



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

**Petition No. 2004 of 2023**

**PRESENT:**

Hon'ble Shri Arvind Kumar, Chairman  
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)  
Hon'ble Shri Sanjay Kumar Singh, Member

**IN THE MATTER OF:** Petition for truing-up in compliance of the directive of this Commission vide the Order dated 29.05.2020 in Petition No. 1440 of 2019 for claiming additional recurring/non-recurring expenditure incurred by Dhariwal Infrastructure Limited on account of occurrence of various 'Change in Law' events during the period FY 2022-23.

**Dhariwal Infrastructure Limited (DIL)**

CESC House, Chowringhee Square, Kolkata - 700 001

.....Petitioner

**Versus**

**Noida Power Company Limited (NPCL)**

Electric Sub-Station, Knowledge Park - IV,  
Gautam Buddha Nagar, Greater Noida - 201 310

.....Respondent

The following were present:

1. Ms. Mandakini Ghosh, Counsel, DIL
2. Sh. Shubhayu Sanyal, Additional Manager, DIL
3. Sh. Aweek Chatterjee, DIL
4. Sh. Shamik Das, DIL
5. Sh. Suman Ghosh, DIL
6. Ms. Divya Chaturvedi, Counsel NPCL
7. Sh. Abhishek Anand, Assistant Manager, NPCL

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8. Ms. Srishti Rai, Counsel NPCL

**ORDER**

**(Date of Hearing - 09.11.2023)**

1. The Petitioner, DIL has filed the instant Petition for truing-up of the expenses corresponding to the 'Change in Law' events; approved by this Commission vide its Order dated 29.05.2020 in Petition No. 1440/2019, affecting the coal and freight charges for FY 2022-23. MOEF&CC had on 21.05.2020 withdrawn its own mandate for washing of coal having more than 34% ash to be used by power stations beyond 500 kms. The Petitioner has not procured any washed coal during FY 2022-23.
2. The Commission vide its Order dated 02.08.2022 in Petition No. 1655/2022 has also approved the "Change in law" event due to revision in rates of C.G. Environment and Development cess. The Commission has, vide its Orders dated 12.05.2023 and 13.06.2023 in Petition No. 1798 of 2021 and Petition No. 1879 of 2022, already conducted its detailed scrutiny and prudence check and *inter-alia*, also approved the claims on account of such 'Change in Law' events, including C.G. Environment Cess and C.G. Development Cess, for the period FY 2020-21 and FY 2021-22 respectively.
3. The Petitioner has made the following prayers:
  - a) Admit the instant Petition and allow the trued-up claims of the Petitioner/DIL towards compensation on account of occurrence of 'Change in Law' events for FY 2022-23, in accordance with the directions of this Commission in its Order dated 29.05.2020 in Petition No. 1440 of 2019;
  - b) Approve the payment of **₹ 5.36 Crores** made by the Respondent/NPCL towards the 'Change in Law' events already approved by this Hon'ble Commission vide its Order dated 29.05.2020 in Petition No. 1440 of 2019 and its Order dated 02.08.2022 in Petition No. 1655 of 2020, resulting into increase in cost of coal and freight components of FSA Grade Coal for FY 2022-23;

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- c) Grant liberty to the Petitioner/DIL to approach this Commission with revised trued-up claims under 'Change in Law' events for the previous financial years, viz., FY 2019-20, FY 2020-21, FY 2021-22, and FY 2022-23, in view of the outcome of Appeal No. 128 of 2020 presently pending before the Hon'ble Tribunal;
- d) Condone any inadvertent omissions/errors/rounding-off differences/shortcomings and permit the Petitioner/DIL to add/alter this filing and make further submissions as may be required in future; and

**Brief facts as stated in the Petition.**

4. The following 'Change in Law' events, have been approved by this Commission vide its Order dated 29.05.2020 and 02.08.2022, the occurrence of which have led to an additional financial impact on the Petitioner/DIL for supply of power to the Respondent/NPCL as per the NPCL PPA during the period FY 2022-23:

**TABLE 1: APPROVED 'CHANGE IN LAW' EVENTS LEADING TO INCREASE IN COMPONENTS OF COAL & FREIGHT CHARGES VIDE THE ORDER DATED 29.05.2020 AND 02.08.2022.**

Particulars	As on 26.10.2015 (Rs/Ton)	Revised Value (Rs/Ton)/ (%)	Applicable Period
DMF (District Mineral Foundation)	No such levy	40.53	01.04.2022 to 31.03.2023
NMET (National Mineral Exploration Trust)	No such levy	2.70	01.04.2022 to 31.03.2023
Clean Energy Cess	200	No such levy	01.04.2022 to 31.03.2023
Stowing Excise Duty	10	Abolished	01.04.2022 to 31.03.2023
Excise Duty	57.33	Abolished	01.04.2022 to 31.03.2023
Central Sales tax	24.26	Abolished	01.04.2022 to 31.03.2023

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Particulars	As on 26.10.2015 (Rs/Ton)	Revised Value (Rs/Ton)/ (%)	Applicable Period
GST on Coal	No such levy	5%	01.04.2022 to 31.03.2023
State Compensation Cess	No such levy	400	01.04.2022 to 31.03.2023
CG Environmental Cess	7.50	11.25	01.04.2022 to 31.03.2023
CG Development Cess	7.50	11.25	01.04.2022 to 31.03.2023
<b>Components of Freight Charges</b>			
Busy Season Charges	115.83	Abolished	01.04.2022 to 31.03.2023
Development Surcharge	57.27	Abolished	01.04.2022 to 31.03.2023
Service Tax	4.20%	Abolished	01.04.2022 to 31.03.2023
GST on Freight	No such levy	5.00%	01.04.2022 to 31.03.2023

5. The total claim under 'Change in Law' events on account of above said rates has been duly considered by the Petitioner/DIL in the instant Petition, irrespective of the increase or decrease in the impact. Further, the Petitioner/DIL has preferred to file an Appeal before the Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal") vide Appeal No. 128 of 2020 partially challenging the order of this Commission in the above Order dated 29.05.2020, to the limited extent of disallowances of Royalty of Coal, Surface Transportation Charges, evacuation facility charges and sizing/crushing charges only.

6. The Petitioner/DIL has computed the total compensation on account of 'Change in Law' events for FY 2022-23 for supply of Gross Contracted Capacity of 187 MW from Unit 2 of the Project to the Respondent/NPCL, which works out to **₹5.36 Crores**, which is much higher than the LC amount

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stipulated under Article 11.4 of the NPCL PPA for the same year. The claim details are summarized in the following Table:

**TABLE 2: SUMMARY OF CLAIMED AMOUNT UNDER CHANGE IN LAW  
EVENTS FOR FY 22-23  
(UPERC Order vide Petition No. 1440/2019 & 1655 /2020)**

*Rs. in Crore*

Summary of claim amount under Change in Law events for FY 2022-23					
Month	UoM	Coal Value	Freight Charges	Cost of Washed Coal	Total Arrears
Apr-22	Rs Crs	2.01	-1.42	0.00	0.59
May-22	Rs Crs	2.00	-1.41	0.00	0.59
Jun-22	Rs Crs	1.29	-0.91	0.00	0.38
Jul-22	Rs Crs	1.44	-1.02	0.00	0.43
Aug-22	Rs Crs	1.56	-1.10	0.00	0.46
Sep-22	Rs Crs	1.28	-0.91	0.00	0.38
Oct-22	Rs Crs	1.18	-0.83	0.00	0.35
Nov-22	Rs Crs	1.36	-0.96	0.00	0.40
Dec-22	Rs Crs	1.85	-1.31	0.00	0.55
Jan-23	Rs Crs	1.82	-1.28	0.00	0.54
Feb-23	Rs Crs	1.19	-0.84	0.00	0.35
Mar-23	Rs Crs	1.19	-0.84	0.00	0.35
<b>Total for FY 2022-23</b>	<b>Rs Crs</b>	<b>18.17</b>	<b>-12.81</b>	<b>0.00</b>	<b>5.36</b>

A reconciliation statement in effect of the above for FY 2022-23 duly certified by the Statutory Auditors, as per the Order dated 29.05.2020 passed by this Commission in Petition No. 1440 of 2019, has also been placed on record.

7. The total compensation on account of 'Change in Law' claims for the entire FY 2022-23 works out to ₹ 5.36 Crores. NPCL has already paid an amount of ₹ 5.25 Crores (after claiming applicable rebate) against the aforementioned Supplementary Invoices dated 05.11.2022, 14.04.2023 and

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21.04.2023. The Revenue Gap/(Surplus) due to 'Change in Law' events, including increase/revision in the rates of C.G. Environment Cess and C.G. Development Cess, based on the afore-said Order dated 29.05.2020 and 02.08.2022 has been shown in the following Table.

**TABLE 3: REVENUE GAP/(SURPLUS) DUE TO 'CHANGE IN LAW' EVENTS UNDER NPCL PPA - FY2022-23**

Rs. in Crore

Revenue Gap/(Surplus) towards 'Change in Law' events under NPCL PPA - FY 2022-23	
Particulars	FY 2022-23
Total Claim under Taxes & Duties (A)	5.36
Total Claim due to use of Washed Coal (B)	0.00
<b>Total Claim under Taxes &amp; Duties and Washed Coal C=(A+B)</b>	<b>5.36</b>
Adjusted rebate claimed by the Respondent@2% of the billed amount (D)	0.11
Amount paid (E) by the Respondent against Supplementary Invoice against after claiming rebate	5.25
<b>Balance Amount payable by NPCL due to 'Change in Law' events (F= C-D-E)</b>	<b>0.00</b>

#### Record of Proceedings

- The Commission, during the hearing on 14.09.2023 granted parties to file their reply & rejoinder in the matter. NPCL has filed its reply dated 11.10.2023 and DIL has filed its rejoinder dated 16.10.2023. The Commission, during hearing on 17.10.2023 fixed the final hearing on 09.11.2023 wherein the Commission, after hearing the arguments reserved its Order. The Commission, during the hearing on 14.09.2023 granted parties to file their reply & rejoinder in the matter. NPCL has filed its reply dated 11.10.2023 and DIL has filed its rejoinder dated 13.10.2023.
- The Petitioner vide its rejoinder dated 13.10.2023 has confirmed that it has duly considered the effect of 'Change in Law' events on all the components in its claim for FY 2022-23, wherever applicable, irrespective of increase or





decrease in the impact. The Petitioner also submitted that 'Change in Law' events which stand abolished or subsumed and the effect of which has been considered within the period of claim are set out below for ease of reference in the following Table:

**TABLE 4: 'Change in Law' events which stand abolished/subsumed**

Particulars	As on Cut-off date 26.10.2015 (Rs/Ton)	Revised Value (₹/Ton)/ (%)	With Effective from	Notifications
<b>Components of Coal Charges</b>				
Clean Energy Cess (Subsumed as State Compensation cess from 01.07.2017)	200	Abolished	01.07.2017	SECL Notification No. SECL/BSP/S&M/17-18/1585 dated 26.07.2017.
Stowing Excise Duty (Subsumed as GST from 01.07.2017)	10	Abolished	01.07.2017	SECL Notification No. SECL/BSP/S&M/17-18/1585 dated 26.07.2017.
Excise Duty (Subsumed as GST from 01.07.2017)	57.33	Abolished	01.07.2017	SECL Notification No. SECL/BSP/S&M/17-18/1585 dated 26.07.2017.
Central Sales tax (Subsumed as GST from 01.07.2017)	24.26	Abolished	01.07.2017	SECL Notification No. SECL/BSP/S&M/17-18/1585 dated 26.07.2017.
GST	No such levy	5.00%	01.07.2017	SECL Notification No. SECL/BSP/S&M/17-18/1585 dated 26.07.2017.

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State/GST Compensation Cess	No such levy	400	01.07.2017	SECL Notification No. SECL/BSP/S&M/17-18/1585 dated 26.07.2017.
<b>Components of Freight Charges</b>				
Busy Season Charges	115.83	Abolished	15.01.2018	Rate Master Circular No 01 of 2018 dated 09.01.2018 (Notification No. TCR/1078/2015/07) pertaining to with drawl of Dynamic Pricing Policy on levy of Busy Season Charges and Development Surcharge
Development Surcharge	57.27	Abolished	15.01.2018	Rate Master Circular No 01 of 2018 dated 09.01.2018 (Notification No. TCR/1078/2015/07) pertaining to with drawl of Dynamic Pricing Policy on levy of Busy Season Charges and Development Surcharge
Service tax (Subsumed as GST from 01.07.2017)	4.20%	Abolished	01.07.2017	MoR Rates Circular No. 19 of 2017 (Notification No TCR/1078/2017/19) dated 30.06.2017
GST	No such levy	5.00%	01.07.2017	MoR Rates Circular No. 19 of 2017 (Notification No. TCR/1078/2017/19) dated 30.06.2017

10.The effect on the total claim under 'Change in Law' events for FY 2022-23 on account of such abolishment/reduction in rates has been duly considered by the Petitioner in the Petition and a total benefit of ₹ **15.48 Crores** has

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been passed on to the Respondent on account of abolishment/reduction in rates during FY 2022-23 as shown in the following Table:

**Table 5: Effect of 'Change in Law' events which stand abolished/subsumed (Rs.in Crore)**

S. No.	Change in Law Events	Benefits passed on to the Respondent Amount (in ₹ Crores)- FY 2022-23
1.	Central Excise Duty leviable on Coal	4.55
2.	Stowing Excise Duty	0.79
3.	Central Sales Tax (CST)	1.92
	<b>Sub-Total</b>	<b>7.26</b>
4.	Less: GST claimed on Coal Price	(5.56)
	<b>Net Benefit due to implementation of GST w.e.f. 01.07.2017</b>	<b>1.70</b>
5.	Net Benefit due to Busy Season Surcharge	9.18
6.	Net Benefit due to Development Surcharge	4.54
	<b>Total Benefit passed on to Respondent</b>	<b>15.48</b>

11.The claimed amount of ₹5.36 Crores as claimed under 'Change in Law' events for FY 2022-23 is much higher than the threshold stipulated under Article 11.4 read with Article 13.2 of the PPA.

12.In compliance with the directions of the Commission's vide its Order dated 29.05.2020, the Petitioner has submitted the certificates provided by M/s Mitra S. K. Private Limited ("MSK") for the period April 2022 to June 2022 and Inspectorate Griffith India Pvt. Ltd. ("IGI") for the period July 2022 to Mar 2023 (both being NABL accredited third party sampling agency empanelled by Coal India Limited) for 'As Received' GCV of FSA Grade Coal received during FY 2022-23.

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### Commission's analysis and decision

13. The Petitioner is seeking compensation/ true up for the period FY 2022-23 due to the Change in Law events impacting cost of coal and freight charges, approved by this Commission vide its Order dated 29.05.2020 in Petition No. 1440 of 2019 and Order dated 02.08.2022 towards Change in Law event owing to increase/revision of C'garh Environment Cess and Development Cess.

14. The Commission vide order dated 29.05.2020 in Petition No. 1440/2019 and Order dated 02.08.2022 in Petition No. 1655 of 2020 has approved following change in law events:

**Table 6: "Change in law "events approved by the Commission.**

S.No.	Change in Law Event	Decision
<b>A.</b>	<b>Increase in the Landed Price of FSA Grade Coal due to Change in Law Events</b>	
1.	Royalty on Coal	Not allowed
2.	Contribution towards District Mineral Foundation and National Mineral Exploration Trust	Allowed
3.	Increase in Surface Transportation Charges and Sizing / Crushing Charges	Not allowed
4.	Increase in Niryat Kar	Not allowed (liberty granted)
5.	Increase in Clean Energy Cess (later renamed as Clean Environment Cess and subsequently, as State Compensation Cess)	Allowed
6.	Levy of Evacuation Facility Charges	Not allowed
7.	CG Environmental Cess	Allowed
8.	CG Development Cess	Allowed
9.	Changes in Busy Season Charges and Development Surcharge	Allowed
10.	Introduction of Coal Terminal Surcharge	Allowed
11.	Increase in Service Tax on Railway Freight and Introduction of Goods & Service Tax on Transportation of Goods by Rail	Allowed
12.	Increase in Excise Duty and Central Sales Tax on Coal	Allowed

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13.	Introduction of Goods & Service Tax on Coal	Allowed
14.	Change in Stowing excise duty	Allowed
B.	Additional Cost incurred for using Washed Coal	Allowed
C.	Carrying cost	Allowed

15. Based on the Commission's approved change in law events, the revised values applicable for period of 01.04.2022 to 31.03.2023 are as below:

**Table 7: Revised values of approved "Change in law" events**

Particulars	As on 26.10.2015 (Rs/Ton)	Revised Value (Rs/Ton)/ (%)	Applicable Period
DMF	No such levy	40.53	01.04.2022 to 31.03.2023
NMET	No such levy	2.70	01.04.2022 to 31.03.2023
Clean Energy Cess	200	No such levy	01.04.2022 to 31.03.2023
Stowing Excise Duty	10	Abolished	01.04.2022 to 31.03.2023
Excise Duty	57.33	Abolished	01.04.2022 to 31.03.2023
Central Sales tax	24.26	Abolished	01.04.2022 to 31.03.2023
GST on Coal	No such levy	5%	01.04.2022 to 31.03.2023
State Compensation Cess	No such levy	400	01.04.2022 to 31.03.2023
CG Environmental Cess	7.50	11.25	01.04.2022 to 31.03.2023
CG Development Cess	7.50	11.25	01.04.2022 to 31.03.2023
Busy Season Charges	115.83	Abolished	01.04.2022 to 31.03.2023
Development Surcharge	57.27	Abolished	01.04.2022 to 31.03.2023

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Particulars	As on 26.10.2015 (Rs/Ton)	Revised Value (Rs/Ton)/ (%)	Applicable Period
Service Tax	4.20%	Abolished	01.04.2022 to 31.03.2023
GST on Freight	No such levy	5.00%	01.04.2022 to 31.03.2023

16.The certificates of NABL accredited third party sampling agency for 'As Received' GCV of FSA Grade Coal received during FY 2022-23 are placed on record. The reconciliation statement for FY 2022-23 duly certified by the Statutory Auditors is also placed on record.

17.DIL has supplied ex-bus 1370.12 MUs during FY 2022-23, out of which 1027.58 MU has been supplied out of FSA grade coal, as validated through Monthly Regional Energy Accounts ("REA") issued by Western Regional Power Committee ("WRPC") and Northern Regional Power Committee ("NRPC") for FY 2022-23. As such 75% of the energy has been supplied through FSA grade coal. The details of energy supplied out of FSA grade coal are as below:

**Table 8: Details of energy supplied out of FSA grade coal**

Month	Ex-Bus energy from FSA Grade Coal (Mus)	GCV of FSA coal consumed (kCal/kg)	FSA Coal Consumed (MT)
Apr-22	121.44	3553	87167
May-22	115.73	3409	86857
Jun-22	73.71	3375	55700
Jul-22	80.76	3295	62511
Aug-22	89.04	3365	67488
Sep-22	68.67	3152	55571
Oct-22	65.67	3293	50867
Nov-22	78.69	3417	58726
Dec-22	103.65	3294	80253
Jan-23	100.12	3247	78641
Feb-23	64.59	3200	51485
Mar-23	65.50	3247	51450
<b>FY 2022-23</b>	<b>1027.58</b>	<b>3333</b>	<b>7,86,445</b>





18.The total claimed and approved amount of increase in cost of coal and transportation of FSA Grade coal is as below:

**Table 9: Approved amount of "Change in law events" (Rs.in Crore)**

Summary of claim amount under Change in Law events for FY 2022-23					
Month	UoM	Coal Value	Freight Charges	Cost of Washed Coal	Total Arrears
Apr-22	Rs Crs	2.01	-1.42	0.00	0.59
May-22	Rs Crs	2.00	-1.41	0.00	0.59
Jun-22	Rs Crs	1.29	-0.91	0.00	0.38
Jul-22	Rs Crs	1.44	-1.02	0.00	0.43
Aug-22	Rs Crs	1.56	-1.10	0.00	0.46
Sep-22	Rs Crs	1.28	-0.91	0.00	0.38
Oct-22	Rs Crs	1.18	-0.83	0.00	0.35
Nov-22	Rs Crs	1.36	-0.96	0.00	0.40
Dec-22	Rs Crs	1.85	-1.31	0.00	0.55
Jan-23	Rs Crs	1.82	-1.28	0.00	0.54
Feb-23	Rs Crs	1.19	-0.84	0.00	0.35
Mar-23	Rs Crs	1.19	-0.84	0.00	0.35
<b>Total for FY 2022-23</b>	<b>Rs Crs</b>	<b>18.17</b>	<b>-12.81</b>	<b>0.00</b>	<b>5.36</b>

19.The summary of total claim amount under all 'Change in Law' events for FY 2022-23 is as shown in the following table:

**Table 10: Total Claim under Change in Law during FY 2022-23 (Rs. Crore)**

Revised Total Claim under 'Change in Law' Events during FY 2022-23	
Change in Law Events	FY 2021-22
State Compensation Cess	15.85
DMF on 30% on Royalty	3.21
NMET on 2% on Royalty	0.21
Stowing Exercise Duty	-0.79
CG Environment cess	0.30

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CG Development cess	0.30
Excise Duty	-4.54
Central Sales Tax	-1.92
IGST for Coal Charges	5.55
Busy Season Charges	-9.18
Development Surcharge	-4.54
Service Tax/IGST on Freight Charges	0.91
<b>Total claimed under 'Change in law' Events - FY 2022-23</b>	<b>5.36</b>

20. Further, as per the direction of this Commission vide Order dated 29.05.2020, the claims, arising out of above occurrence of 'Change in Law' events for FY 2022-23, shall be payable only if such increase in revenue or cost to the Petitioner is more than 1% of Letter of Credit ("LC") amount in aggregate for a contract year as per Article 13.2 of the PPA. The above amount of ₹5.36 Crores as claimed under 'Change in Law' events for FY 2022-23 is much higher than the amount stipulated under Article 11.4 of the PPA for the same year as demonstrated in the following Table:

Rs. in Crs

FY	Monthly Average Billing based on Normative Availability	LC Value	1% of LC Value	Claimed amount under Change in Law
2022-23	45.50	50.06	0.5	5.36

21. The Petitioner, has, vide its invoices dated 05.11.2022, 14.04.2023 and 21.04.2023 claimed the above amount of ₹5.36 Crores towards the 'Change in Law' events for FY 2022-23. The Respondent/NPCL has accordingly disbursed the amount of ₹5.25 Crores towards such claims of the Petitioner/DIL under 'Change in Law' events in the form of adjustment in the monthly energy bill of April 2022, after netting off the 2% rebate amounting to ₹0.11 Crore. The Revenue Gap/(Surplus) with respect to the billed amount as shown in the table below.

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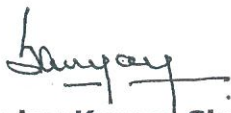



<b>Revenue Gap/(Surplus) towards 'Change in Law' events under NPCL PPA - FY 2022-23</b>	
<b>Particulars</b>	<b>FY 2022-23</b>
Total Claim under Taxes & Duties (A) under Petition No. 1440 of 2019	5.36
Total Claim due to use of Washed Coal (B) under Petition No. 1440 of 2019	0.00
<b>Total amount billed by DIL (C = A + B)</b>	<b>5.36</b>
Adjusted rebate claimed by the Respondent@2% of the billed amount (D)	
Amount paid by the Respondent against Supplementary Invoices after claiming rebate (E)	5.25
<b>Balance Amount payable by NPCL due to 'Change in Law' events (F= C-D-E)</b>	<b>0.00</b>

#### **Commission's View**

**22. Therefore, the total amount of claim on account of Change in Law Events approved in the Order dated 29.05.2020 and 02.08.2022 taken together for FY 2022-23 works out to Rs 5.36 Cr and is approved.**

The Petition is accordingly disposed of.

  
**(Sanjay Kumar Singh)**  
**Member**

  
**(Vinod Kumar Srivastava)**  
**Member (Law)**

  
**(Arvind Kumar)**  
**Chairman**

Place: Lucknow

Dated: 12.04.2024



