

**RAJASTHAN ELECTRICITY REGULATORY COMMISSION
JAIPUR**

Petition No. RERC/2344/2025

In the matter of

Petition under section 142 and 146 of the Electricity Act, 2003 for non-Compliance of the judgment or order passed by RERC in petition no. 2026/2022 dated 27.01.2023.

Coram:

Dr. Rajesh Sharma, Chairman

Shri Hemant Kumar Jain, Member

M/s Benisar Solar Plant

Petitioner

Rajasthan Urja Vikas and IT Services Limited

Jodhpur Vidyut Vitran Nigam Ltd.

Respondents

Date of hearing: 08.08.2025, 11.12.2025, 05.01.2026 and 16.01.2026

Present : Sh. Mahendra Singh Singhvi, Sr. Advocate alongwith the
Sh. Dalip Singh Rajvi, Advocate for Petitioner.
Ms. Parinitoo Jain, Advocate for Respondents.

Date of order

14.05.2026

Order

1. The present Petition has been filed by M/s Benisar Solar Plant (hereinafter referred to as the 'Petitioner') under Section 142 and 146 of the Electricity Act, 2003 for non-compliance of the order passed by the Commission in petition no. 2026/2022 dated 27.01.2023 (Kisan Urja Hitkari Samiti & Ors. vs. RUVNL & Ors.).
2. The matter was heard on 08.08.2025, 11.12.2025 and 05.01.2026. Finally, the matter was heard on 16.01.2026 and Commission

reserved its order while granting liberty to the parties for filing their written submissions within a week time.

3. Advocate Sh. Mahendra Singh Singhvi, Sr. Advocate alongwith the Sh. Dalip Singh Rajvi, Advocate appeared on behalf of the Petitioner. Advocate Ms. Parinitoo Jain appeared on behalf of the Respondents.

Background:

4. The brief facts of the case, based on the pleadings on record, are as follows:
 - 4.1. The Ministry of New and Renewable Energy (MNRE), Government of India, launched the PM-KUSUM (Pradhan Mantri Kisan Urja Suraksha Evam Utthan Mahabhiyan) Scheme. Under Component-A of the said Scheme, decentralized solar power plants of individual capacity up to 2 MW were to be set up by individual farmers, cooperatives, panchayats, and other eligible entities on their agricultural land. The State Government of Rajasthan issued implementation guidelines dated 11.02.2020 and Commission, vide its Tariff Order dated 11.02.2020, determined a pre-fixed levelized tariff of Rs. 3.14/kWh for procurement of power under PM-KUSUM Component-A projects across the State of Rajasthan.
 - 4.2. The Petitioner, M/s Benisar Solar Plant (a partnership firm represented by its authorized partner Shri Dalip Singh Rajvi), was issued a Letter of Award (ID No. 1497) dated 08.07.2020 for establishment of a 2 MW Solar Power Plant at GSS Benisar under the PM-KUSUM Component-A Scheme. Pursuant thereto, a Power Purchase Agreement (PPA) was executed between the Petitioner and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) through Rajasthan Urja Vikas and IT Services Limited (RUVITL) on 28.01.2021, incorporating, inter alia, Article 12 governing 'Change in Law' provisions.

- 4.3. At the time of execution of the PPA on 28.01.2021, there was no Basic Customs Duty (BCD) leviable on import of solar cells and modules. Further, the rate of Goods and Services Tax (GST) applicable on solar modules and inverters was 5%. Subsequent thereto, the following changes in the tax/duty took place:
- (a) The GST rate on solar modules and inverters was enhanced from 5% to 12% with effect from 01.10.2021; and
 - (b) Basic Customs Duty was imposed on import of solar PV cells at 25% and solar PV modules at 40% with effect from 01.04.2022.
- 4.4. The aforementioned changes in the tax/duty regime were also the subject matter of adjudication before this Commission in Petition Nos. 1964/2021 and 2026/2022 (Kisan Urja Hitkari Samiti & Ors. vs. RUVNL & Ors.). By a detailed and reasoned Order dated 27.01.2023, this Commission recognized the enhancement of GST and the imposition of BCD as 'Change in Law' events under Article 12.2 of the PPA and laid down eligibility criteria under Para 47(b), (c) and (d) thereof, applicable to RPGs fulfilling the stipulated conditions. Para 47(d) expressly directed that eligible RPGs may raise supplementary bills in terms of Article 10.7 of the PPA and that the Distribution Companies shall, after due verification, refund the payable amount to RPGs as a result of above events recognized as the change in law events.
- 4.5. The prescribed time for establishing the Solar Plants was initially 10 months. However, the timelines of establishing these projects were extended from time to time by MNRE. MNRE vide OM dated 27.08.2021 granted extension till 31.03.2022, and subsequently vide OM dated 14.12.2021 regarding simplification of PM-KUSUM Scheme Guidelines, the project completion timeline was extended to 24 months from the date of sanction by MNRE. Further extensions were also granted from time to time, with the last extension up to 31.03.2025.

- 4.6. The Petitioner's solar power plant was commissioned and synchronized on 27.09.2024, after availing institutional finance, as evidenced by the Commissioning Report.
- 4.7. The Petitioner submitted supplementary bills on 28.11.2024 claiming Change in Law compensation amounting to Rs. 1,33,47,952.30/- (comprising BCD of Rs. 1,03,04,236.80 and GST differential of 7%(=12% - 5%)amounting to Rs. 30,43,715.50) in compliance with Para 47(d) of the Order dated 27.01.2023, read with Article 10.7 of the PPA. Despite receipt of the said bills and subsequent reminders/notices dated 10.03.2025, the Respondents have failed to release the payment.
- 4.8. In the meanwhile, the Respondent No. 1 (RUVITL) had filed Review Petition No. 2279/2024 challenging the Order dated 27.01.2023, inter alia, on grounds of alleged reduction in solar module prices and absence of financial loss to RPGs. Commission, vide its Order dated 25.11.2025, dismissed the said Review Petition, holding that no error apparent on the face of the record was made out and Order dated 27.01.2023 was thereby affirmed.

SUBMISSIONS OF THE PETITIONER

5. The Petitioner, in its petition, rejoinder, written submissions and during oral hearing, mainly submitted as under:

A. Eligibility and Entitlement under Para 47 of the Order dated 27.01.2023

- 5.1. It is the submission of the Petitioner they squarely fall within the eligibility criteria defined in Para 47(b) and (c) of the Commission's Order dated 27.01.2023. The PPA was signed on 28.01.2021, which is before the cut-off date, i.e., 30.09.2021 (for GST) and before 09.03.2021 (for BCD). It is further submitted that their plant was commissioned on 27.09.2024, which is after the dates 01.10.2021 and after 01.04.2022 respectively, making the Petitioner eligible for both GST and BCD compensation as directed by this Commission in its order dated 27.01.2023.

- 5.2. It is the submission of the Petitioner that the change in law in terms of Article 12.2 of the PPA on account of the increase in GST rates (from 5% to 12% w.e.f. 01.10.2021) is admissible to them as the last date of the bid submission was on and before 30.09.2021 and the Scheduled Commissioning Date including time extension is on and after 01.10.2021, as stipulated in Para 47(b) of the Commission's Order dated 27.01.2023.
- 5.3. It is also stated that the change in law in terms of Article 12.2 of the PPA on account of the imposition of BCD (25% on PV Cells and 40% on PV Modules w.e.f. 01.04.2022) is also admissible to the Petitioner as the last date of bid submission was 28.01.2021, i.e., prior to 09.03.2021, and the plant was commissioned on 27.09.2024, i.e., after 01.04.2022, as stipulated in Para 47(c) of the Commission's Order.
- 5.4. At the time when the PPA was signed on 28.01.2021, there was no levy of BCD on import of solar PV Cells and Modules. Similarly, the GST on solar modules and inverters was applicable at 5%, which was enhanced to 12% w.e.f. 01.10.2021 and BCD was levied, w.e.f., 01.04.2022. MNRE had announced vide order dated 09.03.2021 the levy of BCD on PV Cells at 25% and on PV Modules at 40%. These taxes levied by the Central Government constitute the Change in Law events as defined under Article 12.2 of the PPA.

B. Compliance with the Order and submission of the Supplementary Bills

- 5.5. It is also contended that the Petitioner submitted the necessary supplementary bills and supporting documents to the Respondents on 28.11.2024, in strict compliance with Article 10.7 of the PPA read with Para 47(d) of the Commission's Order dated 27.01.2023, claiming compensation amounting to Rs. 1,33,47,952.30/-. Despite receipt of the same, the Respondents have failed and neglected to release the payment, which

according to the Petitioner constitutes willful disobedience of the Commission's binding directions.

- 5.6. The Respondent No. 1 had issued a letter dated 08.02.2023 giving effect to the Commission's Order dated 27.01.2023 and had made payment of compensation to some of the RPGs who had installed/commissioned their plants. However, the Respondents are not making payment of compensation to the present Petitioner and similarly situated persons, despite being covered under the same Order.

C. Judgment in Rem, Finality of Order and Res Judicata

- 5.7. The Petitioner submitted that the Order dated 27.01.2023 is a judgment in rem, declaratory in nature, and operates to benefit all RPGs satisfying the eligibility criteria laid down therein. The Commission consciously employed the expression "the RPGs" throughout Para 47, thereby extending the benefit to all Renewable Power Generators fulfilling the stipulated conditions, and not restricting the relief to the original petitioners alone. This position stands conclusively established by the Commission's subsequent conduct in Review Petition No. 2279/2024, wherein notices were directed to be issued to all RPGs, including the present Petitioner (who was impleaded as Respondent No. 164), on the express reasoning that the issues raised in review would have ramifications for the entire class of beneficiaries.
- 5.8. The Respondent's Review Petition No. 2279/2024, challenging the Order dated 27.01.2023 on grounds of reduction in module prices and unjust enrichment, was dismissed by this Commission on 25.11.2025 by a reasoned and speaking order. The Commission specifically observed at Para 25 thereof that *"Most of the submissions made in the present Review Petition have either already been considered by the Commission in the earlier orders or pertain to events that occurred subsequent thereto. In either*

case, such grounds do not qualify for review.” The Order dated 27.01.2023 has, therefore, attained absolute finality.

- 5.9. The grounds raised by the Respondents in their reply to the present execution proceedings are identical, both in substance and phraseology, to those raised and rejected in the Review Petition No.2279/2024. The Respondents are, therefore, barred by the principles of res judicata from re-agitating the same issues in the present execution proceedings, which cannot be converted into a forum for re-adjudication. Petitioner also placed reliance on the Hon'ble Supreme Court's judgment in *Ishwar Dutt vs. Land Acquisition Collector & Anr.*, (2005) 7 SCC 190.

D. Estoppel, Discrimination and Non-Compliance

- 5.10. According to the Petitioner the Respondents have admittedly implemented the Order dated 27.01.2023 in respect of several similarly situated RPGs by granting Change in Law compensation. Having partially complied with the judgment, the Respondents are estopped from denying identical relief to the Petitioner, who stands on the same footing. Petitioner also placed reliance on *Century Spinning and Manufacturing Company Limited vs. Ulhasnagar Municipal Council*, (1970) 1 SCC 582 in this regard.
- 5.11. The Petitioner also contended that the Respondent's own letter dated 14.10.2024 admitted that only RPGs whose plants are commissioned after 30.09.2024 would not be entitled to Change in Law benefits. Since the Petitioner's plant was commissioned on 27.09.2024, i.e., before the said cut-off, meaning thereby the petitioner as per the Respondent's communications is also eligible for benefit of Change in Law and now the Respondent cannot track back from his own stand.
- 5.12. As regards the extensions for commissioning the plant after 30.09.2024 as per the Respondents letter dated 14.10.2024, the extension was to be given beyond this date without allowing

Change in Law benefits and no extra payment was to be made over and above PPA Tariff (maximum Rs. 3.14/kWh). According to the Petitioner since their plant was commissioned on 27.09.2024, the Petitioner is entitled for Change in Law benefits as per Article 12.2 of the PPA.

- 5.13. It is submitted that Hon'ble Apex Court in the case of *Maharaj Krishan Bhatt & Anr. vs State of Jammu and Kashmir & Ors reported in (2008) 9 SCC 24* have clearly laid down that - Proposition of law accepted that wrong decision in one case could not be extended to others But held on facts that, once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons.
- 5.14. According to the Petitioner, the present proceedings involve no adjudicatory element and are confined to enforcement of a final and binding judgment. The objections raised by the Respondents are wholly untenable, barred by res judicata, contrary to settled principles governing execution and amount to willful non-compliance of the directions of this Hon'ble Commission.
- 5.15. Since the Order of the Commission has not been complied with and no payment has been made, it constitutes clear willful disobedience and non-compliance of the Commission's Order, warranting action under Sections 142 and 146 of the Act.

Prayer:

6. The Petitioner in their Petition has prayed as follows:
- (a) The Respondents may be punished for the willful non-compliance of the judgment dated 27.01.2023 and/or in the alternative, the Respondents may be directed to immediately comply with the judgment dated 27.01.2023 and may kindly be directed to pay the bill amount submitted by the Petitioner which was received on 28.11.2024.

(b) The bills submitted by the Petitioner for compensation on account of Change in Law amounting to Rs. 1,33,47,952.30/- along with interest @ 12% per annum.

(c) Any other order, which this Hon'ble Commission may deem just and proper in the facts and circumstances of the case, may kindly be passed in favour of the Petitioner.

SUBMISSIONS OF THE RESPONDENTS

7. Per contra, the Respondents, in their reply, written submissions and during oral hearing, mainly submitted as under:

A. Principle of Restitution:

7.1. The object of Change in Law relief is 'restitution', i.e., to restore the generator to the same financial position and not for deriving windfall gains, double benefits or unjust enrichment. It was contended that:

7.2. Since there was reduction in the module cost which already neutralizing the impact of GST and BCD and therefore, compensating again would violate the purpose of clause of change-in-law. Neither the Electricity Act nor the RERC Regulations ensure double recovery from the Discoms or in the alternative double benefit to the generator. This has been the consistent interpretation of the Change-in-law clause by this Hon'ble Commission, the Appellate Tribunal, as well as Supreme Court on various occasions. There must be an independent application of mind by this Hon'ble Commission, both with regard to the occurrence of the Change in Law event and the appropriate measure of compensation to be awarded. This is precisely the rationale for vesting jurisdiction in the regulator. At the time of fixation of tariff in 2020, the module price was approximately USD 0.214/Watt, whereas by 2024, the actual procurement cost had fallen to approximately USD 0.102/Watt,

representing a reduction of nearly 50%. The impact of this reduction translates to a decrease in tariff of approximately Rs. 0.61/kWh, which fully offsets the GST/BCD impact of Rs. 0.50–0.60/kWh claimed by the Petitioner. The Petitioner has not purchased modules at the assumed cost of USD 0.214/Watt as evident from the bills annexed with petition and has not divulged the fact of reduced cost incurred on modules. The Petitioner is not under financial loss; rather it has gained substantial benefit. Thus, any further reimbursement would amount to unjust enrichment contrary to the preamble of the Electricity Act and RERC Regulations.

- 7.3. Due to overall reduction in the cost of solar plant under KUSUM Component-A, the approved GST and BCD Changes in Law have resulted in financial benefits to the RPGs while creating an additional burden on the Discoms in the form of Change in Law payments over the agreed tariff of Rs. 3.14 per kWh. Therefore, the Petitioner is not entitled to any Change in Law benefit because it has already earned the benefits of reduction in module cost.
- 7.4. The impact of module cost reduction on per unit tariff actually offsets Change in Law impact. The basic custom duty @25%/40% and GST @12% Change in Law have reportedly raised the tariff by 50 to 60 paisa per unit, as claimed by RPGs. In contrast, the price of solar modules has gone down significantly. As per the Order dated 11.02.2020 passed by the Commission, the cost was USD 0.214 per watt but has reduced to USD 0.102 per watt. Such decrease in module costs reduces the capital expenditure required to set up solar power plants. Resultantly, the reduction in module costs has led to a per unit tariff decrease of approximately Rs. 0.61/kWh. Hence, the 61 paisa per unit decrease in module costs effectively offsets the 50 to 60 paisa per unit increase due to Change in Law events. Even after paying

GST/BCD the landed cost is substantially below the assumed capital cost and therefore the Petitioner is not under a financial loss, rather it is enjoying double benefits. Since the fall in module cost has offset GST/BCD, any further reimbursement would result in unjust enrichment which is neither envisaged by the Electricity Act nor by the Regulations.

B. Subsumption within the Existing Tariff

- 7.5. The Commission has already recognized the reduction in module costs in its Tariff Order dated 28.10.2024, whereby the ceiling tariff for additional PM-KUSUM Component-A capacity was reduced to Rs. 3.04/unit. The Petitioner's claim stands subsumed in the tariff framework, as the agreed tariff of Rs. 3.14/unit already covers the Change in Law impact.
- 7.6. The financial impact due to Change in Law events i.e. GST and BCD stands absorbed in the ceiling tariff of Rs. 3.14 per unit as agreed in the PPA. Therefore, the financial benefits accrued to the RPGs on account of reduction in module costs shall stand transferred to Discom. The benefit accrued to the generators on account of reduction in cost of module may be allowed to be adjusted against claim of GST and BCD, and the claim of GST and BCD may not be ordered to be paid since it stands absorbed in the benefit of reduction of cost of panel.

C. Commercial decision, offsetting Safeguard duty and BCD evidence

- 7.7. It was a commercial decision of the Petitioner to procure imported solar panels when the same capacity and quality modules were available domestically. Therefore, the developer should bear the consequences of this procurement choice. Further, the impact of Safeguard Duty (SGD) at 14.9% ad valorem, which was applicable at the time of bid and was subsequently removed after imposition of BCD, should be considered before granting any compensation.

7.8. It is further submitted that no documentary evidence has been filed by the Petitioner regarding payment made to the Customs Department in respect of BCD on imported modules. Thus, the BCD claim is not justified.

D. Finality of Review Petition, Regulatory Discretion and Consumer Interest

7.9. Respondents have raised several preliminary objects. It is the submission of the Respondents that Petitioner has not annexed any document to show that it is one of the members of Kisan Urja Hitkari Samiti. According to the submission of the Respondent though the PPA was entered into on 28.01.2021 but the plant was commissioned on 27.01.2024. It is further submitted by the Petitioner that Commission at para 47 of its order dated 27.01.2023 had specified various dates regarding scheduled commissioning, bid submission date, time extension and applicability for change in law for GST and BCD. The Respondents have already complied with the order of the Commission dated 27.01.2023 and in compliance thereof relief has already been granted to various RPGs.

7.10. Respondent further submitted that MNRE extended the scheduled commercial date several times, with last extension given on 21.08.2024 for upto 31.03.2025 at the request of RRECL. However, the Respondent issued a letter dated 14.10.2024 so that plants are commissioned by 30.09.2024 and no further extension is required. The Respondent further issued letter on 23.10.2024 subsequent to their earlier letter dated 14.10.2024 where it was clarified that though the plant may be commissioned after 30.9.2024 but the change in law issue would be dealt separately.

7.11. The Respondents had filed Review Petition No. 2279/2024 against the Order dated 27.01.2023 on account of reduction of Non-DCR module price and plant cost. The dismissal of Review Petition No.

2279/2024 on 25.11.2025 does not automatically entitle the Petitioner to compensation. The Commission has already factored cost reductions into recent tariff orders. The Commission should exercise its regulatory discretion to prevent unjust enrichment and avert unnecessary burden on end consumers.

- 7.12. If any additional compensation/relief is granted, the financial burden would be wrongly shifted on end consumers by way of increase in consumer tariff, specifically when module costs had drastically reduced. It is further argued that the regulatory mandate requires balancing the interest of both generators and consumers and entertaining the Petitioners claim would unfairly tilt this balance. The purpose of putting the generator under the same financial position is only when a generator suffers loss on account of Change in Law, but if the generator is not under any financial loss because it had gained substantial benefit due to reduction in panel cost which is a major component in plant cost, then the RPG is not entitled to any benefit on account of Change in Law.

Commission's view:

8. Commission has considered the submissions made by the Petitioner/Respondents in petition, replies, written submissions and oral arguments made by them during hearing(s). We have also taken note of the earlier Order of this Commission dated 27.01.2023 in Petition Nos. 1964/2021 and 2026/2022, as well as the Order dated 25.11.2025 disposing the Review Petition No. 2279/2024.
9. After careful consideration of the rival submissions and the material on record before us, the following issues arise for our consideration:

Issue (I): Whether the Petitioner fulfills the eligibility criteria laid down in Para 47(b) and (c) of the Order dated

27.01.2023 so as to be entitled to Change in Law compensation on account of enhancement of GST and imposition of BCD?

Issue (II): *Whether the Respondents are barred by the principle of res judicata from re-agitating arguments regarding reduction in module prices and unjust enrichment, in light of the dismissal of Review Petition No. 2279/2024 on 25.11.2025?*

Issue (III): *Whether the Respondents' continued refusal to release payment constitutes non-compliance of the Commission's Order dated 27.01.2023, warranting action under Sections 142 and 146 of the Electricity Act, 2003?*

Issue (I): Eligibility of the Petitioner under Para 47 of the Order dated 27.01.2023

10. It is observed that Para 47 of the Commission's Order dated 27.01.2023 in Petition Nos. 1964/2021 and 2026/2022 lays down specific eligibility criteria for Change in Law compensation. The relevant portions are reproduced hereunder for ready reference:

"47(b) The change in law in terms of Article 12.2 of the PPA on account of the increase in GST rates shall be admissible to the RPGs where the last date of the bid submission was on and before 30.09.2021 and where the Scheduled Commissioning Date including time extension is on and after 01.10.2021."

"47(c) The change in law in terms of Article 12.2 of the PPA on account of the imposition of BCD shall be admissible to the RPGs where the last date of bid submission was on or before 09.03.2021 and the

Scheduled Commissioning Date is on or after 01.04.2022."

"47(d) The RPGs satisfying conditions mentioned at Para 47(b) and (c) above may raise supplementary bills in terms of Article 10.7 of the PPA and the Distribution Companies shall, after due verification, refund the payable amount."

11. On examination of the undisputed facts on record, we find that the Petitioner's position vis-à-vis the eligibility criteria is as follows:
 - (1) The PPA was executed on 28.01.2021, which is prior to both the cut-off dates stipulated in Para 47(b) (30.09.2021 for GST) and Para 47(c) (09.03.2021 for BCD). This fact is not disputed by the Respondents.
 - (2) The Petitioner's solar power plant was commissioned on 27.09.2024, which is undeniably after 01.10.2021 (for GST eligibility) and after 01.04.2022 (for BCD eligibility). The Respondents had, in their reply, sought to dispute the commissioning date by alleging it to be 27.01.2024. However, it is observed that the Petitioner has categorically denied this and has placed on record the Commissioning Report clearly establishing commissioning on 27.09.2024. The Respondents have not placed any contrary documentary evidence to counter the Commissioning Report. Moreover, the Respondent's own letter dated 14.10.2024, drew a distinction between plants commissioned up to 30.09.2024 and those commissioned thereafter.
12. In view of the above, we are of the considered view that the Petitioner squarely satisfies the eligibility criteria laid down in Para 47(b) and (c) of the Order dated 27.01.2023, and is consequently entitled to raise supplementary bills for Change in Law

compensation in terms of Para 47(d) thereof. According to the Petitioner in fact, it has already submitted such supplementary bills on 28.11.2024.

Issue (I) is accordingly answered in the affirmative, in favour of the Petitioner.

Issue (II): Bar of Res Judicata – Module Price Reduction and Unjust Enrichment

13. It is observed that Commission, after hearing all concerned parties including the present Petitioner (who was impleaded as Respondent No. 164 in the Review Petition and filed a detailed reply and advanced oral submissions), passed the order in the matter of Review Petition No. 2279/2024 on 25.11.2025. The relevant observations of this Commission in the above order are reproduced as follows:

"25. In our considered view, the Petitioner has failed to demonstrate any error apparent on the face of the record in the Commission's earlier orders dated 11.02.2020 and 27.01.2023. The Petitioner has also not produced any material evidence that existed at the time of the earlier proceedings but could not be presented despite due diligence. Most of the submissions made in the present Review Petition have either already been considered by the Commission in the earlier orders or pertain to events that occurred subsequent thereto. In either case, such grounds do not qualify for review. The Commission further notes that no other sufficient cause has been established to warrant reconsideration. Accordingly, the Review Petition neither satisfies the criteria laid down under Order 47 Rule 1 of the Code of Civil Procedure, 1908,

nor meets the principles enunciated by the Hon'ble Supreme Court governing the exercise of review jurisdiction."

14. In the light of the above, it is observed that the arguments pertaining to module price reduction, unjust enrichment, tariff subsumption, and the Tariff Order dated 28.10.2024 were raised before this Commission in the main and review proceedings. They were considered and rejected. The Order dated 27.01.2023, as affirmed by the dismissal of Review Petition No. 2279/2024, has attained finality. In our view the Respondents now cannot be permitted to re-agitate the very same issues in execution/compliance proceedings.

15. The Hon'ble Supreme Court in *Ishwar Dutt vs. Land Acquisition Collector & Anr.*, (2005) 7 SCC 190, has observed that:

"18.....When a proceeding based on a particular cause of action has attained finality, the principle of res judicata shall fully apply".

The Hon'ble Court has further cited *Wade and Forsyth on Administrative Law*, 9th Edn. p. 243 where it is stated that:

"One special variety of estoppel is res judicata. This results from the rule which prevents the parties to a judicial determination from litigating the same question over again, even though the determination is demonstrably wrong....."

16. We also note the following observation of the Hon'ble Supreme Court in *Swamy Atmananda vs. Sri Ramakrishna Tapovanam* (SCC p.61, paras 26-27) as cited in *Ishwar Dutt* (supra):

".....Once the matter which was the subject-matter of lis stood determined by a competent court, no party

thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment."

17. We also take note of the Respondent's argument that the Commission should exercise 'regulatory discretion' to prevent unjust enrichment despite the dismissal of the Review Petition. The discretion of the Commission must be exercised within the bounds of law. Having dismissed the review petition on the specific finding that the grounds raised therein did not warrant reconsideration, this Commission cannot, in execution proceedings, exercise a discretion to refuse enforcement of its own final and binding order on the very same grounds that were rejected in review.
18. As regards the Respondent's contention that the Petitioner has not filed documentary evidence of payment of BCD to the Customs Department on the imported modules, we note that as per petitioner's submission supplementary bills were submitted by them on 28.11.2024 which include invoices and calculations supporting the BCD claim. It is however, further noted that para 47(d) of the Order dated 27.01.2023 provides that RPGs for which relief on account of the Change in law events are admissible per para 47 (b)&(c) of the said order may raise Supplementary Bills in terms of the Article 10.7 of the PPA for payment on account of the Change in Law events furnishing the documentary proof exhibiting clear and one to one correlation backed by an auditor certificate and relevant documents to the Discoms in this regard, who, in turn, after due verification will refund the amount which is payable to the RPGs as a result of the above events recognized as the Change in Law events.

19. Similarly, the Respondent's argument regarding the removal of Safeguard Duty (SGD) being a factor to be offset against BCD according to us, it constitutes a fresh ground that cannot be entertained in the present compliance proceedings.

Issue (II) is accordingly answered in the affirmative. The Respondents are barred by the principle of res judicata from re-agitating issues that stand conclusively determined by the Order dated 27.01.2023, as affirmed by the dismissal of Review Petition No. 2279/2024.

Issue (III): Non-Compliance, Estoppel and Discrimination

20. Having established that the Petitioner is eligible (Issue-1) and that the Respondent's defences are barred by res judicata (Issue-II), we now turn to whether the Respondents' conduct constitutes non-compliance warranty action under sections 142 and 146. The Commission's Order dated 27.01.2023 was passed nearly three years ago. The Respondents themselves issued a letter dated 08.02.2023 giving effect to the said Order in respect of several RPGs. The Petitioner, upon commissioning its plant on 27.09.2024 and submitting supplementary bills on 28.11.2024, was entitled to have its claim processed 'after due verification' in terms of Para 47(d).
21. In the facts and circumstances of the case, and considering that the Respondents had raised bona fide legal contentions we are of the view that the ends of justice would be met by directing strict compliance with the Order dated 27.01.2023 within a stipulated timeframe. However, keeping in view the continuous litigation i.e., Change-in-Law main petition & review petition and after hearing the Respondents, in our view no case of willful disobedience is made out u/s 142 & 146 of the Electricity Act, 2003.

22. In view of the foregoing analysis and for the reasons stated hereinabove, the Commission hereby directs as follows:

- (1) The Respondents RUVITL and JdVVNL are directed to release Change in Law compensation to the Petitioner, M/s Benisar Solar Plant, strictly in terms of Para 47(d) of the Commission's Order dated 27.01.2023 in Petition Nos. 1964/2021 and 2026/2022, after due verification and one to one correlation of the supplementary bills submitted by the Petitioner on 28.11.2024.
- (2) The Respondents shall complete the verification of the supplementary bills submitted by the Petitioner for compensation and release the payable amount within a period of sixty (60) days from the date of this Order.
- (3) In case the Respondents find any discrepancy in the bills during the verification process, they shall communicate the same to the Petitioner within thirty (30) days, and the Petitioner shall be given a reasonable opportunity to rectify such discrepancies. The payment of the undisputed portion shall not be withheld on account of any such discrepancy.
- (4) If Respondents fail to release the compensation within stipulated time of 60 days from this order or from the date when the Petitioner submit revised supplementary bill, in case of any discrepancy, whichever is later, provision of LPS will kick in.
- (5) The rate of Late Payment Surcharge (LPS) shall be as applicable under the PPA or Regulations or as prayed by the petitioner, whichever is lower, from the date of submission of the supplementary bill to the date of this order.
- (6) No order as to costs.

23. We order accordingly. the Petition stands disposed of in the above terms.

(Hemant Kumar Jain)
Member

(Dr. Rajesh Sharma)
Chairman