

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

**Review Petition No.1866 of 2020
(As Remanded by the Hon'ble APTEL)
with
I.A. No.46/2025
In
Petition No.1680 of 2017**

In the matter of:

Remand Order pursuant to the Order dated 16.04.2025 of the Hon'ble APTEL in Appeal No. 842 of 2023 & IA No. 1826 of 2024 arising from the Order dated 23.12.2019 of the Commission in Petition No. 1680 of 2017 under Section 86(1)(f) of the Electricity Act, 2003 and the Order dated 18.03.2023 in Review Petition No.1866 of 2020 filed under Section 94 of the Electricity Act, 2003 read with Regulation 72 of the GERC (Conduct of Business) Regulations, 2004, remanding the matter to the Commission .

And

Interim Application filed by the Applicant EPGL seeking interim payment.

Applicant/Petitioner : Essar Power Gujarat Limited

Represented by : Ld. Sr. Advocate Buddy Ranganadhan with Adv. Abhishek Munot, Adv. Samikrith Rao, Adv. Ms. Shefali Tripathi, Adv. Nisarg Desai, Adv. Gaurav Ray and Mr. Bhaven Bhatt.

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented by : Learned Advocates Mr. Anand Ganesan, and Mr. Kishan Vadodaria.

CORAM:

**Anil Mukim, Chairman
Mehul M. Gandhi, Member**

Date: 11/08/2025

ORDER

1. Preliminary:

1.1 This Commission by its Order dated 23.12.2019 in Petition No.1680 of 2017 allowed Change in Law to the extent as stated therein. Thereafter, in Review Petition No.1866 of 2020, the Commission vide its Order dated 18.03.2023 allowed the Review Petition except on the demand of Interest. In its Order dated 16.04.2025 in Appeal No. 842 of 2023 with IA No. 1826 of 2024 arising from Petitions No.1680 of 2017 and 1866 of 2020 filed by the Appellant-present Petitioner, the Hon'ble APTEL passed the following Order:

"XV. CONCLUSION:

The Appellant is held entitled for payment of interest for the period April 2019 to March 2021 on belated payment of compensation on account of change in law. The GERC shall, after giving both parties a reasonable opportunity of being heard and after permitting the Appellant to adduce documentary evidence on this particular issue, pass orders afresh determining the interest to which the Appellant is entitled to for the period April 2019 to March 2021, whether it be simple or compound; the rate of interest; and, in case they are held entitled to compound interest, the periodic rests at which such interest should be compounded ie quarterly or half yearly or yearly rests.

The GERC is requested to complete the entire exercise, culminating in a final order being passed afresh, with utmost expedition, preferably within four months from the date of receipt of a copy of this order."

1.2 Upon receipt of copy of the above Order, the Commission issued necessary notices to both the Parties and kept the matter for hearing. Pursuant to the notices of the Commission, both the Parties have presented their cases as summarized hereinunder.

1.3 Before proceeding with the facts of the case, we may note here that the Petitioner has, by its Affidavit dated 31.07.2025, placed on record stated that Respondent-GUVNL had filed Civil Appeal No.9480 of 2025 before the Hon'ble Supreme Court seeking setting aside of the Hon'ble APTEL's Order dated 16.4.2025 and the Hon'ble Supreme Court by its Order dated 25.07.2025 has dismissed the Civil Appeal holding as under:

"1. Heard Mr.C.A.Sundaram, learned senior counsel appearing for the appelland and Dr.A.M.Singhvi, learned senior counsel appearing for the respondent. Having considered the facts and circumstances of the case, we are of the opinion that the Appellate Tribunal for Electricity has not committed any error in law or fact."

2. **Petitioner's case:**

2.1 Petitioner-Essar Power Gujarat Limited (EPGL) vide its Affidavit dated 29.05.2025 has stated that its claim of the Change in Law under Article 13 of the Power Purchase Agreement dated 26.02.2007 (PPA) executed between EPGL and the Respondent - Gujarat Urja Vikas Nigam Limited (GUVNL) was awarded Change in Law compensation by this Commission vide Order dated 23.12.2019 (in Petition No. 1680 of 2017) and enhanced through Review Order dated 18.03.2023 (in Petition No. 1866 of 2020) on account of the Integrated Goods & Services Tax Act, 2017 (GST Act) notified by the Government of India on 12.04.2017 as implemented with effect from 01.07.2017. It is also stated that the Commission had declined to grant carrying cost as part of restitution/ change in law compensation awarded and therefore the Petitioner was constrained to challenge the Order of the Commission on limited disallowance of carrying cost before the Hon'ble APTEL by way of filing Appeal No.842 of 2023.

2.2 On 16.04.2025, Hon'ble APTEL vide its Judgment in Appeal No. 842 of 2023 (Remand Order) held that EPGL is entitled to Carrying Cost, albeit for the period April 2019 to March 2021 and accordingly, remanded the matter to this Commission: -

(a) To calculate the quantum of interest/ carrying cost payable to EPGL for the period April 2019 to March 2021.

(b) To determine whether interest is payable on a simple or compound basis.

(c) The applicable rate of interest. In case of compound interest, the periodic rests (quarterly, half yearly or yearly) at which such interest should be compounded.

2.3 Petitioner-EPGL has stated that the Remand Order has held that EPGL is entitled to full economic restitution by way of carrying cost on the belated payment of Change in Law compensation for the period April 2019 to March 2021, computed till the date of payment of complete dues to EPGL, and that while granting relief, Hon'ble APTEL has also held that EPGL would be required to produce documentary evidence to establish rate of interest, whether compound or simple and rest (in case of compound interest). In this context, EPGL has stated that this requirement to lead evidence is not in consonance with the position of law settled by the Hon'ble Supreme Court that carrying cost must be computed at the rate of late payment surcharge (LPS) in the power purchase agreement as a contractual right. As a matter of law, therefore, EPGL is entitled to claim carrying cost at the rate of LPS set out at Article 13.2 of the PPA, as a contractual right without having to lead any evidence. It is only if EPGL is

claiming carrying cost at a higher rate than LPS, it is required to lead evidence.

2.4 Petitioner-EPGL, in order to establish its entitlement to compound interest with monthly rests, has adduced documentary evidence before this Commission for the rates based on:

- (i) Its own borrowing arrangements i.e., the Working Capital Facility Agreement dated 1.11.2012 between EPGL and its lenders.
- (ii) Extant Circulars issued by the Reserve Bank of India (RBI).
- (iii) GUVNL's own Affidavit dated 19.11.2019 filed in Petition No. 1680 of 2017, asserting that Change in Law compensation has to be accompanied by Carrying Cost at the rates equal to delay payment rate as per the PPA; and
- (iv) Interest imposed by GUVNL on delay in payment of penalty for shortfall of declared capacity.

2.5 The Petitioner has thus requested the Commission to implement the Remand Order and direct Respondent-GUVNL to pay the entire interest due to EPGL, up till the date of actual payment of such outstanding dues.

2.6 The Petitioner further stated that the present Affidavit is being filed without prejudice to EPGL's rights to challenge the Remand Order, inter alia, to the extent that it has been denied carrying cost for the period 2017-2019 (i.e. from the date of the change in law impact) and to the extent that it failed to recognize that EPGL is entitled to claim carrying cost at the rate of LPS, as a contractual right without the necessity of adducing any

evidence and also that EPGL would thus be required to adduce evidence only if it is claiming carrying cost at a higher rate than LPS.

II. EPGL'S FURTHER SUBMISSIONS

Re. EPGL is entitled to Compound Interest at monthly rests.

2.7 Hon'ble APTEL in the Remand Order, as regards EPGL's entitlement to interest on compounding basis, has held that:

*"In the present case the principles of restitution are contained in Article 13.2 of the PPA, and the only manner in which the appellant can be restored to the position they were in, but for the change in law, is by compensating them with interest on the belated payment of change in law compensation by the 2nd Respondent-GUVNL. Consequently, for the amount paid by them, as a result of change in law, during the period April, 2019 to March, 2021, **the appellant is entitled to be paid interest, from the date they paid the amounts for this period till they were compensated by the 2nd Respondent- GUVNL for such amounts.***

...

In Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624, the Supreme Court, alluding to Reserve Bank of India Circulars dated 14-8-2003 and 3-3-2016 that provided for a borrower to pay interest to the lender on compound interest basis, noted the submission urged on behalf of Respondent 1 Adani Power, that, having borrowed money from banks to install the FGD unit and having paid compound interest on the borrowed sum, it was only seeking restitution for the interest incurred by it and paid to the banks at the same rate; and this was not a case of unjust enrichment.

*The Supreme Court held that the restitutionary principles encapsulated in Article 13.2 would take effect for computing the impact of change in law; in the instant case, Respondent 1 Adani Power had to incur expenses to purchase the FGD unit and install it in view of the terms and conditions of the environment clearance given by the Ministry of Environment and Forests; it had to arrange finances by borrowing from banks; **the interest***

rate framework followed by scheduled commercial banks and regulated by Reserve Bank of India mandated that interest shall be charged on all advances at monthly rests; and, in this view of the matter, Respondent 1 Adani Power was justified in stating that, if the banks had charged it interest on monthly rest basis for giving loans to purchase the FGD unit, any restitution would be incomplete, if it was not fully compensated for the interest paid by it to the banks on compounding basis.

Following its earlier judgement in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624, the Supreme Court, in GMR Warora Ltd. vs. CERC: (2023) 10 SCC 401, held that grant of compound interest as carrying cost. on occurrence of the change in law event, is based on sound logic; the idea behind granting interest on carrying cost is aimed at restituting a party that is affected by a change in law event, and to restore it to its original economic position as if such a change in law event had not taken place; in order to restore the party, which has suffered an economic disadvantage as a result of the change in law event, to its original economic position it was in but for such change in law, it is permissible to grant them compound interest on carrying cost; application of restitutionary principles and privity of contractual obligations between the parties as contained in the PPA, may, in view of the consistent position of law declared by the Supreme Court, justify payment of compound interest even if there is no specific provision in the PPA for payment of compound interest.

In GMR Warora Ltd. vs. CERC: (2023) 10 SCC 401, the Supreme Court affirmed the judgment of this Tribunal, in Adani Power Maharashtra Limited v. MERC (Order in Appeal No. 40 of 2022 dated 22.03.2022), wherein the rate prescribed for LPS in the relevant Article of the PPA (i.e., SBI PLR plus 2%) was directed to be considered for recovery of carrying cost; and it was held that, unless the rate of interest applicable for LPS is granted, the Appellant cannot be restored to the same economic position it was in prior to the occurrence of the change in law event.

*In **MSEDCL vs. MERC: (2022) 4 SCC 657**, the Supreme Court observed that Late payment surcharge is only payable when payment against monthly bills is delayed, and not otherwise; the object of LPS was to enforce and/or encourage timely payment of charges by the procurer; in other words, LPS dissuaded the procurer from delaying payment of charges; and LPS cannot be equated with carrying cost or actual cost incurred for the supply of power.*

*The law on restitution vests expansive power in the court but such power has to be exercised to ensure equity, fairness and justice for both the parties. The court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. In the context of restitution, the court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties. (**CITI Bank vs. Hiten P. Dalal : (2016) 1 SCC 411**). In the absence of an express stipulation in this regard in Article 13.2 of the PPA, there can be no hard-and-fast rule as to how much interest should be granted as a measure of restitution, and it would depend on the facts and circumstances of each case. Awarding of compound interest without examining the relevant factors may, in certain cases, lead to unjust enrichment by the party seeking restitution in the name of disgorgement of benefits purportedly derived by the other party. (**Suneja Towers Pvt. Ltd. vs. Anita Merchant: (2023) 9 SCC 194; Clariant International Ltd. v. SEBI, (2004) 8 SCC 524; and Alok Shanker Pandey v. Union of India, (2007) 3 SCC 545**).*

While the Appellant may be entitled to claim compound interest as a measure of restitution in case they had paid compound interest while borrowing money to make payment for the change in law event, as in *Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624*, they may not be entitled, under the guise of restitution, to unduly enrich themselves in the process. For instance, if they had borrowed money at simple interest to discharge their dues which arose as a result of the change in law, paying them compound interest as a measure of restitution would undoubtedly result in their unjust enrichment, at the cost of the 2nd

Respondent-GUVNL, which cost would, eventually, be borne by the consumers whose interest the GERC is obligated to protect under Section 61(d) of the Electricity Act. It is only for the loss suffered by them as a result of the change in law event, can they seek restitution, and not beyond. The extent of loss they have suffered, as a result of belated payment of compensation for change in law to them by the 2nd Respondent, is a question of fact which necessitates consideration on the basis of the documentary evidence adduced in this regard. The onus is on the Appellant to produce documentary proof to show that they had paid compound interest for borrowing money to pay GST, and they are therefore entitled to be paid the same rate of compound interest to compensate them for the loss they suffered on account of belated payment of change in law compensation. We may not be understood to have held that the quantum of loss suffered by the Appellant must be determined with absolute precision or with mathematical exactitude. All that we have held is that the Appellant must adduce documentary evidence to reasonably establish the quantum of loss suffered by them.

We may also not be understood to have held that the Appellant is disentitled for compound interest. As held in Uttar Haryana Bijli Vitran Nigam Limited vs. Adani Power Mundra Limited: (2023) 2 SCC 624, in case the Appellant is able to establish that they had paid compound interest to borrow money from the banks for meeting the expenditure incurred on account of the change in law event, they would be entitled to be compensated for such amount by payment of compound interest.

Article 11.3.5 of the subject PPA provides that Late Payment Surcharge shall be calculated on the basis of compound interest, and stipulates thus:
-...

While it is no doubt true that LPS cannot be equated with carrying cost [MSEDCL vs. MSERC (2022) 4 SCC 657], the affected party may, in a given case, only be restored to the same economic position they were in before the change in law occurred, by applying the LPS rate, as held by the Supreme Court in GMR Warora Ltd. vs. CERC: (2023) 10

SCC 401 while affirming the judgment of this Tribunal, in Adani Power Maharashtra Limited v. MERC (Order in Appeal No. 40 of 2022 dated 22.03.2022). The interest (simple or compound) to which the appellant is entitled to, and in case of compound interest, whether it should be on quarterly or half yearly or yearly rests, are matters to be decided on the basis of documentary evidence adduced on behalf of the Appellant in this regard.

As there is no material on record to show how the Appellant had paid the amounts as a result of the change in law, whether or not they had borrowed money to pay the said amounts, and whether any such borrowings were on payment of compound interest, we deem it appropriate to remand the matter, requesting the GERC to determine the interest, and the applicable rate thereof, to which the appellant is entitled to as a measure of restitution for belated payment of change in law compensation, after permitting them to adduce documentary evidence in this regard. Needless to state that the 2nd Respondent-GUVNL shall also be given a reasonable opportunity of rebutting the contentions urged on behalf of the Appellant."

[Emphasis supplied]

- 2.8 In view of Hon'ble APTEL's aforesaid findings in the Remand Order, it is submitted that EPGL executed a 'Working Capital Facility Agreement' dated 01.11.2012 (**Working Capital Facility**) with a consortium of lenders (led by State Bank of India), for various fund based and non-fund based financial assistance to meet EPGL's working capital requirements. Under Article 4.1.2 of the Working Capital Facility, EPGL is liable to repay the loans/borrowings, on Compounding basis with Monthly rest:

"4.1.2 Interest

Interest shall be charged on the Outstanding Amounts at the Applicable Interest Rate from time to time and if the Applicable Interest Rate(s) of the Lenders is or are linked to the Base Rate of the Lenders, then the effective rate of interest on such Account(s) shall correspondingly stand changed

on the account of any revision therein by the Lenders from the date of such revision. All interest payable pursuant to this Agreement shall accrue from day to day and shall be calculated on the respective daily balance of such Account(s) and be debited on the last working day of the month or quarter according to the practice of the Lenders.”

2.9 According to the practice of EPGL’s lenders, interest was debited on a monthly basis. Therefore, effectively EPGL was liable to pay and paying interest on a compound basis with monthly rests.

2.10 In addition, the RBI Circulars dated 14.08.2003 and 03.03.2016, which apply to all Scheduled Commercial Banks, mandate that interest on advances be charged on monthly rests. These circulars were considered by the Hon'ble Supreme Court in **Uttar Haryana Bijli Vitran Nigam Limited vs. Adani Power Mundra Limited:** (2023) 2 SCC 624, to uphold the generator's entitlement to Carrying Cost on compound interest basis.

2.11 In light of the above, it is submitted by the Petitioner that it has discharged its onus under the Remand Order by producing the contractual proof of compound interest, as also the statutory basis for interest at monthly rests (RBI circulars), Accordingly, EPGL is entitled to carrying cost on compound interest basis with monthly rests for the period April 2019 to March 2021, till the date of payment by GUVNL.

Re: EPGL is entitled to interest at the rate of SBAR+2%

2.12 Regarding rate of interest on delayed Change in Law compensation, it is most respectfully submitted that interest is to be calculated at SBAR+ 2%, with monthly rests. In this regard, it is pertinent to highlight that, GUVNL

had itself before this Commission vide its Additional Reply Affidavit dated 19.11.2019 filed in this very Petition No. 1680 of 2017, asserted and admitted that: -

“10. It is also submitted that in case, in future, if it comes to the notice of the respondent that there has been certain reduction in taxes / duties leading to reduction in the cost to the Petitioner, Respondent shall be entitled to claim the adjustment in tariff towards such reduction of taxes / duties from the date of implementation by the appropriate authority along with carrying cost, i.e. equal to delay payment rate as per PPA.”

2.13 Article 11.3.5 of the PPA deals with late payment surcharge and provides for delay payment rate as under:

“11.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond 30 days from the Due Date, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of two (2) percent in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with Monthly rests), for each day of the delay.”

2.14 Admittedly, LPS payable under the PPA is to be calculated on a day-to-day basis at the rate of SBAR + 2%, with Monthly rests.

2.15 Further, in the facts of the present case, it is also pertinent to highlight that, during the same period (i.e., April 2019 to March 2021) GUVNL had charged EPGL the same rate of interest for delayed payments, towards penalty for shortfall in power supply.

2.16 In this regard, it is pertinent to note that:

(a) During the relevant period (April 2019 to March 2021), GUVNL itself applied the very same rate of interest i.e., SBAR+ 2% with monthly

compounding, on the outstanding penalty amounts payable by EPGL for shortfall in Normative Availability under the PPA and Supplemental PPA (SPPA).

(b) EPGL was required to achieve Normative Annual Availability of 80% under the PPA and 90% under the SPPA. Accordingly, Penalty was levied:

- (i) Under the PPA at 20% of Capacity Charges on availability shortfall below 75%; and
- (ii) Under the SPPA at @10% for shortfall between 90-75%, and at 30% for shortfall below 75%.

(c) GUVNL raised Penalty demands after each contract year (financial year), when EPGL could not meet the above availability thresholds.

(d) GUVNL started deducting the penalty amounts directly from EPGL's Energy Bills and levied interest at SBAR+2%, compounded monthly.

(e) During the same period, EPGL was entitled to Change in Law compensation along with interest, which undisputedly was not paid by GUVNL. On the other hand, GUVNL was levying interest at SBAR+2% on the penalty amounts.

(f) Had GUVNL paid EPGL the sums towards Change in Law compensation, it would have been in a position to make payment of the Penalty amounts, rather than pay GUVNL interest on compounding basis, for delay in making the said payments.

(g) This arrangement of GUVNL accepting the levy of interest on unpaid penalty amounts, made it kind of a borrowing arrangement under the PPA, wherein EPGL (as the Borrower) had agreed to pay interest on monthly compounding basis to GUVNL (the Lender), This can be

perceived as equivalent to EPGL borrowing a debt and paying default interest on non-payment of dues to the lender, i.e., GUVNL.

(h) As such, in the interest of justice and based on the settled principle of restitution, the same rate should apply to restitution of delayed Change in Law compensation owed by GUVNL to EPGL during the same period.

2.17 It is also relevant to note that, the principal amounts of Change in Law, later paid by GUVNL on 12.05.2023, were in fact only set off against the outstanding Penalty Dues. Had GUVNL paid such compensation, along with applicable interest, in time, EPGL could have extinguished its penalty dues to GUVNL and avoided interest outflows altogether. In this regard, reliance is placed on GUVNL's letter dated 08.05.2023 issued to EPGL re. Penalty Settlement vis-à-vis payment of Change in Law Compensation.

2.18 In view of the foregoing, the carrying cost claim herein reflects the actual financial loss suffered by EPGL on account of delayed restitution. As such, it is most respectfully submitted that, EPGL is entitled to recover what it has paid GUVNL for a similar delay during the same period i.e., SBAR+ 2% on compounding basis, with monthly rest.

2.19 It is submitted that, EPGL's aforesaid claim is supported by:

- (a) Bill passing emails from GUVNL showing the interest rates and monthly deductions till the penalty account was extinguished in August 2024; and
- (b) A detailed Excel sheet showing the recovery of penalty payments, along with the interest rate applied.

2.20 It is submitted that, EPGL's borrowings during the period April 2019 to March 2021, encompass not only the borrowings at the aforesaid rates, but also the loss suffered by EPGL, on account of payment of interest on Penalty at LPS rates to GUVNL, as elaborated above.

2.21 It is submitted that, for determining the amount of interest payable, EPGL has taken the following into consideration:

- (a) Date-wise invoices raised for GST paid under Change in Law.
- (b) Corresponding dates of payment by EPGL and invoice dates.
- (c) Actual delay in reimbursement, computed from date of payment till 12.05.2023.
- (d) Applicable interest rates (benchmark lending rate + margin), as per SBAR data maintained by SBI and industry practice; and
- (e) Monthly compounding of interest to reflect actual loss suffered due cost of funds.

2.22 Based on the above, the total interest/ carrying cost due to EPGL as on 31.05.2025 is Rs. 109,23,76,036/-, details of which are tabulated below for ease of reference:

<i>Calculation of Carrying Cost (compound interest at monthly rest)</i>				
<i>Apr'19 - Mar'21 Carrying Cost [as on 31.05.2025]</i>				
<i>Change in Law Invoice raised for the period of Apr'19 - Mar 21 (PRINCIPAL)</i>	<i>Change in Law (Interest till 12-May-2023)</i>	<i>Total Change in Law Receivable as on 12-May-2023</i>	<i>Change in Law amount Received on 12-May-2023</i>	<i>Balance amount as on 12-May-2023</i>
<i>I</i>	<i>J</i>	<i>K=I+J</i>	<i>L</i>	<i>M=K-L</i>
<i>1,50,98,37,412</i>	<i>75,99,92,201</i>	<i>2,26,98,29,614</i>	<i>1,50,98,37,412</i>	<i>75,99,92,201</i>
<i>Balance unadjusted amount as on 12-</i>	<i>Change in Law Receivable</i>	<i>Total Receivable</i>		

<i>May-2023 (PRINCIPAL)</i>	<i>(Interest till 31- May-2025)</i>	<i>Amount as on 31-May-2025</i>		
<i>N=M</i>	<i>0</i>	<i>P=N+0</i>		
<i>75,99,92,201</i>	<i>33,23,83,835</i>	<i>1,09,23,76,036</i>		

2.23 It is most respectfully submitted that the payment of Rs.150,98,37,412/- made by GUVNL on 12.05.2023 must, in law, be first appropriated towards the outstanding interest component, i.e., Rs. 75,99,92,201/-, and thereafter towards the principal amount of Change in Law compensation.

2.24 In the present case, GUVNL's payment made on 12.05.2023 was without any instruction or specification for appropriation and must therefore be, at the option of EPGL, to be first adjusted against the interest amount then due and payable, and then against the principal.

2.25 Accordingly, of the Rs.150,98,37,412/- paid on 12.05.2023, EPGL is entitled to first appropriate Rs.75,99,92,201/- towards interest accrued up to that date, and only the balance amount of Rs.74,98,45,211/- can be applied against the principal sum. This leaves a residual principal sum of Rs.75,99,92,201/- as still unpaid (i.e., the balance unadjusted amount carried forward), on which further interest has accrued from 12.05.2023 till 31.05.2025, amounting to Rs.33,23,83,835/-. Therefore, the total carrying cost/ interest due to EPGL as on 31.05.2025 is Rs.109,23,76,036/- (i.e. Rs. 75,99,92,201 + Rs.33,23,83,835).

2.26 It is stated that the above appropriation is not only legally tenable but is also necessary to achieve the full restitution as envisaged under Article 13.2 of the PPA and the Hon'ble APTEL's Remand Order, as well as to

prevent GUVNL from benefitting from the delay in payment of carrying cost.

2.27 It is stated that the above amounts have been provided as on 31.05.2025 only for computational purpose, and EPGL in no manner is waiving its claim for any posterior period(s). It is submitted that, in order to be granted full economic restitution, as envisaged under the PPA and reiterated by the Hon'ble Supreme Court in a catena of judgments, interest shall accrue until such date GUVNL makes complete payment of all dues.

2.28 In view of the aforesaid facts and circumstances and in the interest of justice, the Petitioner has prayed, subject to and without prejudice to EPGL's rights as detailed hereinabove, to: -

- (a) Implement Hon'ble APTEL's Judgment dated 16.04.2025 in Appeal No. 842 of 2023.
- (b) Hold and declare that EPGL is entitled to interest/carrying cost at the rates and in the manner set out above, for the period April 2019 to March 2021, for the delayed reimbursement of Change in Law compensation, until such time GUVNL makes full payment; and
- (c) Direct GUVNL to make payment within a period of 30 days from the date of the Order.

2.29 The Petitioner has also filed Interim Application No.46 of 2025 seeking a direction to the Respondent GUVNL to pay a sum of Rs.84,13,95,934/- as interim payment till final adjudication of the Petition. In this application, the Petitioner has stated that as a contractual right, carrying cost payable to the Petitioner is at the same rate as late payment surcharge set out in

Art.11.3.5 of the PPA dated 26.02.2007 between the Petitioner and GUVNL. Art.11.3.5 requires Interest to be paid on a compounded basis with monthly rests at rate of SBAR plus 2%. The Petitioner has further stated that the aforesaid interim payment of Rs. 84,13,95,934/- comes to only 77% of the total claim as on 31.05.2025, which is based on simple interest. This application has been filed without prejudice to the Petitioner's right to recover its full claim from Respondent-GUVNL.

3. REPLY DATED 04.07.2025 OF GUJARAT URJA VIKAS NIGAM LIMITED TO THE AFFIDAVIT & IA SEEKING INTERIM PAYMENT FILED ON BEHALF OF EPGL DATED 29.05.2025:

- 3.1 It is stated by Respondent-GUVNL that there is no merit in the contentions sought to be raised by EPGL and the same are denied and the present reply filed by GUVNL is without prejudice to its rights in the challenge to the Order dated 16.04.2025 of the Hon'ble APTEL.
- 3.2 It is stated by Respondent-GUVNL that Petitioner-EPGL has primarily contended that it is entitled to interest on change in law at the rate of the Late Payment Surcharge (LPS) in terms of the Article 11.3.5 of the Power Purchase Agreement dated 26.02.2007 (PPA), it is entitled to interest on compounding basis, and further that EPGL is not required to provide the details of the actual interest cost incurred by EPGL. EPGL has sought to claim a total amount of Rs. 109,23,76,036/- comprising a claim for principal sum of Rs. 75,99,92,201/- and interest component of Rs. 33,23,83,835. The said contentions and claims of EPGL are baseless, wrong and are denied.

3.3 It is stated that the present proceedings are limited to the Remand Order of the Hon'ble APTEL and cannot be a stage to re-open the issues which have been considered and decided by the Hon'ble APTEL. The Hon'ble APTEL has, in unequivocal terms, denied the contention of EPGL that the interest/carrying cost ought to be equal to the LPS as provided in Article 11.3.5 of the PPA. The Hon'ble APTEL held that the onus is on EPGL to show the actual cost incurred, the nature of the interest actually paid, etc., to claim interest in the present proceedings. In this regard, the Hon'ble APTEL has, in the present remanding Order, inter alia, held as under:

“In the absence of an express stipulation in this regard in Article 13.2 of the PPA, there can be no hard-and-fast rule as to how much interest should be granted as a measure of restitution, and it would depend on the facts and circumstances of each case. Awarding of compound interest without examining the relevant factors may, in certain cases, lead to unjust enrichment by the party seeking restitution in the name of disgorgement of benefits purportedly derived by the other party. (Suneja Towers Pvt. Ltd. vs. Anita Merchant: (2023) 9 SCC 194; Clariant International Ltd. v. SEBI, (2004) 8 SCC 524; and Alok Shanker Pandey v. Union of India, (2007) 3 SCC 545).

While the Appellant may be entitled to claim compound interest as a measure of restitution in case they had paid compound interest while borrowing money to make payment for the change in law event, as in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624, they may not be entitled, under the guise of restitution, to unduly enrich themselves in the process. For instance, if they had borrowed money at simple interest to discharge their dues which arose as a result of the change in law, paying them compound interest as a measure of restitution would undoubtedly result in their unjust enrichment, at the cost of the 2nd Respondent-GUVNL, which cost would, eventually, be borne by the consumers whose interest the GERC is obligated to protect under Section 61(d) of the

Electricity Act. It is only for the loss suffered by them as a result of the change in law event, can they seek restitution, and not beyond.

The extent of loss they have suffered, as a result of belated payment of compensation for change in law to them by the 2nd Respondent, is a question of fact which necessitates consideration on the basis of the documentary evidence adduced in this regard. The onus is on the Appellant to produce documentary proof to show that they had paid compound interest for borrowing money to pay GST, and they are therefore entitled to be paid the same rate of compound interest to compensate them for the loss they suffered on account of belated payment of change in law compensation. We may not be understood to have held that the quantum of loss suffered by the Appellant must be determined with absolute precision or with mathematical exactitude. All that we have held is that the Appellant must adduce documentary evidence to reasonably establish the quantum of loss suffered by them.”

(Emphasis Supplied)

- 3.4 Further, the Hon'ble APTEL has in unequivocal terms also held in the said Order that the carrying cost is only limited till the payment of the principal amount by GUVNL. In this regard, the Hon'ble APTEL has held as under:

“For example, if a generator had paid GST in April, 2019 and they were compensated by GUVNL for such payment, say in April 2023, the only way in which the said generator can be restored to the same economic position they were in, but for their being required to pay GST in April, 2019, would be to grant them interest for the period April, 2019 till April 2023 on the amount paid by them towards GST. It is only in this manner that they can be restored to the same economic position they were in, but for the change in law. And this is the contractual requirement of Article 13.2 of the PPA

.....

Consequently, the Appellant would be entitled not only to the principal amounts which they incurred as a result of the change in law, but also for interest thereon till the date on which they were compensated for the

*change in law event, on payment of the principal sum. **What Article 13.2 requires is for the Appellant to be compensated for the loss and not to permit the Appellant to unduly enrich itself in the process. The obligation of the Court/ Tribunal is to ensure equity, fairness and justice for both the parties. It should not only adopt a realistic and verifiable approach, but also take into consideration the actual loss suffered by the party entitled to restitution, while at the same time ensuring that the said party is not unduly enriched in the process. [Citybank vs. Hiten P. Dalal (2016) 1 SCC 411]."***

(Emphasis Supplied)

- 3.5 Consequently, interest does not accrue for the further period after the payment of the principal amount on 12.05.2023 by GUVNL. Therefore, the question of payment of interest post-May 2023, when the principal amounts were duly paid, does not arise and does not come under the ambit of the present limited remand proceedings in terms of the Remand Order.
- 3.6 In view of the above specific findings of the Hon'ble APTEL, the following contentions of EPGL are baseless and are liable to be rejected as under:
- (a) EPGL is required to be compensated for interest on the basis of Article 11.3.5, which is the LPS applicable for delayed payment of a bill.
 - (b) EPGL is entitled to interest even post-May 2023, when admittedly the entire principal amount was duly paid by GUVNL and accepted by EPGL.
- 3.7 In fact, to get over the above specific finding of the Hon'ble APTEL, EPGL has sought to now contend that the principal amount of the change in law remains due and payable and has not been paid by GUVNL. This is grossly erroneous and is only an attempt to mislead the present proceedings.

3.8 For the above contention, EPGL has sought to restate its own accounts, contrary to the specific acknowledgement and agreement by the parties, to the extent that the principal amounts duly paid by GUVNL in May 2023 have now been adjusted as interest paid by GUVNL. Consequently, EPGL has claimed that principal amounts are due and payable. The above is baseless, contrary to the specific position taken by the parties, misleading and is denied. This is more fully detailed hereinunder:

I. OBLIGATION TO PRODUCE DETAILS IN TERMS OF THE REMAND ORDER:

3.9 The contention of EPGL that it is not under an obligation to produce documentary evidence since it is claiming the interest rate in terms of LPS provision and not anything over it is without merit and in teeth of the findings of the Hon'ble APTEL in the Remand Order as quoted above.

3.10 In the present Affidavit, EPGL has failed to provide or adduce any documents or information regarding the actual interest paid and the rate of interest at which they have availed the loan, if any. In the absence of the same, EPGL cannot be allowed to recover carrying cost on the blanket submission as contended in the Affidavit dated 29.05.2025 in the present case.

3.11 In terms of the Remand Order, if at all EPGL seeks to sustain its claim for interest, EPGL is required to produce documentary proof to show what rate of interest was payable to EPGL while borrowing money to pay the GST, which EPGL has failed to do so in the present Affidavit. Even if such documents and details are produced, the same is subject to a

reasonableness and prudent check. However, EPGL has not even attempted to make such a claim based on any actual cost incurred by EPGL

3.12 Even otherwise, since the present remand proceeding is for a limited aspect, this Commission is bound to decide the present dispute as per the findings and the direction under the Remand Order, which categorically requires EPGL to produce evidence to substantiate its claim, and anything contrary to the same cannot be accepted.

3.13 While carrying cost has been allowed by the Hon'ble APTEL under the principle of restitution, it is submitted that EPGL's computation and approach to interest are erroneous, exaggerated, and inconsistent with applicable legal and contractual principles.

3.14 On 12.05.2023, GUVNL has made payment of Rs. 150,98,37,412/- towards the principal Change in Law amount for the period April 2019 to March 2021 in terms of the Review Order dated 18.03.2023 in Petition No. 1866 of 2020 (Principal GST amount paid by GUVNL from April 2019 to March 2021) and same is not disputed by EPGL.

3.15 The Hon'ble APTEL in the Remand Order has held that the interest is only applicable up to the date of payment made by GUVNL, i.e., till 12.05.2023 (as quoted above). However, even after the clear findings, EPGL has calculated interest up to May 2025 in the Affidavit dated 29.05.2025, which is in teeth of the findings of the Remand Order.

3.16 The present remand proceedings are limited to the directions of the Remand Order and it is a settled principle of law that in case of Limited

Remand, the jurisdiction of the Court below is confined only to the extent for which it was remanded and is bound to act within the scope of remand and to carry out the terms of the remand letter and spirit. **[REF: KP Dwivedi vs State of UP & Ors., (2003) 12 SCC 572] (Para 11&12)**. EPGL, by way of the present remand proceedings, is seeking to enlarge its claims, which is impermissible under law.

3.17 The IA No.46 of 2025 in Petition No.1680. of 2017 for Interim Payment dated 29.05.2025 filed by EPGL seeking interim payment of Rs. 84,13,95,934/- is also liable to be dismissed since EPGL has not complied with and adhered to the directions in terms of the Remand Order.

3.18 In view of the above, the contentions of GUVNL in reply to the issues that arise in the present proceedings are as under:

ISSUE WISE SUBMISSIONS:

I. RE: EPGL is entitled to Compound Interest at Monthly rests:

3.19 EPGL, in its Affidavit, has contended that it is entitled to interest at the rate of LPS on a compounding basis as GUVNL has applied the very same rate of interest, i.e., SBAR +2% with monthly compounding on the outstanding penalty amount payable by EPGL for shortfall in Normative Availability under the PPA and SPPA. In this regard, EPGL has submitted the following:

(a) EPGL executed a 'Working Capital Facility Agreement' dated 01.11.2012 with a consortium of lenders (led by State Bank of India) for various fund and non-fund based financial assistance to meet EPGL's working capital requirements, under which it was required to

repay the loans/borrowings on compounding basis with a monthly rest.

(b) As per the practice of EPGL's lenders, interest was debited on a monthly basis; hence, EPGL is liable to pay interest on a compounding basis with monthly rests.

(c) RBI Circulars dated 14.08.2003 and 03.03.2016 mandated that interest on advances be charged on a monthly rest.

3.20 It is stated that the above contentions are baseless. Firstly, it is not even the stated case of EPGL that amounts were borrowed under the above working capital loan agreement for payment of GST. No such details are produced by EPGL. In the absence of any details, there cannot be any claim that can be sustained by EPGL.

3.21 Further, even the reliance of EPGL on Clause 4.1.2 of the Working Capital Facility Agreement to substantiate its claim for interest is untenable and devoid of merit. The said agreement does not even expressly provide for the payment of compound interest.

"4.3.5 Computation of Interest

*All interest, accruing and amounts outstanding under the working capital facilities shall accrue from **date today and be calculated on the basis of the actual number of days, elapsed and year of 365 days.**"*

[Emphasis Supplied]

3.22 In terms of the above agreement, the interest is to be computed for the actual number of days for which the working capital facility is taken. There is no mechanism of payment of compound interest in the said agreement,

which would be that the accumulated interest gets added to the outstanding amount, and the interest is computed for the future period, computed for the total outstanding amount, including the accumulated interest.

3.23 In fact, in terms of Article 4.1.2 of the Working Capital Facility Agreement produced by EPGL, the interest is payable and is debited on the last working day of the month or quarter, according to the practice of the lenders. This itself establishes that the interest is paid every month or quarter. The question of the interest being accumulated and added to the outstanding amount does not arise. This is even going by the agreement provided by EPGL.

3.24 On the other hand, EPGL has not given any details or documents whatsoever of the amounts taken specifically for the payment of the GST amounts, the interest paid on the said amounts, the rate of interest, etc. The very claim of interest in the present proceedings is baseless and is liable to be dismissed.

3.25 Further, the reliance on the RBI Circulars dated 14.08.2003 r/w 03.03.2016 by EPGL does not in any way act as a documentary proof to showcase as to what is the actual rate of interest which was payable by EPGL with regard to its claim in the present case. These are the general guidelines based on which the commercial bank has to charge interest on advances as per the Terms and Conditions as specified in the said circulars. In terms of the Remand Order, EPGL is to produce documentary proof to show what rate of interest they paid for borrowing money for paying the GST, which EPGL has failed to do so in their Affidavit.

3.26 Reliance of EPGL on the decision in **UHBVNL v Adani Power (2023) 2 SCC 624** does not support the case of EPGL. In fact, after noting the above decision and various other decisions of the Hon'ble Supreme Court, the Hon'ble APTEL in the Remand Order itself has held that it is the onus of EPGL to produce the actual details to substantiate its claim for interest on the grounds of restitution.

II. Re: EPGL is entitled to interest at the rate of SBAR +2% in terms of the LPS provision under the PPA:

3.27 EPGL, in its Affidavit, has relied upon Article 11.3.5 of the PPA and has contended that, as per the PPA, LPS payable is to be calculated on a day-to-day basis at the rate of SBAR+ 2% with monthly rests. In this regard, EPGL has stated that GUVNL has charged EPGL at the same rate of interest for delayed payments, towards the penalty for the shortfall in power supply, and GUVNL has relied on the interest at SBAR+ 2% compounding monthly on the penalty amounts.

3.28 In response to the above, it is submitted that EPGL has failed to demonstrate that it had availed of any loan from any bank or financial institution for which it paid any interest, for it to be restituted in the same manner. The same being the primary consideration, for granting restitution to bring the party to the same economic position, EPGL has failed to demonstrate that any loan or borrowing was availed by it for which interest was incurred to claim compounding principles.

3.29 The question of applying the LPS provision for the change in law restitution does not arise. The LPS is a penal provision for the default on

the part of either party to pay the amounts due and payable at present. In case there is a default or delay in the payment of any bill duly raised by EPGL under the PPA that is payable, the LPS provision would attract as a penal provision.

3.30 Similarly, if any amount is due and payable by EPGL under the Agreement to GUVNL, the LPS provision would apply for such default in payment by EPGL.

3.31 Change in law does not attract LPS, for the period till the tariff is adjusted by the Commission for such change in law. Only after the change in law is approved is the Supplementary Bill raised by EPGL, and if there is a delay in payment of such Supplementary Bill, the LPS provision is attracted as a penal measure. However, for the pendent lite period, the question of LPS does not arise, as there is no default of GUVNL; the approval of the change in law is a mandatory requirement for EPGL to even raise an invoice under the PPA.

3.32 It is for the above reason that the comparison made by EPGL on the claims of GUVNL is baseless, wrong and is denied. It is the claim of GUVNL that it claimed SBAR+ 2% with monthly compounding on the outstanding penalty amount payable by EPGL for the shortfall in achieving normative availability. Such amounts are payable by EPGL in the very first monthly bill after the Contract Year in which the normative availability was not achieved. There is no prior approval of the Commission that is required. Since this amount is not paid by EPGL, which is a default, the LPS provision was invoked.

3.33 In fact, on the specific request of EPGL for permitting it to pay the principal amounts due and payable in instalments, GUVNL accepted the said request together with payment of LPS for the delay in payment.

3.34 EPGL has sought interest as per the LPS rates specified in the PPA. This is untenable and liable to be rejected. In fact, this was the specific claim of EPGL before the Hon'ble APTEL, which has not been granted. The claim of interest is pertaining to change in law claims, whereas the rate of delayed payment surcharge as per the LPS component in terms of PPA, cannot be applicable for carrying cost on Change in Law claims.

3.35 The LPS is a penal provision under the PPA. The carrying cost for change in law claims is on the principle of restitution in terms of the PPA. Both are not the same. In fact, in **MSEDCL v. MERC (2022) 4 SCC 657**, the Hon'ble Supreme Court has specifically held as under:

“174. This Court is unable to accept Mr Singh's submission that the conclusion of APTEL that LPS is not tariff is erroneous..... However, in Article 13 of the Stage 1 and Article 10 of the Stage 2 power purchase agreements, tariff means monthly tariff and tariff adjustment consequential to change in law, is of monthly tariff in respect of supply of electricity.

175. LPS is only payable when payment against monthly bills is delayed and not otherwise.

176. The object of LPS is to enforce and/or encourage timely payment of charges by the procurer i.e. the appellant. In other words, LPS dissuades the procurer from delaying payment of charges. The rate of LPS has no bearing or impact on tariff. Changes in the basis of the rates of LPS do not affect the rate at which power was agreed to be sold and purchased under the power purchase agreements. The principle of restitution under the change in law

provisions of the power purchase agreements are attracted in respect of tariff.

177. LPS cannot be equated with carrying cost or actual cost incurred for the supply of power.

.....

180. LPS under the power purchase agreements do not correspond to the actual interest paid by the power generating companies for funds raised by them. The payment of late payment surcharge ("LPS") is penalty suffered by the procurer, that is, the appellant, on account of default in timely payment.

(Emphasis Supplied)

- 3.36 In the present case, there is no pleading, evidence or any material on record to justify the claim for the rate or otherwise for compound interest.
- 3.37 Restitution cannot be a means for profit or undue gain. The principle of restitution itself requires that a party cannot profit and that the other party is not put to undue loss. As held in MSEDCL's case (supra), LPS is a penal measure and not for restitution.
- 3.38 In the case of **Citi Bank vs Hiten P. Dalal** (2016) 1 SCC 411 [@Para 19], the Hon'ble Supreme Court has held that the courts should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive values and should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain and that no unmerited injustice should be caused to any of the parties.
- 3.39 In **Suneja Towers v. Anita Merchant** (2023) 9 SCC 194, the Hon'ble Supreme Court has held that for the award of compound interest, various factors shall be taken into account, including uncertainties of the market

and several other imponderables. This is in relation to the Consumer Protection Act, which is, in fact, a beneficial legislation for consumers.

3.40 In applying restitution, there cannot be an automatic application of compound interest by applying the LPS provision.

III. Claim for Interest beyond 12.05.2023, which is contrary to the directions in the Remand Order:

3.41 EPGL, in its Affidavit, has also objected regarding the principal Change in Law amounts paid by GUVNL on 12.05.2023, stating that the same were only set off against the outstanding Penalty Dues and has alleged the same to be as 'Delayed Restitution'.

3.42 In this regard, EPGL has stated that the payment of Rs. 150,98,37,412/- made by GUVNL on 12.05.2023 must first be appropriated towards the outstanding interest component and thereafter towards the principal amount of CIL compensation. Further, GUVNL's payment was without any instruction or specification for appropriation and must therefore, at the option of EPGL, be first adjusted against the interest amount, then against the principal.

3.43 In response thereto, it is stated that EPGL accepted and received the entire principal amount of Change in Law compensation as determined and never raised a protest or contemporaneous objection at the time of invoice issuance or payments made by GUVNL and thereafter. The specific understanding and appropriation by the parties at the relevant stage were towards the principal amounts. In fact, the specific invoice raised by EPGL

on 12.04.2023 was for the principal amount of the change in law claims, which was paid by GUVNL on 12.05.2023.

3.44 Even in the pleadings before the Hon'ble APTEL, EPGL has specifically stated that the principal amount was paid on 12.05.2023 and that its claim was only restricted towards interest. The relevant extract from the Written Submissions dated 11.02.2025 and the List of Dates attached with the Written Submissions filed by EPGL in Appeal No. 842 of 2023 are as under:

Written Submissions:

“19. It is submitted that, EPGL generated and supplied power to GUVNL during (1) 01.07.2017 to 23.01.2018 (206 days); and (ii) 21.04.2019 to 11.03.2021 (690 days). CIL compensation (only principal amount) for the said periods was paid by GUVNL on 20.02.2020 and 12.05.2023 respectively. Since this compensation was accruing since 01.07.2017, Carrying Cast would accrue daily at LPS rates since due date of payment till the date of actual payment.”

List Of Dates:

<i>List of Dates & Events - Appeal No. 842 of 2023</i>		
<i>S. No</i>	<i>Date/ Ref</i>	<i>PARTICULARS</i>
		<i>towards CIL (subject to final assessment by GUVNL), as on 08.05.2023, EPGL is liable to pay net differential amount of Rs.168.98 Crores towards balance penalty amount.</i>
<i>84.</i>	<i>12.05.2023 Principal GST amount paid by GUVNL (April 2019 to March 2021)</i>	<i>GUVNL paid a total sum of Rs. 150,98,37,412/- towards the principal Change in Law amount for the period April 2019 to March 2021.</i>

In fact, the above is also recorded by the Hon'ble APTEL in the Remand Order as under:

“.....

On 12.05.2023, the second Respondent paid the Appellant Rs. 150.98 Crores towards the principal change in law amount for the period April, 2019 to March 2021, and on 11.08.2023, the Appellant filed the present Appeal.”

- 3.45 The contention now sought to be raised by EPGL that, based on its own appropriation, reversing its previous position, the principal amount is due and payable, is baseless, wrong and denied. This would also go contrary to the Remand Order of the Hon'ble APTEL, which is only restricted to interest and not to the principal amount.
- 3.46 Therefore, the interest claimed by EPGL of Rs. 33,23,83,835/- for the period from 12.05.2023 to 31.05.2025 on the alleged principal amount of Rs.75,99,92,201 (allegedly after set off) is liable to be set aside for adjudication in the present remand proceedings.
- 3.47 It is pertinent to mention that GUVNL has also filed a Petition No. 1656 of 2017 for the payment of liquidated damages of Rs. 80 Crores together with interest, which arises out of the same PPA and the same is pending adjudication before this Commission. The said petition, filed in 2017, ought to also be adjudicated, and amounts, if any, payable in the present proceedings ought to be set off against the amounts payable by EPGL in the said proceedings. Therefore, the claims so recoverable from EPGL should also be decided and adjusted/set off against the claims if EPGL is able to provide documentary proof of any.

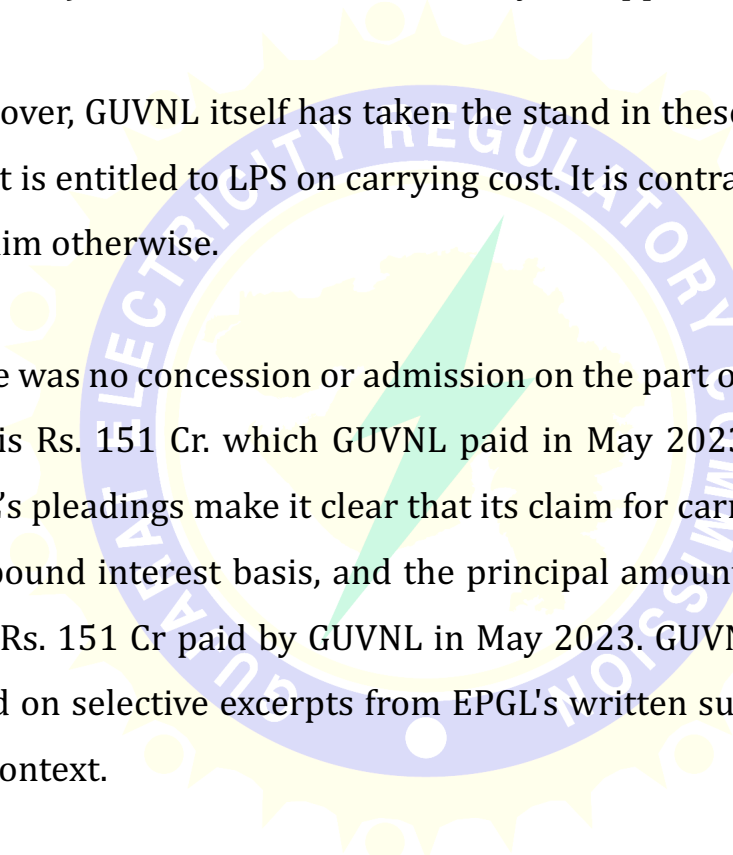
4. **REJOINDER DATED 09.07.2025 OF ESSAR POWER GUJARAT LIMITED**

4.1 The Petitioner-EPGL has by its Rejoinder stated that, Respondent-GUVNL in its Reply has taken the following defenses:

- (a) The loan documents filed by it i.e., its working capital facility dated 1.11.2012, do not expressly provide for compound interest. Further, the Reserve Bank of India circulars relied upon by EPGL are “*general guidelines*” and cannot be relied upon as evidence to “*showcase as to what the actual rate of interest is*”.
- (b) EPGL’s case is based on the late payment charges in the power purchase agreement dated 26.2.2007 which the Hon'ble Appellate Tribunal for Electricity has already rejected in its underlying remand order dated 16.4.2025 (the **Remand Order**).
- (c) EPGL is not entitled to SBAR plus 2% on parity with GUVNL’s recovery of LPS from EPGL for delayed payment of penalty payable for shortfall in availability. GUVNL avers that LPS is a penal provision that would only apply if EPGL raised a supplementary bill and there was a delay in its payment. In the present case, since there was no delay in payment of the amount of Rs. 151 Cr., LPS would not apply.
- (d) EPGL has “admitted” that the principal sum of Rs. 151 Cr. was paid on 12.5.2023 and therefore no interest would accrue after 12.5.2023.

4.2 GUVNL's defenses are clearly misconceived because:

- a. A plain reading of the working capital facility agreement dated 1.11.2012 makes it clear that interest was charged on compound interest basis.

- 
- b. EPGL's case in the present proceedings is not based on LPS as a contractual right. EPGL has (without prejudice to its right to challenge the findings in the Remand Order) claimed SBAR + 2% with monthly rests on the basis of documents filed by it in its affidavit. Besides, the Remand Order clearly states that EPGL may claim carrying cost on the basis of LPS as long as it adduces evidence. EPGL has (without prejudice) filed the evidence necessary to support its claim.
 - c. Moreover, GUVNL itself has taken the stand in these very proceedings that it is entitled to LPS on carrying cost. It is contradictory for GUVNL to claim otherwise.
 - d. There was no concession or admission on the part of EPGL that the full sum is Rs. 151 Cr. which GUVNL paid in May 2023. On the contrary, EPGL's pleadings make it clear that its claim for carrying cost was on a compound interest basis, and the principal amount was much higher than Rs. 151 Cr paid by GUVNL in May 2023. GUVNL's averments are based on selective excerpts from EPGL's written submissions without any context.

4.3 Further, the Petitioner has also filed its response to the Reply filed by Respondent-GUVNL as summarized hereunder:

4.4 The Respondent has deliberately distorted EPGL's averments and sought to answer a case/ issue not raised by EPGL in the present proceedings. EPGL's claim, as is clearly stated in its affidavit, is based on the documentary evidence (in the form of loan agreement, RBI circulars and

documents evidencing GUVNL's own stand) filed with its affidavit establishing that EPGL is entitled to compound interest with monthly rests at the rate of SBAR plus 2%. EPGL's case before this Commission is not based on late payment surcharge as an automatic right but on the documentary, evidence filed by it.

- 4.5 It is certainly correct that remand proceedings are limited to the Remand Order, GUVNL has incorrectly construed the Remand Order. The Remand Order clearly states as under:

“While it is no doubt true that LPS cannot be equated with carrying cost [MSEDCL vs. MSERC (2022) 4 SCC 657], the affected party may in a given case, only be restored to the same economic position they were in before the change in law occurred, by applying the LPS rate, as held by the Supreme Court in GMR Warora Ltd. vs. CERC: (2023) 10 SCC 401 while affirming the judgment of this Tribunal, in Adani Power Maharashtra Limited v. MERC (Order in Appeal No. 40 of 2022 dated 22.03.2022), The interest (simple or compound) to which the appellant is entitled to, and in case of compound interest, whether it should be on quarterly or half yearly or yearly rests, are matters to be decided on the basis of documentary evidence adduced on behalf of the Appellant in this regard.”

(Emphasis Provided)

Clearly, even under the Remand Order, EPGL is entitled to claim carrying cost at the rate of LPS as long as it produces documentary evidence to that effect.

- 4.6 A plain reading of EPGL's affidavit would also establish that its case is predicated on the documents filed with the affidavit. In fact, EPGL at para. 5 (b) and (c) clearly states (without prejudice) that its claim before this Commission is based on documents and not on LPS as a contractual right.

Therefore, GUVNL's averment that EPGL is reopening issues is clearly contrary to the plain language of EPGL's affidavit.

4.7 Contrary to GUVNL's contention, at no point has the Remand Order held that carrying cost *"is only limited till payment of the principal amount..."*

4.8 Moreover, GUVNL's submissions are contrary to principles of restitution which is the underlying basis for CIL compensation under Art. 13.2 of the PPA. Art. 13.2 states that *"the purpose of compensating the party affected by such change in law is to restore... the affected party to the same economic position as if such change in law has not occurred"*.

In a catena of Hon'ble Supreme Court judgments, this language has been interpreted to mean that the entire amount of compensation must be paid which includes both the principal amount as well as the interest (i.e., carrying cost) on the outstanding amount as on date of full settlement of all dues. In fact, the Remand Order analyses the judgments and concludes that:

*"In the present case the principles of restitution are contained in Article 13.2 of the PPA, and **the only manner in which the appellant can be restored to the position they were in, but for the change in law, is by compensating them** with interest on the belated payment of change in law compensation by the 2nd Respondent-GUVNL. Consequently, for the amount paid by them, as a result of change in law, during the period April 2019 to March 2021, the appellant is entitled to be paid interest, from the date they paid the amounts for this period till they were...."*

4.9 EPGL's consistent claim throughout is that carrying cost must be calculated on compound interest with monthly rests. This means that the interest

amount outstanding at the end of every month gets added to the principal amount and interest is then calculated on that cumulative amount. Any part payment against this cumulative amount would get adjusted, and the remaining outstanding would be carried forward. Applying compound interest with monthly rests, the amount payable as of May 2023 (calculated from April 2019 onwards without prejudice) is Rs. 227 Cr. out of which GUVNL paid Rs. 151 Cr. Hence, Rs. 76 Cr. would get carried forward as outstanding due. EPGL has stated that this amount remains pending, due and payable by GUVNL.

4.10 GUVNL is attempting to mischaracterise EPGL's statements in a motivated attempt to wriggle out of compensating EPGL. There is no restatement of accounts by EPGL as alleged. EPGL craves leave to rely upon its response against the previous paragraph.

4.11 In the Reply dated 04.07.2025 Respondent-GUVNL has stated that the contention of Petitioner-EPGL that the principal amount of the Change in Law remained due and payable and has not been paid by GUVNL is grossly erroneous. As against this, the Petitioner has stated that while GUVNL has paid the sum of Rs. 150,96,37,412/-, this would not cover the sum payable (as on that date also) as the carrying cost must be calculated with monthly rests. This means that interest amount outstanding at the end of every month gets added to the principal amount and interest is then calculated on that cumulative amount. Any part payment against this cumulative amount would get adjusted and the remaining outstanding would be carried forward. Applying compound interest with monthly rests, the amount payable as on May 2023 (calculated from April 2019 onwards) is Rs.227 crore out of which GUVNL has paid Rs.151 crore. Hence, Rs.76

crore would get carried forward as outstanding due. This amount remains pending, due and payable by GUVNL. Furthermore, GUVNL's payment on 12.05.2023 was without any instruction or specification for appropriation and must therefore be, at the option of EPGL, to be first adjusted against the interest amount then due and payable, and then against the principal.

4.12 EPGL has fully complied with the directions in the Remand Order and is therefore entitled to the interim relief sought in its interim application till the date of final adjudication. EPGL craves leave to reply on the contents of its interim application at the time of its hearing. The Reply is simply put, illogical and lack commercial sense. Loans are not taken solely for the payment of GST. GST is paid out of running revenue and is funded directly out of working capital arrangements which is why EPGL has (without prejudice) adduced its working capital facility documents as evidence. EPGL states that GUVNL has wrongly construed the provisions of the facility agreement. EPGL has produced sufficient documentary evidence to establish its claim.

4.13 The RBI circulars relied upon by EPGL are binding on its lenders by virtue of Sections 21 and 35A of the Banking Regulation Act, 1949.

Section 21 provides:

*"21. Power of Reserve Bank to control advances by banking companies.- (1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, **it may determine the policy in relation to advances to be followed by banking companies** generally or by any banking company in particular, and when the policy has been so determined, **all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.***

....

(3) Every banking company shall be bound to comply with any directions given to it under this section.

Section 35A provides:

*“35A. Power of the Reserve Bank to give directions.-(1) Where the Reserve Bank is satisfied that- (a) in the public interest; or (aa) in the interest of banking policy; or (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or (c) to secure the proper management of any banking company generally, **it is necessary to issue directions to banking companies generally** or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, **and the banking companies** or the banking company, as the case may be, **shall be bound to comply with such directions.***

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect”

These provisions (cited as the source of the authority for issuing the circular) make it clear that these circulars are binding on all India banks, including EPGL's lenders.

4.14 EPGL states that the judgment in **UHBVNL v Adani Power (supra)** is relevant to this case and further reiterates that it adduced sufficient evidence (without prejudice) to support its claim. EPGL has not relied on Article 11.3.5 of the PPA. EPGL has, however, relied on GUVNL's own stand on interest while making its claim. Since GUVNL has charged SBAR + 2% with monthly rest, EPGL is also entitled to claim the same. EPGL reiterates its contentions that restitution under law and under the Remand Order requires that loss suffered by EPGL on account of interest payments for penalty at SBAR + 2% with monthly rests. This is equal to the rate of LPS. As stated above, the Remand Order specifically permits EPGL to ask for

carrying cost at the rate of LPS as long as it has sufficient documents to support it. Without prejudice to its contentions that EPGL would be so entitled even in the absence of leading evidence to that end, EPGL has done exactly this in its affidavit.

- 4.15 It is arbitrary for GUVNL to claim that carrying cost applicable to EPGL is based on LPS while carrying cost payable by GUVNL is not. GUVNL itself claims that LPS is applicable to carrying cost for CIL compensation. It is also contrary to the Remand Order. With these averments, GUVNL is going behind the Remand Order. In any case, as stated above, EPGL's case (without prejudice) is predicated not on LPS as a contractual right, but on documentary evidence which establishes it to be entitled to SBAR+ 2% with monthly rests. Further, GUVNL's submission that LPS rates necessarily require raising of supplementary invoices has been dealt with and rejected:

*“Paraphrasing the Judgment of the Supreme Court in GMR Warora Energy Limited, this Tribunal further held that Article 10.2, of the PPA in the present case, was a complete restitutionary principle which compensated the party affected by such change in law and which must restore, through monthly tariff payment, the affected party to the same economic position they would have been if such change in law had not occurred; the legal fiction created by Article 10.2 of the subject PPA would require the appellant to be put in the same economic position as if such change in law had not occurred i.e. the appellant should be given the benefit of restitution as understood in Civil Law; in short, **the requirement of Article 10.2.1, which was the application of the restitutionary principle, could only mean that the consequence of the change in law would relate back to the date on which the law was subjected to change as a result of which the party concerned would have suffered an economic disadvantage, requiring them to be restored to the same position they were in as on that date; this, in turn, would require them to be compensated for the loss, suffered on that account, from the date the change in law occurred, and not***

after a supplementary bill is raised; the Supreme Court, in GMR Warora Energy Limited, had affirmed the judgment of this Tribunal in..."

4.16 GUVNL is trying to draw a false distinction between its application of LPS for penalty payments as opposed to CIL payments. This, as stated above, is also contrary to its own stand and to the extant Hon'ble Supreme Court judgments. Further, as stated above, the Remand Order allows EPGL to claim carrying cost at LPS rates. Given that the Remand Order at also rejects GUVNL's arguments that supplementary bills must be raised to claim carrying cost, GUVNL's contentions ought to be rejected in toto. As explained earlier, the Remand Order specifically recognizes that carrying cost can be granted at LPS rate. Hence, GUVNL's submission that LPS cannot be applied for CIL claims is contrary to the Remand Order and is outside the scope of the Remand Order. Further, GUVNL's reliance on **MSEDCL v MERC (supra)** is clearly misplaced.

4.17 EPGL repeats that it has provided all necessary cogent documents/justification required in terms of the Remand Order in its Affidavit, for grant of carrying cost at SBAR plus 2% with monthly rests. The Remand Order makes it clear that EPGL is entitled to claim the same rate and rests as LPS as long as it produces documentary evidence. Since EPGL has (without prejudice) produced the relevant documents to establish its rights, GUVNL's contentions are clearly misplaced. EPGL is not profiteering. EPGL is only seeking restitution (without prejudice) under the Remand Order.

4.18 The judgment in **Suneja Towers v. Anita Merchant**, (2023) 9 SCC 194 has no relevance to the present case. GUVNL has failed to provide the context behind those statements which would establish that at no point did EPGL

concede that Rs.151 crore was the principal sum payable. EPGL had initially raised an invoice dated 10.4.2023 on GUVNL in which it claimed carrying cost. The calculations in this invoice were based on compound interest and the total sum claimed by EPGL as on the date of invoice was far higher than Rs.151 crore. However, GUVNL refused to pay and asked the Petitioner to issue fresh invoices excluding its claim for interest, which is evident from its letter dated 12.4.2023. EPGL issued fresh invoice dated 12.4.2023 claiming the amount of Rs.151 crore without prejudice to its right to claim interest/ carrying cost. GUVNL paid Rs.151 crore on 12.5.2022. Rs.151 crore is the principal sum payable only if there is no interest. It is in that context that EPGL referred to Rs.151 crore as the principal amount. It is in no way a concession that Rs.151 crore was the principal amount payable especially since EPGL has always claimed compound interest. By not placing the full picture, GUVNL is suppressing material information in its pleadings.

5. WRITTEN SUBMISSIONS DATED 22.07.2025 OF PETITIONER ESSAR POWER GUJARAT LTD:

- 5.1 Petitioner-EPGL has stated that it was awarded Change in Law compensation by this Commission vide Order dated 23.12.2019 (in Petition No. 1680 of 2017) and Review Order dated 18.03.2023 (in Petition No. 1866 of 2020) on account of the Integrated Goods & Services Tax Act, 2017 (“GST Act”) notified by the Government of India on 12.04.2017, and implemented with effect from 01.07.2017. This claim was under Article 13 of the Power Purchase Agreement dated 26.02.2007 (“PPA”) executed between EPGL and the Respondent GUVNL. The Commission had although allowed the principal claim, it declined to grant carrying cost as part of restitution/ Change in Law compensation awarded. Consequently, EPGL

was constrained to challenge this limited disallowance before Hon'ble APTEL by way of Appeal No. 842 of 2023. Vide its Judgment dated 16.04.2025 in Appeal No. 842 of 2023 Hon'ble APTEL held that EPGL was entitled to carrying cost for the period 2019-2021 calculated from the date it was due and payable till the date of actual payment. The Remand Order also required EPGL to adduce documentary evidence to establish whether this Carrying Cost should be granted on a simple or compound interest basis, and the applicable rate /rest. The Remand Order however specifically held that EPGL does not have to prove the loss with exact or perfect mathematical accuracy.

- 5.2 EPGL is entitled to Carrying Cost on compound interest basis at the rate of SBAR + 2% at monthly rests, based on documentary evidence. For determining the amount of interest payable, EPGL has considered invoices raised for payment of GST under CIL, corresponding dates of payment by EPGL, actual delay in reimbursement computed from date of payment of GST till 12.05.2023 (i.e. date of payment of part of the outstanding), and compound interest rate of SBAR + 2% at monthly rests. Payment of Rs.150,98,37,412/- made by GUVNL on 12.05.2023 is first appropriated towards the outstanding interest component, i.e. Rs.75,99,92,201/-, and thereafter towards the principal amount of Change in Law compensation. This payment was without any instruction or specification for appropriation and must therefore be first adjusted against the interest amount then due and payable, and then against the principal [Article 11.3.2 of PPA]. The total interest/ Carrying Cost due to EPGL as on 31.05.2025 is Rs. 109,23,76,036. This amount is justified in terms of the Remand Order considering that the Petitioner's Working Capital Facility under which its financing is subject to compound interest for which

necessary documentation has been produced, and that GUVNL's practice of charging interest at SBAR + 2% on the penalty demanded from EPGL in the same period for which also necessary documentation has been produced.

5.3 Under Article 4.1.2, interest is charged on "Outstanding" amount, which shall accrue daily and shall be debited to the account on the last working date of the month.

5.4 "Outstanding" is defined as:

"Outstanding(s) means, in relation to any Lender, at any time, the aggregate of all obligations of the Borrower, of every kind and description, direct or indirect, absolute or contingent, primary or secondary, due or becoming due: now existing or hereafter arising, regardless of how they arise under or in respect of the Working Capital Facilities".

5.5 Since "Outstanding" is the aggregate of all obligations of the Petitioner under the Working Capital Facility, interest is charged on the outstanding at the end of the month, which repeats every month. Hence, it is compounding interest at monthly rests. GUVNL's working capital facility too works on the same basis. RBI Circulars dated 14.8.2003 and 3.3.2016 also mandate that interest on advances be charged on monthly rests. These circulars are applicable to the present case.

5.6 The Petitioner issued a notice dated 13.7.2017 towards GST being a CIL. Thereafter, the Petitioner raised supplementary invoices, but GUVNL did not compensate the Petitioner. GUVNL stated that any CIL compensation ought to only be paid after the Commission's approval. Art. 13 clearly provides that CIL compensation is payable from the date determined by

the Commission. Hence, Respondent-GUVNL ought to have paid CIL compensation on a timely basis.

5.7 The Petitioner's borrowings during April 2019 to March 2021 encompass not only its borrowings but also the loss suffered by it on account of payment of interest on Penalty at SBAR + 2% on compounded basis at monthly rests rates to GUVNL. The Petitioner is not seeking Carrying Cost at LPS as a contractual right, but is seeking Carrying Cost of SBAR + 2% on compounded basis at monthly rests, basis documentary evidence in terms of the Remand Order. In terms of the Working Capital Facility, it is at least entitled to Rs.78,27,43,407 at the compounded basis at monthly rests.

5.8 The Petitioner has stated that it is entitled in law to be restituted with interest at market rates as held by the Hon'ble Supreme Court in ***Clariant International Ltd. v. Securities & Exchange Board of India (2004) 8 SCC 524*** and the Petitioner is, therefore, to be compensated for its losses towards payment of CIL at the relevant point of time, the relevant extract of which is as under:

“30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatoy.

*31. In absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate. Such interest is payable upon establishment of totality of circumstances justifying exerise of such equitable jurisdiction. (See ***Municipal Corpn. of Delhi v. Sushila Devi [(1999) 4 SCC 317]***, SCC para 16.)*

32. *In Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budhaarj [(2001) 2 SCC 721] Raju, J. speaking for the majority held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, namely, interest, compensation or damages.*

33. *In Black's Law Dictionary, the word "compensation" has been defined as under:*

"money given to compensate loss or injury"

34. *In a given case where the liability arises during pendency of a litigation, doctrine of restitution can be invoked In South Eastern Coalfields Ltd. v State of M.P. (2003) 8 SCC 648, it was observed as under:*

"In law. the term 'restiiution' is used in three senses : (i) return or restoration of some specific thing to its rightful owner or status: (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. The Law of Contracts by John D. Calomari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done...."

5.9 In view of the above, the Petitioner stated that its application be allowed and Respondent-GUVNL be directed to pay EPGL a sum of Rs. 109,23,76,036/- (computed as on 31.05.2025) along with applicable interest as sought above till the date of actual payment of all outstanding.

6. **WRITTEN SUBMISSIONS DATED 22.07.2025 OF GUVNL:**

6.1 Respondent-GUVNL has stated that the present proceedings have been initiated in terms of the Remand Order dated 16.04.2025 of the Hon'ble APTEL in Appeal No. 842 of 2023, limited to the issue of the computation

of interest that the Petitioner – EPGL may be entitled to its Change in Law (“CIL”) claims.

6.2 The basic principle over which there can be no dispute whatsoever is that the present proceedings are limited to strict compliance with the directions issued by the Hon’ble APTEL and are therefore to be limited to such remand proceedings. It is not open to EPGL to make claims, either contrary to or de hors the decision of the Hon’ble APTEL. The scope of the present remand proceedings cannot be expanded beyond the findings of the Hon’ble APTEL. The specific findings of the Hon’ble Appellate Tribunal on the entitlement of EPGL for interest, as under:

(a) EPGL is entitled to interest in view of Article 13.2(b) of the PPA as a measure of restitution, limited to the extent of putting them back in the same economic position but for the change in law. Article 13.2 does not prescribe interest to be either simple or compound, or the rate of interest, but only as a measure of restitution:

(Hon’ble APTEL’s Order):

“With regards the Appellant’s claim for compound interest, it is necessary to note that the Appellant had, in the Additional Affidavit dated 17.09.2021 filed by them before the GERC, sought payment of appropriate interest from the GERC. The Appellant’s entitlement for interest, in view of Article 13.2(b) of the PPA, is as a measure of restitution, and in order to put them back in the same position they were in, but for the change in law event. Article 13.2 of the PPA does not prescribe the manner in which a party should be restituted or the nature of interest (whether simple or compound) or the rate of interest they are entitled to as a measure of restitution. The interest they are entitled to should, therefore, be such as to put them back in the same position they would have been in, but for the occurrence of the change in law event.”

- (b) EPGL is entitled to interest on the principal amounts paid, up to the date when they were compensated for the CIL event, i.e., up to 12.05.2023 on the principal sum:

(Hon'ble APTEL's Order):

“Consequently, the Appellant would be entitled not only to the principal amounts which they incurred as a result of the change in law, but also for interest thereon till the date on which they were compensated for the change in law event, on payment of the principal sum. What Article 13.2 requires is for the Appellant to be compensated for the loss and not to permit the Appellant to unduly enrich itself in the process. The obligation of the Court/ Tribunal is to ensure equity, fairness and justice for both the parties. It should not only adopt a realistic and verifiable approach, but also take into consideration the actual loss suffered by the party entitled to restitution, while at the same time ensuring that the said party is not unduly enriched in the process. [City bank vs. Hiten P. Dalal (2016) 1 SCC 411].”

- (c) While the PPA may entitle EPGL to claim interest as a measure of restitution, EPGL cannot, under the guise of restitution, unduly enrich itself in the process. It is only the loss that they have suffered as a result of the change in law, they can seek restitution for, and not beyond:

(Hon'ble APTEL's Order):

“While the Appellant may be entitled to claim compound interest as a measure of restitution in case they had paid compound interest while borrowing money to make payment for the change in law event, as in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624, they may not be entitled, under the guise of restitution, to unduly enrich themselves in the process. For instance, if they had borrowed money at simple interest to discharge their dues which arose as a result of the change in law, paying them compound interest as a measure of restitution would undoubtedly result in their

unjust enrichment, at the cost of the 2nd Respondent-GUVNL, which cost would, eventually, be borne by the consumers whose interest the GERC is obligated to protect under Section 61(d) of the Electricity Act. It is only for the loss suffered by them as a result of the change in law event, can they seek restitution, and not beyond.”

- (d) The extent of loss that EPGL has suffered is a question of fact that necessitates determination based on the documentary proof adduced. The onus of producing the same is on EPGL. While mathematical precision may not be necessary, the quantum of loss has to be reasonably established:

(Hon’ble APTEL’s Order):

“The extent of loss they have suffered, as a result of belated payment of compensation for change in law to them by the 2nd Respondent, is a question of fact which necessitates consideration on the basis of the documentary evidence adduced in this regard. The onus is on the Appellant to produce documentary proof to show that they had paid compound interest for borrowing money to pay GST, and they are therefore entitled to be paid the same rate of compound interest to compensate them for the loss they suffered on account of belated payment of change in law compensation. We may not be understood to have held that the quantum of loss suffered by the Appellant must be determined with absolute precision or with mathematical exactitude. All that we have held is that the Appellant must adduce documentary evidence to reasonably establish the quantum of loss suffered by them.”

- (e) While EPGL may be entitled to interest for the period from April 2019 to March 2021, the rate of interest and other terms and conditions can be determined only based on documentary evidence to be furnished by EPGL to show the extent of loss they have suffered on account of the CIL claims. While the principles of restitution apply, the claim cannot be a means to unduly enrich itself at the cost of the consumers at large:

(Hon'ble APTEL's Order):

“While the Appellant has no doubt been denied interest, as a measure of restitution, from April, 2019 till March, 2021, for an unduly long period of time, we may not be in a position to determine the rate of interest to which the Appellant is entitled to as a measure of restitution in the absence of any material on record to show the extent to which the Appellant had suffered loss on account of such belated payment. While the Appellant is entitled for interest for the period April, 2019 to March, 2021, the question whether they are entitled for simple or compound interest; if so, at what rate; and whether it should be on quarterly, half yearly or yearly rests, can only be determined on the Appellant placing documentary evidence on record to show how and to what extent they have suffered a loss on account of such belated payment. While their not being paid interest undoubtedly amounts to their not being restituted, granting them interest more than what they are entitled to would result in their unjustly enriching themselves at the cost of the consumer whose interest the Commission is obligated to protect under Section 61(d) of the Electricity Act. We must, therefore, express our inability to agree with the submission, urged on behalf of the Appellant, that the matter should not be remanded to the GERC, and that we should decide the Appellant's claim for interest in the present Appeal itself.”

6.3 In terms of the above, the following are abundantly clear:

- (a) The claim for interest is limited to the period from April 2019 to March 2021.
- (b) The claim for interest can be only till such. The principal amount has been paid. The principal amount in the present case was fully paid on 12.05.2023. The interest cannot run beyond the above date.

(c) The principles of restitution apply. The onus is on EPGL to produce documentary evidence to establish the actual loss suffered, for which the claim for interest is being made.

(d) It is for EPGL to show the actual interest cost that it has suffered for funding the CIL claims, and the terms of such interest cost suffered by EPGL. It is only based on the above that the claim for interest can be made by EPGL on GUVNL.

(e) Principles of restitution being applicable, the claim for interest cannot be a means for EPGL to unduly enrich itself at the cost of the consumers at large.

6.4 It is submitted that the present claim for interest by EPGL does not satisfy the onus of proof placed upon EPGL, and the claim, therefore, is liable to be dismissed.

6.5 Firstly, EPGL has made a claim for interest at the rate of the Delayed Payment Surcharge ("DPS") under the PPA. This is evident from the claim statement of EPGL as appearing in the affidavit filed on 29.05.2025, where the claim is for Late Payment Surcharge ("LPS") at 2% higher than the interest rate for different periods. It expressly uses the terms DPC and LPS.

6.6 The above is the specific claim of EPGL before the Hon'ble Appellate Tribunal, which came to be rejected by the Hon'ble APTEL. The specific claim of EPGL is recorded under Head XI A at pages 80 and 81 of the judgment of the Hon'ble APTEL. This was, however, not granted by the Hon'ble APTEL, holding that carrying cost for CIL could be only as a measure of restitution. It has been specifically held that the claim is in terms of Article 13.2, which does not provide the rate of interest, but it is

for EPGL to plead and prove the same with evidence. The Hon'ble APTEL has in its Order at XI D ANALYSIS observed as under:

“With regards the Appellant’s claim for compound interest, it is necessary to note that the Appellant had, in the Additional Affidavit dated 17.09.2021 filed by them before the GERC, sought payment of appropriate interest from the GERC. The Appellant’s entitlement for interest, in view of Article 13.2(b) of the PPA, is as a measure of restitution, and in order to put them back in the same position they were in, but for the change in law event. Article 13.2 of the PPA does not prescribe the manner in which a party should be restituted or the nature of interest (whether simple or compound) or the rate of interest they are entitled to as a measure of restitution. The interest they are entitled to should, therefore, be such as to put them back in the same position they would have been in, but for the occurrence of the change in law event.”

- 6.7 In view of above, the claim for interest at the rate of LPS is grossly erroneous and is liable to be dismissed.
- 6.8 While the Hon'ble Appellate Tribunal has specifically held that it is the onus of EPGL to produce documentary evidence and to show the actual loss suffered by EPGL towards interest for the CIL claim, there is nothing on record produced by EPGL to establish the same.
- 6.9 The only documents sought to be relied on by EPGL are the following:

A. Working Capital Facility Agreement dated 01.11.2012.

- (a) Articles 4.1.2 and 4.3.5 of the above Agreement do not in any manner show the rate of interest, the terms of the interest, whether simple or compound. Mere reference to an agreement, without

even producing the actual loan for the period in issue and the actual interest paid, is wholly misconceived.

- (b) Further, as per the above provision, the interest is to be computed for the actual number of days for which the working capital facility is taken. There is no mechanism of payment of compound interest in the said agreement, which would be that the accumulated interest is capitalized, and the interest is computed for the future period, computed for the total outstanding amount, including the accumulated interest.
- (c) In fact, in terms of Article 4.1.2 of the Working Capital Facility Agreement produced by EPGL, the interest is payable and is debited on the last working day of the month or quarter, according to the practice of the lenders. This itself establishes that the interest is paid every month or quarter. The question of the interest being accumulated and added to the outstanding amount does not arise. This is even going by the agreement provided by EPGL.

B. RBI CIRCULAR DATED 14.08.2003

- (a) EPGL has relied on Clause 1.2 of the RBI Circular dated 14.08.2003, which reads as under:

“1.General

....

1.2 The interest at the specified rates shall be charged at monthly rests from April 1, 2002 subject to the conditions laid down in paragraph 11 below. The interest to be charged shall be rounded to the nearest rupee.”

- (b) The above provision in the RBI circular does not give the rate of interest, or that the interest has to be on a compounded basis.
- (c) It only provides that the interest shall be charged at monthly rests. Monthly rests only denote the period for computation of interest, i.e., at the end of every month. For example, in a loan where Equated Monthly Instalments (“EMI”) are paid, the monthly computation of the interest would only be on the principal amount outstanding at the end of every month. This would keep reducing over time. Similarly, if loan disbursements are to be made every month, the interest would be computed on the outstanding principal amounts due at the end of each month.
- (d) Compounding is a completely different concept, wherein the accumulated interest is capitalized, and thereafter, further interest is on the original amount and the capitalized interest. For this, the interest at the end of every month would need to be capitalized in the books, and the principal amount would be increased by such capitalized interest.
- (e) Even as per the above circular, where compound interest was to be applicable, the rate of interest was to be adjusted to ensure the effective rate of interest remains the same.
- (f) The issue of periodic rest and capitalization of interest if not paid is recognized and detailed by the Hon’ble Supreme Court in the constitutional bench decision in ***Central Bank of India vs. Ravindra & Ors., 2002 (1) SCC 367*** as under:

“Conclusion which follows:

36. The English decisions and the decisions of this Court and almost all the High Courts of the country have noticed and approved long- established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking moneylending transactions. The legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalisation to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower.”

- (g) The capitalization of interest occurs only where the interest remains unpaid. This has to be voluntarily provided for in the transaction documents to enable the creditor to capitalize the interest on the remaining unpaid amount.
- (h) The contention that mere charging of interest on a monthly basis (monthly rest) amounts to compound interest is grossly erroneous.
- (i) If the above interpretation of the RBI circular is understood, there cannot be any transaction with simple interest in India. This contention is misconceived, baseless and is liable to be rejected.

C. ILLUSTRATIVE TABLE – STATEMENT OF INDIAN OVERSEAS BANK FROM 01.10.2018 TO 31.03.2019 :

- (a) The reliance of EPGL on the Illustrative statement in the rejoinder is also misconceived. Firstly, the above is only in the rejoinder,

which cannot be a stage to produce evidence. The same is liable to be rejected for this reason alone.

- (b) Moreover, the said statement is for the period up to March 2019. The computation of interest in the present case is for the period from April 2019 to March 2021. The statement produced is not even for the relevant period.
- (c) Further, the said statement neither provides the rate of interest, the terms of interest, nor even the quantum of interest. All that is provided is for debit and credit entries in the statement. It is not even clear as to for what reason the debit and credit entries are provided, whether there was a default in payment of interest on a monthly basis, what is the time period for payment of principal and payment of interest, whether this was even for the purposes of funding the GST change in law amounts payable, etc.

6.10 The above being the only evidence produced by EPGL in the present proceedings, the claim for interest is liable to be dismissed. It is submitted that there is no evidence whatsoever that could substantiate that EPGL even incurred any interest expenses for the CIL claims. There is nothing on record. It may be that EPGL had taken a loan but had not repaid the same. It may be that EPGL has settled with the banks for restricting and writing off part of its loans. In such cases, no interest cost is incurred.

6.11 The only inference that can be drawn in EPGL not producing the actual loss suffered for its claim of interest is adverse inference. The present Petition is liable to be dismissed, and EPGL is not entitled to any interest claim, as

there is no evidence of EPGL even incurring and paying any interest, there being no evidence of any loss whatsoever to EPGL.

6.12 The only other contention of EPGL is that GUVNL has claimed LPS as provided in the PPA for its claim for liquidated damages from EPGL, and therefore, the same ought to be applied to EPGL, which is grossly misconceived. GUVNL has a claim for liquidated damages, which became due and payable in the past by EPGL. Upon failure of EPGL to pay the same, LPS becomes automatically applicable under the PPA. Since EPGL wanted to postpone the payment of the damages/penalty payable, EPGL had agreed to the payment of LPS.

6.13 CIL claims and interest thereon are not the same as LPS. There is no default in the payment of any bills by GUVNL. In any event, the present proceedings are in remand from the Hon'ble Appellate Tribunal's decision, in terms of which EPGL is not entitled to LPS but only to the actual loss suffered, subject to EPGL establishing the same with evidence, the contention of EPGL is liable to be dismissed.

7. ARGUMENTS OF PETITIONER - EPGL:

7.1 The Petitioner has not received any change in law compensation from the Respondent for the period after 14.10.2018 although the power plant of the Petitioner was operational from April 2019 till March 2021. The Petitioner submits that during the said entire period while Change in Law compensation was denied to it, the Petitioner had paid the compensation amount to the Government of India. Thus, the non-payment which Petitioner should have rightfully got on regular basis today stands at around Rs. 150 crores. Due to shortage in receipt of funds the Petitioner

could not make payment to its creditors and there is huge outstanding as on date of O&M and coal vendors which form part of operational creditors. These creditors are already claiming penal charges from the Petitioner for delay in their payments.

- 7.2 The Petitioner submits that since there is no fault on the part of the Petitioner despite which it has not been given change in law compensation for the period between April 2019 and March 2021. Hence, the Petitioner seeks payment of interest from the Respondent GUVNL at the rate as may be decided by this Commission on the amount of change in law compensation for the period between April 2019 and March 2021.
- 7.3 In view of the aforesaid factual-developments, that has occurred, during the pendency of the captioned Review Petition, the Petitioner prays that it is entitled to Change-in-Law compensation till date of approval the Supplemental PPA dated 12.08.2021 by this Commission along with interest as may be directed by the Commission.
- 7.4 The Petitioner EPGL has also requested the Commission to permit the grant of interest on the amount due as per the Change in Law since Change in Law benefit was not granted to the Petitioner because of no fault on its part and due to delay in approval of the SPPA. It is important to note following dates and events in this regard:

DATE	EVENT
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14.10.2018	The Commission, vide final order dated 23.12.2019, disposed of Petition No.1680 of 2017 by holding that Petitioner is eligible for compensation on account of change in law. The Commission has recognized that annual impact of change in law for the component mentioned in the petition will be Rs.127.97 Crores. The Commission observed in the order that the impact of change in law as approved by the Commission shall be applicable till 14.10.2018 as supplementary PPA dated 01.03.2019 was to be made effective w.e.f. 15.10.2018.
23.12.2019	As stated above, the Commission had disposed of the Change in Law Petition vide Order dated 23.12.2019
05.02.2020	Since the Petitioner was entitled to Change in Law compensation up to date of the approval of the SPPA dated 01.03.2019, the Petitioner EPGL filed the captioned Review Petition no. 1866 of 2020
27.04.2020	This Commission passed order dated 27.04.2020 approving the Supplemental PPA dated 01.03.2019.
12.06.2020	During pendency of the Review Petition, the Government of Gujarat revoked the 2018 GR, based on which Supplemental PPA dated 01.03.2019 was entered into. Government further issued a letter dated 12.06.2020 containing terms and conditions based on which the new Supplemental PPA was to be entered into between the Petitioner and the Respondent GUVNL.

12.08.2021	Petitioner EPGL and Respondent GUVNL entered into fresh Supplemental PPA only on 12.08.2021 in view of the GR dated 12.06.2020. Clause 3.7 of the said Supplemental PPA clarifies that the provisions dealing with change in law under the PPA dated 26.02.2007 shall continue to apply including in respect of the additional capacity.
12.08.2021	Thereafter, Respondent GUVNL filed Petition no. 2004 of 2021 before the Commission praying for approval of the Supplemental PPA.
20.11.2021	This Commission, vide its Order dated 20.11.2021, has approved the aforesaid Supplemental PPA dated 12.08.2021

7.5 It can be seen from the aforesaid dates that the Petitioner EPGL could not get benefit of change in law compensation even after approval of the same by the Commission from 15.10.2018 to 12.08.2021 for no fault of the Petitioner. Hence, the Petitioner EPGL is entitled to be granted interest at the rate that may be prescribed by the Commission. It is submitted that Article 11.3.5 and 11.8 of the PPA dated 26.02.2007 provides for payment of Late Payment Surcharge as under:

"11.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond 30 days from Due Date, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of two (2) percent in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with Monthly rest), for each day of the delay.

11.8.1 Payment of Supplementary Bill 11.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of

- i) Adjustments required by the Regional Energy Account (if applicable);*
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 6; or*
- iii) Change in Law as provided in Article 13, and such Bill shall be paid by the other Party.*

.....

11.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 11.3.4.

....."

It is submitted that the Petitioner is entitled for payment of interest as per the aforesaid provisions of Clause 11.3 and 11.8 of the PPA itself.

7.6 It is submitted that the demand of interest by the Petitioner is also based upon the principle of restitution, which is inbuilt in the PPA. According to which, a party affected by change in law must be compensated and must be restored to the same economic position as if such change in law had not occurred through monthly tariff payment. In other words, such party must be given the benefits of restitution as understood in the Civil Law. It is submitted that similar issue pertaining to application of restitutionary principle in such cases of change in law arising out of PPA was a subject matter of dispute before the Hon'ble Supreme Court in case of Uttar Haryana Bijli Vitran Nigam Ltd. and Anr. Vs. Adani Power Ltd. and Ors. (supra). In the said case, the Hon'ble APTEL had applied the restitution

principle in the context of carrying costs arising out of the approval of change in law events, which was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held as under:

"13. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in fact of the present case, has to be from the date of the withdrawal of exemption which was done by Administrative Orders dated 06.04.2015 and 16.02.2016.....On the facts of the present case, it is clear that the Respondents were entitled to adjustment in their monthly tariff payment from the date on which the Exemption Notifications became effective. This being the case, the restitutionary principles contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that CERC held that the Respondents were entitled to claim added costs on account of change in law w.e.f 01.04.2015. This being the case, it would be fallacious to say that the Respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. "

7.7 The Hon'ble Supreme Court in case of Jaipur Vidhyut Vitaran Nigam Ltd. & Ors. Vs. Adani Power Rajasthan Ltd. & Ors. reported in (2020 SCC Online SC 697) considered the issue of interest/ late payment surcharge on the change in law. The Hon'ble Supreme Court had directed the distribution Company to pay interest / late payment surcharge on the change in law benefits. It was held by the Hon'ble Supreme Court as under:

"73. With regard to the question of interest/ late payment surcharge, we notice that the plea of change in law was initially raised by APRL in the year 2013. A case was also filed by APRL in the year 2013 itself raising its claim on such basis. However, the appellants-Rajasthan Discoms did not allow the claim regarding change in law, because of which APRL was deprived of raising the bills with effect from the date of change in law in the year 2013.

We are, thus, of the opinion that considering the totality of the facts of this case and in order to do complete justice and to reduce the liability of the appellants-Rajasthan Discoms, payment of 2 per cent in excess of the applicable SBAR per annum with monthly rest would be on higher side. In our opinion, it would be appropriate to direct the appellants-Rajasthan Discoms to pay interest/late payment surcharge as per applicable SBAR for the relevant years, which should not exceed 9 per cent per annum. It is also provided that instead of monthly rest, the interest would be compounded per annum.

74. We accordingly direct that the rate of interest/late payment surcharge would be at SBAR, not exceeding 9 per cent per annum, to be compounded annually, and the 2 per cent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case."

7.8 Furthermore, the Hon'ble APTEL in case of Maharashtra State Electricity Distribution Company Ltd. Through Chief Engineer v. Central Electricity Regulatory Commission and Ors. reported in (2021 SCC Online APTEL 36), has held as under:

"14. 2nd Respondent contends that compensation for change in law must restore GWEL to the same economic position. In terms of Article 10.2 of the MSEDCL PPA, the purpose behind compensation for Change in Law is to restore the affected party to the same economic position had such Change in Law event not occurred. The said principle was confirmed by the Hon'ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd., (2019) 5 SCC 325 (for short "SC Carrying Cost Judgment"), The above position was also confirmed by the Hon'ble Supreme Court in Energy Watchdog v. CERC reported as (2017) 14 SCC 80. In terms of the above, the term 'to restore' would be rendered redundant, if compensation fails to take into account actual expenditure and does not "restore" the party

claiming Change in Law to same economic position, as if such change in law had not occurred

.....

67. So far as carrying cost/ late payment surcharge is concerned, this issue is also no more a res integra. The Judgment in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd. [(2019) 5 SCC 325] is finally settled by the Hon'ble Supreme Court. That apart, it is seen that in terms of provisions of PPA, the GWEL (generator) would be put to or restore to same economic position as before, as if no change in law event had occurred. It is seen that the Appellant MSEDCL unilaterally deducted amounts from the invoices raised by GWEL which was contrary to the terms of PPA.....

69. From the above it is clear that as defined, on 30 day after a monthly bill or supplementary bill was received and acknowledged by the procurers, the above. clauses referred to late payment surcharge in case of delay in payment of monthly bills by the procurer beyond the due date comes into play. Apparently, by way of supplementary bill, the claim for change in law was raised when procurer delays the payment by not making the payment within the due date, the GWEL is entitled to late payment surcharge. Therefore, in the light of above clauses, the 2 Respondent GWEL is entitled for late payment surcharge/ carrying cost on the balance amounts which were either withheld or not paid from the day it becomes payable.”

- 7.9 The Hon'ble APTEL in case of Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory Commission reported in (2019 SCC Online APTEL 37) has held as under:

“93. Our findings and analysis

i) There was a change in law and as a result of which the

Appellant had to buy coal which was three to four time costlier than the linkage coal resulting into increased cost of generation.

ii) Under these circumstances the Appellant was forced to arrange additional funds to keep the plant in operation and generate electricity to supply power as per its commitment. The State Commission has accordingly redetermined tariff and has given enhanced tariff from the date of commencement of supply.

iii) The payment of interest was a issue framed by the State Commission, however, the State Commission did not record any reason for not granting the same. The most important aspect in this Appeal is that the Appellant incurred additional expenditure over and above the capped tariff of Rs. 2.32/kWh and accordingly the State Commission redetermined it to Rs.2.8875/kWh for FY 2011- 12 and Rs.2.9218/kWh for the FY 2012-13. Though the differential amount has been paid by the Respondent No.3 to Appellant, no carrying cost/ interest was paid.

However, it is pertinent to note that the differential amount between the capped tariff and the redetermined tariff was payable in the FY 2011-12 and FY 2012-13 but was actually paid subsequently after a gap of several years. It is a well-established fact that money not paid in time but paid subsequently at a much later stage after lapse of several years, losses its real money value to a great extent and is effectively less money paid.

iv)Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.”

7.10 Thus, it is submitted that the Petitioner EPGL is entitled to an interest on Change-in-Law benefit which it was entitled to but have not got the same. This is more particularly in light of the applicability of restitutionary

principle which has been upheld by the Hon'ble APTEL and the Hon'ble Supreme Court in various judgments as cited above.

7.11 In view of the aforesaid the Petitioner EPGL is entitle to the following reliefs in the captioned Petition:

- a. To rectify its typographical error in the later part of paragraph 9(v) of the Order dated 23.12.2019 and note the correct impact of Changes in Law as discussed in para 10(b) of this Application.
- b. To grant Change in Law compensation vide Order dated 23.12.2019 for the period between 15.10.2018 till 20.11.2021, the Amendment Effective date, being the date of approval of Supplemental PPA by the Commission.
- c. To grant interest on the amounts towards Change in Law Compensation for each month it had become due and payable to EPGL by GUVNL, till payment, at such rate that may be prescribed by the Commission.

8. ARGUMENTS OF RESPONDENT-GUVNL:

8.1 The Review Petitioner, above named has filed the present Review Petition seeking clarification in the Commission's order dated 23.12.2019 in Petition No. 1680 of 2017.

8.2 The Commission vide Daily order dated 8.03.2022 in the matter has directed Respondent namely Gujarat Urja Vikas Nigam Ltd. to file their stand on the prayers of the Petitioner on affidavit alongwith reply to the Petitioner's submission on the payment of interest aspect.

8.3 In this regard, it is respectfully submitted that Respondent had submitted its reply to the Review Petition through affidavit dated 11.08.2020 and to additional submission vide affidavit dated 7.10.2021. Moreover, Legal Counsel for Respondent has filed written submission dated 24.03.2022 and made submissions in the Review Petition including the prayers by the Review Petitioner.

8.4 As regard to Prayer No.1 sought by Review Petitioner the Respondent respectfully submits as follows:

- a. The Commission in the Order dated 23.12.2019 has recognized GST Act, 2017 as a Change in Law under Article 13 of the PPA and held that Petitioner is entitled to compensation thereof. The Commission at Para 10 has held as under:

"Before parting with above Order we want to make it clear that the impact of Changes in Law as approved by the Commission hereinabove shall be applicable till 14.10.2018 as the Petitioner and the Respondents have executed a Supplementary PPA on 01.03.2019 to be effective from 15.10.2018".

- b. This Commission in the Order dated 27.04.2020 in Petition no 1807 of 2020 while approving Supplemental PPA dated 1.03.2019 executed between the Petitioner and Respondent has held at Para 25.2 regarding Change in Law as under:

"The change in law as allowed in Order dated 23.12.2019 in Petition No 1680/2017 shall be applicable till 19.08.2019 for the payment of energy charge or till the coal is procured directly from Indonesia, whichever is later. The computation of energy

charge shall be as per supplementary PPA from 20.08.2019 or from the date coal is procured directly from Indonesia, whichever is later. The supplemental PPA allows pass through of actual coal cost, hence, it covers the cost approved under change in law order dated 23.12.2019 of this Commission. Further, any change in law taking place after approval of this order, the Petitioner has to approach the Commission for its approval."

- c. Pursuant to the Order dated 27.04.2020 passed by this Commission and the Government of Gujarat Resolution and Letter both dated 12.06.2020 and Government of Gujarat GR dated 05.06.2021, Respondent has signed modified Supplemental PPA dated 12.08.2021 with Petitioner.

Clause no 3.1 (ii) of the revised SPPA defining Amendment Effective Date is under:

"Amendment Effective Date" shall mean the effective date of this SPPA which shall be from the date of approval of this revised SPPA by GERC."

Clause no 3.2.4 (iii)(v) related to treatment of Change in Law till the effect of approved Change in Law under:

"Further, the Seller shall be entitled to payment towards approved Change in Law for the Energy Charge only till the Effective Date of this SPPA. Thereafter the Seller shall not be entitled to the approved Change in Law for Energy Charges. Any change in law taking place in future after this Supplemental Agreement, has to be submitted by the Seller to the Gujarat Electricity Regulatory Commission for approval."

8.5 In view of above, effective date of Supplemental PPA shall be from date of approval of revised Supplemental PPA by GERC i.e. 20.11.2021 and revised tariff payable under the SPPA shall be from amended effective date. Further, as per clause no 3.2.4 (iii)(v) of the SPPA dated 12.08.2021, the Review Petitioner shall be eligible for approved Change in Law payment only till effective date.

8.6 The Respondent has duly made payments in regard to change in law as per the Order dated 23.11.2019 in Petition No 1807 /2018 of the Commission approved Change in Law for the supply of power prior to 15.10.2018.

8.7 As regard to Prayer No. 2 for rectifying the typographical error in the paragraph 9 (v) of the order dated 23.12.2019, it is submitted that the Table indicates only sample calculation for ascertaining that impact of Change in Law is higher than 1% of LC value or not and does not reflect the actual compensation payable. However, GUVNL has no objection the correction sought by Petitioner same.

8.8 As regard to Prayer No. 3 for direction to Respondent to accept the invoice for Change in Law, it is submitted that Article 13.2 (b) of PPA dated 26.02.2007 related to Change in Law states as under:

"As a result of Change in Law, the compensation for any increase/ decrease in revenue or cost to the Seller shall be determined and effective from such date, as decided by Gujarat Electricity Regulatory Commission whose decision shall be final and binding on the parties "

Accordingly, Review Petitioner shall be raising Change in Law invoice only after decision of the Commission in the present Review Petition.

- 8.9 The prayers of the Petitioner in the present Review Petition are limited to the above two aspects only. There is no other claim, particularly there is no claim of interest that has been made by the Petitioner in the present Review Petition. There are also no pleadings whatsoever on the issue of interest.
- 8.10 The Petitioner cannot also raise the issue of interest in the Review Petition, as the same was neither raised by the Petitioner in the original Petition No. 1680 of 2017, nor was the same granted in the Final Order dated 23.12.2019.
- 8.11 It is submitted that the scope of a review petition is very limited and can only be on errors apparent on the face of the record or any new facts or evidence that is available, which was not within the knowledge of the parties at the time of passing of the original order.
- 8.12 It is not even the claim of the Petitioner that any of the above two conditions exist for the claim of interest. In fact, as stated hereinabove, there is no claim of interest by the Petitioner in the Review Petition, and there was no such claim at the time of passing of the original order. The very limited scope of the review proceeding is well settled. In the written submission dated 24.03.2022, the Legal Counsel on behalf of the Respondent has specifically referred to the following judgments passed by the Hon'ble Supreme Court:

(1) Parsion Devi and Ors. vs. Sumitri Devi & Ors. (1997) 8 sec 715,

(2) Ram Sahu & Ors. v. Vinod Kumar & Ors., 2020 sec Online SC 896,

(3) M/s Trojan & Company vs. Rm. N.N. Nagappa Chettiar [AIR 1953 SC 235] and

(4) Ram Sarup Gupta (dead) by LRs., V Bishun Narain Inter College [(1987) 2 sec 555]:

8.13 In the facts and circumstances mentioned above, the present claim of the Petitioner for interest, at the stage of arguments, is liable to be rejected both on the ground of the claim being beyond the scope of review proceedings and also that the claim is beyond the pleadings and prayers sought for by the petitioner in the original Petition as well as in the Review Petition.

8.14 Thus, from the Remand Order dated 16.04.2025 of the Hon'ble APTEL in this matter, the Commission is required to determine the Interest, simple or compound and in case of compound interest, the periodical rests i.e. quarterly/six-monthly/or yearly, to which the Appellant is entitled for the period April 2019 to March 2021. During the hearing, both the Parties have submitted their case as stated in the foregoing paras.

9. **Finding and Conclusion:**

9.1 We have carefully considered the submissions and arguments of both the sides. It appears from the Order of the Hon'ble APTEL that there was unduly long period of time for which the Petitioner has been denied interest as a matter of restitution as per the PPA between the Parties. Further, the Hon'ble APTEL has also clearly held that the Petitioner is entitled for payment of Interest for the period from April 2019 to March

2021 on belated payment of compensation on account of Change in Law. The Commission has also been directed to decide afresh as to whether the Petitioner is entitled for simple interest or compound interest and the rate of Interest and the periodical rest in case of compound interest, for which the Petitioner has been given liberty to produce documentary evidence. At the same time, the Hon'ble Tribunal has expressed its view that while the Petitioner not being paid Interest undoubtedly amounts to their not being restituted, granting them Interest more than what they are entitled to would result in their unjustly enriching themselves at the cost of the consumer whose interest the Commission is obligated to protect.

- 9.2 We are therefore conscious about the direction regarding restitution vis-à-vis unjust enrichment. The Hon'ble APTEL has, in para XIV-B of its Order dated 16.04.2025, further held as under:

"B. ANALYSIS:

While the Appellant has no doubt been denied interest, as a measure of restitution, from April, 2019 till March, 2021, for an unduly long period of time, we may not be in a position to determine the rate of interest to which the Appellant is entitled to as a measure of restitution in the absence of any material on record to show the extent to which the Appellant had suffered loss on account of such belated payment. While the Appellant is entitled for interest for the period April, 2019 to March, 2021, the question whether they are entitled for simple or compound interest; if so, at what rate; and whether it should be on quarterly, half yearly or yearly rests, can only be determined on the Appellant placing documentary evidence on record to show how and to what extent they have suffered a loss on account of such belated payment. While their not being paid interest undoubtedly amounts to their not being restituted, granting them interest more than what they are entitled to would result in their unjustly enriching themselves at the cost of the consumer whose interest the Commission is obligated to protect under Section 61(d) of the Electricity Act. We must, therefore, express our inability to agree with the submission, urged on behalf of the Appellant, that the matter

should not be remanded to the GERC, and that we should decide the Appellant's claim for interest in the present Appeal itself.

Suffice it, to safeguard the Appellant's interest on this score, to direct GERC to give both parties a reasonable opportunity of being heard and pass orders afresh granting the Appellant appropriate interest (simple or compound as the case may be), fix the rate of interest to which they are entitled to, and, in case compound interest were to be granted, then the periodic rests at which such interest should be compounded. The GERC shall consider the afore-said aspects based on the documentary evidence placed on record by the appellant. We request the GERC to pass orders afresh with utmost expedition, preferably within four months from the date of receipt of a copy of this order.

XV. CONCLUSION:

The Appellant is held entitled for payment of interest for the period April, 2019 to March, 2021 on belated payment of compensation on account of change in law. The GERC shall, after giving both parties a reasonable opportunity of being heard, and after permitting the Appellant to adduce documentary evidence on this particular issue, pass orders afresh determining the interest to which the Appellant is entitled to for the period April, 2019 to March, 2021, whether it be simple or compound; the rate of interest; and, in case they are held entitled to compound interest, the periodic rests at which such interest should be compounded i.e., quarterly or half yearly or yearly rests.

The GERC is requested to complete the entire exercise, culminating in a final order being passed afresh, with utmost expedition, preferably within four months from the date of receipt of a copy of this order.

The Appeal is allowed and the impugned order is set aside to the extent indicated hereinabove. All the IAs therein shall, consequently, stand disposed of. "

- 9.3 We have carefully perused the submissions of both the Parties and also considered their respective arguments. We shall now look into the documents produced by the Petitioner in support of its claim of interest claiming full restitution as envisaged under Art.13.2 of the PPA, the Hon'ble APTEL's Remand Order and as per settled law laid down by the Hon'ble

Supreme Court in this regard. The documents produced are as under:

- i. Its own borrowing arrangements i.e., the Working Capital Facility Agreement dated 1.11.2012 between EPGL and its lenders.
- ii. Extant Circulars issued by the Reserve Bank of India (RBI).
- iii. GUVNL's own Affidavit dated 19.11.2019 filed in Petition No. 1680 of 2017, asserting that Change in Law compensation has to be accompanied by Carrying Cost at the rates equal to delay payment rate as per the PPA; and
- iv. Interest imposed by GUVNL on delay in payment of penalty for shortfall of declared capacity.

9.4 So far as Working Capital Facility Agreement is concerned, the Petitioner has placed before the Commission at Annexure P-2, viz. copy of the said Agreement dated 01.11.2012 with the Banks and Financial Institutions as detailed therein for various fund based and non-fund based financial assistance to meet the Petitioner's working capital requirements on which the Petitioner is liable to repay the loans/borrowings on compounding basis with monthly rest. The Petitioner has also relied upon the Circulars of RBI dated 14.08.2003 and 03.03.2016, which apply to all Scheduled Commercial Banks mandating that interest on advances be charged on monthly rests, and argued that according to the practice of EPGL's lenders, interest was debited on a monthly basis. Therefore, effectively EPGL was liable to pay and paying interest on a compound basis with monthly rests. These circulars were considered by the Hon'ble Supreme Court in **Uttar Haryana Bijli Vitran Nigam Limited vs. Adani Power Mundra Limited: (2023) 2 SCC 624**, to uphold the generator's entitlement to Carrying Cost on compound interest basis.

9.5 It is further submitted by the Petitioner that it has discharged its onus under the Remand Order by producing the contractual proof of compound interest, as also the statutory basis for interest at monthly rests (RBI circulars). Accordingly, EPGL is entitled to carrying cost on compound interest basis with monthly rests for the period April 2019 to March 2021, till the date of payment by GUVNL and it is further submitted that in terms of the above agreement, the Interest is to be computed for the actual number of days for which the working capital facility is taken. In fact, in terms of Article 4.1.2 of the Working Capital Facility Agreement produced by EPGL, the interest is payable and is debited on the last working day of the month or quarter, according to the practice of the lenders. This itself establishes that the interest is paid every month or quarter.

9.6 As against the above contentions of the Petitioner, Respondent-GUVNL has, on the other hand, stated that the Petitioner has not given any details or documents whatsoever of the amounts borrowed specifically for the payment of the GST amounts, the interest paid on the said amounts, the rate of interest, etc. The very claim of interest in the present proceedings is baseless and is liable to be dismissed. Further, the reliance on the RBI Circulars dated 14.08.2003 r/w 03.03.2016 by EPGL does not in any way act as a documentary proof to show as to what is the actual rate of interest which was payable by EPGL with regard to its claim in the present case. These are the general guidelines based on which the commercial bank has to charge interest on advances as per the Terms and Conditions as specified in the said circulars. In terms of the Remand Order, EPGL has to produce documentary proof to show what rate of interest they paid for borrowing money for paying the GST, which EPGL has failed to do so in

their Affidavit.

- 9.7 Respondent-GUVNL has further asserted that EPGL has failed to demonstrate that it had availed of any loan from any bank or financial institution for which it paid any interest, for it to be restituted in the same manner. The same being the primary consideration for granting restitution to bring the party to the same economic position, EPGL has failed to demonstrate that any loan or borrowing was availed by it for which interest was incurred to claim compounding principles.
- 9.8 Perusal of the above Working Capital Facility Agreement shows that Articles 4.1.2 and 4.3.5 thereof do not in any manner show the rate of interest, the terms of the interest, whether simple or compound. Mere reference to an agreement, without even producing the actual loan for the period in issue and the actual interest paid, is wholly misconceived. As per the above provision, the interest is to be computed for the actual number of days for which the working capital facility is taken. There is no mechanism of payment of compound interest in the said agreement, which would be that the accumulated interest is capitalized, and the interest is computed for the future period, computed for the total outstanding amount, including the accumulated interest. In fact, in terms of Article 4.1.2 of the Working Capital Facility Agreement produced by EPGL, the interest is payable and is debited on the last working day of the month or quarter, according to the practice of the lenders.
- 9.9 It is submitted by GUVNL that RBI Circular dated 14.08.2003 does not give the rate of interest, or that the interest has to be on a compounded basis. It only provides that the interest shall be charged at monthly rests. Monthly rests only denote the period for computation of interest, i.e. at the

end of every month. For example, in a loan where Equated Monthly Instalments (“EMI”) are paid, the monthly computation of the interest would only be on the principal amount outstanding at the end of every month. This would keep reducing over time. Similarly, if loan disbursements are to be made every month, the interest would be computed on the outstanding principal amounts due at the end of each month. Compounding is a completely different concept, wherein the accumulated interest is capitalized, and thereafter, further interest is on the original amount and the capitalized interest. For this, the interest at the end of every month would need to be capitalized in the books, and the principal amount would be increased by such capitalized interest.

- 9.10 It is further submitted by GUVNL that, even as per the above circular, where compound interest was to be applicable, the rate of interest was to be adjusted to ensure the effective rate of interest remains the same. The issue of periodic rest and capitalization of interest if not paid is recognized and detailed by the Hon’ble Supreme Court in the constitutional bench decision in ***Central Bank of India vs. Ravindra & Ors., 2002 (1) SCC 367*** as under:

“Conclusion which follows:

36. The English decisions and the decisions of this Court and almost all the High Courts of the country have noticed and approved long-established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking moneylending transactions. The legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalisation to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds

incorporating covenant or stipulation for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower.”

The capitalization of interest occurs only where the interest remains unpaid. This has to be voluntarily provided for in the transaction documents to enable the creditor to capitalize the interest on the remaining unpaid amount. The contention that mere charging of interest on a monthly basis (monthly rest) amounts to compound interest is grossly erroneous. If the above interpretation of the RBI circular is understood, there cannot be any transaction with simple interest in India. This contention is misconceived, baseless and is liable to be rejected.

9.11 It is submitted by the Respondent that as for the illustrative table – Statement of Indian Overseas Bank from 01.10.2018 to 31.03.2019, as relied upon by the Petitioner, the said statement is for the period up to March 2019. The computation of interest in the present case is for the period from April 2019 to March 2021. The statement produced is not even for the relevant period. Further, the said statement neither provides the rate of interest, the terms of interest, nor even the quantum of interest. All that is provided is for debit and credit entries in the statement. It is not even clear as to for what reason the debit and credit entries are provided, whether there was a default in payment of interest on a monthly basis, what is the time period for payment of principal and payment of interest, whether this was even for the purposes of funding the GST change in law amounts payable, etc.

- 9.12 It is further submitted that there is no evidence on record whatsoever that could substantiate that EPGL even incurred any interest expenses for the CIL claims. It may be that EPGL had taken a loan but had not repaid the same. It may be that EPGL has settled with the banks for restricting and writing off part of its loans. In such cases, no interest cost is incurred.
- 9.13 We find force in the argument of GUVNL that the Petitioner has failed to produce any satisfactory evidence showing payment of compound interest for fulfilling GST obligation.
- 9.14 However, from the above, we are of the opinion that the above two documents produced by the Petitioner in support of its Change in Law claim strongly shows the common/normal practice in the commercial parlance, and RBI Circulars mandate the Scheduled Banks to follow in lending of funds.
- 9.15 The Petitioner has relied upon (i) GUVNL's Affidavit dated 19.11.2019 filed in Petition No. 1680 of 2017, asserting that Change in Law compensation has to be accompanied by Carrying Cost at the rates equal to delay payment rate as per the PPA; and (ii) Interest imposed by GUVNL on delay in payment of penalty for shortfall of declared capacity. In this context, the Petitioner has argued that rate of interest on delayed Change in Law compensation is to be calculated at SBAR+ 2%, with monthly rests. It is argued by the Petitioner that, GUVNL had itself before this Commission vide its Additional Reply Affidavit dated 19.11.2019 filed in Petition No. 1680 of 2017, asserted and admitted that: -

“10. It is also submitted that in case, in future, if it comes to the notice of the respondent that there has been certain reduction in taxes / duties leading to reduction in the cost to the Petitioner, Respondent shall be

entitled to claim the adjustment in tariff towards such reduction of taxes / duties from the date of implementation by the appropriate authority along with carrying cost, i.e. equal to delay payment rate as per PPA.”

9.16 The Petitioner has also relied upon Article 11.3.5 of the PPA which deals with late payment surcharge at the rate of 2% in excess of the applicable SBAR per annum and that the LPS payable under the PPA is to be calculated on a day-to-day basis at the rate of SBAR + 2% with monthly rest. The Petitioner has also drawn attention of the Commission to the fact that, during the period April 2019 to March 2021, GUVNL had charged the Petitioner the same rate of interest for delayed payments towards penalty for shortfall in power supply. GUVNL had started deducting the penalty amounts directly from EPGL's Energy Bills and levied interest at SBAR+2%, compounded monthly. During the same period, EPGL was entitled to Change in Law compensation along with interest, which undisputedly was not paid by GUVNL. On the other hand, GUVNL was levying interest at SBAR+2% on the penalty amounts. Had GUVNL paid EPGL the sums towards Change in Law compensation, it would have been in a position to make payment of the Penalty amounts, rather than pay GUVNL interest on compounding basis, for delay in making the said payments. This arrangement of GUVNL accepting the levy of interest on unpaid penalty amounts, made it kind of a borrowing arrangement under the PPA, wherein EPGL (as the Borrower) had agreed to pay interest on monthly compounding basis to GUVNL (the Lender), This can be perceived as equivalent to EPGL borrowing a debt and paying default interest on non-payment of dues to the lender, i.e. GUVNL. As such, in the interest of justice and based on the settled principle of restitution, the same rate should apply to restitution of delayed Change in Law compensation owed by

GUVNL to EPGL during the same period. In view of the foregoing, the carrying cost claim herein reflects the actual financial loss suffered by EPGL on account of delayed restitution. As such, it is submitted that, EPGL is entitled to recover what it has paid GUVNL for a similar delay during the same period i.e., SBAR+ 2% on compounding basis, with monthly rest.

9.17 It is further argued that the Petitioner-EPGL 's claim has been supported by the Bill passing emails from GUVNL showing the interest rates and monthly deductions till the penalty account was extinguished in August 2024; as well as the detailed Excel sheet showing the recovery of penalty payments, along with the interest rate applied. Further, EPGL's borrowings during the period April 2019 to March 2021, encompass not only the borrowings at the aforesaid rates, but also the loss suffered by EPGL, on account of payment of interest on Penalty at LPS rates to GUVNL, as elaborated above. For determining the amount of interest payable, EPGL has taken into consideration the date-wise invoices raised for GST paid under Change in Law; dates of payment by EPGL and invoice dates; delay in reimbursement computed from date of payment till 12.05.2023; applicable interest rates (benchmark lending rate + margin) as per SBAR data maintained by SBI and industry practice; and monthly compounding of interest to reflect actual loss suffered due cost of funds.

9.18 It is argued by the Petitioner that the payment of Rs.150,98,37,412/- made by GUVNL on 12.05.2023 must, in law, be first appropriated towards the outstanding interest component, i.e. Rs.75,99,92,201/-, and thereafter towards the principal amount of Change in Law compensation. In the present case, GUVNL's payment made on 12.05.2023 was without any instruction or specification for appropriation and must therefore, at the

option of EPGL, to be first adjusted against the interest amount then due and payable, and then against the principal. The above appropriation is not only legally tenable but is also necessary to achieve the full restitution as envisaged under Article 13.2 of the PPA and the Hon'ble APTEL's Remand Order, as well as to prevent GUVNL from benefitting from the delay in payment of carrying cost.

9.19 As against the above argument of the Petitioner, Respondent-GUVNL has stated that that the Petitioner accepted and received the entire principal amount of Change in Law compensation as determined and never raised a protest or contemporaneous objection at the time of invoice issuance or payments made by GUVNL and thereafter as well. The specific understanding and appropriation by the parties at the relevant stage were towards the principal amounts. In fact, the specific invoice raised by the Petitioner on 12.04.2023 was for the principal amount of the change in law claims, which was paid by GUVNL on 12.05.2023. Even in the pleadings before the Hon'ble APTEL, the Petitioner has specifically stated that the principal amount was paid on 12.05.2023 and that its claim was only restricted towards interest.

9.20 In our view, the argument now voiced by the Petitioner that the payment of Rs.150,98,37,412/- made by GUVNL on 12.05.2023 must, in law, be first appropriated towards the outstanding interest component, i.e. Rs.75,99,92,201/-, and thereafter towards the principal amount of Change in Law compensation, appears to be an afterthought which cannot be accepted at this belated stage, more particularly when no communication to that effect has been placed on record and mere oral statement cannot

be considered. Moreover, this argument travels beyond the scope of the Remand Order. We accordingly reject this submission.

9.21 The argument of GUVNL is that the present proceedings are limited to the Remand Order of the Hon'ble APTEL and cannot be a stage to re-open the issues which have been considered and decided by the Hon'ble APTEL. The Hon'ble APTEL has, in unequivocal terms, denied the contention of EPGL that the interest/carrying cost ought to be equal to the LPS as provided in Article 11.3.5 of the PPA. The Hon'ble APTEL held that the onus is on EPGL to show the actual cost incurred, the nature of the interest actually paid, etc. to claim interest in the present proceedings.

9.22 It is submitted by GUVNL that in the facts of the present case, the question of applying the LPS provision for the change in law restitution does not arise. The LPS is a penal provision for the default on the part of either party to pay the amounts due and payable at present. In case there is a default or delay in the payment of any bill duly raised by EPGL under the PPA that is payable, the LPS provision would attract as a penal provision. Change in law does not attract LPS for the period till the tariff is adjusted by the Commission for such change in law. Only after the change in law is approved, the Supplementary Bills were raised by EPGL, and if there is a delay in payment of such Supplementary Bills, the LPS provision is attracted as a penal measure. However, for the *pendent lite* period, the question of LPS does not arise, as there is no default of GUVNL; the approval of the change in law is a mandatory requirement for EPGL to even raise an invoice under the PPA.

9.23 It is for the above reason that the comparison made by EPGL on the claims of GUVNL is baseless, wrong and is denied. It is the claim of GUVNL that it

claimed SBAR+ 2% with monthly compounding on the outstanding penalty amount payable by EPGL for the shortfall in achieving normative availability. Such amounts are payable by EPGL in the very first monthly bill after the Contract Year in which the normative availability was not achieved. There is no prior approval of the Commission that is required. Since this amount is not paid by EPGL, which is a default, the LPS provision was invoked. The LPS is a penal provision under the PPA. The carrying cost for change in law claims is on the principle of restitution in terms of the PPA. Both are not the same.

9.24 Respondent-GUVNL has also sought to adjust/ set off against the amounts payable by EPGL in Petition No. 1656 of 2017 towards the payment of liquidated damages of Rs. 80 Crores together with interest, which arises out of the same PPA and the same is pending adjudication before this Commission. In this context, we make it clear that the present Petition is an off shoot of the direction of the Hon'ble APTEL remanding the Petition solely limited to deciding it on the issue of Interest amount payable to the Petitioner towards delay payment of CIL compensation. This Commission at this stage cannot travel beyond the issue remanded by the Hon'ble APTEL. Moreover, the said Petition No.1656 of 2017 for claiming liquidated damages is pending which would be decided on its own merits considering the evidence adduced by both the Parties and, therefore, no set off cannot be given in the present Petition. We reject this contention of GUVNL without going further into it.

9.25 We have considered the arguments of both the Parties on the issue of entitlement of compound interest at SBAR + 2%. As discussed above, the Commission, while determining restitutory compensation payable to the

Petitioner, has to consider the documentary proof to show that they had paid compound interest for borrowing money to pay GST. It is not reflected from the documents relied upon by the Petitioner any such payment. Therefore, we are unable to grant restitutory compensation on compound interest basis, as claimed by the Petitioner. We accordingly reject the prayer for allowing compound interest.

9.26 We note that the Hon'ble APTEL has held the Petitioner to be entitled for restitutionary compensation as there is unduly long delay in paying such compensation which the Petitioner is entitled for. The Commission has been directed to decide the restitutionary compensation by way of interest either simple or at compounding rate, the rate of interest and, in case of compound interest, the periodical rest.

9.27 If we consider the contractual obligation under the PPA between the Parties, as per Art.13.2 of the PPA, the affected Party shall be restored to the same economic position by making appropriate compensation as if no Change in Law has occurred. The law of restitution encompasses all claims found upon the principle of unjust enrichment/unjust benefit and equity. The Petitioner has produced documentary evidence in the form of Working Capital Agreement and RBI Circulars, as described above, which show the banking practice of lending money. Undoubtedly, the dispute in question has arisen from commercial transaction. The industrial practice in lending and borrowing finance can also be taken into judicial notice. We are of the view that in absence of any evidence regarding compound Interest, the Petitioner is entitled for simple Interest. Hence, looking to the SBI MCLR rate during the said period and other circumstances, we deem it expedient to grant 8% simple interest.

9.28 In our considered view, in the facts and circumstances of the case, the Petitioner shall be granted simple Interest for the period from April 2019 to March 2021.

10. In the result, the following Order is passed:

ORDER

- (a) The Respondent-GUVNL shall pay to Petitioner-EPGL simple Interest for the period from April 2019 to March 2021 @ rate of 8%.
- (b) Petition and the IA are disposed of accordingly.

Sd/-

(MEHUL M.GANDHI)
MEMBER

Sd/-

(ANIL MUKIM)
CHAIRMAN

Place: Gandhinagar

Date : 11/08/2025