liable for any penalties or Late Payment Surcharge arising solely on account of delays attributable to APDISCOMs.
- i) Further, the PSA executed between NTPC and APDISCOMs clearly establishes a back-to-back mechanism. Any payment made by NTPC to the Petitioner is required to be reimbursed by APDISCOMs within the stipulated period, including any applicable surcharge. The delay in the present case being entirely due to the inaction of APDISCOMs, NTPC cannot be held liable for any alleged non-compliance.
- j) NTPC has complied with the directions of this Commission under the PPA and PSA by duly forwarding the Petitioner's claims to the APDISCOMs. NTPC has also persistently urged the APDISCOMs to undertake reconciliation of the claim amount towards additional expenditure arising from the Change in Law event.
- k) NTPC is handicapped in respect of any payment obligations until the amounts are reconciled and a one-to-one correlation of the claims is duly established, as specifically mandated by this Commission in its Order dated 01.01.2024 in Petition No. 176/MP/2019. In the absence of such reconciliation, no liability can be fastened upon NTPC.

Re. Dispute Regarding Responsibility for Payment

- l) The APDISCOMs have argued that NTPC is solely responsible for making payment to the Petitioner under the PPA, with their role confined to reconciliation. The Petitioner has

denied this position, contending instead that the delay arises from the APDISCOMs' failure to comply with the Order dated 01.01.2024.

- m) The PSA executed between NTPC and APDISCOMs establishes a back-to-back mechanism, under which any liability discharged by NTPC towards the Petitioner must be reimbursed by APDISCOMs within the stipulated period, including any applicable surcharge.
- n) NTPC has already fulfilled its obligations by forwarding all relevant documents received from the Petitioner to APDISCOMs and by persistently requesting them to complete reconciliation. The continuing dispute between the Petitioner and APDISCOMs on this issue only reinforces the view that the real impediment lies in APDISCOMs' failure to act. Accordingly, NTPC cannot be fastened with independent liability for payment or penal consequences when APDISCOMs have obstructed the reconciliation process itself.

Re. Dispute Regarding AC/DC Capacity Ratio

- o) The APDISCOMs have objected that NTPC submitted bills for 350.813 MW despite the contracted capacity being 250 MW. The Petitioner denies this, stating that the AC/DC ratio is irrelevant to compensation, as the 350 MWp DC capacity is fully compliant with approvals, guidelines, and industry practice, and that the objection is a belated attempt by APDISCOMs to delay compliance. The dispute raised by APDISCOMs and the Petitioner's counter-allegations only reinforce the necessity of reconciliation before any payment can be made. The question of whether claims should be limited to the contracted AC capacity or extended to the installed DC capacity is a matter that requires detailed verification, supported by a one-to-one correlation of invoices, certificates, and approvals.
- p) NTPC has already sought clarification from the Petitioner and forwarded the documents received to APDISCOMs for their consideration. Until the parties reconcile the claim amount, NTPC cannot independently adjudicate or assume liability for this disputed issue. The responsibility to resolve such discrepancies lies within the reconciliation process expressly mandated by this Commission in its Order dated 01.01.2024.

Re. Dispute Regarding Continuous Communication

- q) APDISCOMs have claimed that they have been in continuous communication with NTPC to reconcile the amount payable to the Petitioner, but the reconciliation remains incomplete. The Petitioner has denied this assertion, terming it false and baseless, and contending that the delay stems entirely from the non-cooperation and lax approach of APDISCOMs.

- r) NTPC has taken all necessary steps to facilitate reconciliation, including forwarding the Petitioner's documents and repeatedly requesting APDISCOMs to convene meetings. The conflicting positions of the APDISCOMs and the Petitioner demonstrate only that the delay is not attributable to NTPC. Until reconciliation is completed among the parties, NTPC cannot be made independently liable for payment

Written Submissions by APDISCOMs dated 16.09.2025:

13. APDISCOMs have reiterated their submission made in the pleadings, and as such, the same are not being reproduced herewith for the sake of brevity. Additionally, APDISCOMs have submitted as follows:

Re. The order only adjudicates Respondent nos. 1-2's obligation to pay the Petitioner

- a) The Order has clearly found that the liability of payment to the Petitioner under the PPA is owed by NTPC/NVVN. NTPC/NVVN have failed to comply with the mandate of the Order, despite such liability being held to be without subject to any other contingencies. NTPC/NVVN have the sole liability to make payments and execute the Order in favour of the Petitioner.

Re. The answering respondents' conduct demonstrates compliance with the order

- b) From the correspondence exchanged between the Answering APDISCOMs and NTPC/NVVN, it is clear that bills pertaining to 350.813 MW (DC Capacity) solar panels imported by the Petitioner have been submitted. This is despite the Project's contracted capacity being merely 250 MW (**AC Capacity/Contracted Capacity**), as evident from the record.
- c) To this effect, APDISCOMs on 16.05.2025 issued an email *inter alia* requesting NTPC to clarify and reconcile the above discrepancy.
- d) APDISCOMs have actively participated in the reconciliation process with NTPC/NVVN. APDISCOMs have, in fact, been in constant correspondence with NTPC to determine the actual quantum required to be paid to the Petitioner in pursuance of the Order.
- e) The Petitioner contends that the DC to AC ratio of 1:1.14 is in compliance with the applicable regulatory and contractual provisions. However, neither the PSA nor the PPA contemplates any such provision on the ratio. It is only the Contracted Capacity that finds reference in the PPA.
- f) Further, the reliance placed by the Petitioner on the approval dated 23 October 2019 issued by the Chief Electricity Inspector, Government of Andhra Pradesh is misconceived. This

approval is issued under Section 54 of the Electricity Act, 2003, and under Regulations 32 & 43(4) of the Central Electricity Authority Measures, which relate to the approval for safety and technical adequacy of the electrical installation.

- g) Such approval cannot override or amend the commercial and contractual arrangements agreed between the parties under the PPA and PSA. In particular, the approval cannot be read to validate any claim for compensation based on a DC-to-AC ratio exceeding the contracted capacity, when the PPA itself expressly recognises only the AC/Contracted Capacity of 250 MW.
- h) In view of the above, APDISCOMs undertake to participate in the reconciliation process with NTPC/NVVN to the extent of 250 MW, strictly in compliance with the directions of the Commission and solely with a view to honouring the said orders, albeit under protest. Such participation shall be without prejudice to the rights and contentions of the APDISCOMs in Appeal No. 253 of 2024, pending adjudication before the Tribunal, and shall not, in any manner, be construed as an admission of liability on the part of the DISCOMs.

Analysis and decision:

14. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

15. The main issues that arise for consideration before the Commission in the present matter are as under:

Issue No. I: *Whether the actions/inaction on the part of the Respondents in not making payments of the compensation amount to the Petitioner in terms of the Order of this Commission dated 01.01.2024, passed in Petition No. 176/MP/2019, on the ground of alleged mismatch of AC: DC MW quantum justified?*

Issue No. II: *Whether Respondents should be directed to make payments forthwith to the Petitioner in terms of the claims of the Petitioner and the directions of this Commission in the Order dated 01.01.2024 in Petition 176/MP/2019?*

16. We now take issues one by one for discussion.

Issue No. I: *Whether the actions/inaction on the part of the Respondents in not making payments of the compensation amount to the Petitioner in terms of the Order of this*

Commission dated 01.01.2024, passed in Petition No. 176/MP/2019, on the ground of alleged mismatch of AC: DC MW quantum justified?

17. The Petitioner has submitted that vide Order dated 01.01.2024 in Petition no. 176/MP/2019, the Commission had, inter alia, held that the Petitioner is entitled to compensation on account of a Change in Law, as per the terms of Article 12 of the PPA, due to the imposition of Ministry of Finance Notification No. 1/2018-Customs (SG), dated 30.07.2018. Only the actual amount of the 'Safeguard Duty' imposed by the competent authority and paid by the Petitioner needs to be compensated. NTPC was to make the unconditional payment to the Petitioner. However, to date, the Respondents have not complied with the Order dated 01.01.2024; as such, the Respondents may be directed to pay the compensation amount. *Per Contra*, NTPC has submitted that payment to the Petitioner is subject to the completion of the reconciliation process. APDISCOMs have objected that NTPC submitted bills for 350.813 MW. APDISCOM's only purported ground for withholding payment of the Change in Law compensation is the alleged issue of AC/DC ratio discrepancies. NTPC has already sought clarification from the Petitioner and forwarded the documents received to APDISCOMs for their consideration. Until the parties reconcile the claim amount, NTPC cannot independently adjudicate or assume liability for this disputed issue.
18. Furthermore, APDISCOMs have submitted that it is apparent from the Commission's directions that NTPC is responsible for making the requisite payments to the Petitioner under the PPA and in terms of the Order. APDISCOMs were required to participate in the reconciliation process with NTPC to determine the quantum to be paid. Even though the contracted capacity of the Project is merely 250 MW, NTPC submitted bills for 350.813 MW of solar panels imported by the Petitioner.
19. APDISCOMs have argued that the Petitioner imported the Solar Modules for a quantum of 350.813 MW and is also claiming SGD for the entire 350.813 MW against the Plant Contracted capacity of 250 MW. APDISCOMs have objected that NTPC submitted bills for 350.813 MW despite the contracted capacity being 250 MW.
20. Relevant Article of the PPA dated 07.02.2018 stipulates as under:

Contracted Capacity shall mean 250 MW contracted with NTPC for supply by the SPD to NTPC at the Delivery Point from the Solar Power Project;

Project Commissioning shall mean all equipments up to the rated capacity have been installed and energy has flown into grid;

4.4. Right to Contracted Capacity & Energy

4.4.1. NTPC, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyond **567.21 Million kWh (MU) i.e. energy generated corresponding to a CUF of 25.9% as committed by the SPD.** If for any Contract Year, it is found that the SPD has not been able to **generate minimum energy of 457.71 Million kWh (MU) corresponding to a CUF of 20.9% (i.e. 25.9% - 5%)** on account of reasons solely attributable to the SPD, the noncompliance by SPD shall make SPD liable to pay the compensation provided in the PSA as payable to Discoms and shall duly pay such compensation to NTPC to enable NTPC to remit the amount to Discoms. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be computed at the rate equal to the compensation payable by the Discoms towards non-meeting of RPOs, subject to a minimum of 25% of the applicable tariff.

21. We observe that the Chief Electrical Inspector to the Govt. of A.P., vide its letter No. DES&CEIG/GNT/Tec Sec/HT/KDP-87/D.No. 802/2019 dated 23.10.2019 has certified as under:

Lr.No. DES&CEIG/GNT/Tec Sec/HT/KDP-87/D.No. 802/2019 dated 23.10.2019

Sir,

*Sub: The Electricity Act, 2003 and Central Electricity. Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 - Electrical Installation of Voltage exceeding 650V of M/s. Solairepro Urja Private Limited, 250MW Solar Power Plant, Ramachandrayapalli(V), Mylavaram(M), Kadapa Dist - Statutory Approval under Section 54 of The Electricity Act, 2003 & Regulation 43(4)&32 of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 - **Approval Accorded.***

Ref:- 1) Inspection Dated: 21/10/2019
2) Your letter received on 23/10/2019

Under Section 54, Regulation 43(4)&32 of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, the following equipments of your Electrical Installation of voltage exceeding 650V are approved for energisation.

AS PER ANNEXURE ENCLOSED

Under Regulation 43(4) of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, any additions or alteration in your installation shall not be connected to supply until the same are approved in writing by this office and offer for annual inspection under Regulation 30 of Central Electricity Authority. (Measures relating to Safety and Electric Supply) Regulations, 2010 every year to the concerned Deputy Electrical Inspector.

Under Regulation 13(4), 46(7) of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, you are all Limes solely responsible for the maintenance of the above installation on such condition as to be free from danger.

The above approval accorded is without prejudice to the statutory/mandatory obligations to be fulfilled by you under various other acts and rules as the case may be.

The approval accorded for energizing the electrical equipment is the safety for men and machine from electrical hazards in your installation and ipso facto does not confer any right to be used for any other purpose other than for which the approval is accorded.

The original manufacturer Test certificates of Transformer etc. are accepted and returned.

Annexure to Lr.No. DES&CEIG/GNT/Tec Sec/HT/KDP-87/D.No. 802/2019 dated 23.10.2019

M/s. Solairepro Urja Private Limited, **250MW** Solar Power Plant, Ramachandrayapalli(V), Mylavaram(M), Kadapa Dist

...

III	Solar Plant			
1	Solar Inverters	Make: Sun-2000-95 KTL Huawei Capacity: 90 kW, 800 V Qty: 2558 No's Total Capacity: 2558*90 = 230.22 MW	Make: Sun-2000-95 KTL Huawei Capacity: 90 kW, 800 V Qty: 220 No's Total Capacity: 220*90 = 19.80 MW	Make: Sun-2000-95 KTL Huawei Capacity: 90 kW, 800 V Qty: 2778 No's Total Capacity: 2778*90 = 250.02 MW
2	Solar PV Modules	Make: Jinko Qty: 338 Wp X 72840 No's = 24.30 MWp 330 Wp X 741520 No's = 244.70 MWp 325 Wp X 139464 No's = 45.23 MWp Total Capacity = 320.83 MWp (DC) = 230.22MW (AC)	Make: Jinko Qty: 330 Wp X 67234 No's = 22.02 MWp Total Capacity = 29.22 MWp (DC) = 19.80 (AC) MW	Make: Jinko Qty: 335 Wp X 1,39,774 No's = 46.52 MWp 330 Wp X 741520 No's = 244.70 MWp 325 Wp X 139464 No's = 45.23 MWp Total Capacity = 350.05 MWp (DC) = 250.02MW (AC)

Signature valid

Digitally signed by Ganitham
Vijaya Lakshmi
Date: 2019.10.23 15:50:22 IST
Reason: Approved

#Digitally signed

Director of Electrical Safety And
Chief Electrical Inspector to Govt (PAC)

-9-

22. We observe that vide letter dated 26.08.2024, NTPC has informed APDISCOMs as under:

Sub: Reconciliation of SGD claim made by Solairepro Urja Pvt. Ltd. (250 MW Kadapa Solar Park Project in Andhra Pradesh) based on CERC order in case no. CERC-176/MP/2019

Ref: 1- PSA with APEPDCL AND APSPDCL DISCOMs dated- 11.12.2017
2- PPA dated- 07.02.2018
3- NTPC Email dated -07.02.2024
4- NTPC Email dated -13.02.2024
5- NTPC letter dated -15.02.2024
6- NTPC letter dated -01.03.2024
7- NTPC letter dated -24.07.2024
8- NTPC letter dated -31.07.2024
9- NTPC letter dated -12.08.2024

Sir,

This is in continuation of earlier communications as referred above on the subject matter.

CERC vide order dated 01.01.2024 in the matter of "SGD claim for 250 MW Kadapa Solar Park in Andhra Pradesh has directed the contracting parties to carry out the reconciliation of additional expenditure along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised.

In this regard, it may be noted that all relevant documents in respect of the claim have been shared by NTPC with APPCC through e-mail dated 13.02.2024 & originals through courier on 16.02.2024 for review by APPCC to settle SGD claim in a time bound manner as directed by Hon'ble Commission order dated 01.01.2024

However, after many repetitive requests by NTPC, we have not received a suitable date from APPCC for reconciliation of the said claim till date.

You are therefore, again requested to inform a suitable date for a meeting (online/offline) for reconciliation, failing which, shall attract Late Payment Surcharge (LPSC) in terms of the PPAs & PSAs.

23. We observe that vide email dated 20.05.2025, NTPC has sought clarification from the Petitioner as under:

From: Malkhan Singh <MSNAGAR@NTPC.CO.IN>

Sent: 20 May 2025 16:55

To: SAXENA Vishal (ENGIE India) <vishal.saxena@engie.com>

Subject: Clarification on Import of Solar Panels - M/s. Solairepro urja Pvt Ltd - Regarding.

Dear Sir,

This is with reference to query from APPCC, regarding the reconciliation of Change in Law claims (SGD claim) of 250 MW Solar PV project at Kadapa Solar Park (AP).

*On verification of the claims by APDISCOMs, **it is observed that M/s. Solairepro urja Pvt Ltd imported the Solar Modules for a quantum of 350.813 MW and is also claiming SGD for the entire 350.813 MW against the Plant Contracted capacity of 250 MW. The total claim of change in law for the entire 350.813 MW is Rs. 162.40 crores.***

In this regard, it is requested to provide necessary documents/ clarifications in support of your claim.

24. We observe that vide email dated 20.05.2025, the Petitioner has clarified the NTPC as under:

From: SAXENA Vishal (ENGIE India)

Sent: 20 May 2025 17:04

To: Malkhan Singh <MSNAGAR@NTPC.CO.IN>

Subject: RE: Clarification on Import of Solar Panels - M/s. Solairepro urja Pvt Ltd - Regarding.

Dear Sir,

This is to inform that 250 MW is Plant AC capacity and 350 MWp is Plant DC capacity. I have enclosed the CEIG, Govt. of Andhra Pradesh Approval dated 23.10.2019 (Page 10) for your kind reference.

25. We observe that MNRE has issued an Advisory/clarification dated 05.11.2019, with reference to the D.C. capacity of Solar PV Power Plant, which is reproduced as under:

F. No. 283/63/2019-GRID SOLAR dated 5th November, 2019

ADVISORY/ CLARIFICATION

Sub: Advisory / Clarification w.r.t. D.C. Capacity of Solar PV Power Plants

(1). MNRE has received representations from various Solar Developers/ Solar Developer Associations that recently few States have raised questions and concerns around globally adopted practice of installing additional DC capacity, over and above the nameplate / contracted AC capacity, with the objective of meeting the committed Capacity Utilisation Factor (CUF) in Power Purchase Agreements (PPAs) / Power Supply Agreements (PSAs).

(2). It has further been stated that the State Governments feel that installation of such additional capacity serves as a medium for additional revenue generation for the developers and that such additional DC capacity cannot be allowed.

(3). The issue has been examined in the Ministry of New & Renewable Energy (MNRE), and it is noted that:

i. As per the present bidding practice, the procurer, whether State Government Agencies/ DISCOMS or Central Government entities like SECI/ NTPC, invite bids from solar power developers for setting up solar PV power plant of a certain capacity (MW). The capacity won by the successful bidder (solar PV power developer), on signing of Power Purchase Agreement (PPA) becomes the "Contracted Capacity", which is the capacity (MW) in AC terms, allocated for supply by that bidder.

ii. Along with 'Contracted Capacity', the PPA also provides for a range of energy supply based on Capacity Utilisation Factor (CUF). While the procurer is not obligated to buy energy beyond this range, the developer is liable for penal charges for supply of energy less than the minimum committed energy or minimum committed Capacity Utilisation Factor (CUF).

iii. Thus, the PPAs define the relationship between the Solar Developers and the procurer in terms of AC capacity, and range of energy supply based on CUF, with procurement obligation within this range.

iv. The requirement of designing and installation of additional DC panels may emanate from the contractual need to supply the committed energy and does not cast any obligation on the procurer to buy generation in excess of the contracted energy range.

v. The procurer, without getting into the design and installation of solar capacity on the DC side, should only ensure that the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant, is in excess of the contracted AC capacity.

(4). Accordingly, all concerned are hereby advised that:

i. As long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on Capacity Utilisation Factor (CUF) requirements, the design and installation of solar capacity on the DC side should be left to the generator / developer.

ii. Even if the installed DC capacity (MWp) [expressed as the sum of the nominal DC rating (Wp) of all the individual solar PV modules installed] in a solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is in excess of the contracted AC capacity, unless there is any specific clause in the PPA restricting such D.C. capacity.

iii. The contracting party is not obliged to buy any power in excess of the contracted quantum. There is provision of penalty in case the supply falls short of the contracted quantity.

iv. As per law, the setting up of generation capacity is an unlicensed activity and therefore any person is entitled to set up any capacity which he desires to set up, and sell power to any entity which may want to buy it.

(5). This issues with the approval of Hon'ble Minister (Power & NRE).

26. We observe that the Appellate Tribunal for Electricity (the Tribunal) vide its judgment dated 16.11.2021 in *Appeal No. 163 of 2020* in the case titled *Nisagra Renewable Energy Private Limited Vs. MERC & Another* and *Appeal No. 171 of 2020* in the case titled *Juniper Green Energy Private Limited Vs. MERC & Another*, has held as under:

CIL Compensation

...

22. The respondents defend the impugned order contending that MERC has rightly computed the formula for Compensation for Change in Law and the same is not arbitrary or contrary to the provisions of the PPA, exercising its regulatory powers. Conceding that the PPA and the Competitive Bidding Guidelines do not stipulate DC capacity of modules/panels to be installed to deliver the contracted AC capacity reliance is placed on the decision reported as *Energy Watchdog Vs. Central Electricity Regulatory Commission and Ors.*, (2017) 14 SCC 80, particularly on the following observations:

“19. ... It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commissions general regulatory powers under Section 79(1)(b) can then be used.”

23. The respondent justifies the impugned view also referring to the appellants' submissions that the oversizing DC capacity up to 150% of the required AC output is a prevalent industrial practice arguing that the formula adopted for arriving at the DC capacity which, in turn, is used for calculating the compensation creates a balance between the interests of the solar power developers and the power consumers by laying down the benchmark for DC capacity.

24. Reference is made to Article 5.5.1 of the PPA and Clause 3.12.1 of RfS stipulating the minimum declared capacity utilization factor (“CUF”) to be 19%. It is argued that the appellants' decision to install higher DC capacity and subsequently declare a higher CUF is purely a commercial decision which, it is urged, ought not be allowed to be used “to escape the formula adopted” by the Commission.

25. It has been argued that the appellants have mixed up two different issues of DC capacity required to meet the contractual obligations of supply of AC capacity, and the achievement of the declared CUF in the range of $\pm 10\%$ of the declared CUF. The

flexibility band of $\pm 10\%$ is provided for factoring uncertainty in solar radiations or environmental variations during the tenure of the PPA. This, it is argued, does not in any way suggest that project's installed capacity may vary between $\pm 10\%$ of DC Module capacity required to achieve AC capacity with minimum CUF of 19%. The submission is that if such interpretation were to be accepted, the project developer would be required to install PV modules/panels only to the extent of achieving CUF of 17.10% (lower band of 19%) which, in turn, may make it difficult to achieve CUF in the range of $+10\%$ of minimum required CUF of 19% i.e., between 17.10% to 20.9%.

26. The learned Counsel for MERC also argued that the contention of the appellants for considering minimum CUF as 17.12% instead of 19% while computing allowable DC module capacity for Change in Law compensation, is contrary to the PPA which casts an obligation upon the appellants to ensure achieving 19% CUF. It was submitted that the appellants under the garb of CIL compensation are trying to amend the PPA which is not permissible. It was also argued that adoption of the impugned formula was necessary to comply with the prudence and due diligence provisions as specified in Article 3.1.8 of the PPA to ensure and allow only prudent oversizing of DC capacities under CIL and avoid burden of inefficiencies of generator to be passed on to procurer and consumers.

27. The respondents contest the argument of the appellants that MSEDCL has accepted and taken benefit of lower tariff reiterating that the decision to install higher DC capacity and subsequently declare a higher CUF was purely a commercial decision based on which the bid was submitted by the appellants. The appellants, it is submitted, are getting compensated for units of energy supplied as per the PPA tariff as well as for the impact of SGD.

28. We have already taken note of Clause 3.12.1 of the RfS which gave to the developer the right to declare CUF at the time of entering into the PPA, subject only to the condition that the Declared CUF could not be less than 19%, the developer also being given the liberty to "revise the same once within first year of COD". This was incorporated in Clause 5.5.1 of the PPA, both documents - RfS and PPA – having been approved by the MERC vide Order dated 12.06.2018 in Case No. 131 of 2018.

29. The appellants point out, and the respondents do not contest, that the MNRE had issued a Clarification dated 05.11.2019 which, to the extent relevant, may be quoted as under:

"(4) ...

i. As long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on Capacity Utilisation Factor (CUF) requirements, the design and installation of solar capacity on the DC side should be left to the generator / developer.

ii. Even if the installed DC capacity (MWp) [expressed as the sum of the nominal DC rating (Wp) of all the individual solar PV modules installed] in a solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not in violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is on excess of the contracted AC capacity, unless there is any specific clause in the PPA restricting such D.C. capacity."

(Emphasis supplied)

30. *It appears that the compensation for Change in Law has been limited based on the ratio of the declared CUF under the PPA to the minimum CUF of 19% by applying a simplistic linear formula based on normative parameters to arbitrarily calculate the DC capacity it having been overlooked that it is the prerogative of the developer to finalize the optimal DC capacity for its Project.*

31. *Since the parties in question are not before us, we do not wish to make any comment on the merits of the Order dated 13.11.2019 in case No. 259 of 2019 titled Azure Power Thirty-Four Private Limited vs. MSEDCL (“Azure Order”) and Order dated 22.06.2020 in case No. 8 of 2020 titled ReNew Solar Power Private Limited vs. MSEDCL (“ReNew Order”) – both projects set up in Rajasthan - which have been followed by the Commission in the cases of the present appellants. Suffice it to say that the said earlier dispensation by Azure Order and ReNew Order cannot be applied to the case of Juniper and Nisagra, due to locational and technical differences, the projects of the appellants being situate in Maharashtra, the distinguishing features being inclusive of the higher irradiation or solar energy potential in Rajasthan. As pointed out by the appellants there is no finding returned that the higher DC capacity or higher CUF in relation to the projects in hand is imprudent.*

32. *The contractual understanding, relevant for present purposes, as articulated in Clause 5.5.1 of PPA (as approved by the Commission) read with Clause 9.12.1 of RfS (both quoted earlier) concerns two stages. The first pertains to declaration of CUF at the time of entering into the PPA whereunder it (CUF) could be of any percentage higher than 19% at the option or choice of the generator. The second kicks in during operation of the project after Commercial Operation Date (COD) wherein the actual CUF achieved and maintained has to be within +10% of the Declared CUF. The appellants are right in contending that aside from minimum 19% there is no restriction on the project developer, it being free to provide for and declare a higher CUF at the time of PPA and may even revise it upwards, albeit only once, within the first year of COD. The discipline of maintaining CUF in generation, post COD, within the specified range (+10%) comes up later for the duration of PPA, not with reference to minimum of 19% specified for declaration but in relation to the declared CUF. We agree with the appellants and adopt the illustration given wherein if the Declared CUF is 20%, the permitted range will be 18-22% and if the Declared CUF is 30%, the permitted range will be 27-33%, during the period of PPA post COD. If the carte blanche given by Clause 5.5.1 of PPA in the matter of declaration of CUF is perceived in hindsight by the Commission to be cause of undue burden on the consumer, it would be within its power and jurisdiction to introduce better controls, but for future, by framing regulations.*

33. *Juniper has installed DC capacity of 43.72 MW (146%- or 1.457-times overloading) and Nisagra set up its projects with DC capacity of 101.79 MW (145%- or 1.454-times overloading). As against the minimum CUF of 19%, declared CUF is 25.16%, 24.92% and 25.29% in the case of Juniper and at 25.40%, 25.00%, 25.66%, 25.37%, 25.15%, 25.69% and 25.05% in the case of Nisagra. The appellants have only exercised the right given by RfS and PPA to design their projects in a manner that can deliver the Contracted Capacity and achieve declared CUF. In this view, we find nothing remiss when it is asserted by the appellants that the projects were accordingly set up and it was declared that CUF in the range of 24.9%-25.7% would be offered.*

34. *The State Commission had approved the procurement and adopted tariff by Order dated 27.11.2018 in case No. 277 of 2018. The Tariff Order further records the submissions whereby MSEDCL acknowledged that these projects were differently placed due to the geographic spread and smaller size of Solar Power units and included distribution losses up to 11kV level. It is not disputed that the appellants had declared their CUF in terms of PPA, the said Declared CUF for the respective projects having been accepted by MSEDCL. We hold, on the given facts, that once the RfS and PPA have been approved by the Commission and the declared CUF has been accepted by the parties and the Commission, it (the Declared CUF) cannot be questioned.*

35. *There can be no quarrel with the proposition that Article 9.2.1 of the PPAs dealing with Change in Law envisages restoration of the affected party to the same financial position. Accordingly, Change in Law impact ought to be computed on actuals. While granting in-principle approval for change in law, the MERC, by its Order dated 18.07.2019, unequivocally held that compensation is to be determined on actuals. The said order having attained finality, the MERC was expected to consider determination of compensation on actual DC installed capacity. By the impugned order, the Commission has limited the compensation by restricting the project DC capacity to 39.67 MW as against the total DC capacity of 43.72 MW for Juniper and to 93.33 MW as against the total DC capacity of 101.79 MW for Nisagra. Such an approach is contrary to the terms of the PPAs as well as settled law on the subject, particularly because it is based on normative/arbitrary formula different from the actuals. Juniper and Nisagra have already incurred the full cost for the Project and additional cost on account of imposition of Safeguard Duty, which is a part of the project cost. The claim for compensation under change in law provision is limited to the additional burden of taxes and duties. There is no basis for the assumption at the stage of scrutiny of such claim that the projects have been designed sub-optimally. Relief sought pertains to reimbursement of additional cost on account of Change in Law and not the full cost for the modules.*

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

27. From the above, we observe that MNRE Advisory dated 05.11.2019 stipulates that as long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on CUF requirements, the design and installation of solar capacity on the DC side should be left to the generator/developer. Even if the installed DC capacity (MWp) [expressed as the sum of the nominal DC rating (Wp) of all the individual solar PV modules installed] in a

solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is in excess of the contracted AC capacity, unless there is any specific clause in the PPA restricting such D.C. capacity. Further, the Tribunal vide its Order dated 16.11.2021, has held that the higher installed DC capacity results in higher generation from the project while using the same AC infrastructure, thereby optimising the utilisation of the AC infrastructure, leading to a lower cost of energy, benefits of which have been passed on to Discoms as a lower tariff in terms of the PPAs. DC overloading is accepted as an industry practice for Solar Projects. Discoms have already taken the benefit of higher generation at a lower tariff. Discoms cannot claim that DC overloading is high. Accordingly, there is no escape from the full DC capacity of the projects under consideration when computing Change in Law compensation.

28. We note that in the instant petition, the Contracted Capacity of the project of the Petitioner was 250 MW at the Delivery Point. We observe that vide letter No. DES&CEIG/GNT/Tec Sec/HT/KDP-87/D.No. 802/2019 dated 23.10.2019, the Chief Electrical Inspector to the Govt. of A.P. has certified that the equipment of 250 MW of the Petitioner was approved for energisation. We observe that, as per the Annexure attached to the letter dated 23.10.2019, Solar PV modules with a total capacity of 350.05 MWp (DC) were considered for the energisation and commissioning of the project. As such, we are of the view that APDISCOMs' withholding of payment of the Change in Law compensation on the alleged issue of AC/DC MW quantum mismatch is unwarranted.

29. The issue is decided accordingly.

Issue No. II: Whether Respondents should be directed to make payments forthwith to the Petitioner in terms of the claims of the Petitioner and the directions of this Commission in the Order dated 01.01.2024 in Petition 176/MP/2019?

30. We observe that vide Order dated 01.01.2024 in Petition no. 176/MP/2019, the Commission had, inter alia, held as under:

*47. Accordingly, the Commission hereby directs **the contracting parties to carry out the reconciliation** of additional expenditure along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with an auditor certificate. The Commission further directs that the responding APDISCOMS is liable to*

pay NTPC all the above-reconciled claims that NTPC has to pay to the Petitioner. However, payment to the Petitioner by NTPC is not conditional upon the payment to be made by the responding APDISCOMS to NTPC.

Summary

50. The summary of our findings is as follows:

Issue No. I: The Central Commission has the jurisdiction under the Electricity Act, 2003 to adjudicate the instant matter.

Issue No. II & III: The Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA due to the impugned 2018 SGD Notification. Where imported goods are liable to Safeguard Duty, the value for calculation of IGST includes the Safeguard duty amount and the same is allowed. Only the actual amount of the 'Safeguard Duty' imposed by the competent authority and paid by the Petitioner needs to be compensated.

The liability of 'Monthly Annuity Payment' will start from the 60th (sixtieth) day from the date of the order or from the date of submission of claims, whichever is later. Late Payment Surcharge shall be payable if the payment is not made within the due date.

Issue No. IV: The Petitioner, in the instant petitions, 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 prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.

The directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the projects in question as also towards carrying cost (pre-COD & post-COD) 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 Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors., and connected matters.

51. The Petition No. 176/MP/2019 is disposed of in terms of the above.

31. The Commission observes that in the judgment dated 26.12.2017, the Hon'ble High Court of Jammu and Kashmir in the matter Industries Employees and... vs Sh. Shalinder Kumar & Anr. has held that:

"19. Firstly, the respondents have consumed lot of time in implementing the judgment. Then while finding no escape route, in principle they have taken decision to implement the judgment which they have done partly by according sanction for extension of pensionary benefits but made it blunt by prescribing conditional mode for implementation. These types of tactics are unacceptable. No authority, how high or whosoever may be, can sit over the judgment of the Court. Quite strange, the judgment dated 12.03.2009 has attained finality but it has not been implemented in its real spirit.

20. Non-implementation of the judgment in its real spirit either is deliberate or is with some design to satisfy the ego.

21. In our Constitutional scheme, a person has a right to fight for his rights and also to fight against any discrimination. When a person fights for his rights by having recourse to litigation and when he finally succeeds, he cannot be deprived of reaping the fruits of successful litigation.”

32. From the above, the Commission notes that the Order has to be implemented in its real spirit. No person can be deprived of their legal claims. The delays and laches in implementing the Order constitute an abuse of legal process. In the instant case, the Commission notes that vide Order dated 01.01.2024, it was held that the Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA. The liability of ‘Monthly Annuity Payment’ started from the 60th (sixtieth) day from the date of the order or from the date of submission of claims, whichever is later. Late Payment Surcharge was to be paid if payment was not made by the due date. The contracting parties were to carry out the reconciliation of additional expenditure, along with carrying cost, by exhibiting a clear one-to-one correlation between the projects and the invoices raised, supported with an auditor’s certificate. Further, APDISCOMs were liable to pay NTPC all the reconciled claims that NTPC has to pay to the Petitioner. However, payment to the Petitioner by NTPC was not conditional on the payment made by the responding APDISCOMS to NTPC. NTPC has submitted that the amount was not reconciled between the contracting parties, and therefore, the payment could not be initiated.
33. In view of the discussions in Issue no. I, we hereby direct the contracting parties to reconcile the amount within 30 days of the date of this Order. Further, NTPC is directed to pay the due claim to the Petitioner, along with a late payment surcharge, through supplementary invoices within 45 days from the date of the order, and to claim the same from the respondent Discoms. In the event of the failure to comply with the order, the Petitioner will be at liberty to approach this Commission for initiation of action under section 142 of the Act.
34. The issues are decided accordingly.
35. The Petition No. 517/MP/2024 is disposed of in terms of the above.

Sd/-

रविंदर सिंह ढिल्लों
सदस्य

Sd/-

हरीश दुदानी
सदस्य

Sd/-

रमेश बाबू वी.
सदस्य

Sd/-

जिष्णु बरुआ
अध्यक्ष