

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 7 of 2020

Case of M/s. ACME Chittorgarh Solar Energy Pvt. Ltd. seeking compensation towards increase in capital cost due to introduction and imposition of Safe Guard Duty

M/s. ACME Chittorgarh Solar Energy Pvt. LtdPetitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd.. ...Respondents

Appearance

For the Petitioner :Shri. Hemant Sahai (Adv.)
For the Respondent :Shri. Ashish Singh (Adv.)

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 15 June, 2020

1. M/s. ACME Chittorgarh Solar Energy Pvt. Ltd (ACSEPL) has filed this Case dated 13 January, 2020 against Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) seeking issuance of appropriate Order(s)/Directions(s) as per Article 9 of the Power Purchase Agreement (PPA) dated 27 July, 2018 for a mechanism for recovery of the compensation towards increase in capital cost due to introduction and imposition of Safe Guard Duty by way of Notification dated 30 July, 2018 issued by the Department of Revenue, Ministry of Finance (Government of India) .
2. **Main Prayers of ACSEPL are as follows:**

(a) Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost due to imposition of Safeguard Duty aggregating to INR 105,44,49,166;

(b) Allow carrying costs amounting to INR 5,81,95,009 on reimbursement of Safeguard Duty calculated as on 08.01.2020 plus the carrying costs up to the date of the Order to be issued by this Hon'ble Commission;

(c) Direct the Respondent to pay the above-mentioned amount by way of compensatory tariff of INR 0.4406 per kWh for the period of the PPA;

(d) Direct the Respondent to pay the additional carrying costs on any deferred recovery of the compensatory tariff/payments as entitled to be received by virtue of prayer (a) and (b) above;

3. ACSEPL in its Petition has stated as under:

3.1 ACSEPL is a wholly owned subsidiary of M/s ACME Solar Holdings Limited which is engaged in the business of development, building, owning, operating and maintaining utility scale grid connected solar power projects and is engaged in the business of generation of power.

3.2 On 9 April 2018, MSEDCL issued Request for Selection (**RfS**) to procure 1000 MW of Solar Power on Long Term basis from new or existing Solar Projects through Competitive Bidding process under Section 63 of EA to meet its Renewable Purchase Obligation. Subsequent to financial and technical qualification, ACME was shortlisted as one of the successful bidders. MSEDCL issued LoA dated 5 June 2018, for 250 MW in favour of ACME Solar Holdings Limited, declaring ACME as a successful bidder for the development of Solar Power Project of 250 MW capacity located at Badisid (Village), Bap (Tehsil), Jodhpur (Dist), State – Rajasthan.

3.3 On 27 July 2018, in accordance with the terms of the RfS, ACME Solar Holdings Limited promoted and incorporated ACSEPL as a special purpose vehicle for the purposes of development of the project and entered into PPA with MSEDCL.

3.4 The Government of India on 30 July 2018 issued SGD Notification which impacted the capital cost of the Project. Per the said notification, the Government of India has imposed safeguard duty on the following rates upon the import of solar cells and modules, (whether or not assembled in modules or panels) from certain countries, including China:

Time Period	Safeguard Duty
From 30.07.2018 to 29.07.2019	25%
From 30.07.2019 to 29.01.2020	20%
From 30.01.2020 to 29.07.2020	15%

3.5 Consequently, ACSEPL on 13 September 2018 issued a Notice of Change in Law to MSEDCL. ACSEPL by way of the said letter detailed the imposition of safeguard duty

by the Government of India and its consequent impact on the project cost. However, MSEDCL failed and neglected to provide any response to such intimation and notice of ACSEPL.

- 3.6 Therefore, ACSEPL had approached the Commission in Case No. 340 of 2018. The Commission by its Order dated 15 February 2019 in Case No. 340 of 2018 has already held that the SGD Notification is a “Change in Law Event” in terms of Article 9 of the PPA.
- 3.7 During the proceeding of the hearing in Case No. 340 of 2018, ACSEPL was in the process of procuring the solar modules, and therefore, the details were not supplied at that juncture. Considering the same, the Commission did not deal with the specific computation and impact of Safeguard Duty payable by ACSEPL since at that stage ACSEPL was in the process of procuring the solar modules, details of which were pending and therefore, did not put them before the Commission.
- 3.8 ACSEPL placed the orders for purchase of modules from China and received all the Solar Panels post 30 July 2018 thereby attracting the imposition of Safeguard Duty. The commercial invoices issued on account of safeguard duty imposed along with the share of IGST imposed on the said Safeguard Duty, the payment proof along with the Chartered Accountant’s certificate for such payments is annexed with the Petition.
- 3.9 The Commission by its Order dated 15 February 2019 has already confirmed that the imposition of the Safeguard Duty is a change in law event in terms of Article 9 of the PPA. Hence present Petition has been filed to seek consequential relief from such order i.e. seeking recovery of the additional capital cost that has been incurred by ACSEPL due to imposition of the Safeguard Duty by the Central Government.
- 3.10 The procedure for working out the compensation for Solar Renewable projects has been outlined in the PPA itself. As per PPA provision, the affected party has to be restored to the same financial position by way of compensation as if event of Change in Law had not occurred. The quantum of compensation and mechanism of compensating affected party is to be decided by the Commission.
- 3.11 Further, the Ministry of Power had issued directions on 27 August, 2017 under Section 107 of EA to the e Central Electricity Regulatory Commission (**CERC**). Under this, it had directed CERC to determine the per unit impact of such domestic duties, levies, cess and taxes which can be passed on. The relevant extracts of the directions is as under:

“3. Now, in Order to address the above issue and ensure sustainability of the electricity market in the larger public interest, the Central Government, in exercise of the powers conferred under section 107 of the Act, hereby issues this direction to the Central Electricity Regulatory Commission:

a)Any change in domestic duties, levies, cess and taxes imposed by Central

Government, State Governments / Union Territories or by any Government instrumentality leading to corresponding changes in the cost, may be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through.

b) Central Commission will only determine the per unit impact of such change in domestic duties, levies, cess and taxes, which will be passed on.”

3.12 Based on the above directions and provisions as mentioned in the PPA, the Commission may compute the per Unit impact and accordingly compute the compensation that ACSEPL is entitled to claim from MSEDCL. For the same, the complete shipment details have been annexed with Petition.

3.13 For the purpose of calculating per unit impact on tariff due to additional cost incurred towards Safeguard duty, ACSEPL has relied on MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015 and arrived at per unit impact. The annuity payment based on the model comes out to be Rs. 17.70 Crores for a period of 25 years.

3.14 The Commission previously vide its Order dated 15 February,2019 has already observed that in terms of the PPA dated 27 July, 2018, ACSEPL is entitled to claim carrying cost. The relevant portion of the Order dated 15.02.2019 is reproduced as under:

“29. In view of the foregoing, the Commission rules that the Ministry of Finance Notification dated 30 July, 2018 imposing Safeguard Duty is an event of Change in Law. Further the Commission also rules that the additional expenditure and other consequential impacts shall be considered on actual basis for reimbursement under Change in Law subject to prudent check. Accordingly, Power Producers shall approach the Commission at later date for determination of increase in cost or/and revenue expenditure on account of imposition of Safeguard Duty, if any and the mode of recovery of the same.”

3.15 The carrying cost is the compensation for time value of the money. Any compensation for Change in Law is incomplete if it does not come with carrying cost that is inherent in the very provision. The mandate for Change in Law provisions across all PPAs (standard documents drafted by the government) is restitution i.e. relief be granted in a manner so as to place an affected party in the same economic position as if a Change in Law event had not occurred. Restitution is therefore inherent in compensation. Carrying costs, being based on the principle of restitution ought to be granted from the effective date till the date of disbursal of actual compensation to ACSEPL.

3.16 In view of the foregoing, it is clearly discernible that ACSEPL has incurred an additional cost qua the Project of Rs. 105,44,49,166 as a direct consequence of the introduction/imposition of Safeguard Duty on the Project for which it must be compensated along with carrying costs for the period starting from the date on which it

has incurred the costs to the date of actual reimbursement by MSEDCL and would be entitled to claim carrying cost on any deferred recovery.

4. MSEDCL in its reply dated 28 April 2020, along with other issues has also objected to the capacity of Solar panel (250 MW as per PPA vs 319 MW considered by ACSEPL) to be considered for Change in Law compensation. However, during hearing held on 2 June 2020, MSEDCL has stated that it is not objecting on the capacity considered by ACSEPL as it is within the principles approved by the Commission in similar matters. Hence, while summarising submissions of MSEDCL and Reply of ACSEPL, this issue of capacity to be considered is not stated in this Order. Accordingly, other submissions of MSEDCL are summarised below:
 - 4.1.1 Documents submitted for payment of safeguard duty are under scrutiny. MSEDCL may require additional documents/information/data for verification of the same.
 - 4.1.2 The reimbursement/compensation towards safeguard duty, if any has to be provided through adjustment in tariff only.
 - 4.1.3 Calculations for determination of per unit impact provided by ACSEPL are based on the MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015. The Renewable Energy Tariff Orders are being issued under section 61 of EA and the tariff discovered for the present project is in accordance with section 63 of EA. Hence, the parameters prescribed in the RE Tariff Regulations, 2015 cannot be made applicable in the present case. Hence, the claim of ACSEPL for Rs.0.4439 per unit towards Safeguard Duty is not tenable
 - 4.1.4 As regards the compensation, the Commission has already specified a mechanism and modality for compensation of safeguard duty in its recent Orders. ACSEPL, on the one hand is emphasizing on it to be placed in same financial position as if the safeguard duty was not levied on it and on the other hand is conveniently hiding the details of financial model used to arrive at the bid tariff of Rs.2.72 per unit and instead seeking shelter of parameters used in the RE tariff Regulations, 2015.
 - 4.1.5 As regards the carrying cost, MSEDCL submits that the PPA is a sacrosanct document which provides for “Late Payment Charge” at 1.25% in case of delay in payment of bills. There cannot be any other penalty in the form of additional interest which is not provided in the PPA. In the present Case, no delay is there in payment of “Change in Law” bills as the same still needs to be approved by the Commission and raised by ACSEPL on MSEDCL.
 - 4.1.6 The Commission in its recent Safeguard Duty Orders has categorically mentioned that the compensation towards safeguard duty; if any has to be computed after due prudence check. In previous such matters, it was ruled by the Commission for submission of undertaking by the claimant regarding import of such solar modules from the countries attracting Safeguard Duty and also sample verification of the RFID tags.

4.1.7 The modality, manner and formula for calculation of impact of Change in Law and carrying cost thereof have already been decided by the Commission. Hence a similar dispensation needs to be provided by the Commission in the present matter as well to maintain parity and equality subject to submission of all necessary documents/ data /information/ undertaking/ Supplementary agreement as may be required.

5. ACSEPL in its Rejoinder dated 5 May 2020 has stated as under:

5.1 MSEDCL has not disputed treatment of the Safeguard Duty as a Change in Law Event under the PPA. MSEDCL has relied upon the Order of the Commission dated 13 November, 2019 in Case No. 259 of 2019 in the matter of Azure Power Thirty-Four Private Limited v/s. MSEDCL.

5.2 ACSEPL has undertaken installation of the solar panels in a phased manner beginning from 01 October 2019 and ending on 27 December 2019. These capacities have been duly certified by the Central Electricity Authority (CEA), Regional Inspectorial Organization (North) under the applicable laws. Following table showing the capacity addition in a phased manner undertaken by ACSEPL:

S. No.	Date as per CEA	Capacity of Modules Installed (in MW DC)
1	01 October, 2019	100.06
2	23 October, 2019	104.99
3	24 October, 2019	31
4	26 December, 2019	20.04
5	27 December, 2019	63.07
Total		319.16

5.3 MSEDCL vide its Certificate dated 1 January 2020 has verified and confirmed the commissioning and commercial operation of the 250 MW (AC) Solar PV Project of ACSEPL. As evident from the Commissioning Certificate and the Energization Approvals issued by CEA, ACSEPL had installed a capacity to the extent of 319.16 MW (DC) as on 27 December 2019 i.e. prior to the Commissioning of the Project on 1 January, 2020. Therefore, as per the agreed understanding between MSEDCL and ACSEPL, ACSEPL is entitled to receive compensation towards the impact of the Safeguard Duty on the Solar Panels of 319.16 MW (DC).

5.4 Few solar module consignments have been imported by ACSEPL, by executing bonds for payment of safeguard duty to the Customs Department. Owing to the huge amounts required to be paid under Safeguard duty which was not envisaged while quoting competitive tariff and subsequent non- realization of the same by MSEDCL for the past six months, ACSEPL was unable to clear these bonds from Customs department. ACSEPL, shall, in addition to such duty, will be liable to pay interest to Customs Department, at the rate of 15% -18% from the first date of month of filing of Bill of Entry to till the date of actual payment of duty thereof. Therefore, MSEDCL should also

consider such bond amounts along with interest as levied by Customs department while reconciliation and calculating tariff increment as per methodology directed by the Commission so that ACSEPL may clear the bonds by making the said payments to Customs department along with applicable interest. ACSEPL undertakes that it will submit the payment receipt from Customs department within 15 days from date of payment by MSEDCL.

- 5.5 As per the provisions as stipulated under Article 9.2 of the PPA, the affected party has to be restored to the same financial position by way of compensation as if event of Change in Law had not occurred. Accordingly, the compensation methodology to be adopted by the Commission ought to be laid down for allowing recovery of the following component:
- (a) Safeguard Duty (for both modes i.e. paid by cash and through bonds) along with the GST paid on the Solar Modules;
 - (b) Actual Interest on the component (a) above;
 - (c) Actual Carrying cost on the component (a) and (b) above from the date of incidence till the actual payment / deferred payment thereof.
- 5.6 The additional cost incurred by ACSEPL due to imposition of Safeguard Duty was entirely funded by ACSEPL itself as it was not envisaged during the time of bid submission. Considering that the existing Project lenders refused to upfront release / disburse additional amounts for payment of Safeguard Duty, ACSEPL therefore, availed loans from Non-Banking Financial Companies (NBFCs). These loans were availed having rate of interest in the range of 16 per cent per annum.
- 5.7 The PPA does not contemplate the rate of interest that may accrue upon ACSEPL due to payment of additional costs as a result of Change in Law Event. However, the PPA provisions restituting ACSEPL to same economic position as existing prior to the occurrence of Change in Law Event. Therefore, ACSEPL cannot be left remediless, by not providing it with the necessary interest that ensues from payment of additional costs as a result of Change in Law Event.
- 5.8 MSEDCL has submitted that the “Late Payment Charge at the rate of 1.25 per cent in excess of SBI (MCLR)” is only the applicable restitution mechanism provided under the PPA. Such submission is erroneous. It has to be clarified that Late Payment Charge (LPC) is a concept that has been incorporated as a principle in the PPA, to make good the delay that has been caused by MSEDCL in payment of the Monthly Invoices. Such charge provisioned under Article 6.3 of the PPA, cannot substitute the restitution envisioned under Article 9.2 of the PPA i.e. the LPC is available only for delayed payment of Monthly Invoices and not on additional costs that are incurred as a consequence to the Change in Law Event. These two concepts are mutually exclusive and cannot be used interchangeably.

- 5.9 The norms and parameters laid down by the Commission under MERC RE Tariff Regulations, 2015 applicable at the time of bidding of the Project, basis which the incremental increase on the tariff has to be computed is set out as under:

Parameters	Norms
Debt	70% of total cost
Equity	30% of total cost
Interest Rate on debt	300 basis point above SBI 1 year MCLR rate
Return on Equity	16% per annum (Post tax)
Depreciation for first 12 years	5.83%
Depreciation from 13 years onwards	1.54%
Interest on Working Capital	350 basis point above SBI 1 year MCLR rate

Considering the aforesaid parameters, the incremental tariff increase for the remainder of the PPA terms is Rs. 0.4439 per unit.

- 5.10 The Ministry of New and Renewable Energy (**MNRE**) vide its letter has directed that Change in Law compensations to developers shall be made by way of annuity and rate of such annuity to be calculated as per CERC Renewable Energy Tariff Regulations. Hence, similar approach may also be adopted by the Commission and ACSEPL may be allowed the tariff compensation by way of annuity and the rate of such annuity be allowed as provided by MNRE letter.
- 5.11 As regards MSEDCL seeking additional time in scrutinizing the documents that have been submitted for the purpose of reconciliation of amounts incurred by ACSEPL. These information/ documents were made available to MSEDCL on 28 January 2020, and till date ACSEPL has not received any request for additional documents / information from MSEDCL. It cannot be ignored that any delay in reconciliation by MSEDCL will consequently result in carrying cost, which ultimately be payable by the consumers of the State. Therefore, as a government instrumentality, it is desirable that MSEDCL acts promptly and reconciles the amounts at the earliest. In this regard, the Commission may provide not more than two weeks to MSEDCL for reconciliation of the amounts.
6. At the e-hearing through video conferencing held on 2 June, 2020, the Advocate of ACSEPL reiterated its submissions in the Petition and further stated that new alternate methodology for compensating ACSEPL on lumpsum basis with carrying cost as the compensation for time value of the money as per the principle of restitution should be considered. The Advocate of MSEDCL stated that it is not pressing issue of capacity of Solar Panels to be considered for computation of Change in Law. He requested that methodology adopted in recent Orders for computation of Change in Law impact of Safeguard Duty should also be applied in present matter. He further opposed allowing additional cost for executing bonds for payment of safeguard duty to the Customs Department along with interest as levied by Customs department as a compensation under the Change in Law

7. ACSEPL in its written submission dated 6 June 2020 has stated as under:

7.1 Prior to date of commissioning i.e. 01 January 2020, ACSEPL has installed all the solar modules aggregating to 319.16 MW DC capacity, as required for the Project. The aggregate principal amount towards impact of the SGD Notification on the Project cost is Rs. 106,22,57,810.

7.2 The said amount can be compensated to ACSEPL in either one of the following manners:

- (i) The payment of entire aggregate principal amount of Rs. 106,22,57,810 as a lump sum amount paid upfront, together with carrying cost. The carrying cost is to be calculated on the basis of an aggregated weighted average rate between cost of debt and cost of equity, that reflects the cost of this incremental investment towards capex. The weighted average rate as per MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015 is 14.25% $[(11.20\% \times 70\%) + (21.38\% \times 30\%) = 14.25\%]$ per annum. The carrying cost should be calculated for the period from the date of the financial liability on account of the SGD till the amounts are paid by the beneficiary. This payment structure has been awarded by the CERC in diverse cases of SGD as change in law, in respect of projects under the CERC's jurisdiction, OR
- (ii) The payment of entire aggregate principal amount of Rs. 106,22,57,810 together with carrying cost (upto COD), as an equated monthly instalments (EMIs), spread over a pre-determined period of time, starting from the COD. The carrying cost shall be calculated on the basis of an aggregated weighted average rate between cost of debt and cost of equity, that reflects the cost of this incremental investment towards capex. The weighted average annuity rate as per MERC RE Tariff Regulations, 2015 is 14.25% $[(11.20\% \times 70\%) + (21.38\% \times 30\%) = 14.25\%]$ per annum. Similarly, the carrying cost for the period from the date of the financial liability on account of the SGD till commissioning i.e. upto 01 January, 2020 should also be 14.25% per annum. The period of annuity payment could be 13 years, starting from COD, as has been accepted in principle by SECI in respect of diverse PPAs executed by it. Also, the accrued amounts corresponding to the period from the date of commissioning till the date of commencement of the payment, to be paid in lumpsum to ACME by MSEDCL along with the LPS specified in the PPA; OR
- (iii) The payment of entire aggregate principal amount of Rs. 106,22,57,810 together with carrying cost (upto COD), in the form of an incremental tariff. Fundamentally, the said aggregate principal amount, together with carrying cost, is in the nature of additional capex in the project. Since the principal amount is a determinate amount, the MERC may calculate an incremental tariff specific to this determinate amount of Rs. 106,22,57,810 (plus carrying cost upto COD) by applying the normative financial principles set out in the MERC RE Tariff

Regulations,2015. Therefore, this supplementary tariff on a per unit of electricity basis, can be paid against supplementary monthly invoices and calculated in respect of the number of units of electricity supplied for the month. The incremental tariff so determined should be paid w.e.f. the COD date for the Project. Also, the accrued amounts corresponding to the period from the date of commissioning till the date of commencement of the payment, to be paid in lumpsum to ACSEPL by MSEDCL along with the LPS specified in the PPA.

- 7.3 In the event the principal amount has to be paid over a longer period, then the applicable annuity rate has to be calculated not at the rate of LPS specified in the PPA, but in the manner submitted in paragraph above.
- 7.4 The principle adopted in the Azure Power case assumes that the principal amount is payable as a lump sum and therefore, delay in payment is to be compensated by the LPS which is applicable for delayed payment. The calculation of the principal amount, if it is to be paid over a period of time, will also need to include the cost of capital over such period of time and therefore, the annuity rate is not equivalent to the LPS prescribed in the PPA. If the power producer has to be restituted to be placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law then the carrying cost has to be determined according to the principles set out in para 6.3 above. LPS is not a mechanism for restitution where there is a delayed recovery of capital expenditure. LPS is applied only in case of delayed receipt of monthly invoices i.e. working capital.
- 7.5 ACSEPL has designed the capacity requirements applying the PVSyst Study, an established energy modeling tool that helps in analyzing how much solar energy can be harvested into an electrical energy from a particular project site / location. Also, Solar power is infirm in nature and depends upon Global Horizontal Irradiance (GHI) of Solar which varies from site to site. ACSEPL is confident of being able to meet the contractual requirements of delivering the required AC capacity.
- 7.6 The Commission, in Azure Power Case has given the formula to arrive at a maximum Direct Current (DC) capacity upto which Developers are entitled to Change in law claims. The same is: $(\text{Declared CUF}/\text{Min CUF}) \times \text{PPA Capacity}$. As per said formula, ACSEPL is entitled to Change in law for a maximum DC capacity of 391.25 MW DC $[(29.75\%/19\%) \times 250 \text{ MW} = 391.25 \text{ MW}]$. However, the installed DC capacity of ACME is 319.16 MW only which is within the maximum limit as specified by the Commission.
- 7.7 As per the PPA, the Scheduled SCOD was 27 October, 2019, however the actual commercial operation was achieved on 1 January, 2020 (with a delay of 65 days). Such delay has been condoned by MSEDCL upon payment of Liquidated Damages by ACSEPL. Therefore, ACSEPL is entitled to claim SGD on the modules procured even after the original Scheduled Commercial Operations Date (SCOD). The Commission is therefore prayed to allow change in law claims till extended commissioning date as mentioned in commissioning certificate and accepted by MSEDCL.

- 7.8 ACME has released certain Solar Modules from the Customs, after executing bonds with the Customs Department, which attract an interest of 15-18% additionally. While calculating the tariff increment, the bond amounts along with interest borne by ACME ought to be considered.
- 7.9 The Commission may appreciate that the Project was commissioned on 1. January, 2020 and has been supplying power to MSEDCL since then. However, since the present proceeding remained pending before the Commission, 5 months have passed by, without any recovery being made by ACME. Therefore, the amounts that have already accrued, as per methodology to be determined by the Commission in this Case, till the date of Order, may be paid as a lumpsum amount, together with LPS specified in the PPA for this period from COD till date of order of this commission.
- 7.10 The Commission should not allow any rebate in the payment of supplementary invoices raised in respect of the SGD claim allowed by the Commission under the present Petition.
- 7.11 The Commission in Azure Power Case has given liberty to MSEDCL to undertake sample verification of installation of modules through checking of RFID tags. In this regard, it is important to point out that since CEA has already certified the number of modules installed at the Project Site which has been referred by MSEDCL while inspecting the Project Site and relied upon by MSEDCL while issuing the Commissioning Certificate there is no reason for repeating a similar exercise once again as there is considerable cost and time involved. Sample verification through checking of RFID tags will only lead to further delay in compensating claims which will entail carrying cost, that is ultimately borne by the consumers of the State of Maharashtra.

Commission's Analysis and Ruling:

8. ACSEPL had approached the Commission in Case No. 340 of 2018 seeking the approval and determination of compensation on account of Change in Law for its Solar Project. The Commission in its combined Order dated 15 February 2019 provided the following dispensation:

“ 27. PPA also provides for the adjustment in the tariff to be effective from the date of Change in Law. Therefore, provisions of the PPA enable the Commission not only to declare an event as Change in Law but also to determine the increase or decrease in revenues or cost to the Power Producer on account of operation of Change in Law keeping in view the principle of compensation and the effective dates from which such compensation can be paid. There is no concept of in-principle approval of Change in Law, in the PPA. The consequential implementation of Change in Law and compensation will flow from the declaration and recognition that Ministry of Finance Notification dated 30 July, 2018 is a Change in Law. The Commission has already concluded that said Notification of imposing Safeguard Duty is in the nature of Change in Law. Power

Producers shall commission their respective projects and approach the Commission for determination of the increase in cost or/and revenue expenditure on account of implementation of such Change in Law. At that stage, the Commission will determine the mode of recovery of the cost or/and expenditure for the Power Producers due to Safeguard Duty on import of Solar panel / modules.

28. *As regard to the request of ACSEPL to extend date of Financial Closure and Schedule COD under the PPA, the Commission notes that Change in Law provisions under the PPA only talks about compensating the affected party as if Change in Law has not occurred. There is no provision of extending Scheduled COD on account of Change in Law. Hence, the Commission rejects the request of extending COD.*
29. *In view of the foregoing, the Commission rules that the Ministry of Finance Notification dated 30 July, 2018 imposing Safeguard Duty is an event of Change in Law. Further the Commission also rules that the additional expenditure and other consequential impacts shall be considered on actual basis for reimbursement under Change in Law subject to prudent check. Accordingly, Power Producers shall approach the Commission at later date for determination of increase in cost or/and revenue expenditure on account of imposition of Safeguard Duty, if any and the mode of recovery of the same.*

Thus, the Commission has already held that the imposition of Safeguard Duty is an event of Change in Law.

9. ACSEPL has filed this Case seeking approval and determination of the compensation under “Change in law” on account of the introduction of Safeguard Duty for its 250 MW Solar Project having PPA for sale of power to MSEDCL. ACSEPL has contended that it has incurred an additional cost of Rs 105.44 Cr. on account of Safeguard Duty (including IGST) for import of Solar PV Modules of capacity of 319.16 MW and accordingly it is seeking compensation of this amount and carrying cost of Rs. 5.81 Cr from MSEDCL by relying on restitution principle of the PPA.
10. The Commission notes that PPA has following provisions relating to compensation on account of event of Change in Law:

“9.2.1 In the event a Change in Law results in any adverse financial loss/ gain to the Power Producer then, in order to ensure that the Power Producer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Power Producer/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the MERC.

9.2.2. If a Change in Law results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of MERC.

9.2.3. The Power Procurer / MSEDCL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

9.2.4. The revised tariff shall be effective from the date of such Change in Law as approved by MERC, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated”

As per clause 9.2.1 of the PPA, affected party has to be restored to the same financial position by way of compensation as if event of Change in Law had not occurred. The quantum of compensation and mechanism of compensating affected party is to be decided by the Commission. Also, affected party has to provide all supporting documents to other party for ascertaining / substantiating impact of the Change in Law.

11. Accordingly, in the present Case ACSEPL has claimed Rs. 111.25 Cr. (Rs 105.44 Crs for SGD and related expenses + Rs 5.81 Crs as carrying cost) as quantum of compensation on account of Change in Law event (imposition of Safeguard Duty) and has also proposed in the Petition the mechanism of per unit impact with annuity payment over the PPA period of 25 years for providing compensation. It has also stated that all supporting documents for substantiating quantum of compensation has been provided along with Petition. Subsequently, during the proceeding of e-hearing, and written submission dated 6 June, 2020, ACSEPL has proposed alternate option of Lumpsum payment for providing compensation. MSEDCL has contended that the documents provided by ACSEPL are under scrutiny and MSEDCL may require additional documents/information/data for verification of the same. MSEDCL has also stated that payment methodology approved by the Commission in recent Orders for other Solar Project Developer shall also be applicable in present matter to avoid discrimination. MSEDCL has opposed request of ACSEPL for including interest on Custom's Bond in Change in Law compensation. Having heard both the parties, the Commission frames following issues for its consideration in the present matter:

- a. Whether all required documents for verification of Change in Law claim have been submitted.
- b. Whether interest cost on Custom Bonds are to be included in computation of Change in Law

- c. What is the Capacity of Solar Modules eligible for compensation under Change in Law
- d. What should be rate of interest for Carrying Cost?
- e. What is the Methodology for awarding compensation?

The Commission has dealt with the all above issues in the following paragraphs.

a. Whether all the required documents for verification of Change in Law claim have been submitted:

- 12. The Commission notes that MSEDCL in its reply has stated that the documents provided by ACSEPL are under scrutiny and MSEDCL may require additional documents /information /data for verification of the same. ACSEPL in its written reply has stated that after SCoD it had submitted the documents to MSEDCL on 28 January 2020. However, MSEDCL has not yet sought any additional document or clarification from it. Further, Central Electricity Authority (CEA) has already certified the number of modules installed at the Project Site which has been referred by MSEDCL while inspecting the Project Site and relied upon while issuing the Commissioning Certificate. Hence there is no need to repeat a similar exercise as there is considerable cost and time involved.
- 13. The Commission notes that verification of Solar panel for its country of origin and one to one tagging of Safeguard Duty payment is an essential requirement of verification of Change in Law claim. Further, the same is also as per the provisions of the contract. However, ACSEPL has submitted these documents to MSEDCL in January 2020 i.e. almost 5 months earlier. Till date MSEDCL has not completed verification process nor has it sought any additional information. Such delay in verification of claims would increase carrying cost liability and hence MSEDCL should complete verification process on priority. The Commission in its Order dated 13 November 2019 in Case No. 259 of 2019 has suggested interim arrangement to avoid delay in process of verification which is reproduced as under:

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14. In this regard, the Commission is of the opinion that although RFID tags gives exact details of country of origin, verification of each of such tag will be time consuming exercise and would require several months considering a very large number of modules. Although, verification process is important, one cannot ignore the fact that compensation under Change in Law is based on principle of restitution to the same financial position which as per settled principle of Law includes carrying cost from the date it affects the party. Hence, any delay in verification process will require MSEDCL to pay carrying cost to APTFPL. Therefore, in order to avoid un-necessary burden of carrying cost, APTFPL shall provide undertaking stating that all modules have been imported from the Countries which are subjected

to Safeguard Duty and shall also provide requisite details of RFID tag within six months from this order. In the meantime, MSEDCL may undertake sample verification of RFID tag (subject to the verification of the final data which APTFPL will submit to MSEDCL) and shall also consider other documents provided by APTFPL for verification of the claim under Change in Law event.

15.The Commission thinks it fit to direct MSEDCL to complete verification of supporting documents submitted by APTFPL on priority and should complete it within 45 days from the date of this Order. APTFPL shall cooperate with MSEDCL and provide all necessary documents for enabling MSEDCL to ascertain claim under the Change in Law event.

14. Above dispensation is squarely applicable in the present matter as well. As per provisions of PPA read with conditions stipulated in RFS documents, Solar Generator has to submit details of RFID tags to the Distribution Licensee for verifying technical compliance by the plant. Further, such RFID tags can also be used to ascertain that the panels at site are installed for PPA under consideration and imported from countries to which Safeguard Duty has been made applicable. Therefore, in case, ACSEPL is yet to submit these details of RFID tags as per provisions of PPA, it shall submit the same to MSEDCL immediately. Verification of such RFID tags would take substantial time, hence in order to avoid further delay in payment of compensation and thereby accumulation of carrying cost, ACSEPL shall provide undertaking that all modules installed at project site for supplying power to MSEDCL have been imported from the Country/ies which are subjected to Safeguard Duty. Without waiting for verification of documents and sample checking of modules MSEDCL shall act upon such undertaking given by ACSEPL and ascertain the compensation amount under Change in Law. Such ascertaining of compensation amount will be at risk and cost of the ACSEPL. MSEDCL shall complete this process within 15 days from date of this Order. In Parallel, additional documents, if required, shall be sought and scrutiny should be completed within 45 days. Further, physical verification of RFID tags shall be completed within 6 months using sampling techniques as per ISO sampling standards. ACSEPL shall cooperate with MSEDCL and provide all necessary documents for enabling MSEDCL to ascertain claim under the Change in Law event. Based on such scrutiny of documents and/or physical verification of RFID tag, compensation amount ascertained earlier shall be re-verified and in case of any deviation, same shall be adjusted with holding/carrying cost in future payments.

b. Whether interest cost on Custom Bonds could be included in computation of Change in Law

15. ACSEPL has submitted that it has got released certain Solar Modules from the Customs, after executing bonds with the Customs Department, which attract an interest of 15-18% additionally. Therefore, ACSEPL has claimed to include such interest cost on bonds in Change in Law compensation. MSEDCL has opposed such request of ACSEPL.

16. The Commission notes that provision of Change in Law enables the affected party to be placed in the same financial position as if event of Change in Law had not occurred. However, compensation for this purpose needs to be worked out judiciously so as to avoid inefficiencies or additional cost to be passed which will adversely impact other party.
17. As per Clause 3.1 (ix) of the PPA reproduced below, ACSEPL is responsible for payment of all types of taxes/ cess:

ix) The Power Producer shall be responsible for all payments on account of any taxes, cesses, duties or levies imposed by the GoI/State Government or its competent statutory authority on the land, equipment, material or works of the Project or on the Electricity generated or consumed by project or by itself or on the income or assets owned by it.

Thus, payment of duties (which includes Safeguard Duty) is obligation of ACSEPL. Hence, any financing cost for paying such duties also needs to be borne by ACSEPL only. It cannot be passed on to procurer i.e. MSEDCL. Bonds were signed by ACSEPL as it chose to defer the payment of SGD to get the solar panels released from Customs. Procurer cannot be expected to cover the financing cost and the liabilities, if any, to the concerned authorities for handling of imported panels at the port.

18. Hence, ACSEPL's request to allow interest cost on Custom Bond cannot be included in Change in Law compensation and hence is not accepted.

c. What is the Capacity of Solar Modules eligible for compensation under Change in Law:

19. Both parties in their final submission have not disputed capacity of Solar Panels which would be eligible for payment of compensation under Change in Law. They have relied upon Commission's recent Order dated 13 November, 2019 in Case No. 259 of 2019 for this purpose. Relevant part of this Order is reproduced below:

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17. With this background, the Commission is of the opinion that APTFPL's decision of installing 195 MW of DC solar module for providing AC output of 130 MW is with the intention to optimise performance of the plant by achieving higher CUF of 28.34% as against minimum threshold of 19% mentioned in the bidding document. Such optimisation has allowed APTFPL to offer rate of Rs. 2.72/kWh to MSEDCL. In case APTFPL had designed its plant for 19% CUF, then rate for sale of solar energy would have been different and most probably would have been more than existing rate of Rs. 2.72/kWh. Therefore, in the opinion of the Commission, APTFPL as well as MSEDCL is getting benefit of higher CUF which is being achieved by way of installing more DC solar modules. In case, if MSEDCL's argument is accepted that it does not require energy more than 19% CUF, then it would not only lose the opportunity of procuring such additional energy at a lower rate of Rs. 2.72/kWh, but would be required to undertake separate bidding process for procuring such additional energy as MSEDCL is still under shortfall in its Solar

RPO. Further, due to reducing cost of solar panel, in recent past it is become industrial practice to install higher capacity of DC solar panel as compared to desired AC output for targeting best financial output. Such projects are being commissioned with DC to AC ratio between 1.2 to 1.6. Therefore, it is not in the interest of MSEDCL to refuse energy above 19% CUF beside it has agreed under PPA for higher CUF of 28.34%.

18. *As MSEDCL is getting benefit of lower tariff on account of higher CUF on account of higher DC capacity of solar module, it cannot deny its obligation to compensate APTFPL for Change in Law event which affected cost of DC module installed in the project. At the same time, it cannot be open for APTFPL to install any amount of DC module in the project and claim compensation for the same from MSEDCL. The Commission notes that bidding document has stipulated minimum CUF of 19% which was to be maintained throughout the tenure of PPA. For maintaining such CUF, generator is required to provide additional DC capacity to take care of losses in inverter, evacuation infrastructure and also degradation factor of Solar module. Such higher capacity has to be provided by generator and no compensation on account of Change in Law can be allowed for the same. If we consider 19% CUF prescribed under bidding document as base then for 130 MW of AC output, APTFPL should have been compensated for 130 MW of DC module as higher capacity of Solar module for taking care of conversion, degradation & transmission loss has to be borne by APTFPL. Therefore, for 28.34% of CUF, APTFPL needs to be compensated for 194 MW ($28.34/19 \times 130$ MW) and not for 195 MW as claimed by APTFPL.*
20. In view of the above ruling of the Commission, for fulfilling the contractual obligation of supplying 250 MW (AC) capacity to MSEDCL, ACSEPL is entitled to Change in law for a maximum DC capacity of 391.25 MW DC [$(29.75\%/19\%) \times 250$ MW = 391.25 MW]. However, the installed DC capacity of ACSEPL is 319.16 MW only which is within the maximum limit as specified by the Commission.
21. ACSEPL while substantiating the capacity of 319.16 MW, has stated that it has analysed and designed the capacity requirements by applying the PVSyst Study, an energy modeling tool that helps in analyzing how much solar energy can be harvested into an electrical energy from a particular project site / location. However, from the data made available by MSEDCL, it is observed that as against declared CUF of 29.75%, ACSEPL is able to achieve monthly CUF in the range of 21 to 24% in the period of February 2020 to May 2020. ACSEPL always has option of improving its performance by undertaking some measures. But in case ACSEPL fails to achieve lower limit of declared CUF on annual basis, then as per provisions of PPA it will lead to imposition of penalty at rate of 25% of PPA tariff on quantum of short supplied energy. PPA also provides option to Generator to revise CUF within one year from date of commissioning of the project. ACSEPL may exercise its choice to finalise its declared CUF and the DC installed capacity. No further claims of change in law would be admissible for any additional modules in case DC capacity is upwardly revised.

22. In view of the above, based on present declared CUF of 29.75%, the Commission accepts DC capacity of 319.16 MW installed by ACSEPL for compensation payable under Change in Law.

d. What should be Rate of interest for Carrying Cost:

23. The Commission notes that there is no dispute amongst the parties relating to allowing carrying cost as per restitution principle of the PPA. However, both parties are in dispute on rate of interest for such carrying cost. ACSEPL has contended that carrying cost needs to be allowed at weighted average annuity rate as per MERC RE Tariff Regulations, 2015 i.e. 14.25% $[(11.20\% \times 70\%) + (21.38\% \times 30\%) = 14.25\%]$ per annum. ACSEPL has cited CERC Order allowing interest rate on annuity basis and opposed use of Late Payment Surcharge stipulated in the PPA as a proxy to carrying cost. On the other hand MSEDCL has responded by stating that principles approved by the Commission in recent Order dated 13 November 2019 should be adopted here for avoiding discrimination among Solar generators.
24. In this regard, the Commission notes that during the hearing, the Advocate of the ACSEPL has fairly stated that CERC judgments are not binding on this Commission but requested to refer it for guidance. The Commission notes that CERC has allowed parties to mutually agree to pay compensation in lumpsum or on annuity basis over the period of PPA without specifying rate of interest for such annuity basis. Hence, CERC Order does not provide guidance on carrying cost besides it is not binding on this Commission.
25. The Commission notes that carrying cost is allowed as per restitution principle of the Change in Law stipulated under the PPA. Thus, carrying cost needs to reflect time value of money and cannot be used as tool to earn additional compensation. Use of weighted average cost of capital / annuity rate which includes rate of Return on Equity would provide higher compensation than time value of money and hence is not appropriate to use as interest rate for carrying cost.
26. In normal course, for time gap between date of spending and realising the said amount, utility takes Working Capital loan and as per tariff principle such utility is allowed to claim interest on such Working Capital loan. Similarly, when higher expenses are incurred on account of Change in Law which is to be reimbursed at later date, entity may fund such expenses through Working Capital Loan or through other means available with it. However, under Section 63 bidding, Commission is not expected to go into all such financial details as bidder is not expected to disclose fundamental basis of the bid tariff. PPA does not stipulate rate of interest for carrying cost. Hence, as an alternative, rate of interest on working capital stipulated in RE Tariff Regulations is being used as rate for carrying cost to work out the financing cost.
27. MREC RE Tariff Regulations 2015 stipulates rate of interest on Working Capital as Base Rate (varies from 7.40% to 10% over the period) of State Bank of India plus 350 basis

point. However, at the same time it is important to note that late payment surcharge/delayed payment charges stipulated in the PPA is one year MCLR (varies from 7% to 9.20% over the period) of SBI plus 1.25% (125 basis point) which is lower than the rate of interest on Working Capital stipulated in Regulations. Delayed Payment charges is to cover cost of working capital which utility has to raise in view of non-availability of fund due to delayed payment plus some punitive charges so as to create deterrent and ensure payment by the due date. Therefore, delayed payment charges are always more than the interest rate for working capital. Same can be seen from MERC RE Tariff Regulations 2015 which stipulate interest on Working Capital as SBI Base Rate+350 basis point (effective max rate 13.50%) and delayed payment charges 15%. However, in case of ACSEPL's PPA, if SBI Base Rate + 350 basis point stipulated in Regulations is adopted as interest rate for working capital, then financial principle of having delayed payment charges (SBI MCLR + 125 basis point) higher than interest on working capital would not be fulfilled. Thus only conclusion that could be drawn is that present PPA which has been signed after following due competitive bidding process under Section 63 of the EA, 2003, presumes interest rate for working capital at much lower rate than that stipulated in MERC RE Tariff Regulations. However, as there is no other reference rate stipulated in Regulations, and in order to balance the interest of both parties, the Commission in its earlier Order dated 13 November 2019 has ruled that late payment surcharge/delayed payment charge stipulated in the PPA is to be used as a proxy for carrying cost. In view of factual situation explained above, in the opinion of the Commission it is the best option to continue with this dispensation.

28. Accordingly, the Commission rules that as in its earlier Order dated 13 November 2019 in Case No. 259 of 2019, in present matter also, carrying cost will be equal to 1.25% in excess of 1 year MCLR of State Bank of India. Further, as such rate is linked to 1 year MCLR of SBI, it is not a fixed rate, but will reflect cost of borrowing for different time span for which compensation is to be paid.
29. Carrying cost shall be applicable from date of payment of Safe Guard Duty to Government Authorities either through executing Custom Bonds or other means till date of this Order. For the sake of clarity it is once again reiterated that additional interest cost for repaying Custom bonds separately claimed by ACSEPL will not be allowed.

e. What is the Methodology for payment of Compensation under Change in Law?

30. ACSEPL has proposed three options for payment of compensation on account of Change in Law viz. a) Lumpsum payment, b) payment at equal monthly instalments and c) revision in tariff as per MERC RE Tariff Regulation 2015. ACSEPL has contended that carrying cost in all these options needs to be allowed. Whereas MSEDCL has stated that principles approved by the Commission in recent Order dated 13 November 2019 should be adopted.
31. The Commission in its earlier Order dated 13 November 2019 has stipulated following methodology for ascertaining amount to be paid on account of Change in Law:

22. *APTFPL has claimed that it incurred an additional cost of Rs 68.73 Crores on account of Safeguard Duty (including additional GST) on import of Solar PV Modules of capacity of 195 MW. As stated in para 15 above, MSEDCL needs to verify this claim of APTFPL. Subsequent to such verification, compensation to be paid to APTFPL on account of imposition of Safeguard Duty shall be computed as follows. For the purpose of illustration in the following paragraphs, the Commission has considered Rs. 68.64 crore as claim ascertained by MSEDCL. Such amount includes only Safeguard Duty (including additional GST).*

23. *As stated in para 20 above, APTFPL shall be eligible for compensation for 194 MW of solar panels/modules. Same shall be determined as Rs. 68.29 Crore (68.64 x 194/195). Further, as per principle of restitution provided under the Change in Law provisions of the PPA and as per settled Law, APTFPL shall be eligible for carrying cost from date it paid such amount to Government Authorities till date of this Order. As Late Payment surcharge in the PPA is linked to delayed payment, the Commission allows interest rate as per such provision of the PPA i.e. 1.25% in excess of 1 year MCLR of State Bank of India, which is 9.30%.*

Above ruling is squarely applicable in present matter. ACSEPL has contended that it has incurred an additional cost of Rs 105.44 Cr. on account of Safeguard Duty (including IGST) on import of Solar PV Modules of capacity of 319.16 MW. As ruled in para 22 above, all 319.16 MW of Solar PV Modules are to be considered for Change in Law computation. MSEDCL needs to verify ACSEPL's claim of additional cost with documentary proof. Further, as per principle of restitution provided under the Change in Law provisions of the PPA and as per settled Law, ACSEPL shall be eligible for carrying cost from date it paid such amount to Government Authorities till date of this Order. As stated in para 28 above, rate of interest for carrying cost will be equal to 1.25% in excess of 1 year MCLR of State Bank of India. Based on prevailing MCLR of SBI, rate of interest for carrying cost for each financial year would be different.

32. Amount of compensation to be paid ascertained as per above principle can be paid in lumpsum or in equal instalments. On the issue of lumpsum payment of compensation amount, the Commission in its earlier Order dated 13 November 2019 has already ruled as follows:

24. *Such amount determined as per methodology specified in above paragraph can be paid in lumpsum or can be converted into per unit rate over the tenure of the PPA. MSEDCL has opposed lumpsum payment as it will affect tariff of end consumers. However, the Commission is of the opinion that lumpsum payment would avoid further carrying cost which MSEDCL has to pay to APTFPL on account of deferred payment. Further, during the hearing, APTFPL has stated that it is willingly to offer some discount if payment is made in lumpsum. Considering all these aspects, MSEDCL has to decide whether it opts to pay the compensation on lumpsum basis or per unit basis over the PPA period. MSEDCL shall communicate its option of*

payment to APTFPL within a week from ascertaining amount of compensation to be paid as per para 18 above.

Above rulings are squarely applicable in present matter except discount, which has not been offered by ACSEPL in present matter. Thus, MSEDCL has option to decide whether it has to pay the amount of compensation in lumpsum to avoid further carrying cost or make payment over the tenure of PPA with additional carrying cost. MSEDCL has to decide its option of making payment of compensation and accordingly communicate the same to ACSEPL within a week from ascertaining amount of compensation to be paid.

33. Compensation amount can also be paid in equal monthly instalments instead of lumpsum payment. The Commission in recent Order dated 13 November 2019 has stipulated following methodology for payment of compensation over the PPA tenure:

19. APTFPL has considered impact of Safeguard Duty as increased capital cost and has applied other financial parameters as per Generic tariff Order for computing per unit impact of Change in Law. Consideration of financial parameters of Generic Tariff Order which is different from APTFPL's bid assumption would not restore it to the same financial position as if no Change in Law has occurred. Further, PPA does not provide any specific provisions which state that increase in expenses during construction period shall be treated as increase in capital cost and tariff shall be revised accordingly. PPA only provides for compensation of increased expenses. Such increased expenses have been ascertained in para 23 above. In case it is not paid in lumpsum and deferred over the period, then considering principle of restitution, APTFPL needs to get carrying cost on such deferred recovery. MSEDCL in its calculation has not considered such carrying cost on deferred recovery and hence it is not as per the restitution principle under Change in Law provisions of PPA.

20. In view of the above, for determination of per unit rate of compensation payable to APTFPL over the PPA period, following methodology needs to be adopted:

- a. Total amount of compensation to be paid in Rs. Crores ascertained as per para 15 and 23 above shall be the basis for computation of per unit rate. Such total amount shall be equally divided over each year of PPA tenure.
- b. Carrying cost shall be computed on the deferred recovery part (average of opening and closing balance) of total compensation at the simple interest rate of 1.25% in excess of 1 year MCLR of State Bank of India, which is rate prescribed under the PPA for Late Payment.
- c. Summation of installment of compensation computed at 'a' above and carrying cost on deferred recovery computed at 'b' above will be the amount which is to be paid to APTFPL during that particular year.

- d. *Per unit cost for a particular year shall be computed by dividing amount determined in 'c' above by energy to be supplied during that year from the project capacity of 130 MW at CUF of 28.34%. However, during the year of commissioning, availability of project only for the part of year shall be appropriately factored while computing energy to be supplied from the project.*
- e. *At the end of Financial Year, MSEDCL shall reconcile total amount paid through per unit charge as against total amount which is recoverable in that year as per 'c' above. Any over-recovery shall be adjusted in the payment for the month of March. Any under-recovery on account of lower generation shall be carried forward to next year and shall be payable without any additional carrying cost and only from the excess generation above 28.34%. Such unrecovered compensation, if any, at the end of PPA tenure shall be reconciled and paid in last month of PPA tenure at no additional carrying cost.*

21. *Above method of computing per unit impact of Change in Law compensation protects the interest of both parties as it provides time value of money (carrying cost) on deferred recoveries to APTFPL and also allows MSEDCL to smoothen the payment of compensation over the period of PPA. Also, it requires the generator to maintain the plant over the tenure of the PPA at agreed CUF of 28.34% to earn such compensation allocated for that year.*

Above methodology of payment of compensation amount over the PPA tenure is squarely applicable in present matter with case specify change of project capacity of 250 MW at CUF of 29.75%.

34. ACSEPL has also suggested that payment of compensation shall be completed within 13 years coinciding with repayment of loan capital. In this regard, the Commission notes that any option of paying ascertained amount of compensation within period lesser than PPA tenure will save carrying cost burden on MSEDCL. However, this decision has to be taken by MSEDCL by considering pros and cons of various options available. In case, MSEDCL agrees to make payment within period lower than PPA tenure, it can make appropriate modification (PPA tenure to be replaced by 'years' in which payment is to be made) in methodology stipulated above to arrive at per unit rate of compensation.
35. Hence, the following Order:

ORDER

- 1. ACME Chittorgarh Solar Energy Private Ltd is eligible for claiming compensation on account of imposition of Safeguard Duty (including additional GST) under Change in Law provisions of PPA for capacity of 319.16 MW of Solar module/panel**

installed at project location. IT shall provide undertaking that all modules installed at project site for supplying power to MSEDCL have been imported from the Country/ies which are subjected to Safeguard Duty.

2. Maharashtra State Electricity Distribution Co. Ltd. shall act upon such undertaking given by ACME Chittorgarh Solar Energy Private Ltd and ascertain the compensation amount under Change in Law. Such ascertainment of compensation amount will be at risk and cost of the ACME Chittorgarh Solar Energy Private Ltd. MSEDCL shall complete this process within 15 days from date of this Order. Based on the scrutiny of documents (to be completed in 45 days) and/or physical verification of RFID tag (to be completed in 6 months), compensation amount ascertained earlier shall be re-verified and in case of any deviation, same shall be adjusted with holding/carrying cost in future payments.
3. Compensation for Change in Law event shall be computed and paid as per methodology prescribed under Paras No. 31 to 34 above.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

