Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2106/2023,2107/2023,2108/2023,
2109/2023, 2110/2023, 2111/2023

In the matter of Petition filed under Section 86 (1)(b) and (f) of the Electricity Act, 2003 for approval of change in law and seeking an appropriate mechanism for grant of appropriate adjustment /compensation to offset financial commercial impact due to change in law event on account of the order dated 19.04.2021, 21.04.2022 and 30.11.2022 passed by the Hon'ble Supreme Court which resulted in an increase in the cost implication of the project due to additional cost incurred for installation of Bird Diverters in priority area on transmission lines which was not factored into the tariff as determined by the RERC.

Coram:

Dr. Rajesh Sharma, **Chairman**
Shri Hemant Kumar Jain, **Member**

Petitioners:
1. Ratedi Wind Power (P) Ltd (2106/2023, 2107/2023, 2108/2023),
2. Tanot Wind Power Ventures (P) Ltd (2109/2023),
3. Khandke Wind Energy (P) Ltd (2110/2023),
4. Lalpur Wind Energy (P) Ltd (2111/2023).

Respondents:
1. Rajasthan Urja Vikas Nigam Limited
2. Ajmer Vidhyut Vitran Nigam Limited
3. Jodhpur Vidhyut Vitran Nigam Ltd.
4. Jaipur Vidhyut Vitran Nigam Limited

Date of hearing: 11.05.2023, 16.06.2023, 20.07.2023, 22.08.2023, 21.09.2023, 10.10.2023, 03.12.2024, 04.03.2025

Present : Sh. Kshitiz Sharma, Advocate for Petitioners (2106/2023, 2107/2023, 2109/2023 to 2111/2023)

Sh. Vibhor Sharma, Advocate for Petitioner (2108/2023).

Sh. Bipin Gupta, Advocate for Respondents

Sh. Sunil Bansal, Advocate for Respondents

Order Date: 19.05.2025

Order

1. The Petitioners referred to in the cause title are generating companies which have filed petitions for the approval of Change in Law and for grant of an appropriate adjustment /compensation mechanism to offset financial/commercial impact borne by the Petitioners due to change in law event i.e. order dated 19.04.2021 by Hon'ble Supreme Court in I.A. no. 85618 of 2020 in WP(C) no. 838 of 2019 and interim order dated 21.04.2022 passed by the Hon'ble Supreme Court in I.A. no. 141842, I.A. no. 149293 by the Union of India and I.A. no. 160225 of 2021 by the State of Rajasthan, which resulted in increase of cost implication of the project due to additional cost of installing Bird Diverters borne by the Petitioners which was not factored into the tariff determined by the RERC.

2. Rajasthan Urja Vikas & IT Services Limited (hereinafter to be referred as 'Respondent no. 1' or 'RUVITL') is a company incorporated under the provisions of the Companies Act, 2013 for purchase of power on behalf of three distribution licensees in the State of Rajasthan. RUVITL is also the authorized representative for signing the agreement on behalf of the Rajasthan Discoms.

3. Ajmer Vidhyut Vitran Nigam Limited (AVVNL) , Jodhpur Vidhyut Vitran Nigam Ltd. (JdVVNL) and Jaipur Vidhyut Vitran Nigam Limited (JVVNL) are the three Discoms in the state of Rajasthan and respondent no. 2,3 and 4 in the petition respectively.

4. As the issue that arises in all the petitions for consideration and decision of the Commission is similar, all the petitions referred to in cause title are clubbed together and are being disposed of by this common order.

5. Petitioners in their petitions and during hearing mainly made following submissions:

5.1 The petitioners submitted that the Rajasthan Renewable Energy Corp. Ltd (RRECL) has permitted the Petitioners to set up power generation projects at various locations in the state of Rajasthan to generate power under "Policy for Promoting Generation of Electricity through Non-Convention Energy Sources-2004" issued by the Government of Rajasthan vide Energy Department letter no. F20 (4) Energy/2004 dated 25.10.2004 and amended from time to time. In pursuance to this, Petitioners have executed Power Purchase Agreements (PPAs) with the respective Discoms and are supplying electricity as per the terms of the said PPAs.

5.2 The Petitioners further submitted that the relevant provision in regard to change in law as mentioned in Article 12 of the PPAs is reproduced below:

> *"12. Change in Law*
>
> *PPA has been executed in pursuance to the 'Policy for Promoting Generation of Electricity through Non-Conventional Energy Sources-2004' issued by Government of Rajasthan vide Energy Department letter no. F20 (4) Energy/2004 dated 25.10.2004 and amended from time to time. Any change consequent to such Act, Policies, Rules, Regulations and Regulatory directions shall be binding and will have to be complied with by all parties.*
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> *The comments of RERC, if any, on this agreement will have to incorporated and if need be, the agreement will be amended accordingly."*

The tariff in PPAs is premised on normative capital cost including normative cost for setting up of an overhead transmission system up to the interconnection point. Such normative cost did not include cost of installing Bird Diverters and the same had to be installed on transmission lines by the Petitioners in compliance to the order dated 19.04.2021 and 21.04.2022 passed by the Hon'ble Supreme Court. Therefore, the additional expenditure incurred on account of the aforesaid order ought to be accounted for and allowed to the Petitioners in terms of Article 12 of the PPA.

5.3 The Petitioners also submitted that a Public Interest Litigation(PIL) (Writ Petition (Civil) No 838 of 2019) was filed before the Hon'ble Supreme Court seeking to protect two species of birds namely the Great Indian Bustard (GIB) and the Lesser Florican. In the PIL, it was stated that the overhead power lines are the biggest threat to the survival of the GIBs. Therefore, the Hon’ble Supreme Court vide order dated 19.04.2021 directed to install Bird Diverters on transmission lines leading to an increase in Operation and Maintenance cost of the Project. In the aforementioned order, the Hon'ble Supreme Court passed directions, to be implemented by the concerned authorities, which are as follows:-

a) Undergrounding of power lines/installation of Bird Diverters on lines in GIB priority and potential areas of Rajasthan and Gujarat.

b) In case of any issues relating to feasibility of undergrounding of power lines, same shall be referred to three (3) members Expert Committee constituted by the Hon'ble Supreme Court and based on the report of the committee, further action shall be taken.

c) Where it is found feasible to convert the overhead cables into underground power lines, the same shall be undertaken and completed within a period of one year and till such time diverters shall be installed on the existing power lines.

d) It was observed in the order that there cannot be uniform method and directions regarding undergrounding all power lines more particularly of High voltage though not impossible but would require technical evaluation on case to case basis.

The Hon'ble Supreme Court in the said order directed as under:-

"*18. In all cases where the overhead power lines exist as on today in the priority and potential GIB area the respondents shall take steps forthwith to install diverters pending consideration of the conversion of the overhead cables into underground power lines. In all such cases where it is found feasible to convert the overhead cables into underground power lines the same shall be undertaken and completed within a period of one year and till such time the diverters shall be hung from the existing power lines.*"

5.4 The Petitioners further submitted that subsequently, the Hon'ble Supreme Court passed an order dated 21.04.2022 directing State of Rajasthan and Gujarat to implement the earlier order dated 19.04.2021. The relevant portion of the order is reproduced below:-

"7. During the course of the hearing, it has emerged that none of the parties before the court or the interveners have any objection to the installation of bird diverters. Though in the IA which has been filed before the Court by the State of Rajasthan an attempt has been made to indicate the steps which have been taken, the progress has been deficient in all respects. The installation of bird diverters at least in the priority areas of the States of Gujarat and Rajasthan must be taken up with the utmost expedition. The installation of bird diverters in the priority areas shall be completed before 20 July 2022, when these proceedings shall be taken up for further direction. This direction shall govern all State owned as well as private power producers."

9. The Committee which has been appointed by the Court shall within a month in consultation with the CEA formulate the standards of quality required for the bird diverters so that uniformity can be maintained in the standards to be observed. Necessary steps shall be taken immediately thereafter for ensuring that the time schedule of completing the installation of bird diverters in the priority areas associated with the Great Indian Bustard and Lesser Florican is observed by all power producers in Gujarat and Rajasthan."

5.5 The petitioners also submitted that Hon'ble Supreme Court directed to install Bird Diverters on transmission lines in priority areas before 20.07.2022. Ratedi Wind Power Pvt Ltd, one of the petitioner, has submitted that it set up its Wind Power project at Jaisalmer, having total capacity of 26.4 MW. Petitioner from the said project entered into Power Purchase Agreements for supplying 22.4 MW, 1.6 MW and 2.4 MW to Ajmer Vidyut Vitran Nigam

Limited, Jaipur Vidyut Vitran Nigam Limited, and Jodhpur Vidyut Vitran Nigam Limited respectively. Petitioner's for 26.4 MW Wind Power Project is connected at 220/33 kV WWIL Jajiya Pooling substation, co-ordinates of the said Pooling sub-station are 26.8287, 70.7534. Further, 220/33 kv WWIL Jajiya Pooling substation is connected to 220/ 400 kV Akal Substation, co-ordinates of same are 26.8181, 71.0654.Pertinently, this area is falling under priority area for installing Bird Diverters. Power generated from 26.4 MW wind turbines are being evacuated through 33 kV lines, terminating at 220/33kV WWIL Jajiya Pooling substation. Total length of such 33 kv overhead lines, for evacuating 26.4 MW wind power generation is 52 KM and total 11,896 no. of bird diverters required to be installed on such lines. The Petitioner served a notice dated 31.08.2021 to the Respondents regarding compensation/ Change of tariff on account of Supreme Court's order dated 19.04.2021. The other petitioners are also made similar submissions.

5.6 The petitioners also submitted that in terms of the directions passed by the Hon'ble Supreme Court in the order dated 21.04.2022, the Expert Committee appointed in consultation with Central Electricity Authority decided technical standards for Bird flight Diverters and the same were conveyed to the Chairman, CEA, vide letter dated 31.05.2022.

5.7 The Petitioners also submitted that meanwhile the Electricity (Timely Recovery of Costs due to Change in Law) Rule, 2021 came into force w.e.f. 22.10.2021 which is applicable on a generating company & transmission licensee. The aforesaid rule deals with the mechanism /procedure to determine the tariff in case of Change in Law. It is apposite to say that one of the objectives of the aforesaid rules is to adjust monthly tariff in case of change in law and to recover/adjust compensation in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred. For the convenience of the Commission, relevant extract of rules are reproduced below:

"3. Adjustment in tariff on change in law-

…………………...

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated-

a. where the agreement lays down any formula, in accordance with such formula;

b. where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules."

5.8 The Petitioners further submitted that in compliance of the order dated 19.04.2021 & 21.04.2022 passed by the Hon'ble Supreme Court, the Petitioner initiated the process of procurement and installation of Bird Diverters on the above referred 33 kV overhead transmission lines falling in priority areas.

5.9 The Petitioners submitted that pursuant to the conditions laid down under Change in Law Rules of 2021, claims were issued by the Petitioners to Respondents requesting to compensate, as a result of Change in Law event, as one time charge or impact on per unit basis to be recovered from monthly billing of remaining years of the PPAs tenure as per methodology prescribed under the Rules of 2021.

5.10 The Petitioners further submitted that the Respondents in reply to the claims, issued letters stating that the Petitioners are required to approach RERC for approval of change in law claim for recovery of expenditure incurred on installation of Bird Diverters and to provide all relevant documents to the Respondents. Thereafter, the Respondents intimated to share a copy of the petition, if any, filed before RERC and reminded the petitioner to provide all necessary documents to the Respondents.

5.11 The Petitioners submitted that the Hon'ble Supreme Court vide order dated 30.11.2022 directed that all bird diverters shall be in compliance with the quality norms which have been laid down by the Court appointed Committee in consultation with the CEA in terms of its report dated 31 May 2022 and further directed to submit status report within a period of six weeks on the steps which have been taken to complete the tendering process and to install bird diverters.

5.12 The Petitioners further submitted that Rule 2 (c) (III) of the Rules 2021 explicitly states that change in law shall include any change in condition of a supply or transmission of electricity. Thus, it is apposite to say that the Hon'ble Apex Court vide order dated 19.04.2021 and 21.04.2022 has laid down the conditions to install Bird Diverters on transmission lines. The Hon'ble Supreme Court in its aforesaid order directed that the Bird Diverters shall be installed in priority area expeditiously before 20.07.2022. This, in compliance to the order passed by the Hon'ble Apex Court, the purchase order cased 30.08.2022 was issued by the Petitioners for purchase and installation of bird diverters on transmission lines falling in priority areas. In view of the above, an increase in cost implication of the projects due to purchase and installation of Bird Diverters has resulted in increase in expenditure of the Petitioners after the effective date of the Rules of 2021 and hence, amounts to "Change in Law" event as defined under Rule 2) of the Rules of 2021.

5.13 The Petitioners also submitted that it shall not be out of place to submit here that in terms of Article 12 of the PPAs, any change consequent to the Electricity Act, Policies, Rules, Regulations and Regulatory directions shall be binding and will have to be complied with by all parties. The order of the Hon'ble Supreme Court has force of law and be mandatorily complied by Petitioners by installing Bird Diverters on transmission lines and undergrounding of transmission lines subject to it being found feasible post the technical diligence assessment of the relevant issues by the Expert Committee constituted vide order dated 19.04.2021.

5.14 In views of the submissions made hereinabove, the petitioners in their petitions have mainly prayed to:

a. Admit the petition

b. Hold and declare that the order dated 19.04.2021 and 21.04.2022 passed by the Hon'ble Supreme Court wherein Hon'ble Apex Court directed to install bird diverters as an event of change in law in terms of Article 12 of the PPA as well as under the Rules of 2021.

c. Direct Respondents to compensate the petitioners additional cost of undergrounding its overhead transmission lines, as and when the Hon'ble Supreme Court decides on the conversion of the overhead power lines into underground cables in the ongoing proceedings before them.

d. Declare that the Petitioners are entitled to recover carrying cost/ interest on all amounts incurred /paid by the Petitioner for installation of Bird Flight Diverters from the date of incurrence/payment of such amounts the petitioners till such date as the Petitioners recovers such amounts in their entirely.

e. Allow Carrying Cost and restore the Petitioners to the same economic condition prior to occurrence of the Change in Law Events by permitting the Petition and the amounts as per the computations set out in hereinabove or through a suitable mechanism to compensate the Petitioner for the financial impact of the Changes in Law events;

f. Approve and direct the Respondents to compensate the

Petitioners equivalent to an amount, paid by them, towards the increase in cost implication of the project as a onetime lump sum amount or mechanism devised by the Rules of 2021 to restore the petitioners to the same economic condition prior to the occurrence of the Change in Law event.

g. Consequently, direct the parties to carry out necessary amendments to the PPAs to incorporate the aforementioned Change in Law Events and direct the Respondents to execute such necessary amendments;

h. Allow legal and administrative cost incurred by the Petitioner in pursuing the instant petition and,

i. Pass any such order and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.

6. The respondents in their written reply and during the course of hearing mainly submitted as under.

6.1 The Respondents submitted that present Petitions have been filed based on the PPAs between the petitioners and answering respondents. The Power Purchase Agreements as well as amended PPAs do not provide to restitute the petitioners under change in law events and therefore the claims of compensation to restitute the petitioners on the same position as if the change in law event has not occurred is not maintainable and liable to be rejected.

6.2 The Respondents further submitted that the change in law rules on which the petitioners are seeking reliance have not been applied retrospectively and the said rules are to be applied prospectively that is the agreement entered after 22.10.2021 and therefore the said rules cannot be applied retrospectively and the petitioner cannot seek any benefit on account of any rules which have come into force on 22.10.2021 and thus the petition is liable to be rejected.

6.3 The Respondents also submitted that the petitioners before investing any amount as claimed in their prayers, has not approached the commission before making an Investment and therefore the prayers cannot be accepted and are liable to be rejected.

6.4 The Respondents further submitted that the Hon'ble apex court in its order dated 19.04.2021 has issued specific direction to the respondents of the petition for installing the Bird Diverters. The petitioners have not clarified in their petitions that whether he was respondent in the said petition before the Hon'ble Apex Court and therefore in absence of it being respondents, the claim is not acceptable and is liable to be rejected.

6.5 The Respondents also submitted that the petitioner’s area does not fall under the priority area but rather it falls under potential area and therefore, subsequent order dated 21.04.2022 In paragraph no. 8, It is only for priority area. The petitioners without there being any necessity and instead of undergrounding of 33 KV lines as was required mandatorily vide order dated 19.04.2021 have stated to install the Bird Diverters which cannot be said to be the change in law as the petitioners themself have on their own installed the Bird Diverters and therefore the claim is liable to be rejected.

7. The petitioners, in response to the reply of the respondents, have filed rejoinder on 06.09.2023 and submitted as under.

7.1 The petitioners submitted that a bare reading of Article 12 of the PPAs would reveal that the said provision is extremely wide in scope and inter alia provides for amendment in the PPA, if the need so arises on account of an event of Change in Law.

7.2 The petitioners further submitted that it is wholly unreasonable of a Respondent to expect from Petitioners to foresee the mandatory requirement to install Bird Diverters on account of orders passed by the Hon'ble Supreme Court. The tariff decided by the Hon'ble Commission in the year 2011 on normative capital cost did not include cost of Installing Bird Diverters and the same had to be installed on transmission lines by the Petitioners in compliance to the order dated 19.04.2021 and 21.04.2022 passed by the Hon'ble Supreme Court. Therefore, the Respondents is blowing hot and cold at the same time by making contrary submissions and in terms of Article 12 of the PPA as well as the Rules of 2021, it is imperative that the Petitioners are entitled to be compensated for additional cost incurred due to installation of Bird Flight Diverters and to put the Petitioners to the same economic position as Change in Law has not occurred.

8. The Commission vide RoP dtd. 03.12.2024 directed the parties to furnish the detailed documents related to latest developments in the matter. In compliance of this, the counsel for the Petitioner on 04.03.2025 submitted the latest judgment/order of CERC dtd. 03.05.2024 in the Petition no. 197/MP/2023 & 206/MP/2023 and the order of MERC dtd. 24.07.2024 in the Petition No. 149/2023. The relevant paras from the said CERC order is cited as under:

"16. we note that the SC GIB Order dated 19.04.2021 states as under:

5. The State as well as the Central Government therefore, have a duty cast to preserve the endangered species and as such the expenses incurred will have to be provided by them either under the schemes available or by earmarking the same in such manner. Needless to mention that in the instant case the preservation is by undergrounding the powerlines and in that context if cost is incurred, it would also be permissible to pass on a portion of such expenses to the ultimate consumer subject to approval of the Competent Regulatory Authority.

…….

11. In the above background, there cannot be disagreement whatsoever that appropriate steps are required to be taken to protect the said species of birds. In that view, insofar as the existing overhead powerlines are concerned the respondents shall take steps forthwith to install divertors and in respect of *existing overhead powerlines all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for the lines to be laid underground. In all such cases where it is feasible, steps shall be taken to lay the transmission line underground. For the lines to be laid in future if as per the technical report the overhead line alone is feasible and the same is ratified by the Committee, in such event the installation of the divertors shall also be a condition attached in the contract to be entered with generating companies. Insofar as, the cost incurred in the said process, the concerned respondents No. 5 to 8 and 9 to 11 shall work out and provide for the same and the respondents No. 1 to 4 aid in this regard. It would be open to them to muster the resources in accordance with law. In cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms, Irrespective of the cost factor the priority shall be to save the near extinct birds.*

14. In the light of the contentions urged on this aspect of the matter, we are conscious that the laying of the underground power line more particularly of high-voltage though not impossible, would require technical evaluation on case-to-case basis and conclusion cannot be reached laying down a uniform method and directions cannot be issued unmindful of the fact situation. Though that be the position the consensus shall be that all low voltage powerlines to be laid in the priority and potential habitats of GIB shall in all cases be laid underground in future. In respect of low voltage overhead powerlines existing presently in the priority and potential habitats of GIB, the same shall be converted into underground powerlines, In respect of high-voltage powerlines in the priority and potential habitats of GIB, more particularly the powerlines referred in the prayer column of I.A. No.85618/2020 and indicated in the operative portion of this order shall be converted into underground power line.

….

16. The details of the powerlines for installation of divertors from Rajasthan are as follows:

b) List of powerlines for installation of divertors from Rajasthan	*Capacity*
1) Jaisalmer-Ramgarh-1 (40 Km)	*132 kv*
2) Jaisalmer-Ramgarh-2 (40 Km)	*132 kv*

……

Lines from Rajasthan

b) List of powerlines from Rajasthan for undergrounding	*Capacity*
1) Kanoi-Salkha (21 Km)	*33 kv*
2) Sam-Dhanana (45Km)	*33 kv*
3)Tejuva-Kuchr (17 Km)	*33 kv*

4)Khuchri horizontal-parallel (21 Km	33 kv

17.The respondents No.5, 6 and 9 to 11 while arranging to lay the powerline underground in respect of the powerlines, the feasibility of which is not in doubt shall proceed with the work right away. However, in cases where the respondents find the there are issues relating to feasibility, the matter shall be referred to the committee with all relevant material and particulars. The committee shall assess the matter and arrive at a conclusion as to whether the underground powerline is feasible or not. Based on the report to be rendered by the committee the further action shall be taken by the respondent.

18. In all cases where the overhead powerlines exist as on today in the priority an potential GIB area the respondents shall take steps forthwith to install diverters pending consideration of the conversion of the overhead cables into underground powerlines. In all such cases where it is found feasible to convert the overhead lines into underground powerlines the same shall be undertaken and completed within period of one year and till such time the diverters shall be hung from the existing powerlines."

17. From the above, we observe that Order dated 19.04.2021 of the Hon'ble Supreme Court in I.A. No. 85618 of 2020 in M.K. Ranjitsinh v. Union of India, Writ Petition (Civil) No. 838 of 2019 (SC GIB Order), mandates that the additional actions/measures are to be taken by the developers located in the potential and priority habitats of GIB. We observe that that additional expenditure after the cut-off date would qualify as a Change in Law under Article 12 of the PPAs. We note that as on date of submission bids, i.e., 20.11.2018, the Petitioner would not have been in a position to anticipate the additional expenditure required to be incurred in adopting the measures in terms of the SC GIB Order dated 19.04.2021.

18. We note that Article 141 in the Constitution of India stipulates as under:

141. Law declared by Supreme Court to be binding on all courts

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

19/ Hon'ble Supreme Court of India, in its judgment dated 21.09.1995 in a case titled Nand Kishore vs State of Punjab, has held as under:

Putting aside for the moment the course above-adopted, let us otherwise examine the view of the Hon'ble Judges of the Full Bench of Punjab and Haryana High Court on the question formulated. It is well known that the general principle underlying the doctrine of res-judicate is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities. and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fairplay and justice. These principles stand enunciated in Daryao and others v. The State of U.P. & Others [1962(1) SCR 574]. This court in The Amalgamated Coalfields Ltd. & Anr. v. The Janapada Sabha, Chhindwara (1963 (Supp (1) SCR 172] opined that constructive res-judicata *was an artificial form of rex judicata enacted by Section 11 of the Code of Civil Procedure and it should not be generally applied to writ petitions filed under Article 32 and Article point out that when a matter related to stitution. The court therted for a different year, the doctrine of res-judicata was itself inapplicable. This Court still spelled out the binding effect of a decision made under Article 141 of the Constitution as follows:*

> *" If for instance, the validity of a taxing statute is impeached by an assessee who is called upon to pay a tax for a particular year and the matter is taken to the High Court or brought before this Court and it is held that the taxing statute is valid, it may not be easy to hold that the decision on this basic and material issue would not operate as res judicata against the assessee for a subsequent year. That, however, is a matter on which it is unnecessary for us to pronounce a definite opinion in the present case. In this connection, it would be relevant to add that even if a direct decision of this Court on a point of law does not operate as res judicata in a dispute for a subsequent year, such a decision would, under Art. 141, have a binding effect not only on the parties to it, but also on all courts in India as a precedent in which the law is declared by this Court. The question about the applicability of res judicata to such a decision would thus be a matter of merely academic significance."*

20. From the above, we observe that in terms of Article 141 of the Constitution of India and the provisions of the PPAs, the SC GIB Order amounts to a Change in Law event as the law laid down by the Hon'ble Supreme Court of India has a binding effect, enshrined in the Constitution of India.

21. In the instant petition, the bids were submitted by the Petitioners on 30.04.2019 (in Petition No. 197/MP/2023) and 15.02.2019 (Petition No.206/MP/2019). PPAs were executed between the Petitioners and the SECI on 27.11.2019 (Petition No. 197/MP/2023) and 17.09.2019 (Petition No. 206/MP/2019), and the SCoD the projects were 23.04.2021 and 01.03.2021 in Petition No. 197/MP/2023 & 206/MP/2023 respectively. The projects were commissioned on 31.03.2023 and 07.03.2022 in Petition No. 197/MP/2023 & 206/MP/2023 respectively. We observe that the SC GIB Order was issued on 19.04.2021, which was after the date of submission of bids and the actual COD of the projects and, as such, the Petitioner's projects were affected by the said order of the Hon'ble Supreme Court. Therefore, the Petitioners are entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPAs due impugned order, viz. the SC GIB Order dated 19.04.2019.

22 Before proceeding further, it is pertinent to mention here that the SC GIB Order dated 19.04.2021 was amended on 21.03.2024 as under:

> *62. We are accordingly of the view that the order passed by this Court on 19 April 2021 needs to be suitably modified. A blanket direction for undergrounding high voltage and low voltage power lines of the nature that was directed by this Court would need recalibration for the reasons discussed above. This task is best left to domain experts instead of an a priori adjudication by the Court. Experts can assess the feasibility of undergrounding power lines in specific areas, considering factors such as terrain, population density, and infrastructure requirements. This approach allows for more nuanced decision-making tailored to the unique*

circumstances of each location, ensuring that conservation objectives are met in a sustainable manner.

67. The Committee shall be at liberty to assess the efficacy of bird diverters and subject to its own findings on efficacy, to lay down specifications for bird diverters with due regard to the parameters specified by the Central Electricity Authority. It shall also identify the number of bird diverters required for the successful implementation of conservation efforts. In this regard, the Committee may also consider the recommendations of the technical expert committee constituted by the Ministry of Power by OM No 25-7/42/2019-PG dated 27 May 2022.

68. The injunction which has been imposed in the order dated 19 April 2021 in respect of the area described as the priority and potential areas shall accordingly stand recalled subject to the condition that the Expert Committee appointed by this Court may lay down suitable parameters covering both the priority and potential areas.

69. In the event that the Committee considers it appropriate and necessary to do so, it would be at liberty to recommend to this Court any further measures that are required to enhance the protection of the GIB. This may include identifying and adding suitable areas beyond the designated priority zones outlined above, if deemed crucial for the conservation of the species. Such additional areas could serve as vital habitats, corridors, or breeding grounds for the GIB, contributing significantly to its long-term survival.

70. We request the Committee to complete its task and submit a report to this Court through the Union Government on or before 31 July 2024.

72. The Union of India and the concerned ministries are directed to implement the measures described in the preceding paragraph, which it has undertaken to implement. Further, they are directed to continue implementing the measures detailed in paragraph 8(d) of this judgment. The directions contained in the order dated 19 April 2021 shall accordingly stand substituted by those contained in the present judgment. The project clearances which have been granted pursuant to the recommendations of the earlier committee appointed in terms of the order dated 19 April 2021 shall not be affected by the present judgment.

23. The Hon'ble Supreme Court vide judgment dated 17.03.2023 in the matter of Govt. of NCT of Delhi through the Secretary, Land, and Building Department and Another v. K.L. Rathi Steels Limited and others [2023 SCC Online SC 288) has held as under:

66. Although, the expression "for any other sufficient reason" in Order XLVII Rule ICPC is wide enough to take within its scope and ambit many circumstances or situations which do not fall in the earlier part of the Order XLVII Rule 1 CPC which are the two grounds (1) and (ii) referred to above, in my view, the Explanation to the said provision carves out an exception to the expression "for any other sufficient reason" as a ground for review of a judgment in ground (iii). The Explanation being in the nature of an exception is to be read outside the scope of the expression "for any other sufficient reason" in Order XLVII Rule 1 CPC. In other words, if, on a question of law, a decision of a Court is reversed by a subsequent decision of a superior Court (Larger Bench in the instant case) and the *same is reopened on the basis of the said subsequent decision there would be no finality of judgments of the Court even between the parties thereto. It is, hence, observed that even an erroneous judgment or order is binding on the parties thereto even if subsequently that very judgment is reversed in a decision of a superior Court. Otherwise, there would be chaos and no finality of any decision of a Court which is against public policy. Judgments rendered by a Court of competent jurisdiction as per the prevailing law are binding on the parties to the said judgment. Merely because that judgment is subsequently overruled by a subsequent decision of a superior Court in any other case, the same shall not be a ground for review of such judgment.*

24. From the above, we observe that the SC GIB Order dated 19.04.2021 stands modified on 21.03.2024, and the injunction imposed vide Order dated 19.04.2021 stands recalled. It was also held that the Expert Committee appointed may lay down suitable parameters covering both the priority and potential areas on or before 31.07.2024. Further, the project clearances which have been granted pursuant to the recommendations of the earlier committee appointed in terms of the order dated 19.04.2021 shall not be affected by the present judgment. We observe that the Petitioner has already incurred the additional expenditure qua SC GIB Order dated 19.04.2021 (post the bid submission date, i.e., 20.11.2018). Accordingly, we find and hold that the Petitioner is entitled to the additional expenditure in compliance with the the SC GIB Order dated 19.04.2021 as a Change in Law event under Article 12 of the PPAs. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure as per Article 12 of the PPAs by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate from 19.04.2021 up to 21.03.2024 qua SC GIB Order dated 19.04.2021.

9. The relevant paras from the said MERC order dtd. 24.07.2024 in the matter of M/s Azure Power Thirty-Four Private Limited (APTFPL) Vs MSDCL are cited as under:

" 12.7. The Commission notes that in present case, bid submission date was 27 April 2018 and project was commissioned on 6 September 2019. Supreme Court has issued GIB Order on 19 April 2021 i.e. post commissioning of the project. GIB order mandates APTFPL to install bird diverters on overhead lines. Such requirement of installation of bird diverters is modification of prevailing conditions in which APTFPL was operating. Hence, Supreme Court's GIB Order mandating installation of Bird Diverters on overhead lines qualifies as Change in Law event under the present PPA."

10. The matter was finally heard on 04.03.2025 and the order was reserved.

Commission's View

11. The Commission has considered the submissions made by the Petitioners/Respondents in petitions, written submissions and oral arguments during hearing(s). The Commission has also gone through the Orders/Judgments cited on behalf of the counsels of the Petitioners/Respondents.

12. The petitioners mainly prayed to hold and declare that the order dated 19.04.2021 and 21.04.2022 passed by the Hon'ble Supreme Court wherein Hon'ble Supreme Court directed to install bird diverters, as an event of change in law in terms of the PPA as well as under the change in law rules of 2021 and requested to restitute the petitioners to the same economic condition prior to the occurrence of the said change in law event.

13. In support of their prayers, the petitioners submitted that according to clause 12 (Change in Law) of the PPAs, any change consequent to such Act, Policies, Rules, Regulations and Regulatory directions shall be binding and will have to be complied with by all parties. The tariff of the projects of petitioners was premised on normative capital cost and such normative cost did not include cost of installing bird diverters. The bird diverters had to be installed on transmission lines by the petitioners in compliance of the order of Hon'ble Supreme Court dated 19.04.2021 and 21.04.2022.

14. The petitioners also submitted that the Electricity (Timely Recovery of Costs due to Change in Law) Rule, 2021 came into force with effect from 22.10.2021 which is applicable on their generating plants. As per these rules, the additional expenditure incurred on account of installation of bird diverters should be adjusted in monthly tariff and the petitioners should be restored to the same economic position as if such change in law had not occurred.

15. Per contra the counsel for Respondents submitted that clause 12 of the PPAs does not provide for restitution. Further, the Change in Law Rules 2021 cannot be applied retrospectively as the Rules came into force on 22.10.2021. Further the petitioners should have approached the Commission before making any expenditure on installation of bird diverters.

16. The Respondents also submitted that Hon'ble Supreme Court vide its order dated 19.04.2021 has issued specific directions to the respondents of that petition for installing the bird diverters. The petitioners have not clarified in their petitions that whether they were respondents in the said petition before Hon'ble Supreme Court. Respondents further submitted that the petitioners' area does not fall under the priority area but rather fall under potential area and the subsequent order of the Hon'ble Supreme Court dated 21.04.2022 it only for priority area.

17. After going through the rival submissions, the commission observes that in the present case, the PPAs was signed for 20 years between the Petitioners and Respondents and the Change in Law provision was also incorporated in Article 12 of the PPAs. The Commission notes that the PPAs had provision for any change consequent to Act, Policies, Rules, Regulation and regulatory direction shall be binding on parties and shall be complied by all parties. It is the submission of the Respondents that the PPAs do not have a provision to restitute the generator to same economic position if change in law event happens. Article 12 of the PPAs states that:

"12 Change in Law

> *PPA has been executed in pursuance to the 'Policy for Promoting Generation of Electricity through Non-Conventional Energy Sources-2004' issued by Government of Rajasthan vide Energy Department letter no. F20 (4) Energy/2004 dated 25.10.2004 and amended from time to time. <u>Any change consequent to such Act, Policies, Rules, Regulations and Regulatory directions shall be binding and will have to be complied with by all parties.</u>*
>
> *The comments of RERC, if any, on this agreement will have to incorporated and if need be, the agreement will be amended*

accordingly."

18. The Commission also observes that the tariff of the Petitioner plant was revised to Rs. 4.46 per Unit vide this Commission order dated 14.12.2011 in term of section 62 and tariff of this plant is premised on normative capital cost including normative cost for setting up of an overhead transmission system up to the interconnection point. Needless to say that normative cost did not include the installation cost of Bird Diverters, since the installation of Bird Diverters was done in compliance of the Hon'ble Apex Court direction on 19.04.2021. It could thus be seen that the petitioners have impacted financially by the SC GIB Order as the cost of the bird diverters were not included in the tariff.

19. Before going to delve into further, it is apposite to take a cognizance of the direction imparted by Hon'ble Supreme Court vide order dated 19.04.2021. The relevant extract is reproduced hereunder:

> *"11. In the above background, there cannot be disagreement whatsoever that appropriate steps are required to be taken to protect the said species of birds. In that view, insofar as the existing overhead powerlines are concerned the respondents shall take steps forthwith to install divertors and in respect of existing overhead powerlines all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for the lines to be laid underground. In all such cases where it is feasible, steps shall be taken to lay the transmission line underground. For the lines to be laid in future if as per the technical report the overhead line alone is feasible and the same is ratified by the Committee, in such event the installation of the divertors shall also be a condition attached in the contract to be entered with generating companies. Insofar as, the cost Incurred in the said process, the concerned respondents No. 5 to 8 and 9 to 11 shall work out and provide for the same and the respondents No.1 to 4 aid in this regard. It would be open to them to muster the resources in accordance with law. In cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms. Irrespective of the cost factor the priority shall be to save the near extinct birds".*
>
> *"12. In fact, a few suggestions were made in the course of arguments, as to how financial resources can be mobilised. One of the options that could be explored, is to invite the attention of each electricity*

utility engaged in the generation of power, to Section 135 of the Companies Act, 2013, which imposes corporate social responsibility upon companies having a specified net worth or turnover or net profit. Section 166(2) of the Companies Act, 2013 ordains the Director of a Company to act in good faith, not only in the best interest of the Company, its employees, the shareholders and the community, but also for the protection of environment. The word 'environment", though not defined in the Companies Act, has to be given the meaning assigned to it under the Environment (Protection) Act, 1986. Section 20I of the Environment (Protection) Act, 1986. defines the word "environment to include the inter-relationship which exists among and between water, air and Land, und human beings, other living creatures, plants, micro- organisms and property.

Moreover, with the implementation of the Compensatory Afforestation Fund Act, 2016 (CAF, 2016), substantial funds are available with the National and State Authorities. Sections 4, 5 and 6 of the Act, provide for the utilisation of the fund for measures to mitigate threats to wildlife. The State of Rajasthan has already set up a Compensatory Afforestation Fund Management and Planning Authority (CAMPA) on 12.11.2009. Rule 5(2)(1) of these Rules permit the use of the State Fund for the improvement of wildlife habitat. It appears, according to the petitioners that a sum of Rs.47.436 crores, out of a total of Rs.54,685crores CAMPA Fund have been transferred by the Union Environment Ministry to the States for afforestation projects".

"18 In all cases where the overhead power lines exist as on today in the priority and potential GIB area the respondents shall take steps forthwith to install divertors pending consideration of the conversion of the overhead lines into underground. In all such cases where it is found feasible to convert the overhead cables into underground power lines the same shall be undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing power lines."

20. We may note that Hon'ble Supreme Court vide its order dtd. 19.04.2021 has directed to install the bird diverters on the overhead lines of all priorities and potential area of Gujarat and Rajasthan pending consideration of the conversion of the overhead cables into underground power lines. It is the submission of the petitioners that, in compliance of this, the Petitioners have installed the bird diverters on their overhead lines.

21. Subsequently, Hon'ble Supreme Court passed another order dated 21.04.2022 in this matter directing State of Rajasthan and Gujarat to

implement its earlier order dated 19.04.2021. The extract of order is as under:

> *"7. The installation of bird divertors at least in the priority areas of the States of Gujarat and Rajasthan must be taken up with the utmost expedition. The installation of bird divertors in the priority areas shall be completed before 20 July 2022, when these proceedings shall be taken up for further direction. This direction shall govern all state owned as well as private power producers".*
>
> *"8.The States of Rajasthan and Gujarat as well as all power producers in the private domain shall ensure that within the priority areas, a comprehensive exercise is completed within a period of three weeks to assess (i) the total length of transmission lines; and (ii) the estimated number of bird divertors required for the purpose".*

22. The Commission observes that in the meantime Ministry of power notified the Electricity (Timely Recovery of Costs due to Change in Law) Rule, 2021 with effect from the date of their publication in the Official Gazette .i.e., 22.10.2021. the relevant extract of the Rule is as under:

> *"3. Adjustment in tariff on change in law-*
>
> …………………...
>
> *(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.*
>
> *(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated-*
>
> *a. where the agreement lays down any formula, in accordance with such formula;*
>
> *b. where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules."*

23. While analyzing the scope and applicability of Change in law event, we find it necessary to cite the landmark judgment of Hon'ble Supreme Court dated 20.04.2024 in the matter of GMR Warora energy Limited & ors, Wherein it was held that:

> "93 *For appreciating the rival submissions, we will have to*

construe the term "Law", which has been defined in the PPAs, which reads thus:

"Law" means, 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 Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, Notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the CERC and the MERC."

94. Perusal of the definition of the term "Law" itself would clearly show that the term "Law" would mean 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 Governmental Instrumentality and having force of law. It would further reveal that the term "Law" shall also include all applicable rules, regulations, orders, Notifications by an Indian Governmental Instrumentality and shall also include all rules, regulations, decisions and orders of the CERC and the MERC.

……

95. In any case, the issue as to what would amount to "Law" is no more res integra. This Court, in the case of Energy Watchdog (supra), has observed thus:

> *"57. Both the letter dated 31-7-2013 and the revised Tariff Policy are statutory documents being issued under Section 3 of the Act and have the force of law. This being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India and other Indian sources is cut down, the PPA read with these documents provides in Clause 13.2 that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by such change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law has not occurred. Further, for the operation period of the PPA, compensation for any increase/decrease in cost to the seller shall be determined and be effective from such date as decided by the Central Electricity Regulation Commission. This being the case, we are of the view that though change in Indonesian law would not qualify as a change in law under the guidelines read with the PPA, change in Indian law certainly would."*
>
> ………..
>
> *98. As discussed herein above, the term 'Law' would also include all applicable rules, regulations, orders, Notifications issued by an Indian Governmental Instrumentality.*

> 99*. <u>It would thus be clear that all such additional charges which are payable on account of orders, directions, Notifications, Regulations, etc., issued by the instrumentalities of the State, after the cut-off date, will have to be considered to be 'Change in Law' events. The Generators would be entitled to compensation on the restitutionary principle on such changes occurring after the cut-off date</u>."*

24. Applying the aforesaid ratio to the facts of the instant case, it can be held that all the additional charges occurred due to installation of Bird diverters with respect to Hon'ble supreme Court order dated 19.04.2021 have to be considered as Change in Law event after the cut-off date i.e. after the date of PPAs. The Petitioners are entitled to get compensation towards additional expenditure occurred on account of installation of bird Diverter on the transmission line in compliance of Supreme court order dated 19.04.2021.

25. It is worth mentioning that the Union of India had filed an affidavit in apex court with reference to order dtd. 19.04.2021 wherein it was contended that the direction imparted by Hon'ble apex court is practically impossible to implement and also the Union Government has a commitment at international level to reduce carbon footprint. The Hon'ble apex court while recognizing the need to balance both the need for the preservation of the GIB and need for sustainable development, have modified its earlier injunction imparted and relaxed the potential area subjected to parameters laid down by the Expert Committee vide order dated 21.03.2024. The relevant extract of the order dated 21.03.2024 is reproduced hereunder:

> *" 62. We are accordingly of the view that the order passed by this Court on 19 April 2021 needs to be suitably modified. A blanket direction for undergrounding high voltage and low voltage power lines of the nature that was directed by this Court would need recalibration for the reasons discussed above. This task is best left to domain experts instead of an a priori adjudication by the Court. Experts can assess the feasibility of undergrounding power lines in specific areas, considering factors such as terrain, population density, and infrastructure*

requirements. This approach allows for more nuanced decision-making tailored to the unique circumstances of each location, ensuring that conservation objectives are met in a sustainable manner.

67. The Committee shall be at liberty to assess the efficacy of bird diverters and subject to its own findings on efficacy, to lay down specifications for bird diverters with due regard to the parameters specified by the Central Electricity Authority. It shall also identify the number of bird diverters required for the successful implementation of conservation efforts. In this regard, the Committee may also consider the recommendations of the technical expert committee constituted by the Ministry of Power by OM No 25-7/42/2019-PG dated 27 May 2022.

68. <u>The injunction which has been imposed in the order dated 19 April 2021 in respect of the area described as the priority and potential areas shall accordingly stand recalled subject to the condition that the Expert Committee appointed by this Court may lay down suitable parameters covering both the priority and potential areas.</u>

69. In the event that the Committee considers it appropriate and necessary to do so, it would be at liberty to recommend to this Court any further measures that are required to enhance the protection of the GIB. This may include identifying and adding suitable areas beyond the designated priority zones outlined above, if deemed crucial for the conservation of the species. Such additional areas could serve as vital habitats, corridors, or breeding grounds for the GIB, contributing significantly to its long-term survival.

70. We request the Committee to complete its task and submit a report to this Court through the Union Government on or before 31 July 2024.

72. The Union of India and the concerned ministries are directed to implement the measures described in the preceding paragraph, which it has undertaken to implement. Further, they are directed to continue implementing the measures detailed in paragraph 8(d) of this judgment. <u>The directions contained in the order dated 19 April 2021 shall accordingly stand substituted by those contained in the present judgment. The project clearances which have been granted pursuant to the recommendations of the earlier committee appointed in terms of the order dated 19 April 2021 shall not be affected by the present judgment.</u> "

26. The respondents have raised objection regarding the compensation to the petitioners on the basis that the bird diverter was to be installed only in the priorities area and not in potential area. The Commission would like to note that bare perusal of para 18 of the order dtd. 19.04.2021, it can be seen that the installation of diverter were mandated for both priority and

potential area and it was by the recent order of Hon'ble Apex Court dtd. 21.03.2024 wherein the injunction was recalled for both the categories i.e. priority and potential. Vide the said order, Hon'ble Apex Court also held that the project clearances which have been granted pursuant to the recommendations of the earlier committee appointed in terms of the order dated 19.04.2021 shall not be affected by the present judgment. Thus a saving has also been carved out by the Apex Court for the Generators who had already incurred expenditure in compliance of the order dated 19.04.2021. Thus, we are unable to accept the contention of respondents on this aspect.

27. In view of the specific law laid down by the Apex Court in GMR Warora case , the Petitioner are also entitled to grant of relief in the nature of carrying cost on the compensation on account of impact due to 'Change in Law'. As has been held by the Commission in earlier Orders, the Petitioner, in the instant petition shall be eligible for carrying cost starting from the date when the actual payments were made qua procurement of Bird Divertors till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RERC Tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.

28. The Commission vide its Order dated 30.12.2021 in Petition No. 1914/2021 (Fortum Solar Plus Pvt Ltd Vs SECI) while dealing with a similar issue, has taken a balanced and justified view regarding discount rate and annuity period. Relevant extracts of the order is reproduced below :

> *"52. It is further noted that the Central Commission has notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and RE Tariff Order dated 31.03.2021. In the said regulations read with RE tariff Order, the Central Commission has considered only the interest rate of 9% and the term of the Loan repayment as 15 years.*

53. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate of 9% can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law events. Further, the Commission is of the view that the compensation for Change in Law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt.

54. Commission after considering all the submissions and facts, deems it appropriate to allow the discount rate of 9% and annuity period of 15 years."

Thus, in this matter also the Commission deems it appropriate to allow the discount rate of 9% and annuity period of 15 years or remaining period of the PPAs , whichever is less.

29. The Commission further holds that the liability of SECI/ RUVNL for 'Monthly Annuity Payment' starts from 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner (SPD), whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner (SPD), whichever is later, late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

30. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure as per Article 12 of the PPAs. The Petitioners have to exhibit clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate from 19.04.2021 up to 21.03.2024 qua SC GIB Order dated 19.04.2021. Also, it will be the responsibility of the Petitioner to place documentary evidences to this effect clearly demonstrating net additional cash outflow so as to establish clear one to one correlation and its impact. We further direct that the respondent no 2 (RUVNL) are liable to pay SECI all the above reconciled claims that SECI has to pay to the Petitioner.

31. The summary of our findings are as follows:

    31.1 SC GIB Order dated 19.04.2021 is a Change in Law event in terms of Article 12 of the PPAs. The contracting parties to carry out reconciliation of additional expenditure incurred by the petitioners for installing Bird Divertors by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate from 19.04.2021 up to 21.03.2024.

31.2 The Petitioners shall be eligible for carrying cost starting from the date when the actual payments were made qua procurement and installation of Bird Divertors till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RERC Tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest.

31.3 Once a supplementary bill is raised by the Petitioners in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.

31.4 The discount rate of annuity payments shall be 9% towards the expenditure incurred by the Petitioner on account of Change in Law. The tenure of Annuity Payments shall be for 15 years or remaining period of the PPAs, whichever is less.

31.5 The liability of SECI/RUVITL for "Monthly Annuity Payments" starts from 60th (sixtieth) day from the date of this order or from the date of reconciliation of claims by the Petitioner, whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day, late payment surcharge for the delayed period corresponding to each such delayed Monthly Annuity Payment(s) shall be payable as per respective PPAs/PSAs.

32. We order accordingly. No order as to cost.

(Hemant Kumar Jain) Member	(Dr. Rajesh Sharma) Chairman