

No/N/271/2018

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Miller Tank Bed Area, Vasanthnagar, Bengaluru-560 052.

Dated:11.02.2022

Present:

Sri H.M. Manjunatha : **Officiating Chairperson**
Sri M.D. Ravi : **Member**

OP No.114/2018

BETWEEN:

Adani Green Energy (UP) Limited,
(A Company Registered under the
provisions of the Companies Act,1956,
having its registered office at)
Adani House, Nr. Mithakhali Six Roads,
Navrangpura, Ahmedabad – 380 009,
Gujarat-380 015.

...PETITIONER

(Represented by Smt. Poonam Patil Advocate)

AND

Chamundeshwari Electricity Supply Corporation Limited (CESC),
A Company Registered under the
provisions of Companies Act, 1956
having its Registered Office at
#29, Kaveri Grameena Bank Road,
Vijayanagara, 2nd Stage, Hinkal,
Mysore-570017

...RESPONDENT

(Represented by Sri. Sriranga, Advocate,
for M/s Justlaw Advocates).

ORDER

1. This Petition is filed under Section 86 and other provisions of the Electricity Act, 2003 for (i) approval of "Change in Law", and (ii) consequential relief to compensate for the increase in capital cost due to introduction of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Tax Acts enacted by the respective States, in terms of Article 15 of the Power Purchase Agreements between the petitioner and respondent in above stated petition. The main was petition filed on 13.12.2018 in which the petitioner did not quantify the claims for additional non-recurring capital cost incurred and O& M cost which will be incurred due to introduction of GST Laws in terms of Article 15 of the Power Purchase Agreements. During the course of hearing, the learned Counsel for petitioner prayed to file an amended petition to quantify the GST and O&M claims and pay the requisite court fee as per provisions of the KERC (Fee) Regulations, 2016. The Commission could not conduct the court hearing due to Lockdown declared by the Central and State Government due to Covid-19. After following Standard Operating Procedure for conducting court proceedings, this Commission started hearing the cases through virtual mode. Keeping in view of the fact, the petitioner on 01.12.2020, has filed an amendment application to the main petition on 01.12.2020 with quantification of compensation amount for additional non-recurring capital cost and Operation and Maintenance (O&M) expenditures from the respondent and also remitted the requisite court fees. The respondent

did not object to the amendment application. Accordingly, IA for amendment was allowed on 04.12.2020 by this Commission. Thereafter the petitioner has filed Amended petition on 05.01.2021 praying for the following reliefs to;

- (a) Admit the Petition;
- (b) Hold and declare that the imposition of the Integrated Goods and Services Tax, 2017, Central Goods and Services Tax, 2017 and Karnataka Goods and Services Tax, 2017 is an event under Change in Law under Article 15 of the PPA;
- (c) Restore the Petitioner to the same economic condition prior to occurrence of the Change in Law by way of adjustment in tariff in terms of Article 15 of the PPA by increasing the tariff or direct the Respondent to make a onetime lumpsum payment of Rs.6,26,84,865/- (Six crores, twenty-six lakhs eighty four thousand eight hundred sixty five only) being the sum incurred by the Petitioner towards goods and services and Rs.64,37,395/- (Sixty four lakhs thirty seven thousand three hundred ninety five only)) and also towards GST & O & M expenses respectively.
- (d) To pass such other and further order or orders as this Hon'ble Commission deems appropriate under the fact and circumstances of the present case.

2. The brief facts set out in this petition are as under:

- (a) The Petitioner, Adani Green Energy (UP) Limited, (hereafter referred to as 'AGEUPL' or 'Petitioner') is a company incorporated under the provisions of the Companies Act, 2013, a 100% subsidiary of Adani Green Energy Limited, (hereafter referred to as 'AGEL') and is primarily engaged in the business of setting up of power plants and generation

of electricity, having its Registered Office at Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad-380009, Gujarat.

(b) The Respondent, Chamundeshwari Electricity Supply Corporation, is a distribution licensee in the State of Karnataka (hereafter referred to as 'CESC'), with whom the Petitioner has executed a Power Purchase Agreement (PPA).

(c) The Department of Energy, Government of Karnataka, had resolved to undertake development of 290 MW of solar power in Karnataka to be implemented in 17 Taluks, through private sector participation. Accordingly, the Respondent invited proposals by its "Request for Proposal" dated 12.02.2016 prescribing the technical and commercial conditions for selection of bidders for under taking development of solar PV ground mount power plants totaling to 290 MW (AC), in Karnataka, to be implemented in 17 Taluks, through private sector participation.

(d) The petitioner company submitted its proposal for development of solar PV ground mount project in the Magadi Taluk, Ramanagara District before KREDL.

(e) That the KREDL, after evaluation of the proposals received from bidders, had accepted the bid of said M/s. Adani Green Energy (UP) Limited (AGEUPL) for development of 20 MW (AC) capacity of Solar PV ground mount Project in the Magadi Taluk, Ramanagara District and issued a Letter of Award No. KREDL/07/RPO/GC/290MWs-F298/2016/1963

dated: 30.05.2016 (herein after called the "LoA") to the Petitioner, wherein, inter alia, asked Petitioner to execute Power Purchase Agreement (herein after called the "PPA") with Respondent. The LOA and Allotment Letter dated 30.05.2016 is produced as Annexure P-1.

(f) Thereafter, the Petitioner executed a PPA with the Respondent on 28.06.2016 for setting up of 20 MW solar power plant Taluk: Magadi Taluk, Ramanagara District at a tariff of Rs.4.92/kWh on long term basis. The PPA was thereafter forwarded by the Respondent to the Commission for approval. The PPA dated 28.06.2016 is produced as Annexure P-2.

(g) That this Commission, vide its letter no. KERC/S/F-31/Vol-1171/16-17/1698 dated: 27.09.2016 has communicated approval of the Commission for the PPA executed between the Petitioner and Respondent in respect of development of 20 MW (AC) Solar Power Project in at Taluk: Magadi Taluk, Ramanagara District, Karnataka, subject to incorporating the corrections/modifications in the said PPA by entering into a suitable Supplemental PPA. The letter dated 27.09.2016 is produced as Annexure P- 3 (Colly).

(h) Subsequent to the execution of the PPA, on 12.04.2017, the Government of India introduced the Goods and Services Tax, replacing multiple taxes levied by the Central and State Governments. The petitioner could not have contemplated such additional GST taxes at the time of bid submission. The introduction of GST has made huge

impact on the actual cost of the project vis-a-vis budgeted cost which is beyond the control of the petitioner and is a Change in Law event in terms of the PPA.

- (i) On 17.07.2017, petitioner company sent notice to CESC regarding the Change in Law event that took place after applicability of GST w.e.f 01.07.2017. In this regard, no response was received from the CESC, therefore, the petitioner company has filed this Petition seeking approval for Change in Law in terms of Article 15 of the PPAs. The notice produced as Annexure P-4.

- (j) The Effective date and Scheduled Commissioning Date (SCOD), in accordance with the PPA was on 26.09.2017. The Petitioner commissioned its projects on 08.01.2017. The Synchronization Certificate dated 09.01.2018 is attached as Annexure P-5.

- (k) Before the Effective Date i.e. 27.09.2016, the earlier existing indirect tax regime was characterized by multiple tax laws, different mechanisms, definitions etc. but with the introduction of GST, several indirect taxes including Excise Duty, Service Tax, VAT, Central Sales Tax etc. have been replaced by a different taxation scheme namely GST. With the introduction of CGST Act,2017; IGST Act,2017 and SGST Act,2017 (GST laws) with effect from 01.07.2017, the CGST & SGST are to be levied on Intra-State supplies of goods or services by the Central and State Government respectively and the IGST is levied on Inter -State supplies of goods or services by the Central Government, at the rate

prescribed from time to time.

On 8.9.2016, the Constitutional Act,2016 was enacted, empowering both the Centre and States to levy GST on supply of goods and services. The Articles 246A, 268A ,269A and 279A were inserted into the Constitution and pursuant to the Constitution Act.2016 the parliament and State Legislatures have enacted the following GST Laws:-

- (i) The Central Goods and Services Tax Act.2017 ("CGST Act")
- (ii) The Integrated Goods and Services Tax Act,2017("IGST Act")
- (iii) The Karnataka Goods and Services Tax Act,2017 ("SGST Act").

(l) In view of the aforesaid GST Laws (IGST Act, CGST Act, and SGST Act), it is submitted that a tax slab of 5% to 28% has been introduced with respect to Goods & Services required for execution, construction and operation of Solar Projects w.e.f. 01.07.2017. The said goods and services were previously either exempted or fell under lower tax slabs. The new slabs have also led to an increase in the overall solar power project cost. The change in tax regime, has escalated the capital cost of the petitioner's project, hence making the tariff quoted at the time of bid for allocation of project is becoming unviable. The total escalation in cost of the petitioner due to implementation of GST is about Rs.6,84,44,297.

(m) Impact GST Laws on Cost of construction of solar Project:

The petitioner has submitted that the construction cost of the project has escalated to the tune of Rs. 6,20,06,902 due to introduction of GST Laws A description of the levy of GST laws on each component is

detailed here under: -

- i) PV Module supply - Before the Effective Date, no tax was being levied on the supply of PV Modules. In view of the rates notified under Schedule I of the IGST Goods Notification, the supply of PV Modules is now subject to tax of IGST at the rate of 18% is being levied. This had led to an incremental impact of Rs.2,24,86,250 on the cost of the Project.
- ii) Mounting Structure, a Nut-Bolts; Clamp a Fasteners - Before the Effective Date, Central Sales Tax at the rate of 2% is levied. In view of the rates notified under IGST Goods Notification, CGST Goods Notification and SGST Good Notification, the said components are subject to tax of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively are being levied. This had led to an incremental impact of Rs.1,95,39,147 on the cost of the Project.
- iii) Cables – the Effective Date, Central Sales Tax at the rate of 2% was being was being levied against form C under the Central Sales Tax Act 1956, as amended from time to time. In view of the rates notified under IGST Goods Notification, CGST Goods Notifications and SGST Goods Notification, the said component of IGST, CGST and SGST are now subject to tax of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively are being levied. This had led to an incremental impact of Rs.44,99,996 on the cost of the Project.
- iv) Electrical Supply - Before the Effective Date, Central Sales Tax at the rate of 2% was being levied against “Form C” under the Central Sales Tax Act 1956. The said component is now subject to tax of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively. This had led to an incremental impact of Rs.47,11,465 on the cost of the Project.

- v) Preoperative Services - Before the Effective Date, Service Tax at the rate of 15% was being levied on the said services. In view of rates notified under IGST / CGST/ SGST Services Notifications, the said service components of IGST, CGST and SGST at the tax rate of 18%, 9% and 9% respectively. This had led to an incremental impact of Rs.12,59,321 on the cost of the Project.
- vi) Electrical Erection: Before the Effective Date, Service Tax at the rate of 15% was levied on the said services. The said service components of IGST, CGST and SGST at the tax rate of 18%, 9% and 9% respectively, being levied of these services. This had led to an incremental impact of Rs.3,34,469 on the cost of the Project.
- vii) O&M Tools Supply - Before the Effective Date, Central Sales Tax at the rate of 2% was being was being levied against form C under the Central Sales Tax Act 1956, as amended from time to time. In view of the rates notified under IGST Goods Notification, CGST Goods Notifications and SGST Goods Notification, the said component of IGST, CGST and SGST are now subject to tax of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively are being levied. This had led to an incremental impact of Rs.1,44,534 on the cost of the Project.
- viii) Engineering Consultancy Services - Before the Effective Date, Service Tax @ 15% was being levied on this component. In view of the rates notified under the IGST Services Notification, the said service tax of IGST at the rate of 18% is being levied. This had led to an incremental impact of Rs.26,208 on the cost of the Project.
- ix) Civil Services - Before the Effective Date, Service Tax at the rate of 6% was being levied on the said services. In view of rates notified under IGST / CGST and SGST Services Notifications, the said service components of IGST, CGST and SGST at the tax rate of 18%, 9% and

9% respectively. This had led to an incremental impact of Rs.40,05,812 on the cost of the Project.

- x) Erection of Mounting Structure - Before the Effective Date, Service Tax at the rate of 15% was being levied on the said services. In view of rates notified under IGST Service Notification CGST Services Notification and rates notified under the SGST Services Notification, the said service components of IGST, CGST and SGST at the tax rate of 18%, 9% and 9% respectively are being levied of these services. This had led to an incremental impact of impact of Rs. 2,79,408 on the cost of the Project
- xi) Logistics Services - Before the Effective Date, Service Tax at the rate of 15% was being was being levied on the said services. In view of rates notified under IGST Service Notification CGST Services Notification and rates notified under the SGST Services Notification, the said service components of IGST, CGST and SGST at the tax rate of 18%, 9% and 9% respectively are being levied of these services. This had led to an incremental impact of impact of Rs. 14,84,512 on the cost of the Project.
- xii) PEB Supply - that before the Effective Date, Central Sales Tax at the rate of 2% was being levied on the said supply of Goods. In view of rates notified under IGST Goods Notification, the said component is subject to tax at the rate of 18%. This had led to an incremental impact of Rs.4,73,265 on the cost of the Project.
- xiii) Switchyard Supply - that before the Effective Date, Central Sales Tax at the rate of 2% was being levied on the said supply of Goods against production of C Form. In view of rates notified under IGST/CGST/ SGST Goods Notifications, the Goods tax of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively. This had led to an incremental impact of Rs.23,16,442 on the cost of the Project.

- xiv) Switchgear Supply - It is submitted that before the Effective Date, Central Sales Tax at the rate of 2% was being levied on the said supply of Goods. In view of rates notified under CGST Goods Notification and rates notified under the SGST Goods Notification, the Goods taxes of CGST and SGST at the rate of 9% each respectively are being levied on these Goods. This had led to an incremental impact of Rs. 3,27,112 on the cost of the Project.
- xv) Land Services - that before the Effective Date, Service Tax @ 15% was being levied on this component. In view of the rates notified under the IGST Service Notification, CGST Services Notification and rates notified under the SGST Services Notification, the said service taxes of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively are being levied. This had led to an incremental impact of Rs. 1,18,286/- on the cost of the Project.
- xvi) Financing & IDC Charges Services - that before the Effective Date, Service Tax @ 15% was being levied on this component. Service Tax @ 15% was being levied on this component. In view of the rates notified under the IGST Service Notification, CGST Services Notification and rates notified under the SGST Services Notification, the said service taxes of IGST, CGST and SGST at the rate of 18%, 9% and 9% respectively are being levied. This had led to an incremental impact of Rs. 225/- on the cost of the Project.
- xvii) Statutory - It is submitted that before the Effective Date, Service Tax @ 15% was being levied on this component. In view of the rates notified under the IGST Services Notification, the said service tax of IGST at the rate of 18% is being levied. This had led to an incremental impact of Rs. 450/- on the cost of the Project.

xviii) The petitioner submits that he has submitted the copies of relevant invoices raised by Adani Enterprise Limited and for supplying LT Cable is annexed as Annexure P-15 along with the petition and copies of such documents also provided to the respondent.

(n) Impact of GST on Operation & Maintenance (O&M) Expenses: -

- (i) It is submitted that before the Effective Date; the Service Tax @ 15% was being levied on O&M Expenses. In view of the Notification No. 20/2017-Central Tax (Rate) of Department of Revenue, Ministry of Finance, Government of India under the CGST Act dated 22.08.2017 and under the Notification dated 29.06.2017 of Finance Department, Government of Karnataka under the SGST Act, CGST and SGST at the of 9% each is being levied on operation and maintenance expenses. This will lead to an incremental impact of Rs.64.38 Lakhs on the cost of the project.
- (ii) It is further, submitted that for determination of the impact of GST on Operation & Maintenance expenses which the petitioner is going to incur in next 25 years of PPA tenure, petitioner has worked out the same on the basis of relevant normative parameters as specified by this Hon'ble Commission in its Order dated 12.04.2017 in the matter of "Revision of tariff for Grid Interactive Megawatt Scale Solar Power Plants for FY 18" the considered normative O&M cost considered for the year of 2017-18 is Rs. 7.40 Lacs/MW, which includes Service Tax of 15%, with an annual escalation of 5.72%. In the present petition, petitioner has considered the same parameter with an additional 3%

GST impact, i.e., 18% GST on the normative O&M expenses. Accordingly, net present value of pre-GST O&M Expenses and post GST impact works out to Rs.64.38 Lakhs and is being claimed as compensation. A comparative chart demonstrating the impact on Project Cost, Estimated at Completion (EAC) due to GST Regime is also annexed as Annexure- P-16.

(o) Submissions on Change in Law:

- (i) It is pertinent to mention here that the definition of Law as provided under the PPA is an inclusive and illustrative definition, and contemplates all laws, including the Electricity Laws applicable in India in various forms. The definition of law is quoted as under: -

“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, or any interpretation of any of them by an Indian Government Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, 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 or the Appropriate Commission;”

- (ii) The relevant clause of the PPAs i.e., Article 15 is quoted as under: -

ARTICLE 15: CHANGE IN LAW

15.1 Definitions

In this Article 15, the following terms shall have the following meanings:

15.1.1 "Change in Law" means the occurrence of any of the following events into any additional recurring / non-recurring expenditure by the Developer or any income to the Developer.

- a) 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;*
- b) 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;*
- c) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- d) 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 the Developer;*
- e) any change in tax or introduction of any tax made applicable for supply of power by the Developer 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 the Developer, or (ii) any change on account of regulatory measures by the KERC or (iii) any change in the KERC approved Tariff as compared to the approved tariff exist as on the Bid Due Date.

15.2 Relief for Change in Law

15.2.1 The aggrieved Party shall be required to approach KERC for seeking approval of Change in Law.

15.2.2 The decision of the KERC to acknowledge a Change in Law and the date from which it will become, effective, provide

relief for the same, shall final and governing on both the parties.

(iii) As per Article 15 of the PPA, the following conditions have to be met

with while claiming a Change in Law: -

(a) The underlying principle of Change in Law provision is to determine the consequence of change in law and to compensate a parts affected by a change in law such that the party is restored to the, same economic position as if such change in law had not occurred.

(b) The coming into effect of

(i) The enactment or coming into force of any law.

(ii) Change in interpretation of any law.

(iii) Change in any consents, Clearances or Permits available for the Project.

(iv) Inclusion of new or Change in the terms and conditions prescribed for obtaining the Consents, Clearances, Permits. introduction of any tax made applicable.

(v) Change in tax or introduction of any tax made applicable.

(c) Provided that change in law results in any additional recurring/non-recurring expenditure by the Developer or any income to the Developer.

(iv) The enactment of the Constitutional Amendment Act along with the aforesaid GST legislations is a Change in Law Event pursuant to enactment by a government instrumentality, which qualifies as an event of Change in Law according to 1st Bullet of Article 15.1.1 of the PPA since: -

- (a) *The enactment of the GST legislations is the enactment of a Law repealing the current indirect tax regime.*
- (b) *The GST legislations have been passed by the Parliament of India and State Legislatures;*
- (c) *The GST Legislations have been enacted subsequent to 14.10.2016 (which is the Effective Date under the PPA); and*
- (d) *Implementation of the GST Legislations will result in the change in the cost of or revenue.*

(v) The Hon'ble Appellate Tribunal for Electricity in its order dated 19.04.2017 in *Sasan Power Limited v. Central Electricity Regulatory Commission* in Appeal No. 161 of 2015 held that: -

"44. It is true that according to the provisions of the RFP, the quoted tariff shall be inclusive one including statutory taxes, duties and levies. But the PPA gives express right to an affected party to claim Change in Law if the event qualifies thus in terms of Article 13. The RFP cannot override this right if an event qualifies as a Change in Law. The Competitive Bidding Guidelines (Article 4.7 thereof has already been reproduced hereinabove) and the PPA have to be read together. If an event qualifies as a Change in Law event, then the compensation must follow because otherwise Article 13 of the PPA will become redundant."

(vi) The Changes in Law claimed in the present petition meet the criteria laid down under Article 15 of the PPA to qualify as Changes in Law for which the petitioner ought to be compensated and the compensation that would be equivalent to the financial impact of

the Changes in Law on the costs and revenues of the petitioners so as to restore the petitioner to the same economic condition prior to occurrence of the Changes in Law.

(vii) Clause 6.2(4) of the Tariff Policy dated 28.01.2016 are issued by Central Government from time to time under Section 3 of the Electricity Act, 2003 also recognizes the concept of Change of Law and provides as under: -

“6.4(2) After the award of bids, if there is any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, the same may be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through subject to approval of Appropriate Commission.”

(viii) To sum up, the petitioner submits that in view of the above facts, it is evident that: -

- (a) There have occurred Changes in Law which has a financial impact on the costs and revenues of the petitioner.
- (b) petitioner is entitled to be compensated for these Changes in Law in terms of Article 15 of the PPA.

(p) Submission on O& M Expenses:

(i) The petitioner submits that the tax structure on services on O&M services

after GST is changed and there is an increase in service tax from 15% to 18% on O&M services which has impacted the operation and maintenance of the solar power project of the petitioner. The petitioner has submitted that though, the Hon'ble Central Electricity Regulatory Commission in its Order dated 19.09.2018 in Petition No. 50/MP/2018–Prayatna Developers Pvt. Ltd. vs. NTPC Ltd. & Ors. has observed that outsourcing of O&M is not being the requirement of the PPA, it is submitted that the PPA provisions does not especially segregate and provide for covering of outsourcing of O&M of solar projects. As a matter of industrial practice, it is considered a part of the expenditure incurred by the generator. The PPA does not have any provision regarding requirement or prohibition for outsourcing O&M as it is dependent on various contingent physical and economic factors that cannot be determined at the time of drafting of PPA. Outsourcing of O&M is not some dispensable activity as certain activities are required to be outsourced to experts to ensure quality of work. It is thus a prudent utility practice and in following the same, Petitioner has acted in compliance with its obligation to act in accordance with prudent utility practice as provided in the PPA.

- (ii) It is further submitted that the Regulation 2 (1) (c) of the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 defines the term 'O&M expenses' as under:

Para (s) 'Operation and maintenance expenses' or 'O&M expenses' means the expenditure incurred on operation

and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads;

(iii) It is submitted that had the intention of the Hon'ble Central Commission that the O&M work not to be outsourced should have mentioned word "employees" instead of "manpower". This clearly shows that intention of the Commission is not to restrict the solar power developers to use in-house staff responsible for entire operation and maintenance work. Principles used in determination of cost-plus tariff under Section 62 of the Electricity Act, 2003 are also stand valid for project selected for sale of power to utilities under Section 63 of the Act.

(iv) As per the prudent industrial practices, across the world, solar power plants have always contracted with Original Equipment Manufacturers (OEMs) for supply of spares for maintenance work and also contracted with maintenance contracting companies, and consultants to assist for maintenance work. On the other hand, in-house staff has generally been responsible for routine and minor maintenance work and supervise the contract given to maintenance contracting companies. In the current competitive environment, solar power projects are being selected through competitive bidding process. Such solar power projects offer lowest rate per unit. Such project developers, in order to remain competitive look at outsourcing more of their maintenance requirements and some plants have outsourced 100% of the maintenance. Now it can be said that the outsourcing of the O&M to

a third party is not a requirement of the PPA and will be a commercial decision of the Petitioner for its own advantage.

(v) It is submitted that the equipment installed and commissioned by the solar project developer should be in operational/functional condition throughout the O&M period. Therefore, O&M expenses, apart from manpower cost also include supply of all tools, tackles, spares etc. for replacement of electrical, mechanical and electronic equipment's which become beyond repair. GST paid on such supply, being recurring expenses should be made pass through.

(a) Submissions regarding allowing Carrying Costs:

(i) It is submitted that the petitioner is entitled to "Carrying Costs" for the costs incurred due to the Change in Law events. 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 to the very provision. It is submitted that 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 to compensation.

(ii) Further, it is submitted that the "carrying cost" is in the nature of compensation for money denied at the appropriate time, as held by

Hon'ble Appellate Tribunal for Electricity in the Judgement dated 20.12.2012 in Appeal No. 150 and in the Judgment dated 13.04.2018 in Appeal No. 210 of 2017. It is submitted that the Petitioner is entitled to carrying cost and the failure to grant the same would defeat the underlying principle of restitution and render the Change in Law article otiose. Further, the said Article is a restitutive provision and thus ought to be given a wide interpretation.

(iii) It is submitted that the Hon'ble Supreme Court has in the case of R.C. Cooper vs. Union of India: AIR 1970 SC 564 noted that as per the dictionary meaning, "compensation" means anything given to make things equal in value: anything given as an equivalent, to make amends for loss or damage". The aforesaid principle has also been recognized by the Hon'ble Supreme Court in the case of N.B. Jeejeebhoy vs. Assistant Collector, Thana Prant, Thana: AIR 1965 SC 1096.

(iv) It is submitted that compensation is a comprehensive term and is aimed at restoring a party to the same position as if no injury was caused to it, as held by the Hon'ble Supreme Court in the case of Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. and Anr., (2010) 10 SCC 341.

(v) It is evident from the above stated judgment that: -

a. Compensation implies equivalence and not simpliciter making equal a loss sustained. Thus, time value of money will

also have to be considered while awarding compensation.

- b. It is a term of broader implication.
- c. where the stated purpose is restoration to the same economic position, this Commission ought to consider the aggregate economic impact including carrying cost which is in the nature of compensation.

(vi) It is submitted that Hon'ble Appellate Tribunal for Electricity in the Wardha Power Judgment has recognized the principle that in order to 'restore the affected party to the same economic position', compensation for Change in Law claims has to be such, as to reimburse the affected party for the expense actually incurred. Thus, the same will include expenditure attributable towards carrying cost. The relevant portion of the judgment is given below: -

"27. For example, if the price of coal calculated on the same base as used in the bid is more than the prevalent price of coal, then using the base price of coal for computing the compensation for Change in Law will result in over compensation to the Seller. Similarly, if the coal price calculated on the same base as used in bid is less than the actual price of coal, it will result in under compensation to the Seller. In both these cases, the affected party will not be restored to the same economic position as if such Change in Law has not occurred, as intended in the PPA."

(Emphasis Supplied)

(vii) The petitioner submits that the principle of recovery of carrying cost/ interest and time value of money has been recognized in the following

cases which are as under: -

(a) Judgment of the Hon'ble Tribunal dated 13.04.2018 in Appeal No. 210 of 2017, Adani Power Limited vs. Gujarat Electricity Regulatory Commission & Ors.

(b) Judgement of the Hon'ble Tribunal in North Delhi Power Ltd vs. DERC 2010 ELR (APTEL) 0891

(c) Judgment of the Hon'ble Tribunal in Tata Power Company Ltd vs. Maharashtra Electricity Regulatory Commission 2011 ELR (APTEL) 336

(viii) In view of the aforesaid judgements, it is submitted that the petitioner is entitled to carrying cost for the period from the date of the effect of the Change in Law event.

(ix) The petitioner has prayed to this Commission to consider the GST impact claimed by the petitioner as per the Certificate of the Chartered Accountant filed before this Commission, according to which the petitioner is also seeking a sum of Rs. 6,26,84,865/- towards impact of GST on Goods and Services. The petitioner is seeking refund of a sum of Rs. Rs.64,37,395 towards O & M expenses since there is 3% impact after the imposition of GST Act. (In Pre GST regime, service tax was levied at 15% and now under GST regime, CGST and SGST at 9% respectively is levied).

3. Upon issuance of Notice, the respondent appeared through its counsel and filed a Statement of Objections on 25.06.2019 on the basis of Original Petition filed on 13.12.2018 wherein the petitioner did not quantify the

claims for incremental cost on its power project on account of introduction of GST Laws. The gist of statement of objections are as follows:

- (i) The petitioner herein owns a 20MW Solar Power Plant at Magadi Taluk, Ramanagara District KREDL vide Request for Proposal dated 12.02.2016 had called for bids for development of ground mount Solar Power Projects in 60 Taluks of Karnataka. M/s Adani Green Energy Limited being one of the successful bidders, was issued a Letter of Award dated 30.05.2016 for development of 20MW Solar Power Project.
- (ii) On 28.06.2016, the petitioner executed a PPA with the respondent. This Commission vide letter dated 27.09.2016 approved the PPA subject to certain modifications. As per Article 3.1 of the PPA, 'effective date' is the date on which this Commission gives concurrence to the PPA. The petitioner herein was therefore required to commission the project within 12 months from the effective date as per Article 8.5 of the PPA, i.e., on or before 26.09.2017. Further, as per Article 4.1, the petitioner was required to achieve conditions precedent within 8 months of effective date i.e., on or before 26.05.2017.
- (iii) On 12.04.2017, Government of India introduced the levy of Goods and Service Tax (hereinafter referred as 'GST'), replacing multiple indirect taxes levied by the Central and State Governments. On 27.06.2017, Karnataka Goods and Services Tax Act was enacted. On 1.07.2017, the Central Goods and Services Tax Act of 2017 and the Integrated Goods and Services Tax Act of 2017 for levy and collection of tax on inter- state

supply of goods or services or both by the Central Government were enacted. It is pertinent to mention that GST Laws have come into effect in India on 01.07.2017. Aggrieved by the alleged additional GST burden foisted upon the petitioner, the petitioner has filed the present petition seeking for the same to be declared as an event constituting Change in Law, thereby giving the benefit of the additional GST burden to the petitioner.

(iv) It is the case of the petitioner that introduction of GST has increased the capital cost of the project. Further, it is contended by the petitioner that introduction of new tax slabs has made the present tariff fixed in the PPA unviable. Therefore, it is entitled to get relief under 'Change in Law' in terms of the Article 15 of the PPA. Based on the same, the petitioner has filed the present petition.

(v) In response to the contentions urged by the petitioner, it is at the very outset submitted that the petitioner herein is not entitled for relief of change in law under the Article 15 of the PPA.

(vi) The brief facts which are cogent for the purpose of considering the request of the Petitioner in the present petition are as under;

EVENT	DATE
Request For Proposal	12.02.2016
Letter of Award	30.05.2016
Power Purchase Agreement	28.06.2016
Effective Date as per PPA	27.09.2016
Deadline for Achievement of Conditions Precedents	26.05.2017
Implementation of GST Law	01.07.2017

Scheduled Commissioning Date as per the PPA	26.09.2017
Commissioning date of the Petitioners Plant	08.01.2018

(vii) The respondent submits that from the perusal of the above table, it is clear that the petitioner had executed the PPA and started implementing the project much before the GST law was made effective in the country, Thereby, it has not affected by the promulgation of GST law and is not entitled for relief under Article 15 of PPA.

(viii) As per the Article 4.1 of the PPA, the petitioner herein had to achieve conditions precedent within 8 months from effective date i.e., 26.05.2017 and under Article 4.2(f) of the PPA, the petitioner had to fulfill the technical requirements for [Solar PV ground mount project] as per the format provided in Schedule 2 to the PPA and has to provide the documentary evidence of the same. However, till date the petitioner herein has not produced any documentary evidence to the respondent or to this Commission to indicate that it has met the technical requirements as per the Schedule-2. Unless the petitioner produces cogent material before this Hon'ble Commission to show that it has incurred the said expenses after the coming into effect of the GST Laws, no claim for declaring the same to be a change in law will lie. Therefore, in the absence of any such material, the claim of the petitioner to declare the imposition of GST laws to be a change in law cannot be considered.

- (ix) It would also be of relevance to note that if the petitioner produces material to show that it has suffered the additional tax burden after coming into effect of the GST Laws, then the same would be an admission that the petitioner has violated the terms of the PPA by not adhering to the deadline for fulfilling conditions precedent. Therefore, it is submitted that petitioner is not entitled to relief for change in law.
- (x) It is also submitted that the question as to whether the implementation of GST can be considered to be an event of Change in law has received the detailed consideration of the Hon'ble Central Electricity Regulatory Commission (hereinafter referred to as CERC) in the Petition No.187/MP/2018 and in other similar matters, wherein it was clearly held that any additional cost claim of the petitioner, incurred by it during the construction period due to purchase of any goods or service has to be correlated with invoices raised by the supplier of goods and services and Auditor's certificate. The production of invoices is essential to determine whether goods and service in question has been taxed before or after the GST law came into effect. If the invoices were raised before 01.07.2017, then the petitioner would be taxed as per the earlier laws in force before the introduction of GST law and would therefore not have been burdened by the additional taxing event. However, if the petitioner has suffered an additional burden, onus of proving the same lies with the petitioner. In the present case, the petitioner has merely placed on record an unauthenticated/ un- attested statement

along with a memo as additional documents. No details are forthcoming with regard to the source of the data mentioned in the statement and no supporting invoices etc. have been produced. Absolutely no reliance can be placed on the same. Such being the case, the petitioner is not entitled for any relief sought for in the present petition.

(xi) With regard to the petitioner's contention that it has been taxed on expenditure incurred under the head of Operations and Maintenance expenses due to introduction of GST, it is submitted that Hon'ble CERC in Petition No.187/MP/2018 has held that O&M stage can be broadly construed to be Post Construction Stage and same is covered under the Services under 'GST Laws'. The activities that constitute O&M with regard to solar plants are Site Security, Consumables, breakdown spares, Annual Maintenance Contract, Module Cleaning, labour and water supply. It is submitted that there will be no GST levied, if O&M services were undertaken by the generator itself. In the event that such service is outsourced to a third party, as the PPA does not provide for outsourcing of the same, no claim for such additional tax payable on outsourced services can be considered to be a change in law. It is contended that outsourcing of O&M services is not allowed under the present PPA and RFP. Therefore, the claim of the petitioner on account of suffering an additional tax burden on account of sums paid towards O & M expenses is not maintainable.

(xii) The petitioner has sought for carrying cost to be considered as one of the components of his claim for GST to be considered a change in law. In this regard, it is submitted that in the present case, the PPA does not provide for carrying cost on account of change in law. In this regard, reliance is placed on the decision rendered by the Hon'ble CERC in the matter of Petition No.187/MP/2018, wherein it has analyzed this issue and come to the reasoned decision that carrying cost cannot be considered to be a component which can be considered to be the basis for a claim of change in law. The relevant portion of the order of the CERC is extracted hereunder for ready reference:

“204From the above judgment, Commission observes that if there is a provision in the PPA for restoration of the Petitioners to the same economic position, as if no change in law events have occurred, the Petitioners are eligible for carrying cost for such allowed change in law events from the date of change in law event until the same is allowed by the Commission. The Commission observed that PPA does not have a provision dealing with restitution principles of restoration to same economic position. Therefore, the Commission is of the view that the claim regarding separate carrying cost is not admissible.”

(xiii) The petitioner at paragraph 19 of the petition attempted to set out the heads under which it has suffered the additional tax levy. Although the Petitioner refers to fanciful sums which, according to the Petitioner is the additional burden being faced by it, absolutely no material is forthcoming in the petition in support of each and every one of these

components. Merely stating sums which are allegedly to be incurred does not entitle the Petitioner to any benefit which is sought in the present petition. The Hon'ble CERC has categorically held that unless material in the form of invoices etc. are placed on record, no claim can be entertained.

(xiv) No data is forthcoming from the Petition to substantiate the petitioners request for consideration of GST to be a change in law. The averments do not indicate that there is no avenue for the company to utilize the credit. The only statement made is that the Electricity being included in tax exemption slab and as per the scheme of the GST, there is a provision for refund of unutilized input credit available in the account. Under this circumstance, the question of considering the claim would not arise.

4. The petitioner orally submitted during the hearing to consider the Rejoinder to the Statement of Objections filed in similarly placed other cases, in this case also, also reiterated the grounds and sub petitioner filed the Rejoinder to the Additional Statement of Objections missions made in the amended petition. The petitioner filed a memo on 25.09.2019 for production of additional documents such as a copy of CA Certificate dated 19.02.2019, A Table containing various details, including invoice-wise GST impact in respect of the invoices (page 2-17).

5. Regarding Discrepancies Invoice / Documents:

During the course of hearing/pleadings, the learned Counsel for Respondent submitted that invoices / purchase orders produced by the petitioner were verified by the Officials of Respondent and found discrepancies in invoices/purchase orders which requires clarifications from the representative of the petitioner. The learned Counsel for petitioner has agreed to clarify such discrepancies if any. In view of the same, this Commission has considered their request and decided that it would be appropriate to provide opportunity to both the parties to have a Joint Meeting in order to reconcile the differences duly verifying the purchase orders/ Invoices documents and thereafter, submit a Reconciliation Report in this regard. In pursuance to this direction, the representatives of both the parties held joint reconciliation meetings on various dates at CESC Corporate Office, Mysuru.

6. On 8.11.2021, the petitioner has further submitted the written arguments on the basis of amended petition. The brief of the arguments is as under:
 - (i) The petitioner submitted that in the pre-GST regime, the tax liability for a Developer setting up a Solar Power Plant was as under:
 - (a) Excise Duty- For initial setting up of solar power generation project, Excise duty was totally exempted vide Central Government Notification bearing No.15/2010 dated 27.02.2010.
 - (b) VAT (Value added Tax) of 5.5 % as per Section 4 of the Karnataka Value added Tax Act, 2003 was leviable under Entry 80 of the third Schedule of the said Act for Renewable

Energy devices and parts thereof. There was an exemption from payment of VAT for Solar PV Modules and Solar Inverters vide Notification dated 01.08.2015 by the Government of Karnataka.

- (c) CST (Central sales Tax) - As per Section 8 of the CST Act, every supplier/dealer in the course of interstate trade or commerce is liable to pay tax at the rate of 2% on submission of Form C.
- (d) Service Tax - 15% service tax was leviable as per Section 66B of the Finance Act (inclusive of 0.5% of Swachh Bharat Cess and 0.5% of Krishi Kalyan Cess vide notification No.22/2015 dated 06.11.2015).
- (ii) With regard to the enactment of GST Laws, all the above-mentioned taxes ceased to exist and a single tax called "GST" is made applicable throughout the nation. Ministry of Finance vide its Notification 1/2017 dated June 28, 2017 prescribed rate of applicable taxes to different goods and services. Under the said notification, various parts of goods and services for setting up solar power projects are classified in different categories having distinct chapter with heading named as "HSN classifications". (Annexure P-10 for IGST Goods Notification, page 328-401 (Annexure- P-11-CGST Goods Notification, Page 402-475 (Annexure- P-12 for CGST Services Notification, Page.476-481), KGST Goods Notification page 482-541 (Annexure-P-14, Page 542-572 KGST Service Notification of the main petition). The petitioner has submitted that the relevant record/ Booklets on GST Goods and Services as published by Ministry of Finance for ready reference of taxes leviable

as per their classification viz., IGST/CGST-KGST vis a vis tax levied as per HSN classification (Document Nos.9 and 10 along with rejoinder dated on 09.04.2021).

- (iii) It is pertinent to mention that, Chapter 84,85 and 95 under Sl. No.234, provides for 5% of GST for Solar Power Generating System (SPGS). However, the benefit of 5% is available only for the products mentioned specifically under the above-mentioned Chapter Headings and other components which are not procured under the SPGS will not be covered under the same headings and will not be able to get the benefits of 5% applicable GST tax rate. The said position has been clarified by circular No.80/54/2018-GST dated 31.12.2018 passed by the Government of India.
- (iv) The petitioner submitted that it had procured goods and availed services individually from the suppliers and has not entered into any EPC Contract. Consequently, they have paid GST at the rate charged by the individual Vendor as per invoices raised by them, the respondent does not deny the said fact. However, the respondent contends that the petitioner ought to have availed the 5% concessional duty provided for the SPGS system and therefore, denies the reimbursement as per the individual HSN classification payment made by the petitioner.
- (v) In so far as the issue of pre-GST tax is concerned; the Petitioner has considered 2% CST as any other prudent Developer would have in the

pre-GST era where there was a choice for a buyer to plan its taxes depending on the rates of levy within and outside the state. The said benefit however was taken away with the introduction of GST and therefore, the Petitioner took decisions accordingly and procured materials within the state wherever it was feasible for them. The Respondent cannot deny the said position of tax during pre-GST regime and assume VAT just to deny the Petitioner their legitimate claim.

(vi) In so far as the issue of dispute between the parties is concerned, the Respondent has refused to reimburse the claim of the Petitioner mainly on the ground that the Petitioner ought to have availed the concessional rate of 5% GST by classifying the case of the Petitioner under SPGS. The concessional rate of 5% is inapplicable to the Petitioner as they have procured/availed all goods and services individually after paying GST at respective HSN classification and not under an EPC Contract so to qualify under SPGS category. (Kindly see Annexure 2, CA Certificate w.r.t GST Payment reflected in GSTR 2A, at pg.120-121 in the Memo filed by the Petitioner on 22.10.2021). This fundamental difference is being overlooked by the Respondent intentionally to deny the legitimate claim of the Petitioner. It is further submitted that Petitioner has made the actual payment as per respective HSN classification and the Respondent has admitted the

payment of GST as per HSN classification by the Petitioner but strangely deny the reimbursement on baseless grounds.

(vii) Further, submits that it is a well settled principle that commercial decisions taken prior to the implementation of the GST cannot be questioned by the respondent at this stage and GST reimbursement claims by the petitioner cannot be refused on this ground. To classify a project as a Renewable Energy Devices falling under Chapter 84,85 or 94, the petitioner is supposed to procure a Solar Power Generating System (SPGS) from a single supplier. In the present case, petitioner has purchased major components forming SPGS from different vendors and also not awarded the same as EPC Contract to single party, therefore, in view of above, the concessional rate of 5% GST tax rate cannot be applied for the present case.

(viii) The petitioner placed reliance upon the case of Parampujya Solar Energy Pvt. Ltd. Vs National Thermal Power Corporation Ltd & Ors, Petition Number 206/MP/2018 (2019 SCC ONLINE CERC 191), the Hon'ble Central Electricity Regulatory Commission has held as under:

'95. The Petitioners are directed to make available to the Respondents (NTPC & SECI) all relevant documents exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by relevant invoices and Auditor's Certificate. The Respondents (NTPC, SECI) are further directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to

the SPDs as per the methodology discussed in Para 86 and 94 above. It has been brought to our notice that in some cases, the Respondent Procurers are questioning the rationale of the commercial decisions taken by the SPDs in cases where the rates of GST are on the higher side. Since, the decision for project implementation including the mode of procurement of goods and services were taken by SPDs prior to the implementation of GST, it would not be appropriate to question such commercial decisions on the basis of the differential rates of GST on certain goods and services, and payments should be made based on the invoices raised and supported by Auditor's Certificate. The Commission is of the view that since the quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 is not large, it should be discharged by the Respondent-Procurers as one-time payment in a time bound manner. Accordingly, it is directed that the GST bills shall be paid within 60 days from the date of issue of this Order or from the date of submission of claims by the Petitioners, whichever is later, failing which it shall attract late payment surcharge in terms of the PPA. Alternatively, the Petitioners and the Respondents (NTPC, SECI) may mutually agree to mechanism for the payment of such compensation on annuity basis spread over such period not exceeding the duration of the PPAs as a percentage of the tariff agreed in the PPAs. This will obviate the hardship of the Respondents (NTPC, SECI) for one-time payment'

(Emphasis supplied)

- (ix) In the same case referred to above, Parampujya Solar Energy Pvt. Ltd. (PSEPL) V. National Thermal Power Corporation Ltd. (NTPC) and Others,

the CERC has held that in case of direct purchase, 5% concessional rate is not applicable. Relevant extract of the said judgement is as under:

“93. The Commission observes that as per Notification No. 1/2017-Central Tax (Rate) as contained at Sr. No. 234 Chapter heading 84, 85 or 94 of the “renewable energy devices & parts for the manufacture (C) Solar Power Generation System” the concessional rate of 5% would also be available i.e. say inverters, cables, connectors etc. are under 28 per cent duty but whenever these products are used in the solar generation system, these will attract an effective levy of 5 per cent instead of 28 per cent. Further, in case of direct purchase of the mounting structures, power conditioning units etc. are under 18 per cent duty but in case these components are sold as part of Solar Power Generating system then the same will attract an effective levy of 5 per cent instead of 18 per cent”.
(Emphasis supplied)

The said position w.r.t GST in case of direct purchase had been echoed earlier by CERC in the case of Prayatna Developers Pvt. Ltd. vs NTPC Ltd. And Ors., in Petition No. 50/MP/2018.

- (x) The Respondent has also mentioned that the Petitioner is not entitled for a claim of a sum of Rs.1,05,42,848 as the invoices in respect of the said procurement/services are dated post the Commissioning date. (Kindly see Memo dated 23.09.2021 filed by the Respondent in support of the said statement). The Petitioner has submitted the statement wherein

invoices that are dated post commissioning i.e., post 09.01.2018 amount to Rs. 1,05,42,848 (Kindly see Annexure 3, pg.122 of the Memo dated 21.10.2021 filed by the Petitioner). However, the benefits of change in law cannot be restricted only up to the date of commissioning.

(xi) It is submitted that in so far as the claim of O&M expenses is concerned, the PPA itself provides for outsourcing of O&M expenses and therefore, the petitioner is entitled for reimbursement. The same is reflected in the following articles of PPA: -

a) Scope of the Project: *Article 2.1(b)-Operation and maintenance of the (Solar PV ground mount Project) in accordance with the provisions of this Agreement*

b) Obligation of the Developer: Article 5.1.3(c)& (d):

5.1.3(c): make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement.

Article 5.1.3(d): ensure and procure that its Contractors comply with all applicable permits and applicable laws in the performance by them of any of the Developer's obligations under this Agreement

c) Article 21: Definitions

“Contractor” means the person or persons excluding other Developer, as the case may be, with whom the Developer has entered into any of the EPC Contract, the O & M Contract, or any other agreement or a material

contract for construction, operation and or/maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Developer”.

(xii) O & M expenses are recurring expenses in terms of article 15 of the PPA and includes activities like salary, maintenance costs, income from leases, etc. Outsourcing of O & M service is a prudent industrial practice which is recognized even under the PPA as demonstrated supra. The pre GST tax on O & M expenses was 15% and now the GST on the same is 18% and consequently the incremental impact on the Petitioner is Rs.64.37,395 (Kindly refer para-C, pg.21-22 of the Main un amended petition wherein the Petitioner has stated the methodology for calculating the O & M expenses).

(xiii) The petitioner contended that the carrying cost is an inherent provision in the PPA as the Change in Law compensation was premised on the underlying principle that the affected party is to be restored to the same economic position as if such Change in Law had not occurred. Therefore, in order to restore the petitioner's economic position, it is imperative that “*Carrying Cost*” is given to it for the time value of money.

(xiv) In this regard, the petitioner has placed reliance upon the Judgment of Hon'ble Supreme Court in Uttar Haryana Bijli Vitaran Nigam Limited vs. Adani Power Limited & Anr, (2019) 5 SCC 325 wherein it had held

that the Change in Law Clause envisages an in-built restitution principle which must restore the affected party, to the same economic position as if such Change in Law had not occurred.

- (xv) It is submitted that the petitioner has incurred an additional cost for which it has to be reimbursed with the "time value of money". It is further submitted that the Hon'ble APTEL in its judgment in *Adani Power Ltd. vs. Central Electricity Regulatory Commission & Ors, Appeal No. 210 of 2017* had held that the carrying cost is in the nature of compensation for money denied at the appropriate time.
- (xvi) On 22.10.2021 the Ministry of Power, Government of India ('MoP') in exercise of the powers under Section 176 of the Electricity Act, 2003 has issued the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('CIL Rules'). This rules is given effect from 22.10.2021.
- (xvii) The petitioner further submits that the judgments produced by the respondent are not relevant for the purpose of the adjudication of the present dispute in as much as the said judgments refer either to the definition of Solar Power Generating Systems or on certain component being part of SPGS or not. Admittedly, the petitioner has procured the materials and availed services from individual vendors and paid GST based on the HSN classification stipulated for the said goods and services and therefore, the alleged 5% concessional duty under SPGS system is inapplicable in the present case of the petitioner. Therefore, in the light of the above submissions and material on record, the

petitioner respectfully prays that this Hon'ble Commission may be pleased to allow the petition in the interest of justice and equity. To substantiate the claims.

7. The Respondent has filed a written submission on 16.11.2021 on the basis of grounds made in Amended Petition, stating that the earlier Statement of Objections filed on 24.06.2019, Additional Statement of Objections dated 17.03.2021 and memo dated 27.09.2021. filed by the respondent before this Commission, may be read as part and parcel of the present written submissions. The brief of written submission filed on 16.11.2012 is given as under: -

(i) Prior to introduction of GST, multiple indirect taxes were levied on goods and services. The following taxes were levied during the pre-GST regime:

TAX	RATE	ACT
Union Tax	12.50%	Central Excise Duty
Service tax	15%	
Value Added Tax	5.5% or 14.5 % - purchase within in the State	Karnataka Value Added Tax Act, 2003
Central Sales Tax	2% (against C-Form)	Central Sales Tax Act, 1956
Central Sales Tax	5.5% or 14.5% - purchase from outside the state	Central Sales Tax Act, 1956
Entry Tax	2% - machinery and parts	Karnataka Tax on Entry of Tax Act, 1979

(ii) On the basis of above table, it is submitted that it is the case of the petitioner, it has considered the Central Sales Tax at 2% against submission of C-form having made inter-state purchases. Also, in case

of works contract service, the petitioner has considered the service tax rate is to be 6%. Whereas, the Respondent has considered that had the petitioner procured goods within Karnataka then it would have paid Tax at 14.5%, 5.5% or 5.0% under Karnataka Value Added Tax Act, 2003 and on Service component would have paid service tax at 6 % (15% of 40% considering that it pertains to original works) and 10.15% (14.5% of 70%) for material components.

- (iii) As per Section 140 of Central Goods and Services Act, 2017, Transitional Arrangement for Input Tax Credit was allowed to the manufacturers and dealers. It is submitted that, under the Act, a registered person who has purchased goods prior to imposition of GST and such goods lying in stock for which Central Excise Duty, CST and VAT has been paid is allowed to carry forward the tax paid on such goods. Under these circumstances, the goods purchased in the pre-GST regime for which Central Excise duty, CST & VAT paid and lying in stock is subsequently sold in the GST regime is allowed as credit and can be off set for the GST payable for the said goods. Hence, the Petitioner should bifurcate the quantity of goods purchased before GST and transitional credits availed on such goods and place the same on record. In the pre-GST regime, it was cost to the supplier of goods whereas in the Post GST it is allowed as credit. Thus, the tax burden on the Petitioner was substantially reduced.

- (iv) Based on the above, the total tax implication on the Petitioner during pre-GST regime would have been Rs.6,57,19,774(Analysis of the invoices at pre-GST rates is produced at page 1050 of the Paper book-vol. 3)
- (v) The Respondent further submits that Notification 1 of 2017 –Central tax (Rate) dated 28.06.2017 provide for concessional tax rate of 5% on supply of renewable energy devices and parts for the manufacture of solar power generating system. However, the petitioner has failed to avail the said concession tax benefit and has not acted as a prudent businessman and could have avoided unnecessary tax burden on the respondent. The petitioner contended that in the absence of a specific definition of solar power generating system, concessional rate of 5 % cannot be applied to all components uniformly.
- (vi) The Section 2(30) of the CGST Act, 2017 defines composite supply as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. As per section 8(a) of the CGST Act, 2017, in case of composite supplies, rate of tax should be rate of tax applicable on the principal supply.
- (vii) Further, Section 2(90) of the CGST Act, 2017 defines a principal supply as the supply of goods or services which constitutes the predominant

element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

- (viii) The respondent submits that the term "Solar Power Generating System" is not defined under erstwhile law. However, under erstwhile excise law, various exemptions were extended to non- The petitioner filed the Rejoinder to the Additional Statement of Objections filed by the respondent on 23.06.2021 along with CA Certificate (Annexure-1 at page 19-34/619-634.) Tabular column (Annexure-2 at page 35-49/635-649), Certificate from CA with reference to tax i.e. GSTR 2A (Annexure No 3 at page 50/650) & Certificate from CA with reference to Input tax credit (Annexure No 3 at page 123/723) all these documents and pages as referred are in paper book-volume-II of the petition). conventional energy devices which included Solar Power Generating System – List 8 of Notification 12/2012-CE dated 17.03.2012. Since the pre-GST law has not defined the term "Solar Power Generating System" in order to understand the ambit of the said system, the Hon'ble CESTAT in *Phenix Construction Technology V.s Commissioner of Central Excise, Ahmedabad-II* (2017-TIOL-3281-CESTAT-AHM), has examined the question whether the structure and parts of structure cleared for initial setting up of the solar power plant are eligible for benefit of Notification 15/2020-CE. The point of dispute was whether the aforesaid goods would qualify as components of the solar On 8.11.2021, the petitioner has further submitted the written arguments on the basis of amended petition. The brief of the arguments is as under:

plant. The Hon'ble CESTAT held that items required for initial setting up of the plant would qualify as component and hence, the benefit of exemptions would extend to such items also as solar power generating systems.

(ix) Further, in the case of *Jindal Strips Ltd. vs. Collector of Customs, Bombay (2002-TIOL-347-CESTAT-DEL-LB)*, CESTAT, the Hon'ble CESTAT observed that component means a constituent part or element. It was also observed that "component" means one of the parts of sub-assemblies or assemblies, of which a manufactured product is made up and into which it may be resolved and includes an accessory.

(x) Further, the Hon'ble Karnataka Authority for Advance Rulings (GST) in *Solaris Non-Conventional Energy Private Limited* [reported in 2019 SCC On Line Kar AAR-GST 49] held that when parts are supplied on standalone basis (when supplied with PV modules) and the said components/ parts are used for setting up of solar plant, it would be eligible to concessional rate of 5% as the same forms part of the solar power generating system as contemplated in Notification No.1 of 2017 dated 28.06.2017 issued by Ministry of Finance.

(xi) It is submitted that though the Petitioner has commissioned its plant on 02.10.2017 (date is wrongly mentioned) the correct commissioned date is 08.01.2018, the Petitioner has produced several invoices which are dated post the SCOD. The Petitioner has not provided any reasons as to why several invoices are dated after post SCOD. It is submitted that

this Hon'ble Commission in its order dated 29.10.2021 in OP NO. 65-67 of 2019 had held that invoices dated after the commissioning should not be allowed. This Commission observed that the same would be additional financial burden on the Respondent which inturn will be passed on to the consumers as additional tariff. Therefore, the Petitioner is not entitled to any refund on the invoices dated post commissioning date. (Details of the invoices dated post commissioning date is produced at page 1041 of the paper book- vol3).

(xii) It is submitted that total transaction value of invoices dated after commissioning date comes up to Rs.16,84,72,980. It is submitted that the Petitioner is not entitled to any reimbursement on the invoices dated post commissioning date. Therefore, the Petitioner is not entitled to the GST impact on invoices dated post commissioning date which comes up to Rs.1,05,42,848.

(xiii) The Petitioner has claimed Rs.64,37,395/- towards the additional impact on the O&M expenses. It is submitted that if the operations and maintenance was carried out by the Petitioner itself, then the question of additional cost on O&M expenses would not arise. Further, the PPA entered into by the parties does not provide for outsourcing of O&M. Therefore, the Petitioner is not entitled to any reimbursement of additional amount incurred on account of GST towards O&M expenses.

(xiv) This Commission in its order 29.10.2021 in OP Nos. 65-67 of 2019 has disallowed the claim of the petitioner towards O&M expenses. This

Commission has further observed in said Order that the projected O&M cost is calculated solely based on assumptions and in the absence of any reliable material placed on record to establish that the petitioner has actually incurred additional O&M expenditure, therefore, the claims towards O&M expenses cannot be allowed. It is submitted that even in the present case, the petitioner has provided a table at Annexure 16 of the petition, to showcase the increase of cost towards O&M which is purely based on the assumption. Therefore, the petitioner is not entitled to any reimbursement towards O&M expenses.

- (xv) This Commission in its catena of judgements held that the question of allowing carrying cost does not arise in the absence of a specific provision for the same in the PPA entered into by the parties. The respondent submits that the Hon'ble Supreme Court in *Union of India v. Tulasiram Patel* [reported in (1985) 3 SCC 398], held that "when express inclusions are specified, anything which is not mentioned explicitly is excluded". Further, the Hon'ble CERC in its order dated 09.10.2018 in Petition No. 188/MP/2017 held that in the absence of a specific provision for carrying cost stipulated in the PPA, the aggrieved party is not entitled to it. The Hon'ble Supreme court in *NTPC vs. Madhya Pradesh State Electricity Board, (2011) 15 SCC, (paras 25 to 28)* has held that interest cannot be granted based on principles of equity when there are no statutory/contractual provisions allowing interest. It is submitted that there is no explicit provision in the PPA entered into by

the parties which allows the grant of carrying cost. Hence, in the absence of the same the petitioner is not entitled to any carrying cost. Seen from any angle, the present petition is bereft of merits and deserves to be rejected.

8. The petitioner and Respondent have relied on the following, Court rulings/case Laws.

(a) Case Law/ Rulings submitted by Petitioner:

- (i) *Petition No. 50/MP/2018 – M/S Prayatna Developers Private Limited vs National Thermal Power Corporation Limited & others.*
- (ii) *Petition No. 206/MP/2018 – Paramapujaya Solar Energy Private Limited (PSPEL) vs National Thermal Power Corporation Limited & others.*
- (iii) *(2019) 5 SCC 325 – Uttar Haryana Bijli Vitran Nigam Limited vs Adani Power Limited.*
- (iv) *Appeal No. 210/2017 - Adani Power Limited vs Central Electricity Regulatory Commission & others.*
- (v) *Appeal No. 131/2019 in DHN Power Distribution Company Limited Vs. CERC and Ors.*

(b) Case Law/ Rulings submitted by Respondent.

- (i) *(2017) SCC Online CESTAT 5822 – M/s Phenix Construction Technology vs. Commissioner of Central Excise.*
- (ii) *(1997) SCC Online CEGAT 1246: – Jindal Strips Limited vs. Collector of Customs.*
- (iii) *(2018) SCC Online Utt AAR-GST 11 – Eapro Global Limited before the Uttarakhand Authority for Advance Ruling (GST).*

(iv) (2019) SCC Online Kar AAR-GST 49 – Solarys Non-Conventional Energy Private Limited before the Karnataka Authority for Advance Ruling (GST).

(v) Petition No. 536/MP/2020 – Solar Energy corporation of India Limited vs M/S Azure Power Venus Private Limited & others.

9. We have heard the learned counsels for the parties and perused the written submissions and rival contentions raised by the parties, relevant documents and case laws submitted by both parties. The following issues arise for our consideration.

Issue No.1: Whether the enactment of the Integrated Goods and Services Act, 2017, the Central Goods and Services Tax Act, 2017, the Karnataka Goods and Services Tax Act, 2017 with effect from 01.07.2017 is covered under the scope of 'Change in Law' under Article 15 of the Power Purchase Agreement?

Issue No.2: Whether the petitioner is entitled to claim incremental impact in the cost of construction on account of enactment of GST Laws? If so, then what would be the compensation amount?

Issue No.3: Whether the claims of O& M expenditure to be incurred by the petitioner on account of Change in Law can be considered for the reimbursement from the respondent?

Issue No.4: Whether the claim of the petitioner to restore to the same economic condition prior to occurrence of the change in law by way of adjustment in tariff in terms of Article 15 of the PPA?

Issue No.5: Whether the petitioner is entitled for carrying cost for the period from the date of the effect of the Change in Law event?

Issue No.6: What order?

10. On consideration of the entire pleadings and the documents produced by both the parties and written submissions by them, our findings on the above issues are as follows:
11. **Issue No.1:** Whether the enactment of the Integrated Goods and Services Tax Act, 2017, the Central Goods and Services Tax Act, 2017, the Karnataka Goods and Services Tax Act, 2017, with effect from 01.07.2017 is covered under the scope of 'Change in Law' under Article 15 of the Power Purchase Agreement?
1. The KREDL has invited proposals by its 'Request for Proposal' dated 12.02.2016 prescribing the technical and commercial parameters /conditions for selection of bidders for undertaking development of solar PV ground mount power plants in various Taluks through private participation. This petitioner has also participated in bids called by the KREDL for development of 200 MW capacity Solar PV ground mount project in Magadi Taluk, Ramanagara District. The Letter of Award (LoA) dated 30.05.2016 was issued to the petitioner herein by the KREDL information to execute the Power Purchase Agreement (herein after called the "PPA") with Respondent (Annexure-P-1). The PPA was came to be signed on 28.06.2016 between the petitioner and respondent (Annexure-P-2) and it was approved by the KERC on 27.09.2016 (Annexure-P-3). As per Article 3.1 of PPA the "effective date" is the date of execution by getting concurrence of KERC. i.e. 29.09.2016. Article 8.4 of PPA stipulates that the Developer shall commission the project within 12(twelve) months from the Effective Date. Article 4.1 & 4.3 of PPA

stipulates that the Developer have to fulfil the Conditions precedent as envisaged under Article 4.3 within 8 (eight) months from the Effective Date. The petitioner has Commissioned its Solar Power Project on 08.01.2018 (Annexure- P-5). This Petition was filed on 13.12.2018 by the petitioner for seeking from this Commission to declare that enactment of Integrated Goods and Services Tax Act,2017, Central Goods and Services Tax Act,2017 and Karnataka Goods and Services Tax Act,2019 (hereafter referred as "GST Laws") qualifies as "Change in Law" event in terms of Article 15 of PPA. The petitioner has mentioned in its petition that the definition of 'Law' provided under the PPA is an inclusive and illustrative definition and contemplates all laws, including the Electricity Laws applicable in India in various forms. The definition of law sets out under the PPA is as under:

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

2. The petitioner has narrated the definition of Article 15 of the PPA which deals with the provisions of Change in Law and also Article 15.2 which

deals with relief for Change in Law. The petitioner has submitted that as per Article 15 of the PPA, the following conditions have to be fulfilled while claiming a Change in Law: -

- (a) The underlying principle of 'Change in Law' provision is to determine the consequence of Change in law and to compensate a party affected by a change in law such that the party is restored to the same economic position as if such change in law had not occurred.
 - (b) The coming into effect of:
 - (i) The enactment or coming into force of any law.
 - (ii) Change in interpretation of any law.
 - (iii) Change in any consents, Clearances or Permits available for the Project.
 - (iv) Inclusion of new or Change in the terms and conditions prescribed for obtaining the Consents, Clearances, Permits.
 - (v) Change in tax or introduction of any tax made applicable.
 - (c) Provided that such change in law results in any additional recurring/non-recurring expenditure by the Developer or any income to the Developer.
3. The petitioner submits that the enactment of the Constitution (One Hundred and First Amendment) Act, 2016 by the parliament and in pursuant to enactment of GST Laws by government instrumentality, which qualifies as an event of Change in Law according to 1st Bullet of Article 15.1.1 of the PPA since:
- (i) The enactment of the GST legislations is the enactment of a Law repealing the current indirect tax regime.
 - (ii) The GST legislations have been passed by the Parliament of

India and State Legislatures;

(iii) The GST Legislations have been enacted subsequent to 27.09.2016 (which is the Effective Date under the PPA); and

(iv) Implementation of the GST Legislations will result in the change in the cost of or revenue.

4. The petitioner submits that Clause 6.2(4) Of the Tariff Policy,2016 issued under Section 3 of the Electricity Act,2003 by the Central Government also recognizes the concept of Change in Law and provides as under:

“6.4(2) After the award of bids, if there is any change in domestic duties, levies, cess and taxes imposed by the Central Government, State Governments/ Union Territories or by any Government Instrumentality leading to charges in the cost, the same be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through subject to approval of Appropriate Commission.”

5. The petitioner further contended that the Hon'ble Appellate Tribunal for Electricity (ATE) in its Order dated 19.4.2017 in the matter of M/s. Sasan power Limited vs. Central Electricity Regulatory Commission in Appeal No. 161 of 2015, has held that if PPA gives express right to an affected party to claim Change in Law if event qualifies in terms of PPA. . The RfP cannot override the right if an event qualifies as a Change in Law. In view of above, the petitioner requests this Commission to recognize and declare the enactment of GST Laws by the Government of India as Change in Law under Article 15 of the PPA for the purpose of claim for adjustment / recovery in tariff on account of the Change in Law event.

6. Per contra, the respondent submitted that the petitioner has participated in bids called by KREDL on 12.02.2016 and Letter of Award issued on 30.05.2016 and subsequent to this, the petitioner has entered into PPA on 28.06.2016 with the respondent and started implementing the project much before the introduction of GST laws made effective in the country. Therefore, petitioner is not affected by the promulgation of GST Laws and not entitled for relief under Article 15 of PPA. As per Article 4.1 of PPA, the petitioner had to achieve the Conditions precedent within 8 months from the effective date and also fulfil the technical requirements for Solar PV ground mount project as per provisions of Article 4.2(f) of PPA and also had to provide the documentary evidence for the same. Unless the petitioner produces cogent material before this Commission to prove that it has incurred the said expenses after the coming into effect of GST laws, no claim for declaring the same to be Change in Law will lie. Therefore, in the absence of any such material the claim of the petitioner to decide the imposition of GST law to be change in law cannot be considered. The petitioner further contended that if the petitioner produces material to show that it has suffered the additional tax burden after coming into effect of the GST laws, the same would be an admission that the petitioner has violated the terms of PPA by not adhering to the deadline for fulfilling Conditions precedent. Therefore, the petitioner is not entitled to relief for Change in law.

7. On the basis of examination of written submission/ statement of

objections and rejoinders submitted by both the parties, we have to examined whether enactment of GST Laws namely IGST Act, 2017; CGST Act,2017 by the Government of India and KGST Act,2017 by the Government of Karnataka is covered under the scope of "Change in Law" event under the provisions of existing PPA or otherwise? Therefore, we would like to proceed to go through the relevant provisions of PPA, Competitive Bidding Guidelines, GST Notifications and Court rulings which are applicable and have relevance to the facts of the instant case. And proceeded to analyse the issues raised by the petitioner in this petition and will give our findings accordingly.

8. The Commission notes that Article 21 of the PPA inter alia, defines the terms 'Law' and 'Government Instrumentality'. Which are as under: -

"Government Instrumentality" means any department, division or sub-division of the Government of India or the State Government and includes any commission board, authority, agency or municipal and other local authority or statutory body including panchayat under the control of Government of India or the State Government, as case may be, and having jurisdiction over all or any part of the project facilities or the performance of all or any of the services or obligations of the developer under or pursuant to this Agreement."

"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, or any interpretation of any of them by an Indian

Government Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by any an Indian Government Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the KERC."

9. The Commission further notes that Article 15 deals with Change in Law event, the extract Article is as under:

"Article 15.1.1 of PPA, defines the term 'Change in Law' means the occurrence of any of the following events after the submission of online Techno Commercial Bid resulting into any additional recurring/non-recurring expenditure by the Solar Power Developer (SPD) or any income to SPD.

The sub-clauses of Article 15.1.1 read as under:

- (a) the enactment coming into effect, adoption, promulgation, modification or repeal in India, of any law, including rules and regulations framed pursuant to such Law;*
- (b) a change in the interpretation or application of any law by Indian Government Instrumentality having legal power to interpret or apply such Law.*
- (c)-----*
- (d)-----*
- (e) any change in tax or introduction of any tax made applicable for supply of power by the developer as per the terms of this Agreement.*

10. Further, Article 15.2 provides relief for change in law. Article 15.2.1 stipulates that the aggrieved party shall be required to approach the KERC for seeking approval of 'Change in Law'. and Article 15.2.2 states that the decision of the State Commission, to acknowledge a 'Change in Law' and the date from which it will become effective and to provide relief for the same, shall be final and governing on both the parties.
11. The Commission observes that as per Article 15 the "Change in Law" comes into effect on adoption / promulgation / amendment / modification or repeal of any law in India; change in the interpretation of any law in India; imposition of a requirement for obtaining any consent or change in tax or introduction of any tax made applicable for supply of power by the Solar Power Developer (SPD) as per the terms of the Agreement, resulting into any additional non- recurring expenditure to the SPD. The Commission is of the view that harmonious construction of the sub-clauses under Article 15.1.1 makes it clear that bullet point first (it refers to sub-clause-a) of said PPA is wider in scope and refers to an enactment, coming into effect, adoption, promulgation, amendment, modification or any or repeal in India, of any law, including rules and regulations framed pursuant to such Law, whereas bullet point fifth (refer to sub-clause-e) of PPA in seriatim refers specifically to any change in tax or introduction of any tax made applicable for supply of power by the developer as per this agreement. Further, we are of the considered view that fifth bullet point i.e., sub-clause (e) of Article 15.1.1 would be applicable as "Change in Law" to

the case, where the Change in tax or introduction of any tax directly impacts "supply of power" and in that case remedy of change in law is available to the petitioner under this bullet point five i.e., sub-clause (e) of the PPA. Therefore, the GST Laws enacted are not in the nature of a mere change in the tax having limited applicability on supply of power. Rather, it is in the nature of an enactment having wide ranging implication on the entire indirect taxation regime in India. Various laws were subsumed and repealed with the enactment of GST laws.

12. This Commission notes that the Hon'ble Appellate Tribunal for Electricity (ATE) by its judgment dated 14.8.2018 in Appeal No. 111 of 2017 in M/s. GMR Warora Energy Limited vs. Central Electricity Regulatory Commission and Others, has decided on the interpretation of "Change in Law" provisions and held that "any tax or application of new tax on supply of power also covers on inputs required for such generation and supply of power to the distribution licensees". Further, it held that any tax levied through an Act of Parliament after cut-off date of bids, which results in additional expenditure by the petitioner, the same is covered as "Change in Law".
13. The Commission notes that the Hon'ble Tribunal for Electricity in its Judgment dated 27.4.2021 in Appeal No.172 of 2017 in Coastal Gujarat Power Limited vs. Central Electricity Regulatory Commission & Ors has held that-

“22.- that the expression Change in law (CIL), means the occurrence of any of the following events, on or after “Cut- Off date” which results in any change in the cost of, or revenue from, the business of generating and selling electricity by CGPL to the Procurer under the terms of the PPA which include:

(i) Enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law; or

(ii) Change in interpretation of any Law by Competent Court of Law, tribunal or Indian Governmental Instrumentality, provided such Court of Law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation; or

(iii) Change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller.

“23. The expression “Law” is explained in Article 1.1 of PPA by an inclusive definition which covers statutes, notifications, ordinance, rules, regulations, codes etc.”

14. It may be noted here that the “GST Laws” were enacted by the Act of Parliament such as the Central Goods and Services Act,2017(No.12 of 2017)(Annexure-P-7); the Integrated Goods and Services Tax Act,2017 (No. 13 of 2017)(Annexure-P-8) and these were published in Extra-ordinary Gazette of India on 12.4.2017 and the Karnataka Legislatures have enacted the Karnataka Goods and Services Act,2017(Karnataka Act No.27 of 2017), which was published on 27.6.2017 in Extra-ordinary

Gazette (Annexure-P-9). In the instant case, the KREDL had issued RfP on 12.02.2016 for inviting bids for development of the 20 MW capacity solar power PV ground mount project at Magadi Taluk, Ramanagara District and Letter of Award (LoA) was issued on 30.05.2016. The PPA came to be executed on 28.06.2016 between petitioner and respondent and it was approved by the KERC on 27.09.2016 prior to the introduction of GST Laws i.e. 1.07.2017. This Commission notes that the petitioner has issued a notice to the Respondent on 17.07.2017 about notification of Change in law event under Article 15 of the PPA dated 28.06.2016 (Annexure-P-2) stating that since GST is not factored in PPA executed prior to imposition of GST on July 1, 2017. It shall be an event under the Article 15 "Change in Law" of Power Purchase Agreement signed between Adani Green Energy (UP) Limited and Chamundeswri Electricity Supply Corporation Limited on 28.06.2016. Therefore, it has brought to the notice of the respondent that the above -mentioned Chang in Law event shall result in additional capital cost and Operating cost for the solar Power Project and thereby increase in cost of generation. Such increase cost needs to be reimbursed by the procurer by way of adjustment in tariff since same is covered under Article 15- Change in Law of the PPA.

15. This Commission is of the considered opinion that the change in duties/ tax-imposed consequent upon the GST Laws has resulted in the change in cost of inputs required for generation by the petitioner and same is to

be considered as "Change in Law". Therefore, the contention of the respondent that the present petition would not qualify the criteria specified in Article 15.1 of the PPA for considering as an event of "Change in Law" has no force and is liable to be rejected.

16. We rely upon the judgments of the Hon'ble Appellate Tribunal for Electricity in Appeal No.111 of 2017 in M/s. GMR Warora Energy Limited vs. CERC and Ors and in Appeal No.172 of 2017 in the matter of Costal Gujarat Power Limited vs. CERC & Ors, wherein it was held that any tax levied through an Act of Parliament after cut -off date which results in additional expenditure by the Petitioner, the same is covered as "Change in Law" and also held that any tax or application of new tax on 'supply of power' covers the taxes on inputs required for such generation and supply of power to the Distribution Licensees. In the present case, the "GST Laws" have been enacted by the Act of Parliament and the State Assemblies. The change in tax-imposed consequent upon these Acts has resulted in the change in the cost of inputs required for generation and hence the same is to be considered as "Change in Law". Hence, the Commission holds that the enactment of "GST Laws" is squarely covered as "Change in Law" under the sub-clause(a) and sub- clause (e) in seriatim of Article 15.1.1 of the PPA. This view is in consonance with the view taken by the Commission in Order dated 29.10.2021 in OP Nos. 65/2019, 66/2019 and 67/2019 in the matter of Mytrah Advait Power Private Limited vs. BESCO & Ors.

Hence, our answer on Issue No.1 is in affirmative.

12. **Issue No.2:** Whether Petitioner is entitled to claim incremental impact in cost of construction on account of enactment of GST Laws? If so, then what would be the compensation amount?

1. The petitioner has submitted that after filing Online techno economic bid and execution of PPA, the Government of India has introduced the Goods and Services Tax Laws, replacing multiple taxes levied by the Central and State Government. The introduction of GST Laws has had a huge impact on the actual cost of the project vis- a- vis budgeted cost and sought additional capital cost of Rs. 6,26,84,865 towards Goods and services Tax and Rs. 64,37,395 towards O & M expenses on account of enactment of GST Laws and these costs were not contemplated by the petitioner at the time of bid submission. Therefore, petitioner requested this Commission to declare it as a change in Law event under Article 15 of the PPA and to direct the respondent pay the amount claimed as asked in this petition under "Change in law" event in terms of Article 15 of the PPA along with carrying costs. The petitioner further submitted that though the petitioner has sent a notice on 17.07.2017 to respondent i.e. CESC regarding the Change in Law event that took place after applicability of GST Laws, but no reply/response not been received as yet from the respondent. Therefore, the present petition is filed for seeking reliefs under Articles 15.1 and 15.2 of the PPA.

2. The petitioner submitted that in the pre-GST era, the levy of Central Excise Duty for a developer for setting up of a solar power plant and payment of VAT on solar PV modules and Inverters were also exempted. As per Section 8 of CST Act, every purchaser in the course of inter-state trade or commerce is supposed to be liable to pay tax at the rate of 2% on production of "Form C" and pay 15% service tax as per Section 66B of the Finance Act (inclusive of 0.5% of Swachh Bharat Cess and 0.5% of Krishi Kalyan Cess as per Notification No.22/2015 dated 06.11.2015.
3. Per contra, the respondent submits that the petitioner has participated in bid for the present project during the month of November 2015, executed PPA on 28.06.2016 and started the implementation of its project much before the GST Laws were made effective in the country. Therefore, petitioner could have procured required materials/services at the prevailing tax rates of pre-GST regime. The petitioner has not achieved the Conditions precedent within the eight months period from the effective date as envisaged under the provisions of Article 4.1 of the PPA. Further, it would have met the technical requirements for setting up of solar PV ground mount plant as mandated under Article 4.2(f) of the PPA. Unless and until the petitioner provides cogent material before this commission to substantiate that it had incurred the said additional GST expenditure which has impacted the cost of construction of its project after enactment of GST Laws the petitioner claim for additional cost is inadmissible. In the absence of any such

material evidence, the claim of the petitioner to reimburse the GST amount on account of introduction of GST Laws and request to declare the imposition of GST Laws a "Change in Law" event may not be considered. The respondent has relied upon the rulings of Hon'ble CERC in the Petition No.187/MP/2018 and other similar matters, wherein it has held that any additional cost claimed by the petitioner incurred by it during the construction period due to purchase of any goods or services has to be correlated with Invoices raised by the supplier of goods and services and Auditor's certificate.

4. In view of rival arguments made by both the parties, this Commission proceeds to examine as to whether the petitioner is entitled to claim the incremental impact in cost of construction of its solar power project such as payment of GST and O& M expenditures from the respondent on account of enactment of GST Laws under Article 15 of the PPA and thereafter, we will give our findings in the relevant paras of this order.

Commission's Analysis:

- (i) The Commission notes that prior to the introduction of GST Laws, the goods were taxed/ levied at the time of production or manufacturing as Excise Duty by the central government and at the time of sale as Value Added Tax (VAT) by the concerned State. For the sale of goods between two States, then Central Sales Tax (CST) was levied and for projects executed within certain Municipal Corporation limits, an additional octroi was also levied on such

goods. After implementation of GST Laws, the multiple indirect taxes levied by Central and State Governments/Union Territories, the new GST Tax structure, the complex multifarious tax regime did away that was prevalent prior to the implementation of GST Laws i.e.1.7.2017.

- (ii) The contention made by the respondent that the petitioner could have paid Pre-GST at the rate at the rate of 14.5%,5.5 % or 5% had it been the procurement would have been made with in the state. This contention of the respondent is not tenable. Further, the calculations made by the respondent at Document No3 filed on 27.09.2021stating that Pre-GST impact on petitioner would be of Rs.6,57,19,774 is not justifiable.
- (iii) This Commission relies upon a "Concept and Status on Goods and Service Tax (GST)" published by Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, as on 1st August, 2018, wherein a list of indirect taxes, duties, cesses and surcharges have subsumed under GST is provided. The extract of the "Concepts and Status on GST" is produced as under:

"10.21 Subsuming of taxes, duties etc.: Among the taxes and duties levied and collected by the Union, Central Excise duty, Duties of Excise (Medicinal and Toilet Preparations), Additional Duties of Excise (Goods of Special Importance), Additional Duties of Excise (Textiles and Textile Products), Additional Duties of Customs (commonly known as CVD), Special Additional Duty of Customs (SAD), Service Tax and cesses and surcharges

insofar as they related to supply of goods or services were subsumed. As far as taxes levied and collected by States are concerned, State VAT, Central Sales Tax, Purchase Tax, Luxury Tax, Entry Tax, Entertainment Tax (except those levied by the local bodies), Taxes on advertisements, Taxes on lotteries, betting and gambling, cesses and surcharges insofar as they related to supply of goods or services were subsumed.”

- (iv) This Commission notes that the Central Excise Tariff Act, 1985 (5 of 1986) and Exemption Notifications (other than general) had provided exemption of duty of Central Excise inter alia required for initial setting up of solar power generation or solar energy production project or facility and also general exemption was provided to various items. The General Exemption No.64 stipulates as under: -

GENERAL EXEMPTION NO. 64:

“Exemption on all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment and components, required for initial setting up of a solar power generation project or facility. [Notification No. 15/2010-CE., dated 27.2.2010 as amended by 26/12, 15/14]. In exercise the powers conferred by the sub-section (1) of section 5A of the Central Excise Act, 1944(1 of 1944), the Central Government, on being satisfied that it is necessary in public interest so to do, hereby exempts all items of

machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment(including those required for testing and quality control) and components, required for initial setting up of solar power generation or solar energy production project or facility, from the whole of the duty of excise leviable thereon which is specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986), subject to the following conditions, namely:-

- (1) That an officer not below the rank of a Deputy Secretary to the Government of India, in the Ministry of New and Renewable Energy recommends the grant of this exemption, including quantity, description and specification of goods and certifies that they are required for initial setting up of a solar power generation or solar energy production project facility, as case may be; and*
- (2) The Chief Executive Officer of the project furnishes an undertaking to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacture, to the effect that-*
 - (i) the said goods will be used only in the said project and not for any other use; and*
 - (ii) in the event of non-compliance of sub-clause(i), the Project Developer of such Project shall pay the duty which would have been leviable at the time of clearance of goods, but for this exemption."*

- (v) It is observed that from the aforesaid exemption notification, the Central Excise Duty exemption was given on procurement of all equipment /components, required for initial setting up of a solar power generation plant.
- (vi) The Commission examined the relevant GST Notifications and material documents provided during pleading by the both the parties. The Commission noticed that in Karnataka state, solar PV panels and solar Inverters were taxable at the rate of 4% to 5.5% KVAT from 1.4.2005 to 31.7.2015, but exempted from Value Added Tax from 1.8.2015. However, on 8.2.2016, Government of Karnataka had issued a clarification about the applicability of Tax Exemption Notification No. FD 71 CSL 2015 stating that other than solar and solar inverters, other commodities would be taxable at 5.5% VAT. It is further noted that all services were levied Service Tax @15%, Swachh Bharat Cess of 0.5% and Krishi Kalyan Cess of 0.5% before introduction of GST Laws.
- 5. Regarding submission of Report on verification of Invoices/documents done after Reconciliation Joint Meeting:**
- (i) During the course of hearing/pleadings, the learned Counsel for Respondent made oral submission that though they have received the copies of invoices, purchase orders and other documents from the petitioner for verification, but, after verification of purchase

orders, Invoices and Bill of entries, they found that there were several infirmities in Invoices/ purchase orders, thus it requires further clarifications from the petitioner. In view of above submission, during next date of hearing and arguments this Commission made observation that it would be appropriate for both the parties to have a Joint meeting at their convenient date and place to go through the relevant Invoices/ Purchase Orders and other document and seek clarifications and also verify the correctness of invoices/ purchase orders and other documents and thereafter, they shall submit a Report in this regard, during next date of hearing and arguments.

- (ii) In pursuance to this direction, Learned Counsel for petitioner submitted a Memo dated 16.08.2021 along with a memo of documents, the Minutes of the Meeting (at page2-4/996-998); Summary of cost impact due to GST as Annexure-1 (page-5-18/999-1012) Annexure-2 (at page-19-34/1013-1051 at Paper Book-volume-III).

6. **Commission's Observation on Reconciliation Meeting Minutes:**

- (i) It could be seen from the Minutes of Meeting dated 16.08.2021, shows that the representatives of both the parties were present and wherein, they have deliberated on various issues and also signed the meeting proceedings (Minutes of the Meeting, at page2-4/996-998

of Paper book- volume-III). The relevant paras of the proceeding of this meeting are as follows: -

- (a) In para 5- of the minutes, it is recorded that the petitioner has computed pre-GST tax rate considering the concessional rate of 2% for domestic supply of goods against C Form having Inter-state supply (except PV Modules) whereas CESC contends that the procurements within Karnataka State under Karnataka VAT, the rate would have been 14,5%, 5,5% and 5%.
- (b) In para 6 - further contended that there is a price reduction by the sub-contractors due to ITC credit for Works Contract Services which was not available in pre-GST regime to be taken in account. Hence, entire purchase considered at 2% CST whereas local purchase tax rate is 14.5% has to be taken into account. AGEUPL in the response submitted that the Petitioner submitted a Statutory Auditor's Certificate dated 01.10.2018 certifying that the Company has not availed Input Tax Credit of GST paid on goods procured for setting up Solar Power Generating Plant (20 MW) for generation and supplies of Electrical energy, since the supplies of Electrical Energy falls under exempted goods under the GST regime vide notification No. 02/2017 dated 28th June 2017.

- (c) In para 7 - that the petitioner has considered rate of 6% tax for Works Contract Services, whereas CESC contends that the supply of Works Contract Service includes both material as well as Service Component. The Service Component is subject to tax rate of 6% ($15\% * 40\%$ considering it is pertaining to Original Works) and for Material Component the VAT Rate is 10.15% ($14.5\% * 70\%$) as per Karnataka VAT Schedule.
- (d) In para-8, the petitioner has computed post-GST tax rate based on HSN wise classification which varies from 5% to 28% where as CESC contends that the procurement post – GST, the rate of tax would have been 5.00% for supply of materials considering the project under solar power generating system (SPGS) and 18% of services.
- (e) In para-9, the details mentioned in Point No.5,6 and 7 are discussed during the meeting whereas no revisions were made in the claims by the Petitioner.
- (f) In para-10, that the Respondent contends that the claims made pertaining to the period after the Scheduled Date of Commissioning as per PPA shall not be considered, since the default is on account of delay in Commissioning of Project from the petitioner. The details are summarized and impact on account of GST claimed by the Petitioner post the Scheduled Date of Commissioning is attached as

Annexure-2. Further in respect of the point no.5 to 8, a detailed report will be filed by CESC considering the above issue separately.

- (ii) On the perusal of Annexure-1 at page 5-18/999-1012 of paper book-volume-v to the Minutes of Meeting, it is noted that the details of solar power project with respect to Magadi project have been furnished. In the observation column, it is mentioned bill amount claimed less or more than the actual bill as per record. Further, it is recorded that 512 Invoices were made available in respect of this project and 482 of the invoices were verified.
- (iii) From this Annexure-1, it could be gathered that both the parties have carried out a detailed verification of Invoices and analyzed them thoroughly and thereafter, the Learned Advocate for Petitioner has furnished the Copy of the minutes of the joint meeting proceedings with relevant Annexures as mentioned in para above. In view of above facts, the contention made earlier by the respondent while filing statement of objections on the basis of Main Petition stating that the petitioner has not provided the relevant invoices, purchase orders and other cogent documents, does not have any relevance now, Hence it is liable to be rejected. Further, it could also be observed that both the parties have reiterated their earlier stand taken while submitting their written submissions and no revisions were made in the claims by the parties.

(iv) Further, it may be noted that on behalf of the Respondent, the Learned Counsel filed a Memo dated 27.09.2021 in furtherance to the Joint Meeting held on 12.08.2021 (at page 2-10/1030-1039 of Paper book- volume -III) along with a details of the invoices that are dated after scheduled commissioning date as Document No.2(Ink page 12-20 &1041-1049 of paper book- volume -III) and Summary of GST impact as Document No.3 (ink page 21-22 & page 1050-1051 of paper book- volume-III). It is observed that in this report, the respondent has reiterated same contentions as raised by him in the written submissions.

(v) On 22.10.2021 the Ministry of Power, Government of India ('MoP') in exercise of the powers under Section 176 of the Electricity Act, 2003 has issued the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('CIL Rules'). This rules is given effect from 22.10.2021. In the instant case PPA does not lay down any formula. More than that earlier to this notification by Ministry of Power, Commission has already directed to reconcile the matter and to that effect reconciliation has been effected as stated Supra.

7. **Regarding: Authority on Advance Rulings on GST:**

(a) During the course of arguments, the learned counsel for Respondent submitted a copy of various orders passed by the Authority on Advance Rulings (GST) and Rulings of the Customs

Excise and Services Tax Appellate Tribunal (CESTAT). The respondent placed reliance on the following rulings as hereunder:

- (i) In the Uttarakhand Authority for Advance Ruling (GST)
(2018 SCC Online Utt AAR-GST 11)
- (ii) In the Karnataka Authority for Advance Rulings (GST)
(2019 SCC Online Kar AAR-GST 49)
- (iii) In the Customs Excise and Service Tax Appellate Tribunal
West Zone Bench, Ahmedabad
(2017 SCC Online CESTAT 5822)
- (iv) In the Customs Excise and Gold (Control) Appellate
Tribunal Court No. IV, New Delhi
(1997 SCC Online CEGAT 1246: (1997) 94 ELT 234)

- (b) The petitioner has also submitted a copy of citation of Authority on Advance Ruling on GST (Proceedings of A.C.A.R. 2015-16(20) KCTJ dated 8.4.2015.

Commission's Views on Advance Rulings:

- (i) This Commission perused these citations/ Rulings as mentioned above and observed that in these cases, the concerned Applicant has sought clarification from the Authority on Advance Rulings seeking rulings on classification of goods/ items and the rate of tax that would be applicable on such commodities/ goods as Solar Panels, Solar Inverters, Solar Power Optimizers, Solar Energy Power Plant, Solar Charger controllers etc. and also whether the supply of Solar Power Generating System is made in assembled and if so will it be covered under " composite" or "mixed" supply. Further some of the CESTAT Rulings are on structures and parts of structures for initial

setting up of Solar Power Plant claiming exemption from Central Excise Duty under Notification No.15/2010-CE, dated 27.2.2010 and whether phrase “component part” occurring in Notification No.77/90 dated 20.3.1990 would cover “spare parts” for the purpose of granting of benefit of exemption of excise duty.

- (ii) On the perusal of the aforesaid rulings passed by various Hon'ble Authority for Advance Rulings/ CESTAT and Hon'ble Supreme Court, it is observed that there are divergent views on these advance rulings. In the instant case, it is an undisputed fact that the petitioner has procured good and services individually either from domestic and foreign suppliers, therefore, facts of the above cited Rulings are not applicable to the present case, hence cannot be relied there upon.
- 8. Regarding: Claims of incremental impact in Cost of construction of the project on account of enactment of GST Laws- Commission's Analysis and Rulings:**

- (i) The Commission notes that as per Notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 issued by Ministry of Finance, Government of India, wherein Schedule-I, Chapter Heading/ Sub-heading /tariff item- 84 or 85, 5% IGST is levied on renewal energy devices & parts for their manufacture and similarly a Notification No. 01/2017-Central Tax (Rate) dated 28.6.2017 was issued the Ministry of Finance, Government of India, wherein at Serial No. 234 Chapter/

Heading/sub-heading / Tariff item 84, 85 &94 of the “renewable energy devices & parts for the manufacture(b) Solar power-based devices and (c) Solar Power Generation System” 2.50% CGST is levied. Further, as per Notification (01/2017)/ No. FD 48 CSL 2017, dated 29.06.2017 issued by the Finance Department, Government of Karnataka, wherein Schedule-I, Chapter/ Heading/ Sub-heading/ Tariff item No.84 or 85, description of goods shown as Solar power- based devices/ Solar power generating system, 2.5% SGST is levied.

- (ii) The Commission observes that it could be seen from above said notifications, that 5% IGST, 2.5% CGST and 2.5% SGST is levied on Solar power- based devices & parts for their manufacture inter alia Solar power-based devices/ Solar power Generating system as per description of goods as titled under Chapter/Heading/ Sub-heading/ Tariff Item.
- (iii) This Commission has perused the definitions of various terms defined under Section 2 of the Central Goods and Services tax Act,2017 and also under Section 2 of the Karnataka Goods and Services Tax Act, 2017, but finds that nowhere, the terms “device” and “parts” have been exclusively defined under the definitions clauses of the aforesaid GST Laws.
- (iv) The contention of the respondent is that the petitioner ought to have availed the concessional rates of 5% of GST (2.5% CGST +2.50%

SGST) levied on solar power-based devices/ solar power generating system at Chapter 84 or 85 and 94 of Schedule-I of the IGST Act,2017/ CGST Act, 2017/ KGST Act,2017. To counter this argument, the petitioner says that the concessional rates of 5% GST (2.5% CGST+2.5% SGST) on solar power generating system is not applicable to the present case, as it has procured all goods and services individually either from domestic suppliers or foreign suppliers after paying the applicable rate of tax as charged / levied by the Supplier as per HSN classification under concerned Chapter/ Heading/ Sub-heading / Tariff Items under particular Schedule of the CGST Act/ IGST Act and KGST Act. Further, petitioner contended that it has not entered any EPC agreement with EPC contractor for supply, erection and commissioning of SPGS so as to qualify the concessional tax under SPGS category. The petitioner further advanced the arguments that it is a well settled principle that commercial decisions taken prior to the implementation of GST Laws, cannot be questioned by the respondent at a later stage. In this regard, it has placed reliance upon the Order passed by the Hon'ble CERC in the case of Parmapujaya Solar Energy Private Limited vs. National Thermal Power Corporation Limited and Ors, in Petition No.206/MP/2018(2019 SCC ONLINE CERC 191).

- (v) In view of above, we are of the considered opinion that contention of respondent that the petitioner ought to have procured solar

power generating system/ renewal energy devices under concessional rate of 5% GST under GST regime rather than procuring from various sources individually which resulted in incurring the additional amount of GST does not hold water and have no much force to accept it. In the instant case, the petitioner has procured goods and services individually after following its internal business practices from domestic and foreign suppliers/ manufactures, including some of them are from other business entities of the petitioner's company which are totally independent entities as submitted by the petitioner in its written submission while describing the purchase procedure, raising invoices and payment of GST taxes to the concerned Suppliers.

(vi) This Commission has relied upon the Order passed by the Hon'ble CERC in the case of Parmapujya Solar Energy Private Limited vs. National Thermal Power Corporation Limited & Ors, in Petition No.206/ MP/2018(2019 SCC online CERC 191), the Hon'ble Central Electricity Regulatory Commission has held as under:

"93. The Commission observes that as per Notification No. 1/2017-Central Tax (Rate) as contained at Sr. No. 234 Chapter heading 84, 85 or 94 of the "renewable energy devices & parts for the manufacture----- (C) Solar Power Generation System" the concessional rate of 5% would also be available i.e. say inverters, cables, connectors etc. are under 28 per cent duty but whenever these products are used in the solar

generation system, these will attract an effective levy of 5 per cent instead of 28 per cent. Further, in case of direct purchase of the mounting structures, power conditioning units etc. are under 18 per cent duty but in case these components are sold as part of Solar Power Generating system then the same will attract an effective levy of 5 per cent instead of 18 per cent."

"95. ---- It has brought to our notice that in some cases, the Respondent-Procurers are questioning the rational of the commercial decisions taken by the SPDs in cases where the rates of GST are on higher side. Since, the decision for project implementation including the mode of procurement of goods and services were taken by the SPDs prior to the implementation of GST, it would not be appropriate to question such commercial decisions on the basis of the differential rates of GST on certain goods and services, and payments should be made based on the invoices raised and supported by Auditor's certificate."

- (vii) The Commission places reliance on Minutes of Meeting dated 12.08.2021 held on various dated between representatives of both the parties during which they have states that they verified the 512 invoices of procurements of goods and services from various sources including foreign country. Therefore, it is clearly evident that the petitioner has procured various components/ items/ equipment services and allied accessories required for construction of solar project at site and attracted tax incidence accordingly as per provisions of GST Acts. In view of above facts, we rely upon the

Order of Hon'ble CERC in Case of Parampujya Solar Energy Private Limited vs. National Thermal Power Corporation Limited and Ors, in Petition No.206/MP/2018 (2019 SCC Online CERC 191) wherein it has held that incase of direct purchase of mounting structures, power condition units etc., are under 18 per cent tax but in case these component are sold as part of Solar Power Generating system then the same will attract an effective rate of 5% instead of 18 per cent.

(viii) In view of the above, the Commission is of the opinion view that the petitioner had taken a commercial decision to procure the various components/ equipment required for setting up of solar power project individually from individual manufacturers/ suppliers of domestic markets and foreign country as well and has paid the applicable tax rate on individual equipment/ items/ material as per HSN classification of goods and services of GST Laws. Moreover, the supplier has levied applicable rate of tax on individual invoices and collected thereon, Under the circumstances, the respondent cannot dispute this commercial decision of the petitioner stating the that it could have avoided paying higher tax on each purchase and such GST tax cannot be reimbursed on account of GST Laws, and this contention of respondent is not tenable.

(ix) The Commission has perused the Notification No.24/2018-Central Tax (Rate), dated 31st December,2018, wherein, the Central Government on the recommendation of GST Council has made

amendments in the Notification No.1/2017- Central Tax (Rate), dated 28th June,2017. In the said notification the following paras extracts are as under,

(a) in the opening paragraph, after words, brackets and figures

“sub-section (5) of section 15 shall be inserted;

(a) **In Schedule I-2.5%, -**

(vii) against S.No.234, in the entry in the column (3), the following Explanation shall be inserted in the end, namely;

“Explanation: If the goods specified in this entry are supplied, by a supplier, along with the supplies of other goods and services, one of which being taxable service specified in the entry at S.No.38 of the Table mentioned in the notification No.11/2017- Central Tax (Rate), dated 28th June,2017 [G.S.R. 690(E)], the value of supply of goods for the purpose of this entry shall be deemed as seventy per cent, of the gross consideration charged for all such supplies, and remaining thirty per cent, of the gross consideration charged shall be deemed as value of the said taxable service.”

(x) This Commission has also perused the Notification No.27/ 2018- Central Tax (Rate), dated 31st December,2018, wherein, after serial number 37 in the column (1) and the entries relating thereto in column (2),(3),(4),(5) serial number 38 and Chapter/Heading/ Sub-heading/ Tariff item-9954 or 9983 or 9987- Services by way of

construction or engineering or installation or other technical services, provided in relation of setting up of inter alia (b)-Solar power based devices (c) Solar power generating system, there on 9% tax is levied. Further, it has been explained that this entry shall be read in conjunction with the serial number 234 of the Schedule-I of the notification No.1/2017- Central Tax (Rate), published in the Gazette, of India, dated 28th June,

(xi) The Commission notes that these notifications were given effect from 01.01.2019. However, in the instant case, the petitioner has Commissioned its power project 08.01.2018. Therefore, these notifications will not be applicable in the instant case. In view of above facts, the contention of the respondent that the petitioner would have procured goods and services at concessional rates and have avoided additional tax burden on account of GST laws, is not tenable. This Commission rejects this line of argument.

9. Auditor Certificates regrading effective tax rates pre and post- GST regime and payment:

(i) This Commission places reliance upon the certificates issued by the Chartered Accountants from time to time in for the instant case.

(a) This Commission placed reliance on the Chartered Accountant's Certificate dated 19.02.2019 wherein, it has been certified that M/s. Adani Green Energy (UP) Limited has complied with all norms as per 'GST

laws and amount claimed is correct as per effective taxes in pre and post' GST Regime'.

The Certificate issued by Dharmesh Parikh & Co. Chartered Accountants is reproduced here under:

CERTIFICATE

TO WHOM SO EVER IT MAY CONCERN

REG; ADANI GREEN ENERGY(UP) LIMITED

“We, Dharmesh Parikh &Co., Chartered Accountants, on the basis of accounts and other relevant records maintained and furnished to us by M/s. Adani Green Energy (UP) Limited certify that the material & services as per attached Annexure-A were procured and utilized for its 20 MW Solar Power Plant developed at Magadi location in the State of Karnataka.

The said Materials & Services have been procured by payment of applicable GST post enactment of GST Law. Due to GST implementation, the Company has paid additional tax 6,26,84,865 (in Words Rupees Six Crores Twenty-Six Lakhs Eighty-Four Thousand Eight Hundred and Sixty-Five only) in the form of GST on the material & services utilized as additional taxes.

This is to certified that M/s. Adani Green Energy (UP) Limited has complied with all norms as per 'GST laws and amount claimed above is correct as per the effective taxes in pre and post 'GST regime'. The certificate is issued in the context with Petition OP No.114/18 before Hon'ble KERC.

This certificate is issued on specific requirement of the company's management and we are have relied on the internal allocation towards project done by the management and other information and explanation given to us and document submitted to us and we

owe no financial or other liability in respect of the same to anyone relying on this certificate except our client."

Place: Ahmedabad

Date 19/02/2019

For Dharmesh Parikh & Co.
Chartered Accountants
Firm Registration No.112054W
Signature
Anuj Jain
Partner
Membership NO.119140
UDIN-19119140AAAABP8279

(b) The Commission placed reliance on the Certificate issued by the Chartered Accountant (Hemangi & Associates) in support of the GST payment made by the petitioner- company. It is reproduced here under:

CERTIFICATE

"We, Hemangi & Associates, Chartered Accountants, on the basis of books of accounts and other relevant records maintained and furnished to us by M/s. Adani Green Energy (UP) Limited certify that the material & services were produced and utilized for its 10MW Solar Power plant developed at Magadi location in the state of Karnataka.

The said material & Services have been procured by payment of applicable GST post enactment of GST law. The procurement verified with GST -2A of entity. The summary of the reconciliation of procurement with GSTR-2A is produced as under:

Particulars	Invoice Amount	GST Amount	GST Impact
GST paid & Reported in GSTR 2A	28,25,20,941.17	4,26,12,899.87	2,95,06,090.68
GST Paid but vendor not reported in GSTR 2A	3,73,57,161.29	66,29,598.65	24,67,689.14

Import/ Foreign Supply- Not forming part of GSTR 1A	50,23,05,333.42	3,18,03,940.86	3,07,11,084.81
Grand Total	82,21,83,435.88	8,10,46,439.38	6,26,84,864.63

It is certified that M/s. Adani Green Energy (UP) limited has complied with all the norms as per GST Laws and amount claimed is correct as per effective taxes in pre and post GST regime. The certificate is issued in context with the Petition No.114/18 before the Hon'ble KERC.

This certificate is issued on the specific requirement of the company's management and we have relied upon books of accounts, management representation, and other information and explanation given to us and documents submitted to us. We owe no liability either financial or otherwise to anyone in respect of this certificate except our client."

For
Hemangi & Associates
Chartered Accountants
FRN 145225W
(Signature)
Hemangi Mulaokar
Partner
M. No.- 127083
UDIN-21127083AAAABV1553

(Signature)
Dated 18/01/2021
Place: Ahmedabad

(c) The Commission notes that the petitioner has submitted a Memo dated 22.10.2021 along with a Chartered Accountant's certificate dated 12.10.2021 (Mauksha Shah & Associate) Chartered Accountants regarding payment of additional tax of Rs.3,07,11,085 for procurement of materials and services from outside of India at Annexure -A which is reproduced as under: -

CERTIFICATE
TO WHOM SO OVER IT MAY CONCERN
REG: ADANI GREEN ENERGY(UP) LIMITED

“We, Mauksh Shah & Associates, Chartered Accountants, on the basis of accounts and other relevant records maintained to us by M/s. Adani Green Energy (UP) limited certify that the material & services as per attached Annexure-A were procured and utilized for its 20 MW Solar Power Plant developed at Magadi location in the State of Karnataka.

The said Materials & Services have been procured outside India (Foreign) by payment of applicable GST post enactment of GST Law. Due to GST implementation, the Company has paid additional tax Rs.3,07,11,085(in words Three Crores Seven Lacs Eleven Thousand and Eight Five Only) in the form of GST on such material & services utilized as additional taxes.

This is to certified that M/s. Adani Green Energy (UP) limited has complied with all norms as per ‘GST laws and amount claimed above is correct as per the effective taxes in pre and post ‘GST regime’. The said material & Services have been verified based upon purchase Order/service order / contracts in respect of the material / services attached in the annexure and GST amount has been remitted accordingly. The certificate is issued in the context of petition No OP 114/ 18 filed before Hon'ble KERC.

This certificate is issued on specific requirement of the company's management and we are have relied on the internal allocation towards project done by the management and other information and explanation given to us and document submitted to us and we owe no financial or other liability in respect of the same to anyone relying on this certificate except our client.”

Place: Ahmedabad
Date:12.10.2021

Seal

For Mauksh Shah & Associates,
Chartered Accountants
Firm Registration No.156115W
(Signature)
Mukesh Shah
Proprietor
Membership NO.190272
UDIN- 21190272AAAAAX9329

10. **Regarding Purchase Invoices After the Date of Commissioning of Solar Power Project and allowable claim of GST upto actual date of commissioning.**

- (i) It may be noted here that the Power Purchase Agreement has entered between both the parties on 29.06.2016 for setting up of 20 MW Solar Power project in Magadi Taluk, Ramanagara District . The KERC has approved the PPA on 27.09.2016 which is the Effective date. The Scheduled Commissioning Date of the project was 12 (Twelve) months from the Effective Date means and the project ought to have been commissioned on or before 26.09.2017. but it has been commissioned on 08.01.2018(Annexure- P-5). The Respondent has filed a Report dated 27.09.2021 along with a details of the invoices that are dated after scheduled commissioning date as Document No.2(Ink page 12-20 &1041-1049 of paper book- volume -III) and Summary of GST impact as Document No.3 (ink page 21-22 & page 1050-1051 of paper book- volume-III). In this report it is contended that after verification of the invoices, it is found that the sum total of the invoices dated after the commissioning

date i.e. 02.10.2017 (actual commissioning date is 08.01.2018) is of Rs.1,05,42,848. The invoices dated after the commissioning date should not be considered while determining the GST compensation amount on account of imposition of GST. Therefore, the petitioner is not eligible to claim GST impact of Rs.1,05,42,848 on such invoices raised after the commissioning date.

- (ii) To examine this issue, the Commission has perused the definition of "COD" Commercial Operation Date as defined under Article 21.1 of definition clause of the PPA, which says that "COD" shall mean the actual commissioning date of respective units of the power project where upon the developer starts injecting power from the Power project to the Delivery Point."
- (iii) In view of above, the Commission has perused the contents of Commissioning Certificate dated 09.01.2018 issued by the Executive Engineer (EI), TL&SS, KPTCL, Somanahalli, Bengaluru which states that that "This is to certify that M/s. Adani Green Energy (UP) Limited, Shambav House, Nr Judges Banglow Roads Bodakdev, Ahmedabad-380 015, Gujarat have commissioned 20MW Solar Power Plant at Gejjaraguppe villag, Magadi Taluk, Ramanagara Dist and Provisional interconnection and synchronization has been carried out successfully with KPTCL grid through existing 66kV Chikkaganganawadi- Adani Solar power line on 08.01.2018 at 4:35 PM.". It may be noted from above; it is evident that the petitioner's

solar power plant had been commercially operationalized on 08.01.2018.

(iv) The Commission has perused some of the Invoices randomly and observed that invoices are having inward stamped dated, subsequent to the date of commissioning of project date i.e., 08.01.2018, considering the actual date of COD, it is observed that large number of components /items/ equipment have been received by the petitioner at project site after the date of commercial operationalization of the solar project at Magadi Taluk. In this regard, this Commission sought clarification from the Counsel for petitioner, but no convincing reply was given by the Counsel for the Petitioner. However, Advocate had made oral submissions that the petitioner will not press much upon for seeking reimbursement of GST on those invoices raised after the date of Commissioning of the project. It is also brought to our notice by the respondent that few invoices are prior to implementation of GST laws, therefore, the GST claims on such invoices should not be considered.

(v) Keeping the above facts in view, we are of the considered opinion that as per provision of Article 15 of the PPA which deals with impact of change in law applicable for supply of power by the petitioner shall be as per terms of Agreement. In so far as the Change in Law event with regard to the procurement of solar modules, inverters, equipment, services and allied materials is concerned, it is

applicable till the stage of Construction and commissioning of the project and not beyond the that is not applicable during the Operation period after the commencement of supply of electricity. There is no provision in the PPA for determining tariff or payment of additional expenditure incurred by way of any capital investment made by the petitioner are after construction the period is over and this position of law is applicable irrespective of any up-gradation or improvement or repair or modification undertaken by the petitioner at any time throughout the terms of operation period. All such costs are entirely to the account of the petitioner with no liability on respondent either for capital cost or taxes. Therefore, no invoices for claiming GST compensation for procurement of solar modules, component, equipment and allied services raised after the date of the commissioning is allowed for reimbursement of GST payment by the petitioner.

- (vi) In the present petition, the petitioner has made its submission that it had procured the goods and services of worth of Rs.82,21,83,436 from domestic and foreign manufacturer/ suppliers individually and incurred GST expenses of Rs.8,10,46,439 on the total base value of the Goods and Services, out of which an amounting to Rs.1,83,61,575 Pre-GST tax amount. Therefore, while calculating the GST impact on construction of power project, the aforesaid Pre-GST tax amount is not being claimed as GST impact on its power project

and petitioner is claiming of Rs.6,26,84,865 as GST impact from the Respondent. The Commission is of the view, that the contention of the petitioner is acceptable because he has factored 2% to 15% CST after reducing this Pre-GST tax amount from the total tax suffered by him has, claimed net GST impact as certified by the Chartered Accountants' as explained in above paras of this Order, moreover, the respondent has also not objected, to the petitioner's stand in this regard.

- (vii) Keeping the above facts in view, this Commission holds that the invoices raised for GST claims for solar modules, equipment and allied services raised by the petitioner after the date of commissioning date i.e., 08.01.2018 are not admissible. The Commission holds that the invoices raised from 01.07.2017 till the date of commissioning i.e., 08.01.2018 are to be considered for GST claims amounting to Rs.**5,21,42,017** on account of implementation of GST Laws, as a "Change in law" event under the provisions of Article 15 of the PPA dated 29.06.2016 entered between both the parties. Hence, the Commission allows the GST claims of the petitioner for construction of solar power project at Magadi Taluk, Ramanagara District on account of introduction of GST Laws due to "Change in Law" event under the Article 15 of PPA, the details are given in the table below:

ABSTRACT**Table-1****20 MW Solar Power Project at Magadi Taluk, Ramanagara District of M/s****Adani Green Energy (UP) Limited**

OP No.114 /2018	GST Impact Amount claimed by the Petitioner (Rs.)	Reimbursement of GST amount disallowed (Rs.)	Reimbursement of GST amount allowed (Rs)
	6,26,84,865	1,05,42,848	5,21,42,017

The Date-wise details of invoices raised from 01.07.2017 to 08.01.2018 is at Annexure-1(A) ,1(B)& II of this Order.

11. Regarding: Collection and remittance of IGST/CGST& SGST to the Government Authorities:

(i) The petitioner has filed a memo dated 11.06.2021 along with Certificate from CA with respect to Input Tax Credit as at Document No 5 (page 98 /755 Booklet volume-II) & CA Certificate in support of the GST 2A payment made by the petitioner company as at Document No 7 (page 102 /759 Booklet volume-II) Further, , in this memo petitioner has submitted the procedure is followed in the procurement of goods and services by the petitioner and consequent GST payments is made to the suppliers.

(ii) It would be pertinent to mention here that this Commission has gone through the relevant provisions of the Central Goods and Services Tax (CGST) Rules,2017, which deals with the legal requirement for registration of a person/dealer under the above said GST Rules and

that the registered dealer/ Supplier is required to levy tax at source from the purchaser, the liability to remit the tax amount collected from the purchaser of goods/services by the supplier to the Government Authority and filing the GST Returns and types of Forms that are to be used after introduction of GST Laws. The Commission feels that there is no need to repeat again the relevant provisions of the CGST Act,2017 and CGST Rules,2017 in the instant case, as this Commission has elaborately mentioned the provisions of above said Act and Rules in detail, in OP Nos. 65/2019, 66/2019 & 67/2019, in Order dated 28.10.2021 in the case of Mytrah Advait Power Private Limited vs. BESCO and Ors.

(iii) Further, In the instant case, the purchase orders / invoices/ relevant documents had been verified by the representatives of petitioner and respondent during the time of reconciliation meetings held on 12th of August 2021. The Commission has also gone through the Minutes of Meeting dated 12.08.2021 (at page 1076-1105 of Paper book- volume-II). It could be noted from the Annexure -1 to the Minutes at page 5-18/999-1012 of Booklet volume -II). For Magadi power project, that the representatives of both the parties have verified total 512 invoices

(iv) This Commission notes that the petitioner has filed a rejoinder to the additional statement of objections with affidavit dated 09.04.2021

duly signed by the Authorized Signatory enclosing the following documents: -

- (1) Certificate dated 19.2.2019 issued by the Chartered Accountant as Annexure-1 and Annexure-A- Summary of GST impact for AGE(UP)Limited- Magadi for 20 MW Project (At page-3-4/976-977of paper book – volume-III).
 - (2) Report dated 11.03.2020 prepared by Independent Consultants 'Deloitte Haskins &Sells LLP on impact on construction cost of solar power projects on account of introduction of GST at Document No.2 (page-5-18/ page-978-991of paper book – volume-III)
 - (3) Certificate dated 13.11.2020 issued by the Chartered Accountant with reference to Input Tax credit stating that the petitioner-company has not availed the Input Tax Credit as Document No.3(at page 19/ page- 992 paper book- volume-III).
 - (4) Certificate dated 18.01.2021 issued by Chartered Accountants with reference to GSTR-2A as Document No.4 of (at page 20/ page 993 of paper book-volume-III).
- (v) Regarding payment of GST towards procurement of goods and services by the petitioner, This Commission has placed reliance on the Chartered Accountant's Certificates dated 19.2.2019; 11.03.2020; 13.11.2018 and 18.01.2021, wherein it has been certified by them that the said materials and services have been procured by payment of applicable post-GST post enactment of GST Law. Due to the implementation of GST Laws, the petitioner-company

has paid additional tax Rs.6,26,84,865 in the form of GST on the material and services utilized as additional taxes. It is pertinent to note that as per relevant provisions of CGST Act, 2017 and CGST Rules, 2017, it is very clear that it is the duty of the Supplier of goods and services to levy tax as per applicable rate of tax as per HSN classification of goods and services on value of Invoices and collect accordingly from the purchaser and remit it to the concerned Authority in prescribed time frame and file the GST return in prescribed Format electronically through GSTR Web Portal.

Hence, we answer issue No.2 accordingly.

13. **Issue No 3:** Whether the claim O&M Expenditure to be incurred by the Petitioner on account of Change in Laws can be considered for reimbursement from the Respondent?

- (i) The petitioner has submitted in its amended petition that before the Effective date, the Service Tax at the rate of 15% was being levied on Operation & Maintenance (O&M) expenses. In view of the Notification No.20/2017- Central Tax (Rate) issued by the Ministry of Finance, Government of India under CGST Act, 2017 dated 22.8.2017 and under the Notification dated 29.6.2017 of the Government of Karnataka under SGST Act, CGST and SGST at the of 9% each is being levied on Operation and maintenance expenses. This will lead to an incremental impact of Rs.64.38 Lakhs on the cost of the project.
- (ii) The petitioner contends that O&M expenses are recurring expenses in

terms of the PPA and includes activities like salary, estimated maintenance costs and monthly income from lease etc. As a matter of prudent industrial practice, the O&M services are outsourced to third parties to ensure international standards in the plant inspection procedures, quality assessment plans and check lists for maintenance. Often, certain services are also outsourced to experts when a company is not well equipped to perform certain activities. The outsourcing of O&M is thus a practical requirement to achieve targets in the most efficient way possible.

(iii) The petitioner submitted that the impact on GST in O&M expenses which the petitioner is going to incur in next 25 years of PPA tenure and it has worked out on the basis of the relevant normative parameters as specified by KERC in its Order dated 12.04.2017 in the matter of "Revision of tariff for Grid Interactive Megawatt Scale Solar Power Plants for FY 2018, the considered normative O& M cost for the year 2017-18 at Rs.7.40 lacs/MW, which includes Service Tax of 15% with an annual escalation of 5.72%. The petitioner has considered the same parameter with an additional 3% GST impact, i.e. 18% on the normative O&M expenses. Accordingly, net present value of pre- GST O&M expenses and post-GST impact works out to Rs.64.38 lakhs and which is being claimed as compensation. The petitioner has submitted a comparative chart to demonstrate the impact of O& M on its power project (Annexure-P-16). It is averred that at the time submitting the bid, it had

factored O&M cost which is to be incurred during the life of the projects. However, the increase in taxes, applicable to various O&M activities on account of introduction of GST Law has resulted in increase of O&M cost of the petitioner and this incremental impact will have to be borne by the petitioner. Since this increase is on account of "Change in Law", the petitioner is entitled to relief for such increase.

- (iv) Per contra the respondent submitted that the petitioner's contention that it will incur O& M expenditure during the period of implementing the project while outsourcing O&M activities which are required to maintain its solar power project. The respondent has placed reliance on the Hon'ble CERC in Petition No.187/MP/2018 wherein it has held that the O&M stage can be broadly construed to be Post Construction Stage and same is covered under the services under GST Laws. The activities that constitute O&M with regard to solar plant are site security, consumables, breakdowns spares, annual maintenance contract, module cleaning, labour and water supply. In this regard, respondent has contended that there will be no GST levied, if O&M services were undertaken by the Generator itself. In the event that such services are outsourced to a third party then, no claim for such additional tax payable on outsourced services can be considered to be Change in Law event. In view of above, the respondents contended that claims of O& M cost and carrying cost sought by the petitioners are not justiciable. Hence, it is liable to be rejected.

(v) This Commission is of the view that recurring expenses referred to in Article 15.1.1 of the PPA includes activities like salary, estimated maintenance costs, taxes etc. The Commission is of the view that outsourcing of the "Operation and Maintenance" services is not requirement of the PPA/ Bidding Documents. The Concept of the outsourcing is neither included expressly in the PPA and nor it is included implicitly in the Article 15 of the PPA. The Commission is of the view that in the Competitive Bidding Scenario, the SPDs bid levelized tariff without disclosing the details of the calculations of the project cost. Moreover, it is a commercial decision of the petitioner taken for its own advantages and any increase in cost including on account of taxes is to be borne by the petitioner etc. In the event of the petitioner chosen to employ services of other agencies, cannot be increase liability for the respondent.

(vi) The petitioner has referred to the provisions of the Generic Tariff Order dated 12.4.2017 "Revision of tariff for Grid Interactive Megawatt Scale Solar Power Plant for Fy-2017-18" issued by this Commission to support its arguments for claiming compensation on account of the Goods and Services Tax Laws on the operation and maintenance cost. The Commission notes that this Generic tariff is applicable for those projects whose tariff is fixed under section 62 of the Electricity Act,2003 whereas the petitioner's project was selected through competitive bidding for which aforesaid parameters of tariff order of KERC is not applicable.

Therefore, the Commission does not find any merit in the petitioner's argument.

- (vi) In view of above, this Commission it is of the opinion that there is no specific provision for providing relief towards O& M expenses under existing the PPA as sought for by the petitioner. Moreover, the petitioner has failed to establish its claims by providing invoices for having incurred O& M or to be incurred such expenses on account of implementation of GST laws, but the petitioner has only furnished a calculation sheet as Annexure -P/16 which is prepared on the basis of parameters of Generic Tariff Order dated 12.4.2017 issued by this Commission for the Interactive Mega Scale Solar power projects for 2017. This parameter of Generic Tariff Order is not applicable for the petitioner's project. Therefore, this Commission holds that the claim of the petitioner on account of additional service tax burden of operation and maintenance expenses if any, is not maintainable.

Hence, we answered issue No.3 is accordingly.

14. **Issue No.4:** Whether the claim of the petitioner to restore to the same economic condition prior to occurrence of the change in law by way of adjustment in tariff in terms of Article 15 of the PPA?
15. **Issue No.5:** Whether the petitioner is entitled for carrying cost for the period from the date of the effect of the Change in Law event?
16. We have clubbed issue No.4 and issue No.5 together as both the issues are inter-related. Therefore, we will deal with these issues together and give our

findings/ rulings accordingly.

- (i) The petitioner submitted that he is entitled to " Carrying Cost" for the additional project costs incurred due to Change in law event. Any compensation for Change in Law is incomplete if it does not come with the carrying cost that is inherent to the very provision. Carrying cost is the compensation for the time and value of the money. The petitioner contends that the mandate of Change in Law provisions across all PPAs (Standard documents drafted by the Government) recognizes the principle of restitution i.e. relief to be granted in a manner so as to place an affected party into the same economic position as if a Change in Law had not occurred. Restitution is therefore, inherent to compensation.
- (ii) The petitioner has placed reliance upon the various judgments of the Hon'ble Appellate Tribunal for Electricity in the Judgment dated 20.12.2012 in Appeal No.150 and in Judgement dated 13.4.2018 in Appeal No.210 of 2017, wherein it held that the carrying cost is in the nature of compensation for money denied at appropriate time. He further argued that that the petitioner is entitled to carrying cost and the failure to grant the same would defeat the underlying principle of restitution and render the Change in Law Article otiose. Further, the said Article provides for restitution provision and thus ought to be given a wide interpretation.
- (iii) The petitioner submits the Hon'ble Appellate Tribunal for Electricity in the

Wardha Power judgment has recognized the principle that in order to “restore the effected party to the same economic position” compensation for Change in Law claims has to be such, as to reimburse the effected party for the expenses actually incurred. Thus, the same will include expenditure attributable towards carrying cost.

(iv) The petitioner submitted that the Hon'ble Supreme Court has in the case of R.C. Cooper vs. Union of India AIR1970 SC540 noted that as per dictionary meaning “compensation means anything given to make things equal in value: anything given as equivalent, to make amends for loss or damage”. The above said principle has also been recognized by the Hon'ble Supreme Court in the case of N.B. Jeejabhoy vs. Assistant Collector, Thana Prant, Thana: AIR 1065 SC 1096.” Further, the Hon'ble Supreme Court in case of Yadava Kumar vs. Divisional Manager, National Insurance Corporation Limited and Ors. (2010)10 SCC 341) has held that “compensation is a comprehensive term and is aimed at restoring the party to same economic position as if no injury was caused to it.”

(v) To counter the arguments of the petitioner the respondent submitted that the petitioner has by way of additional submissions sought for carrying cost to be considered under Change in law. In this regard, it is submitted that in the present case, the PPA does not provide for carrying cost on account of change in law. The Respondent is placed reliance on the decision rendered by the Hon'ble CERC in the matter

of Petition No.187/MP/2018, wherein this issue was analysed and come to the reasoned decision that carrying cost cannot be considered to be a component which can be considered under change in law.

- (vi) The respondent has submitted that with regard to principle of recovery of carrying cost/ interest time value of money being recognized in different cases, it is contended that the introduction of GST does not have any bearing on the petitioner and hence averments that it is eligible for carrying costs is denied as untenable. It is pertinent to note that the PPA does not provide for carrying costs. Therefore, the petitioner is not eligible for any benefit transgressing the PPA.
- (vii) The respondent denies the averments made in additional submission on the petition that the petitioner is entitled for the carrying cost incurred due to "Change in law" and further contends that no reliance can be placed on Order of the Hon'ble Appellate Tribunal for Electricity in Appeal No.150 of 2012 and Appeal No.210 of 2017 as the same is not relevant to the facts and circumstance of the present case. The respondent further submitted that no reliance can be placed on *Yadava Kumar vs. Divisional Manager, National Insurance Company* (2010) 10 SCC 341 as facts of the present are different from the judgment cited by the petitioner.
- (viii) After hearing the arguments/counter arguments advanced by both the parties, , the issues that arise for our consideration is whether the petitioner is entitled for carrying cost and restoration of the petitioner to

the same economic position as if the change in law event has not occurred. After going through the relevant provisions of the PPA of this case, it is noticed that no specific provision is provided for restoration of the petitioner to the same economic position to the petitioner, prior to the introduction of GST laws due Change in Law event. Therefore, this Commission relies on the various judgment of the Hon'ble Appellate Tribunal for Electricity in this matter. The Hon'ble Appellate Tribunal for Electricity (ATE) dated 13.4.2018 in Appeal No. 210 of 2018, in case of Adani Power Limited vs. CERC & Others, in which it was held that since Gujarat Bid-01 PPA has no provision for restoration of the petitioner to the same economic position as if the change in law event has not occurred. Therefore, the question of allowing carrying cost will not arise. The relevant portion of the judgement dated 13.4.2018 reads as under:

Para 12 d) x "further, the provisions of Article 13,2 i.e., restoring to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e., restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principles of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Environ-Legal Action vs. Union of India & Others, we are of the considered opinion that the Appellant is eligible for carrying cost arising out of approval of the change in law events from the effective date of change in law till approval of the said event by the appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to

the same economic position as if the Change in Law has not occurred. Accordingly, this decision of allowing carrying cost will not be applicable to the Gujarat Bid-01 PPA.

(ix) The Commission placed reliance on the Judgment of the Hon'ble Appellate Tribunal for Electricity dated 14.8.2018 in Appeal No.111 of 2017 in M/s. GMR Warora Energy Limited vs. Central Electricity Regulatory Commission and Ors, on the aspect of carrying cost which is as under:

“ ix. In the present case, we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging working capital to cater the requirement of impact of Change in law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of the Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed by the Central Commission that the Appellant is eligible for surcharge if payment is not made in time by the Respondents No.2 to 4 after arising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest and carrying cost for the period from when Change in Law becomes operational till the date of its

approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of redetermination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of tariff. In the present case after perusal of the PPA we find that the impact of Change in Law event is to be passed on to the Respondents No.2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA. The relevant extract is reproduced below:

13.4. Tariff Adjustment payment on account of Change in Law 13.4.1 Subject to Article 13.2 the adjustment in Monthly Tariff Payment shall be effective from:

(a) The date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in law; or

(b) The date of the order/ judgment of the Competent Court or tribunal or Indian Government Instrumentality, if the Change in Law is on account of change in interpretation of Law,

(c) the date of impact resulting from the occurrence of Article 13.1.1.

From the above it can be seen that the impact of Change in Law is to be done in the form of the adjustment to the tariff. To our mind such adjustment in the tariff is nothing less than re-determination of the existing tariff.

“x. Further, the provisions of Article 13.2 i.e., restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of ‘restitution’ i.e., restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon’ble Supreme Court in case of Indian Council for Enviro Legal Action vs. Union of India & Ors, we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by the appropriate authority.”

Hon’ble APTEL also recalled the judgement in Gujrat case, as stated in earlier paragraph the decision to allow carrying cost “It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if the Change in Law has not occurred. Accordingly, this decision of allowing carrying cost will not be applicable to the Gujarat Bid-01 PPA.”

- (x) We are of the view that the Hon’ble Tribunal vide above judgment has decided that if there is a provision in the PPA for restoration of the Seller to the same economic position as if no Change in Law event has occurred, the Seller is eligible for carrying cost for such allowed Change in Law event(s) from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/ judgment.

(xi) We note that the petitioner has placed reliance on the Hon'ble APTEL Judgment in Adani Power Limited vs. Central Electricity Regulatory Commission & Ors, in Appeal No.210 of 2017 where it was held that the carrying cost is in the nature of compensation for money denied at the appropriate time. Further, the petitioner has also placed reliance upon the Judgment of Hon'ble Supreme Court in Uttar Haryana Bijli Vitaran Nigam Limited vs. Adani Power Limited & Ors. (2019)5 SCC 325, wherein it had held that the Change in Law Clause envisages an in-built restitute principle which must restore the affected party, to the same economic position as if such Change in Law had not occurred.

(xii) In the light of above referred judgments, this Commission has gone through the contents, facts and circumstances of the cases referred above to ascertain the relevance as to whether the above said judgments are applicable to the instant case. We have perused the Order dated 27.4.2021 passed by the Hon'ble Appellate Tribunal for Electricity in the matter of Coastal Gujarat Power Limited vs. Central Electricity Regulatory Commission and Ors, in Appeal No.172 of 2017 and Appeal No.154 of 2018, which also refers the aforesaid judgments on which the petitioner has relied upon. The relevant portion of the said Judgment is reproduced below:

"28. This tribunal passed Judgement in Appeal No.210 of 2017 titled as Adani Power Limited v. CERC &Ors, on 13.4.2018, inter alia, holding that the carrying cost is payable on the CIL compensation of Seller, the

said matter being also based on claim for compensation due to change in law events in the light of Standard Bidding Documents issued by the Ministry of Power, Government of India. This judgment was upheld by the Supreme Court by judgement passed on 25.02.2019 in *Uttar Haryana Bijli Vitaran Nigam Limited v. Adani Power Limited (2019)5 SCC 325*, inter alia, holding that Article 13 of the PPA provides for payment of Carrying Costs. There is no quarrel with the proposition that the above quoted provision of the PPA on the impact of change in law requires determination by the Regulatory Commission of the quantum of compensation and the date from which it becomes effective, this also having been recognized in *Uttar Haryana Bijli Vitaran Nigam Limited v. Adani Power (Supra)*, the onus to establish the requisite facts concerning the change in law and its impact being that of the Seller (here, the appellant). It is apt to quote some parts of the said ruling:

"9. It will be seen that Article 13.4.1 makes it clear that adjustment in monthly tariff payment on account of change in law shall be effected from the date of the change in law [see sub-clause(i) of clause 4.1], in case the change in law happens to be by way of adoption, promulgation, amendment, re- enactment or repeal of the law or change in law. As opposed to this, if the change in law is on account of a change in interpretation of law by a judgment of a Court or Tribunal or governmental instrumentality, the case would fall under sub-clause (ii) of clause 4.1, in which case, the monthly tariff payment shall be effected

from the date of said order /judgment of the competent authority / Tribunal or the governmental instrumentality. What is important to notice is that Article 13.4.1 is subject to Article 13.2 of the PPAs.

“10. Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. This would mean that by this clause a fiction is created, and the party has to be put in the same economic position as if such change in law has not occurred i.e., the party must be given the benefit of restitution as understood in civil law. Article 13.2, however, goes on to divide such restitution into two separate periods. The first period is the “Construction period” in which increase/ decrease of capital cost of the project in the tariff is to be governed by a certain formula. However, the seller has to provide to the procurer documentary proof of such increase /decrease in capital cost of the project for establishing the impact of such change in law and in case of dispute as to the same, a dispute resolution mechanism as per Article 17 of the PPA is to be resorted to. It is also made clear that compensation is only payable to either party only with effect from the date on which the total increase /decrease exceeds the amount stated therein.”

- (xiii) From the above-mentioned judgments, the Commission observes that if there is a provision in the PPA for the restoration of the petitioner to the

same economic position as if no Change in law event has occurred, the petitioner is eligible for carrying cost for such allowed "Change in Law" event from the effective date of the Change in law event until the same is allowed by the Commission.

(xiv) The Commission of the view that it would be appropriate to mention the relevant provisions pertaining to Late Payment Surcharge of the PPA of the petitioner's case. The relevant Article 13.4 of PPA is reproduced here under:

"Article 13.4- Late Payment Surcharge: - in the event of delay in payment of a monthly bill by BESCO within 30(thirty) days beyond its Due Date, a late payment of surcharge shall be payable to the Developer at the rate of 1.25% per month on the outstanding amount calculated on the day-to-day basis ("Late Payment Surcharge"). The Late Payment Surcharge shall be claimed by the Developer through the Supplementary Bill."

From the above stated Article 13.4 of PPA relating to Late Payment of Surcharge of the present case, does not have a specific provision to deal with the restitution principle of restoration to the same economic position to the petitioner as if change in law event had not occurred.

(xv) Reliance placed by this Commission is on the Judgment of Hon'ble Supreme Court in the case of Union of India vs. Tulasiram Patel (1985 3 SCC 398), wherein it was held that "when express inclusions are specified, anything which is not mentioned explicitly is excluded".

Therefore, this Commission notes that there are no explicit or implicit provisions available in the instant PPA entered into by the parties which allows carrying cost on construction of solar power project cost impacted on account of introduction of GST Laws and to restore to the same economic position prior to the occurrence of the change in law event as sought by the petitioners on account of GST Laws.

(xvi) The petitioner has placed reliance on the Hon'ble Appellate Tribunal for Electricity as referred in above para, but the facts of the present case and provisions of the PPA of the present case are not similar to aforesaid judgments and the principles laid down in these judgments are not applicable. Therefore, the prayer made by the petitioner to restore to the same economic position as if change in law event has not occurred and seeking carrying cost for the period from the date of effect of Change in Law event cannot be considered and liable to be rejected. Accordingly claims for carrying cost is not allowed.

(xvii) Moreover, the provisions of the PPA referred in the aforesaid judgement of the Hon'ble Appellate Tribunal for Electricity are quite different and facts and principles laid down in above referred Judgment are not relevant to this case. Therefore, we are of considered opinion that claims regarding restoration to the same economic position as if the change in law has not occurred and also seeking carrying cost for the period from the date of the effect of Change in Law event as sought by the petitioner are not tenable. and hence, rejected.

(xviii) With regard to prayer made by the petitioner to declare the petitioner is entitled for carrying cost for the period from the date of the effect of Change in Law is concerned, in this regard it would be appropriate to note the relevant provisions of the PPA. The extract of the Article is here under: -

“15.2- Relief for Change in Law:

Article 15.2.1 The aggrieved party shall be required to approach the KERC for seeking approval of Change in Law.

Article 15.2.2 The decision of the KERC to acknowledge a Change in law and the date from which it will becomes effective, provide relief for the same, shall be final and governing on both the parties.”

It could be seen from the plain reading of provisions of the said Articles, which clearly states when this Commission declares that the enactment of GST Laws is a “Change in Law” event and determine the relief for the same and also decides the date from which it will become effective, such decision shall be final and bidding on both the parties. Keeping in view of above, this Commission has held that the enactment of GST Laws is a “Change in Law” under Article 15 of the PPA on this day of passing of this Order. Therefore, the date of issuance of the order by this Commission is hereby declared as an effective date for holding the enactment of GST Laws as “Change in Law” event in consonance with the provisions of Article 15.2.2 of the PPA and the payment of GST

compensation by the Respondent as determined by the Commission in Table No 1 of para 14(10) (vii) shall be effective from this Order.

Hence, we answer Issue Nos.4 and 5, accordingly.

17. The compensation is allowed for payment of additional capital cost on account of enactment of GST law declaring it as to Change in Law event and payment of GST expenses incurred by the petitioner allowed upto date of actual commissioning of the solar power project. This Commission is not allowing payment of the carrying cost/ interest on such additional cost on account of GST amount allowed by this Commission. for the reasons stated in above paragraphs. Further, this Commission holds that it is not required to determine the tariff for the remaining period of PPA since the amount involved is not huge. Keeping the above facts in view, we hold that GST compensation payment is to be made to the Petitioner in three equal instalments within ninety days from Order.

18. **Issue No.6:** What Order?

For the foregoing reasons, we pass the followings:

ORDER

- a) The petition is partly allowed.
- b) The Petitioner is allowed compensation for GST impact due to enactment of GST Laws on account of Change in Law event under Article 15 of the PPA as determined

and mentioned in Table No.1 of para 12(10)(vii) and as in Annexure I (A) (B) & II of this Order.

- c) No carrying cost/interest is allowed.
- d) The payment of amount of Central Goods and Services Tax / Integrated Goods and Services Tax and Karnataka Goods and Services Tax (GST) as mentioned in Table No.1 of para 12(10)(vii) of this Order shall be made by the Respondent to the Petitioner in three equal instalments within 90 (Ninety days) from the date of this Order. If the respondent fails to pay such amount within this period, then the Respondent shall be liable to pay Late Payment Surcharge at the rate of 1.25% per month as per Article 13.4 of the PPA from the date of default after 90 days (Ninety days).

Sd/-
(H.M. MANJUNATHA)
Officiating Chairperson

Sd/-
(M.D. RAVI)
Member

OP No. 114/2018												
M/s. Adani Green Energy(UP) Limited 20MW Solar Project Magadi Taluk												
Domestic Material/Services details From 1.07.2017 to 08.01.2018												
											Annexure-I(A)	
Sl No	Type	Component	Type of Preoperative Service	Invoice Party Name	Inv. Ref No.	Invoice Document Date	Base Amt.	GST Rate	GST Amt.	Pre GST Tax Rate	Pre GST Tax Amt.	GST Impact
1	Domestic	Preoperative	Tranortation & Prefab porta cabin	SUNBEAM INFRATECH	SI/17-18/M/04	15-07-2017	7,45,912	18%	1,34,264	2%	14,918	1,19,346
2	Domestic	Preoperative	Cotton Thread, Safety Shoes, Safety eyewear	SHREE LAXMI TRADING COMPANY	TI/894/17-18	29-07-2017	8,178	5%	409	2%	164	245
3	Domestic	Preoperative	Cotton Thread, Safety Shoes, Safety eyewear	SHREE LAXMI TRADING COMPANY	TI/894/17-18	29-07-2017	18,594	12%	2,231	2%	372	1,859
4	Domestic	Preoperative	Cotton Thread, Safety Shoes, Safety eyewear	SHREE LAXMI TRADING COMPANY	TI/894/17-18	29-07-2017	44,750	18%	8,055	2%	895	7,160
5	Domestic	Preoperative	Cotton Thread, Safety Shoes, Safety eyewear	SHREE LAXMI TRADING COMPANY	TI/894/17-18	29-07-2017	25,316	28%	7,088	2%	506	6,582
6	Domestic	Switchyard Supply		LAMCO INDUSTRIES PVT LTD	GST/0125/2017-18	29-07-2017	1,86,316	18%	33,537	2%	3,726	29,811
7	Domestic	Preoperative	UPS System with with DC	NOVATEUR ELECTRICAL & DIGITAL SYSTEMS PV	1140019134	31-07-2017	54,500	18%	9,810	2%	1,090	8,720
8	Domestic	Switchyard Supply		G R POWER SWITCHGEAR LTD	GST/17-18/097	31-07-2017	3,11,620	18%	56,092	2%	6,232	49,859
9	Domestic	Preoperative	Supplying of Menpower-Magadi	KBN ENTERPRISES	MAGADI/RA-01	03-08-2017	40,120	18%	7,222	15%	6,018	1,204
10	Domestic	Preoperative	Portable cabin fabrication	SHREE R V ENTERPRISES	G/002/17-18	04-08-2017	1,51,907	18%	27,343	2%	3,038	24,305
11	Domestic	PEB Supply		JINDAL MECTEC PVT LTD	17-18/02/SI/316	19-08-2017	10,364	18%	1,866	2%	207	1,658
12	Domestic	Financing & IDC Charges		RAMAKRISHNA KAMAT & ASSOCIATES	G074/2017-18	21-08-2017	7,500	18%	1,350	15%	1,125	225
13	Domestic	Switchyard Supply		MEHRU ELECTRICAL & MECHANICAL ENGINEERIN	U117:DS/00249	23-08-2017	8,56,734	18%	1,65,085	2%	17,135	1,47,951
14	Domestic	Switchyard Supply		TRANSVERSE SOLUTIONS	TS/ADI/H01/2	23-08-2017	31,158	18%	5,608	2%	623	4,985
15	Domestic	Switchyard Erection		B R ASSOCIATES	2017-28	23-08-2017	1,50,000	18%	27,000	15%	22,500	4,500
16	Domestic	Switchyard Supply		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/008	26-08-2017	31,51,450	18%	5,67,261	2%	63,029	5,04,232
17	Domestic	Switchyard Erection		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/009	26-08-2017	53,93,064	18%	9,70,752	15%	8,08,960	1,61,792
18	Domestic	Preoperative	Construction management services	TUV RHEINLAND INDIA PVT LTD	KA0002900527	27-08-2017	4,24,529	18%	76,415	15%	63,679	12,736
19	Domestic	Preoperative	Construction management services	TUV RHEINLAND INDIA PVT LTD	KA0002900985	30-08-2017	7,09,016	18%	1,27,623	15%	1,06,352	21,270
20	Domestic	Switchyard Supply		G R POWER SWITCHGEAR LTD	GST/17-18/181	30-08-2017	2,46,717	18%	44,409	2%	4,934	39,475
21	Domestic	Electrical Supply		NSM TECHNOLOGIES PVT LTD	024/17-18	31-08-2017	2,31,000	18%	41,580	2%	4,620	36,960
22	Domestic	Preoperative	Manpower Supply-Security Guard	ISS SDB SECURITY SERVICES PVT LTD	KA/17-18/000347	31-08-2017	1,89,853	18%	34,174	15%	28,478	5,696
23	Domestic	Switchyard Erection		TATA CONSULTING ENGINEERS LTD	1729100126	31-08-2017	94,988	18%	17,098	15%	14,248	2,850
24	Domestic	Preoperative	Hiring of JCB	G K HONNARAJU EARTH MOVER AND LAND DEVEL	RA1	01-09-2017	1,44,246	18%	25,964	15%	21,637	4,327
25	Domestic	Preoperative	Hiring of JCB	G K HONNARAJU EARTH MOVER AND LAND DEVEL	RA2	01-09-2017	1,00,704	18%	18,127	15%	15,106	3,021
26	Domestic	Preoperative	Manpower Supply-Security Guard	ISS SDB SECURITY SERVICES PVT LTD	KA/17-18/000417	01-09-2017	1,04,168	18%	18,750	15%	15,625	3,125
27	Domestic	Preoperative	Supplying of Menpower-Magadi	KBN ENTERPRISES	MAGADI/RA-02	06-09-2017	41,080	18%	7,394	15%	6,162	1,232
28	Domestic	Preoperative	Cable Box,Surface mount box	LEXICON COMPUTERS PVT LTD	MS/147/2017-18	06-09-2017	840	18%	151	2%	17	134
29	Domestic	Preoperative	Cable Box,Surface mount box	LEXICON COMPUTERS PVT LTD	MS/147/2017-18	06-09-2017	16,300	28%	4,564	2%	326	4,238
30	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-019	09-09-2017	2,46,979	18%	44,456	2%	4,940	39,517
31	Domestic	Switchyard Supply		SIEMENS LTD	9051702343	09-09-2017	8,67,232	28%	2,42,825	2%	17,345	2,25,480

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32	Domestic	Switchyard Supply		MEHRU ELECTRICAL & MECHANICAL ENGINEERIN	U117:DS/00396	14-09-2017	5,52,930	18%	99,527	2%	11,059	88,469
33	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/01512	15-09-2017	54,000	12%	6,480	15%	8,100	-1,620
34	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/01512	15-09-2017	1,250	18%	225	15%	188	38
35	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/01513	15-09-2017	1,08,000	12%	12,960	15%	16,200	-3,240
36	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/01513	15-09-2017	2,500	18%	450	15%	375	75
37	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00027	16-09-2017	77,500	18%	13,950	15%	11,625	2,325
38	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00027A	16-09-2017	60,000	12%	7,200	15%	9,000	-1,800
39	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00027A	16-09-2017	89,400	18%	16,092	15%	13,410	2,682
40	Domestic	Preoperative	Rent Kyocera Printer	KYOCERA DOCUMENT SOLUTIONS INDIA PVT LTD	280900851	16-09-2017	10,638	28%	2,979	15%	1,596	1,383
41	Domestic	Preoperative	Tarpaulin HDPE	MADRAS CANVAS COMPANY	0075	16-09-2017	4,500	12%	540	2%	90	450
42	Domestic	Preoperative	Tarpaulin HDPE	MADRAS CANVAS COMPANY	0075	16-09-2017	1,67,508	18%	30,151	2%	3,350	26,801
43	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00035	17-09-2017	1,77,500	18%	31,950	15%	26,625	5,325
44	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00035A	17-09-2017	60,000	12%	7,200	15%	9,000	-1,800
45	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00035A	17-09-2017	49,400	18%	8,892	15%	7,410	1,482
46	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00106	19-09-2017	9,000	12%	1,080	15%	1,350	-270
47	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00106	19-09-2017	24,500	18%	4,410	15%	3,675	735
48	Domestic	Switchyard Supply		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/030	19-09-2017	13,64,851	18%	2,45,673	2%	27,297	2,18,376
49	Domestic	Switchyard Erection		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/031	19-09-2017	24,28,183	18%	4,37,073	15%	3,64,227	72,845
50	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HO/1718/00129	20-09-2017	4,500	12%	540	15%	675	-135
51	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HO/1718/00129	20-09-2017	50,360	18%	9,065	15%	7,554	1,511
52	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00149	22-09-2017	4,500	12%	540	15%	675	-135
53	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	HSLR/1718/00149	22-09-2017	12,250	18%	2,205	15%	1,838	368
54	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-024	22-09-2017	10,67,293	18%	1,92,113	2%	21,346	1,70,767
55	Domestic	Switchyard Supply		STERLITE POWER TRANSMISSION LTD	29-VB290017-0101	23-09-2017	3,41,359	18%	61,445	2%	6,827	54,617
56	Domestic	Switchyard Supply		STERLITE POWER TRANSMISSION LTD	35-VB350017-0920	23-09-2017	7,77,920	18%	1,40,026	2%	15,558	1,24,467
57	Domestic	Electrical Supply		CONTROLS INDIA PVT LTD	001876	26-09-2017	68,000	18%	12,240	2%	1,360	10,880
58	Domestic	Preoperative	Laptop, Bag	H P INDIA SALES PVT LTD	J9PMA44927	26-09-2017	40,131	18%	7,224	2%	803	6,421
59	Domestic	Preoperative	HP Back pack	H P INDIA SALES PVT LTD	J9PMA44927	26-09-2017	1,780	28%	498	2%	36	463
60	Domestic	PEB Supply		JINDAL MECTEC PVT LTD	17-18/02/SI/597	27-09-2017	8,00,501	18%	1,44,090	2%	16,010	1,28,080
61	Domestic	Preoperative	POE Switch	ROLTECH COMPUTERS	GST/0116/2017-18	27-09-2017	7,190	18%	1,294	2%	144	1,150
62	Domestic	Preoperative	POE Switch	ROLTECH COMPUTERS	GST/0116/2017-18	27-09-2017	715	28%	200	2%	14	186
63	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/121	27-09-2017	55,926	18%	10,067	15%	8,389	1,678
64	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/122	27-09-2017	45,276	18%	8,150	15%	6,791	1,358
65	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/123	27-09-2017	45,291	18%	8,152	15%	6,794	1,359
66	Domestic	PEB Supply		JINDAL MECTEC PVT LTD	MP/0617	29-09-2017	5,00,200	18%	90,036	2%	10,004	80,032
67	Domestic	PEB Supply		JINDAL MECTEC PVT LTD	MP/0622	29-09-2017	9,96,840	18%	1,79,431	2%	19,937	1,59,494
68	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-030	29-09-2017	8,856	18%	1,594	2%	177	1,417

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69	Domestic	Switchyard Erection		ABHILASHA ROAD CARRIERS	AR-2705	29-09-2017	49,110	5%	2,456	15%	7,367	-4,911
70	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000168	30-09-2017	12,48,300	18%	2,24,694	2%	24,966	1,99,728
71	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000169	30-09-2017	12,43,920	18%	2,23,906	2%	24,878	1,99,027
72	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000170	30-09-2017	12,46,840	18%	2,24,431	2%	24,937	1,99,494
73	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000171	30-09-2017	12,46,840	18%	2,24,431	2%	24,937	1,99,494
74	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000172	30-09-2017	12,46,840	18%	2,24,431	2%	24,937	1,99,494
75	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000173	30-09-2017	12,58,520	18%	2,26,534	2%	25,170	2,01,363
76	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000174	30-09-2017	12,42,825	18%	2,23,709	2%	24,857	1,98,852
77	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000175	30-09-2017	12,52,680	18%	2,25,482	2%	25,054	2,00,429
78	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000176	30-09-2017	12,59,980	18%	2,26,796	2%	25,200	2,01,597
79	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000177	30-09-2017	12,47,570	18%	2,24,563	2%	24,951	1,99,611
80	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000178	30-09-2017	12,40,270	18%	2,23,249	2%	24,805	1,98,443
81	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000179	30-09-2017	12,70,930	18%	2,28,767	2%	25,419	2,03,349
82	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000180	30-09-2017	12,42,460	18%	2,23,643	2%	24,849	1,98,794
83	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000181	30-09-2017	12,52,680	18%	2,25,482	2%	25,054	2,00,429
84	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000182	30-09-2017	12,40,270	18%	2,23,249	2%	24,805	1,98,443
85	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000183	30-09-2017	12,32,970	18%	2,21,935	2%	24,659	1,97,275
86	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000184	30-09-2017	10,10,320	18%	1,81,858	2%	20,206	1,61,651
87	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000185	30-09-2017	10,74,560	18%	1,93,421	2%	21,491	1,71,930
88	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000186	30-09-2017	13,67,290	18%	2,46,112	2%	27,346	2,18,766
89	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000187	30-09-2017	11,64,350	18%	2,09,583	2%	23,287	1,86,296
90	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000274	30-09-2017	13,49,259	18%	2,42,867	2%	26,985	2,15,881
91	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000275	30-09-2017	13,49,259	18%	2,42,867	2%	26,985	2,15,881
92	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000276	30-09-2017	13,49,259	18%	2,42,867	2%	26,985	2,15,881
93	Domestic	Preoperative	Manpower Supply-Security Guard	ISS SDB SECURITY SERVICES PVT LTD	KA/17-18/000657	30-09-2017	2,08,336	18%	37,500	15%	31,250	6,250
94	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000665	01-10-2017	2,60,832	18%	46,950	2%	5,217	41,733
95	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000667	01-10-2017	51,75,436	18%	9,31,578	2%	1,03,509	8,28,070
96	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900000668	01-10-2017	48,36,816	18%	8,70,627	2%	96,736	7,73,891
97	Domestic	Electrical Supply		ANAND SYNDICATS	700	03-10-2017	2,385	5%	119	2%	48	72
98	Domestic	Electrical Supply		ANAND SYNDICATS	700	03-10-2017	84,332	18%	15,180	2%	1,687	13,493
99	Domestic	Electrical Supply		ANAND SYNDICATS	700	03-10-2017	924	28%	259	2%	18	240
100	Domestic	Preoperative	Flexi Box	LEADING NETWORK PVT LTD	PNE/201718/960	03-10-2017	4,200	18%	756	2%	84	672
101	Domestic	Electrical Supply		MEASUREMECH	T-134/17-18	04-10-2017	3,150	18%	567	2%	63	504
102	Domestic	Electrical Supply		VIJAY ELECTRIC CO	0239	06-10-2017	2,13,000	18%	38,340	2%	4,260	34,080
103	Domestic	Preoperative	Supplying of Menpower-Magadi	KBN ENTERPRISES	MAGAD/RA-03	10-10-2017	43,240	18%	7,783	15%	6,486	1,297
104	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/163	10-10-2017	45,000	18%	8,100	15%	6,750	1,350
105	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/165	10-10-2017	30,000	18%	5,400	15%	4,500	900
106	Domestic	Preoperative	Third Party Inspection of variour projects	TATA PROJECTS LTD	4010211718906	10-10-2017	1,41,250	18%	25,425	15%	21,188	4,238
107	Domestic	Switchyard Erection		LILU MAHTO	001/2017-18	12-10-2017	2,65,900	18%	47,862	15%	39,885	7,977
108	Domestic	Erection of MMS & Modules		KBN ENTERPRISES	IVIL WORK /RA-01	12-10-2017	3,09,350	18%	55,683	15%	46,403	9,281
109	Domestic	Electrical Supply		MEASUREMENT AND CONTROL	1710/MNC/INV073	14-10-2017	25,420	18%	4,576	2%	508	4,067
110	Domestic	Preoperative	Rent Kyocera Printer	KYOCERA DOCUMENT SOLUTIONS INDIA PVT LTD	280901238	16-10-2017	4,850	28%	1,358	15%	728	631

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111	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	01	20-10-2017	7,26,998	18%	1,30,860	6%	43,620	87,240
112	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	02	20-10-2017	4,35,540	18%	78,397	6%	26,132	52,265
113	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	03	20-10-2017	1,89,192	18%	34,055	6%	11,352	22,703
114	Domestic	Preoperative	Construction management services	TUV RHEINLAND INDIA PVT LTD	GI0002400071	24-10-2017	11,70,268	18%	2,10,648	15%	1,75,540	35,108
115	Domestic	Switchyard Supply		ABB INDIA LTD	172401004750	25-10-2017	1,57,000	18%	28,260	2%	3,140	25,120
116	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-038	25-10-2017	8,67,470	28%	2,42,892	2%	17,349	2,25,542
117	Domestic	Electrical Supply		THE MOTWANE MFG CO PVT LTD	OMS1718/1498	29-10-2017	4,500	18%	810	2%	90	720
118	Domestic	Electrical Supply		THE MOTWANE MFG CO PVT LTD	OMS1718/1499	29-10-2017	1,85,000	18%	33,300	2%	3,700	29,600
119	Domestic	Cable		ADANI ENTERPRISES LTD	192900000769	31-10-2017	30,22,571	28%	8,46,320	2%	60,451	7,85,868
120	Domestic	Cable		ADANI ENTERPRISES LTD	192900000770	31-10-2017	30,22,571	28%	8,46,320	2%	60,451	7,85,868
121	Domestic	Cable		ADANI ENTERPRISES LTD	192900000789	31-10-2017	19,09,859	28%	5,34,761	2%	38,197	4,96,563
122	Domestic	Cable		ADANI ENTERPRISES LTD	192900000833	31-10-2017	26,33,330	28%	7,37,332	2%	52,667	6,84,666
123	Domestic	Cable		ADANI ENTERPRISES LTD	192900000834	31-10-2017	5,95,812	28%	1,66,827	2%	11,916	1,54,911
124	Domestic	Cable		ADANI ENTERPRISES LTD	192900000837	31-10-2017	13,80,874	28%	3,86,645	2%	27,617	3,59,027
125	Domestic	Cable		ADANI ENTERPRISES LTD	192900000855	31-10-2017	29,51,414	28%	8,26,396	2%	59,028	7,67,368
126	Domestic	Cable		ADANI ENTERPRISES LTD	192900000857	31-10-2017	17,91,244	28%	5,01,548	2%	35,825	4,65,724
127	Domestic	Civil Material		ADANI ENTERPRISES LTD	192900000868	31-10-2017	5,35,500	18%	96,390	2%	10,710	85,680
128	Domestic	Civil Material		ADANI ENTERPRISES LTD	192900000869	31-10-2017	16,06,500	18%	2,89,170	2%	32,130	2,57,040
129	Domestic	Civil Material		ADANI ENTERPRISES LTD	192900000870	31-10-2017	16,06,500	18%	2,89,170	2%	32,130	2,57,040
130	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900000785	31-10-2017	27,33,090	18%	4,91,956	2%	54,662	4,37,294
131	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900000786	31-10-2017	27,33,090	18%	4,91,956	2%	54,662	4,37,294
132	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900000797	31-10-2017	27,33,090	18%	4,91,956	2%	54,662	4,37,294
133	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900000798	31-10-2017	27,33,090	18%	4,91,956	2%	54,662	4,37,294
134	Domestic	Electrical Supply		AKSH OPTIFIBRE LTD	CB1017000869	31-10-2017	37,170	18%	6,691	2%	743	5,947
135	Domestic	Preoperative	Manpower Supply-Security Guard	ISS SDB SECURITY SERVICES PVT LTD	KA/17-18/000950	31-10-2017	2,57,898	18%	46,422	15%	38,685	7,737
136	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-040	31-10-2017	2,25,268	18%	40,548	2%	4,505	36,043
137	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-040	31-10-2017	1,67,968	28%	47,031	2%	3,359	43,672
138	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-041	31-10-2017	59,700	18%	10,746	2%	1,194	9,552
139	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-041	31-10-2017	5,12,746	28%	1,43,569	2%	10,255	1,33,314
140	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-053	31-10-2017	41,280	18%	7,430	2%	826	6,605
141	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-054	31-10-2017	28,992	18%	5,218	2%	580	4,639
142	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-055	31-10-2017	1,72,389	18%	31,030	2%	3,448	27,582
143	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-056	31-10-2017	1,72,389	18%	31,030	2%	3,448	27,582
144	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-057	31-10-2017	22,482	18%	4,047	2%	450	3,597
145	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-058	31-10-2017	3,83,926	18%	69,107	2%	7,679	61,428
146	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-059	31-10-2017	4,95,979	18%	89,276	2%	9,920	79,357
147	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-062	31-10-2017	9,23,600	28%	2,58,608	2%	18,472	2,40,136
148	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/187	01-11-2017	45,000	18%	8,100	15%	6,750	1,350
149	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/188	01-11-2017	39,193	18%	7,055	15%	5,879	1,176

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150	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/189	01-11-2017	30,000	18%	5,400	15%	4,500	900
151	Domestic	Preoperative	Flash Box	MERIDIAN INFOTECH LTD	MIG/17-18/072	03-11-2017	57,563	18%	10,361	2%	1,151	9,210
152	Domestic	Switchyard Erection		LILU MAHTO	002/2017-18	03-11-2017	3,50,700	18%	63,126	15%	52,605	10,521
153	Domestic	Preoperative	Freight, CC, Delivery Order Charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080061	06-11-2017	9,201	5%	460	15%	1,380	-920
154	Domestic	Preoperative	Freight, CC, Delivery Order Charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080061	06-11-2017	3,151	18%	567	15%	473	95
155	Domestic	Preoperative	Handling Charges, Processing, Transportaion charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080062	06-11-2017	5,501	18%	990	15%	825	165
156	Domestic	Preoperative	Freight, CC, Delivery Order Charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080107	06-11-2017	1,79,128	5%	8,956	15%	26,869	-17,913
157	Domestic	Preoperative	Freight, CC, Delivery Order Charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080107	06-11-2017	11,460	18%	2,063	15%	1,719	344
158	Domestic	Preoperative	Handling Charges, Processing, Transportaion charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080109	06-11-2017	19,427	18%	3,497	15%	2,914	583
159	Domestic	Preoperative	Freight, CC, Delivery Order Charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080110	06-11-2017	2,29,181	5%	11,459	15%	34,377	-22,918
160	Domestic	Preoperative	Freight, CC, Delivery Order Charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080110	06-11-2017	13,964	18%	2,514	15%	2,095	419
161	Domestic	Preoperative	Handling Charges, Processing, Transportaion charges	NTC LOGISTICS INDIA PVT LTD	2036-71142080111	06-11-2017	19,427	18%	3,497	15%	2,914	583
162	Domestic	Preoperative	Hiring of DG Set	J K GENERATOR	JK/360/17-18	09-11-2017	27,000	18%	4,860	15%	4,050	810
163	Domestic	Switchyard Supply		ABB INDIA LTD	172401005509	10-11-2017	3,98,800	18%	71,784	2%	7,976	63,808
164	Domestic	Preoperative	Tarpaulin HDPE	MADRAS CANVAS COMPANY	164	11-11-2017	2,500	12%	300	2%	50	250
165	Domestic	Preoperative	Tarpaulin HDPE	MADRAS CANVAS COMPANY	164	11-11-2017	3,57,654	18%	64,378	2%	7,153	57,225
166	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	01	13-11-2017	1,13,750	18%	20,475	2%	2,275	18,200
167	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	02	13-11-2017	22,400	18%	4,032	2%	448	3,584
168	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	02	13-11-2017	1,13,400	28%	31,752	2%	2,268	29,484
169	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	04	13-11-2017	1,75,000	18%	31,500	2%	3,500	28,000
170	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	05	13-11-2017	3,37,500	28%	94,500	2%	6,750	87,750
171	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	06	13-11-2017	2,35,000	18%	42,300	2%	4,700	37,600
172	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	07	13-11-2017	48,000	18%	8,640	2%	960	7,680
173	Domestic	Preoperative	Construction management services	TUV RHEINLAND INDIA PVT LTD	GJ0002400117	13-11-2017	12,86,062	18%	2,31,491	15%	1,92,909	38,582
174	Domestic	Preoperative	Hiring of DG Set	J K GENERATOR	JK/386/17-18	17-11-2017	27,000	18%	4,860	15%	4,050	810
175	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	08	18-11-2017	1,60,000	18%	28,800	2%	3,200	25,600
176	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	08	18-11-2017	2,18,440	28%	61,163	2%	4,369	56,794
177	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	04	20-11-2017	9,74,521	18%	1,75,414	6%	58,471	1,16,943
178	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	05	20-11-2017	11,89,343	18%	2,14,082	6%	71,361	1,42,721
179	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	09	20-11-2017	18,620	18%	3,352	2%	372	2,979
180	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	10	22-11-2017	54,300	18%	9,774	2%	1,086	8,688
181	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	11	26-11-2017	38,255	18%	6,886	2%	765	6,121
182	Domestic	Preoperative	Catalyst-CISCO	MERIDIAN INFOTECH LTD	MIG/17-18/103	27-11-2017	46,509	18%	8,372	2%	930	7,441
183	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/02060	28-11-2017	5,40,000	12%	64,800	15%	81,000	-16,200
184	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/02060	28-11-2017	12,500	18%	2,250	15%	1,875	375
185	Domestic	Preoperative	IP Phone, Openstage	PROGILITY TECHNOLOGIES PVT LTD	2711701115	28-11-2017	62,125	18%	11,183	2%	1,243	9,940
186	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/02092	29-11-2017	5,40,000	12%	64,800	15%	81,000	-16,200
187	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/02092	29-11-2017	12,500	18%	2,250	15%	1,875	375
188	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900001023	30-11-2017	4,02,903	28%	1,12,813	2%	8,058	1,04,755
189	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900001024	30-11-2017	4,02,903	28%	1,12,813	2%	8,058	1,04,755

Sl No	Type	Component	Type of Preoperative Service	Invoice Party Name	Inv. Ref No.	Invoice Document Date	Base Amt.	GST Rate	GST Amt.	Pre GST Tax Rate	Pre GST Tax Amt.	GST Impact
190	Domestic	Electrical Supply		ADANI ENTERPRISES LTD	192900001025	30-11-2017	4,02,903	28%	1,12,813	2%	8,058	1,04,755
191	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001026	30-11-2017	17,33,940	18%	3,12,109	2%	34,679	2,77,430
192	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001027	30-11-2017	14,20,833	18%	2,55,750	2%	28,417	2,27,333
193	Domestic	Preoperative	Manpower Supply-Security Guard	ISS SDB SECURITY SERVICES PVT LTD	KA/17-18/001175	30-11-2017	2,86,462	18%	51,563	15%	42,969	8,594
194	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/02120	30-11-2017	4,32,000	12%	51,840	15%	64,800	-12,960
195	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/02120	30-11-2017	10,000	18%	1,800	15%	1,500	300
196	Domestic	Preoperative	Hiring of JCB	SRI MAHADESHWARA TRADERS	001	30-11-2017	1,83,852	18%	33,093	15%	27,578	5,516
197	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/M-038	30-11-2017	56,000	18%	10,080	2%	1,120	8,960
198	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-070	30-11-2017	3,86,770	28%	1,08,296	2%	7,735	1,00,560
199	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-073	30-11-2017	1,20,740	18%	21,733	2%	2,415	19,318
200	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-074	30-11-2017	1,20,740	18%	21,733	2%	2,415	19,318
201	Domestic	Preoperative	Hiring of JCB	NIHAL ENTERPRISES	001	01-12-2017	1,81,834	18%	32,730	15%	27,275	5,455
202	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-075	01-12-2017	9,23,600	28%	2,58,608	2%	18,472	2,40,136
203	Domestic	Switchyard Erection		SRUTHI ENGINEERINGS	SE/AE/028/17-18	01-12-2017	1,37,500	18%	24,750	15%	20,625	4,125
204	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	12	02-12-2017	83,125	18%	14,963	2%	1,663	13,300
205	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	12	02-12-2017	4,30,000	28%	1,20,400	2%	8,600	1,11,800
206	Domestic	Preoperative	Catalyst-CISCO	MERIDIAN INFOTECH LTD	MIG/17-18/109	05-12-2017	37,674	18%	6,781	2%	753	6,028
207	Domestic	PEB Supply		CHARIOT ENGINEERING SERVICES	1046	06-12-2017	6,50,000	18%	1,17,000	2%	13,000	1,04,000
208	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	13	07-12-2017	2,20,937	28%	61,862	2%	4,419	57,444
209	Domestic	Preoperative	Supplying of Menpower-Magadi	KBN ENTERPRISES	MAGADI/RA-04	08-12-2017	45,580	18%	8,204	15%	6,837	1,367
210	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/250	08-12-2017	45,000	18%	8,100	15%	6,750	1,350
211	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/251	08-12-2017	45,000	18%	8,100	15%	6,750	1,350
212	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/252	08-12-2017	14,000	18%	2,520	15%	2,100	420
213	Domestic	Electrical Erection		IKE ELECTRIC PVT LTD	1718/PL-031	09-12-2017	1,76,493	18%	31,769	15%	26,474	5,295
214	Domestic	Electrical Erection		IKE ELECTRIC PVT LTD	1718/PL-032	09-12-2017	1,67,935	18%	30,228	15%	25,190	5,038
215	Domestic	Logistic Services		SUPER SONIC CARRIER PVT LTD	DLB5002	09-12-2017	90,000	5%	4,500	15%	13,500	-9,000
216	Domestic	Preoperative	Supplying of Menpower-Magadi	KBN ENTERPRISES	MAGADI/RA-05	09-12-2017	46,400	18%	8,352	15%	6,960	1,392
217	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	14	11-12-2017	11,88,173	18%	2,13,871	6%	71,290	1,42,581
218	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	15	11-12-2017	17,85,506	18%	3,21,391	6%	1,07,130	2,14,261
219	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	17	11-12-2017	2,85,945	18%	51,470	6%	17,157	34,313
220	Domestic	Preoperative	Construction management services	TUV RHEINLAND INDIA PVT LTD	GJ0002400178	14-12-2017	13,19,903	18%	2,37,583	15%	1,97,986	39,597
221	Domestic	Switchyard Supply		IKE ELECTRIC PVT LTD	17-18/R-079	15-12-2017	41,992	12%	5,039	2%	840	4,199
222	Domestic	Logistic Services		SUPER SONIC CARRIER PVT LTD	DLB5009	16-12-2017	90,000	5%	4,500	15%	13,500	-9,000
223	Domestic	Civil Services		INTEL INDUSTRIAL SOLUTIONS AND SERVICES	IISS/KA/0131-17	18-12-2017	2,10,600	18%	37,908	6%	12,636	25,272
224	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	18	18-12-2017	50,356	18%	9,064	2%	1,007	8,057
225	Domestic	Preoperative	Hiring of DG Set	J K GENERATOR	JK/470/17-18	18-12-2017	27,000	18%	4,860	15%	4,050	810
226	Domestic	Preoperative	CAP Assy, Extinguisher	SHANTI TRADING CORPORATION	1099	18-12-2017	67,200	18%	12,096	2%	1,344	10,752

Sl No	Type	Component	Type of Preoperative Service	Invoice Party Name	Inv. Ref No.	Invoice Document Date	Base Amt.	GST Rate	GST Amt.	Pre GST Tax Rate	Pre GST Tax Amt.	GST Impact
227	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/02225	19-12-2017	27,00,000	12%	3,24,000	15%	4,05,000	-81,000
228	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/02225	19-12-2017	62,500	18%	11,250	15%	9,375	1,875
229	Domestic	Civil Services		SRI REVANTH CONSTRUCTIONS	RA BILL 01	20-12-2017	24,17,259	18%	4,35,107	6%	1,45,036	2,90,071
230	Domestic	Land Brokerage & Consultancy		INDAL INFRA	2	20-12-2017	8,30,508	18%	1,49,491	15%	1,24,576	24,915
231	Domestic	Land Brokerage & Consultancy		VEERA RAJU H	01	21-12-2017	7,62,712	18%	1,37,288	15%	1,14,407	22,881
232	Domestic	Switchyard Erection		LILU MAHTO	003/2017-18	23-12-2017	3,13,500	18%	56,430	15%	47,025	9,405
233	Domestic	Preoperative	Hiring of JCB	SRI MAHADESHWARA TRADERS	002	25-12-2017	1,89,297	18%	34,073	15%	28,394	5,679
234	Domestic	Civil Services		INTEL INDUSTRIAL SOLUTIONS AND SERVICES	IISS/KA/0138-17	26-12-2017	2,34,350	18%	42,183	6%	14,061	28,122
235	Domestic	Erection of MMS		KBN ENTERPRISES	MAGADI RA-02	26-12-2017	2,51,100	18%	45,198	15%	37,665	7,533
236	Domestic	Electrical Supply		HAJEE A P BAVA & CO CONSTRUCTI	19	27-12-2017	75,000	18%	13,500	2%	1,500	12,000
237	Domestic	Preoperative	Extreme PW NBD	PROGILITY TECHNOLOGIES PVT LTD	2711701468	27-12-2017	3,000	18%	540	15%	450	90
238	Domestic	Logistic Services		SUPER SONIC CARRIER PVT LTD	DLB5028	28-12-2017	1,80,000	5%	9,000	15%	27,000	-18,000
239	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001160	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
240	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001162	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
241	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001164	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
242	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001165	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
243	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001166	28-12-2017	4,98,364	18%	89,706	2%	9,967	79,738
244	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001189	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
245	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001195	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
246	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001201	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
247	Domestic	MMS Supply		ADANI ENTERPRISES LTD	192900001202	28-12-2017	4,98,511	18%	89,732	2%	9,970	79,762
248	Domestic	Preoperative	Transportation Charges	NTC LOGISTICS INDIA PVT LTD	HO/1718/02324	28-12-2017	1,62,000	12%	19,440	15%	24,300	-4,860
249	Domestic	Preoperative	Custom Clearance	NTC LOGISTICS INDIA PVT LTD	HO/1718/02324	28-12-2017	3,750	18%	675	15%	563	113
250	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	20	30-12-2017	9,54,893	18%	1,71,881	6%	57,294	1,14,587
251	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	21	30-12-2017	17,29,934	18%	3,11,388	6%	1,03,796	2,07,592
252	Domestic	Civil Services		HAJEE A P BAVA & CO CONSTRUCTI	23	30-12-2017	3,75,239	18%	67,543	6%	22,514	45,029
253	Domestic	Preoperative	Saviour ARC Coverall-Electrical	SURE SAFETY INDIA PVT LTD	GST/3108	30-12-2017	16,500	18%	2,970	2%	330	2,640
254	Domestic	Switchyard Supply		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/128	30-12-2017	6,32,625	18%	1,13,873	2%	12,653	1,01,220
255	Domestic	Switchyard Erection		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/129	30-12-2017	26,38,976	18%	4,75,016	15%	3,95,846	79,169
256	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/286	02-01-2018	45,000	18%	8,100	15%	6,750	1,350
257	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/287	02-01-2018	45,000	18%	8,100	15%	6,750	1,350
258	Domestic	Preoperative	Hiring of Mobile Lighting Tower	ROTO POWER ENGINEERS PVT LTD	UPT/17-18/288	02-01-2018	30,000	18%	5,400	15%	4,500	900
259	Domestic	Switchyard Erection		SRUTHI ENGINEERINGS	SE/AE/030/17-18	02-01-2018	1,37,500	18%	24,750	15%	20,625	4,125
260	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	CHSI/01624/17-18	03-01-2018	12,73,000	18%	2,29,140	15%	1,90,950	38,190
261	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	CHSI/01625/17-18	03-01-2018	3,42,000	12%	41,040	15%	51,300	-10,260
262	Domestic	Logistic Services		NTC LOGISTICS INDIA PVT LTD	CHSI/01625/17-18	03-01-2018	21,35,600	18%	3,84,408	15%	3,20,340	64,068
263	Domestic	Erection of MMS & Modules		SRI REVANTH CONSTRUCTIONS	RA BILL 01	03-01-2018	9,87,893	18%	1,77,821	15%	1,48,184	29,637
264	Domestic	Switchyard Supply		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/138	05-01-2018	5,20,406	18%	93,673	2%	10,408	83,265
265	Domestic	Switchyard Erection		K S WIND & RENEWABLES INDIA PVT LTD	ADA/KS/137	05-01-2018	94,850	18%	17,073	15%	14,228	2,846
266	Domestic	Preoperative	Hiring of JCB	NIHAL ENTERPRISES	002	06-01-2018	1,84,709	18%	33,248	15%	27,706	5,541
	Domestic Total						15,14,05,123		2,93,04,604		78,73,672	2,14,30,932

OP No. 114/2018												
M/s. Adani Green Energy(UP) Limited 20MW Solar Project Magadi Taluk												
Foreginc Material/Services details From 01.07.2017 to 08.01.2018												
												Annexure-I(B)
SI No	Type	Component	Invoice Party Name	Inv. Ref No.	BOE No.	Document Date	Base Amt.	GST Rate	GST Amt.	Pre GST Tax Rate	Pre GST Tax Amt.	GST Impact
1	Foreign	Electrical Supply	ADANI ENTERPRISES LIMITED	192400004288	3675094	13-10-2017	31,98,644	5%	1,59,932	2%	63,973	95,959
2	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008207	2406141	20-06-2017	30,44,894	18%	5,48,081	2%	60,898	4,87,183
3	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008208	2406300	17-06-2017	1,22,06,255	18%	21,97,126	2%	2,44,125	19,53,001
4	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008209	2296282	21-06-2017	1,54,44,094	18%	27,79,937	2%	3,08,882	24,71,055
5	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008209	2296282	21-06-2017	9,336	28%	2,614	2%	187	2,427
6	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008210	2296301	21-06-2017	1,40,79,328	18%	25,34,279	2%	2,81,587	22,52,692
7	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008232	2409947	17-06-2017	15,22,447	18%	2,74,040	2%	30,449	2,43,591
8	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008263	2563000	24-06-2017	3,79,658	18%	68,338	2%	7,593	60,745
9	Foreign	MMS Supply	ADANI GLOBAL FZE (BRANCH)	2350008265	2563001	24-06-2017	47,58,147	18%	8,56,466	2%	95,163	7,61,303
10	Foreign	PV Module Supply	ADANI GLOBAL DMCC	7213000214	2947927	19-08-2017	11,91,29,946	5%	59,56,497	0%	-	59,56,497
11	Foreign	PV Module Supply	ADANI GLOBAL DMCC	7213000236	3201181	23-08-2017	31,20,44,098	5%	1,56,02,205	0%	-	1,56,02,205
12	Foreign	PV Module Supply	ADANI GLOBAL DMCC	7213000266	3228932	10-09-2017	1,64,88,488	5%	8,24,424	0%	-	8,24,424
	Foreign Total						50,23,05,333		3,18,03,941		10,92,856	3,07,11,085

OP No. 114/2018	
M/s. Adani Green Energy(UP) Limited 20MW Solar Project	
Magadi Taluk	
Total GST Impact Upto Actual date of commissioning (COD)	
08.01.2018	
Annexure-II	
Domestic Materials/services	2,14,30,932
Foreign Materials/services	3,07,11,085
Total GST Impact	5,21,42,017

Sd/-

(H.M. MANJUNATHA)
Officiating Chairperson

Sd/-

(M.D. RAVI)
Member