

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 8 of 2020

Case of M/s ReNew Solar Power Private Limited seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s ReNew Solar Power Private Limited

..... Petitioner

Maharashtra State Electricity Distribution Company Ltd.

..... Respondent

Coram
I.M. Bohari, Member
Mukesh Khullar, Member

Appearance

For the Petitioner

: Sh. Sujit Ghosh (Rep.)

For the Respondent

: Sh. Ashish Singh (Rep.)

ORDER

Date: 22 June, 2020

1. M/s ReNew Solar Power Private Limited (**RSPPL**) has filed this Petition on 13 January, 2020 under Section 86(1)(f) of the Electricity Act 2003 (**EA**) before the Commission for (i) approval of 'Change in Law' and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of Safeguard Duty (**SGD**) on solar cells/modules in terms of Article 9 of the Power Purchase Agreement (**PPA**) dated 27 July, 2018 between RSPPL and Maharashtra State Electricity Distribution Co. Ltd (**MSEDCL**).

2. RSPPL's main prayers are as follows:

- a) Declare the imposition of safeguard duty via Safeguard Duty Notification as Change in Law in terms of the PPA, which has a direct effect on the Project;*
- b) Evolve a suitable mechanism to compensate the Petitioner for the adverse financial loss incurred by the Petitioner on account of Change in Law through a lumpsum payment;*
- c) Grant carrying cost from the date of incurring of the cost by the Petitioner till the date of disbursal of the compensation considering that increase in cost has been financed by both debt and equity;*

3. RSPPL in its Case has stated as follows:

- 3.1. MSEDCL issued its Request for Selection (**RfS**) of Solar Power Developers (**SPDs**) for the development of 1000 MW (AC) Solar Projects through competitive bidding process dated 9 April 2018. RSPPL was selected as the successful bidder pursuant to Letter of Award (**LoA**) dated 25 May 2018.
- 3.2. In terms of the LoA, RSPPL entered into a PPA dated 27 July 2018 with MSEDCL for development of solar energy based power plant of 250 MW capacity at Village Mallaipatti, Tal. Kayatha, Dist., Tuticorin, State – Tamil Nadu. The PPA was amended vide Amendment (First) Agreement dated 27 November 2018 whereby the location of the power plant was changed to Village Lalsar and Jamsar, Tal. Bikaner, Dist. Bikaner, State – Rajasthan.
- 3.3. Subsequently, vide Notification No. 1/2018 (SG) dated 30 July 2018, Central Govt. imposed SGD as per the following rates on the import of 'Solar Cells whether or not assembled in modules or panels' (solar cells and modules):
 - a. 25% ad valorem, minus anti dumping duty, if any, when imported during the period from 30th July 2018 to 29th July 2019;
 - b. 20% ad valorem, minus anti dumping duty, if any, when imported during the period from 30th July 2019 to 29th January 2020;
 - c. 15% ad valorem, minus anti dumping duty, if any, when imported during the period from 30th January 2020 to 29th July 2020

- 3.4. RSPPL has filed this Petition seeking compensation consequent to issuance of SGD Notification imposing SGD at the rates prescribed therein on the import of solar cells and modules, after the last date of bid submission.
- 3.5. The issuance of SGD Notification and the consequent imposition of SGD on the import of solar cells and modules has resulted in an increase in the expenditure incurred by RSPPL after the last date of bid submission and thus has a direct adverse impact on the Project.
- 3.6. As per the provision dealing with Change in Law under the PPAs:
- a. A change in law event is any of the events enumerated therein. Enactment of a new law and any change in rate of taxes which have a direct effect on the Solar Power Project are listed as events under change in law;
 - b. Such change in law event must have occurred after the last date of bid submission; and
 - c. Where the change in law event causes any adverse financial loss or gain to the power producer, then the producer shall be compensated in order to place him in the same financial position as it would have been if not for the occurrence in change in law, and
 - d. The quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Commission.
- 3.7. Further, if the change in law results in RSPPL's costs being increased by 1% or more, of the estimated revenue for the contract period for which such adjustment becomes applicable, then the tariff payment shall be appropriately increased with due approval of the Commission. However, this condition is applicable during the Operation Period, and thereby would not be relevant for the present petition.
- 3.8. Further, it is also relevant to determine the 'last date of bid submission' as any of the aforementioned events would qualify as 'Change in Law' only if it occurs after the last date of bid submission. The last date that was set for submission of bids was 14 May 2018.
- 3.9. Accordingly, on the basis of the aforementioned provisions, it is submitted as follows:
- a. A change in law event is any of the events enumerated therein which includes enactment of any law as also any change in rate of taxes which have a direct effect on the solar project;

- b. The effect of change has occurred after the last date of bid submission, i.e. after 14 May 2018
- 3.10. The Commission in its Order dated 13 November, 2019 in the case of Azure Power Thirty-Four Private Limited, Case No. 259 of 2019, at para 6, has declared the imposition of safeguard duty as an event of change in law and has directed MSEDCL to complete the verification of the documents within a fixed period of 45 days from the date of the Order.
- 3.11. In the instant case, Article 9 i.e. the change in law clause under the PPA is similar to the change in law clause in the PPA which was discussed in the aforementioned decision by Commission. On the basis of the above, it is submitted that the ratio of the aforementioned decision that the imposition of SGD is covered as an enactment of a new law as well as change in rate of tax, would also be applicable to the present case and accordingly the present petition deserves to be allowed.
- 3.12. It is further submitted that prior to imposition of SGD, the import of solar modules was subjected to only Integrated Goods and Service Tax at 5% in as much as basic customs duty (BCD) was free. However, with effect from 30 July, 2018, the import of solar cells and modules required for the setting up of solar power project as per the PPA would be leviable to 25% SGD (which would be progressively liberalised) along with an additional IGST of 5% on the value of SGD. RSPPL's imports were made during the period 11 September 2019 to 18 October 2019. As per the SGD Notification, such imports made would be leviable to 20% SGD along with an additional IGST of 5% on the value of SGD.
- 3.13. RSPPL has placed various Purchase Orders on its suppliers for the supply of solar PV modules and imported the modules vide Bills of Entries. The entire shipping details, i.e. the Module Supplier's Name, Capacity in MWp, Module wattage, invoice number, invoice date, bills of entry number, bill of entry date, invoice amount, SGD, GST (5% with SGD included), challan numbers, challan date, date of payment etc. evidencing payment of duty have been submitted.
- 3.14. In terms of Article 9.1 of the PPA, in order to qualify as change in law, change in law event must have occurred after the last date of bid submission. In the present case, the last date of bid submission was 14 May 2018. Thus, as the SGD Notification came into effect on 30 July 2018, much after the last date of bid submission, such imposition of safeguard duty would qualify as a change in law under Article 9.1 of the PPA.
- 3.15. Article 9.2.1 of the PPA provides that where a change in law event results in any adverse financial loss to the power producer, the power producer must be placed in the same financial position as it would have been had it not for the occurrence of the Change in law, and is to

be compensated accordingly, subject to the condition that the quantum and mechanism of compensation shall be determined and shall be effective from such date as may be decided by the Commission. Thus, the PPA itself recognizes that in such a scenario, the SPD is to be placed in the same financial position, which is essentially the principle of restitution.

- 3.16. The increase in costs due to aforementioned change in law event have a direct bearing on debt and equity required for setting up of the Project. These components are integral to the all-inclusive tariff bid. At the time of the submissions of bid, RSPPL has factored in certain debt requirement, equity requirement, 'interest on debt' and 'return on equity' based on the costs estimated at the time of bid. With the increase in the costs due to the change in law events explained above, the debt and equity requirement, have also increased as compared to requirements ascertained at the time of bid. This additional requirement is met by the RSPPL themselves, till the Change in Law stands approved by the Commission and even thereafter, till the entire payment is disbursed to RSPPL.
- 3.17. Thus, in accordance with the Article 9.2.1 of the PPA, in order to be put in the same economic position as it was prior to the occurrence of the Change in Law, RSPPL is entitled to carrying costs (incorporating the cost of both debt and equity) so as to be proportionately compensated for the incremental capital expenditure incurred by it so as to put RSPPL in the same economic position as if change in law has not occurred.
- 3.18. It is also relevant to highlight that the Commission in the Order dated 13 November, 2019 has held that the Petitioner would be entitled to carrying costs as per the principle of restitution provided under the Change in Law provisions of the PPA and the settled law, from the date the payment was made to the Government Authorities till the date of the payment by MSEDCL.
- 3.19. As the provisions of the present PPA are identical to the PPA considered by the Commission in the aforementioned Order, RSPPL would also be entitled to carrying costs from the date of payment of SGD till the date of the reimbursement of SGD by MSEDCL.
- 3.20. In the Order dated 13 November 2019, the Commission has allowed carrying costs on the basis of the late payment surcharge as provided under clause 6.3 of the PPA i.e. at 9.30% (1.25% excess of 1 year MCLR of State Bank of India). However, the carrying cost has been arrived at by the Commission considering the same as a delayed payment by the MSEDCL. In this regard, we wish to submit that the carrying costs cannot be treated at par with delayed payments made by the MSEDCL under the PPA, in as much as the edifice of granting carrying costs is a principle of restitution which is to place RSPPL in the same economic position had the change in law not occurred, thereby meaning that RSPPL would be granted

carrying costs to the extent of the actual costs (interest cost or return on equity) incurred by them so that RSPPL can be restored to the same economic position.

- 3.21. The actual interest costs as incurred by RSPPL is based on the fact that it has funded the entire amount of SGD paid till date through their equity. Vide the Sanction Letter dated 26 March, 2019, for the Rupee Term Loan issued by the Rural Electrification Corporation Limited (REC) for the present project, it has been specified that the disbursement made to RSPPL would not include SGD and RSPPL would be liable to arrange the additional funds on his own account without recourse to the lender/ project securities until the tariff is increased by the State Commission/ relevant agency. Thus, RSPPL incurred the entire amount of SGD through their own equity. Further, on the final tariff being approved by the Commission, the additional amount on account of SGD would be disbursed subject to the maximum debt of Rs. 973.26 crores (i.e. 75% of the Project cost inclusive of safeguard duty).
- 3.22. The entire capital expenditure incurred by RSPPL for payment of SGD i.e. ~Rs. 125 crores has been fully funded by RSPPL through equity without any recourse to debt. Once the Commission passes an order allowing safeguard duty as a change in law and thereby directing the payment of an incremental tariff, RSPPL would have recourse to the additional debt (subject to an overall cap of Rs. 973.26 crores).
- 3.23. Thus, if the compensation payable to RSPPL is paid in the form of a yearly tariff, along with carrying costs, then the carrying costs as payable would be required to be computed in two parts:
- i. Rate of return on equity for the period upto the date when the Commission passes an order approving the increased tariff payable on account of SGD.

On the basis of the RE Tariff Order as passed by the Commission for FY 2019-20, the return on equity has been computed at 16% grossed up with MAT for the first ten years and thereafter at 16% grossed up with corporate income tax.

Thus, in as much as the RSPPL has funded the entire amount through its equity, RSPPL would also be liable to return on equity equivalent to 20.39% (pre-tax) which is equivalent to 16% (post tax) which has been considered by the Commission in the RE Tariff Order.

- ii. Once the tariff is approved by the Commission, RSPPL would be entitled to carrying costs equivalent to the normative pre-tax weighted average cost of capital on the basis of the normative debt-equity ratio of 70:30 (or 75:25).

Further, once the increased tariff is determined by the Commission, which would thereby result in RSPPL being able to obtain a debt for the SGD (to the extent of 75%), the carrying costs liable to be paid to RSPPL would be based on the interest rate of 11.31 % (in relation to the debt) and interest rate of 20.39% pre-tax return basis the RE Tariff Order of the Commission on equity at 16% (adjusted to MAT and corporate tax) for first 10 years and 22.57% for subsequent years on the basis of the normative debt equity ratio.

- 3.24. If the Commission directs MSEDCL to pay the entire amount as a lumpsum payment, then the carrying costs would be limited to the amount equivalent to the return on equity i.e. 20.39% (pre-tax) till the date of disbursement of the amount to RSPPL.
- 3.25. RSPPL has declared CUF of 28% vide Letter issued to MSEDCL. Further, in order to achieve this CUF, RSPPL has installed higher capacity DC Modules (increased by 45%) i.e. 362.5 MW of DC Modules in order to provide AC Output of 250 MW. It is also pertinent to note that as per the Clause 5.5.1 of the PPA, the minimum CUF shall in no case be less than 19% over a year. Thus, in order to achieve greater efficiency and greater optimization of the power plant, RSPPL has installed higher capacity of DC Modules. Accordingly, RSPPL is entitled to the entire reimbursement of SGD and additional IGST incurred by for the entire capacity of 362.5 MW.
- 3.26. RSPPL also places reliance on para 20 of the Order dated 13 November, 2019 passed by the Commission, whereby, on due appreciation of the necessity to install higher capacity of DC Modules to achieve greater efficiency has allowed reimbursement of SGD for the capacity of modules which are proportionate to the CUF declared by the Generator. In the present case as the CUF declared by RSPPL is 28% and the overloading is 45% i.e. 362.5 MW, RSPPL is liable to be compensated for the entire capacity of 362.5 MW when the base CUF is 19 % for the 250 MW DC capacity (as $28/19 \times 250 = 368$ MW).
- 3.27. The Commission, at para. 27 of the Order dated 13 November, 2019, has sought to peg the per unit cost payable to the Petitioner (APTFPL) (for payment of SGD along with the amount payable as carrying costs) to the CUF of 28.34% as declared by the Petitioner. Further, it has also observed that MSEDCL shall undertake a reconciliation at the end of the financial year and any under-recovery or over-recovery shall be reconciled as follows:
- i. In case of any over-recovery by the Petitioner- the same will be adjusted in the payment for the month of March
 - ii. In case of any under-recovery on account of lower generation- the same shall be carried forward to the next year and shall be payable without any additional carrying cost and only from the excess generation above 28.34%

The per-unit rate of compensation payable has been linked to the CUF that has been declared by the Petitioner for the said petition.

- 3.28. In the present case, RSPPL has declared a CUF of 28%. Further, as per the provisions of Clause 5.5.1 of the PPA, RSPPL is allowed to maintain generation so as to achieve a CUF of +/- 10% of the declared CUF for the entire PPA duration of 25 years. Accordingly, in as much as the PPA allows a range (25.20% -30.80%) and does not contemplate a fixed CUF over the entire tenure of the PPA, it would be just and equitable to consider the same range for pegging the per-unit compensation. It is submitted that the per-unit compensation payable to RSPPL ought to be pegged to the range of CUF as determined in Clause 5.5.1 read with the CUF declared by RSPPL instead of pegging to a single percentage CUF of 28%.
- 3.29. Further, as per the provisions of Clause 5.5.1 of the PPA, RSPPL is allowed to revise the CUF within first year of COD. Per Unit compensation and CUF range should be calculated basis the revised CUF declared by Developer within first year of COD.
- 3.30. It is also a well-known fact that over the entire tenure of the PPA, the modules will suffer certain percentage of degradation and accordingly there would be a gradual reduction in the efficiency of the modules from the first year till the 25th year. This aspect is well accepted by the solar industry and accordingly, basis the same the CUF has been pegged at a range of +/-10% rather than a fixed CUF.
- 3.31. For ease of calculation, per unit compensation may be paid on declared CUF. At the end of Financial Year, reconciliation of total amount paid through per unit charge as against total amount which is recoverable in that year as per actual CUF should be done. Any under recovery/ over-recovery should be adjusted in the payment for the month of March.

4. MSEDCL in its reply dated 28 April, 2020 made the following submissions:

- 4.1. Imposition of SGD on solar cells/modules as a “Change in Law” event has already been decided by this Commission in the past in several identical matters. Said Orders shall be followed in the present matter also.
- 4.2. The onetime compensation of SGD will burden the consumers heavily. If the compensation is made through tariff spread over the entire tenure of PPA, then the same will be gradually recovered from consumers through ARR and tariff petitions.
- 4.3. The interest claimed by RSPPL is based on the tariff order issued by the Commission. The tariff orders are being issued under Section 62 of the EA and the tariff discovered for the

present project is in accordance with Section 63 of the Act. Hence the interest rates as prescribed in the Commission's RE Tariff Order cannot be made applicable in the present case. RSPPL has miserably failed to understand the entire purpose of fixation of interest rate for arriving at a generic tariff for renewable projects.

- 4.4. The PPA is a sacrosanct document which provides for "Late Payment Charge" @ 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 RSPPL on MSEDCL. Hence claims of interest is not only fallacious but farcical as well.
- 4.5. The RfS does not envisage or mention anywhere about the debt equity ratio. It is up to the developer to opt for debt/internal funding for the project. Hence the argument made by the petitioner that the expenditure towards the SGD has been made 100% through equity and hence it requires compensation as envisaged in the Commission's tariff order is not tenable. Commercial call by RSPPL cannot be a ground for claiming additional amounts beyond the PPA.
- 4.6. With respect to the "Computation of tariff", RSPPL has requested to allow DC modules oversizing to achieve the declared CUF of 28 %. In the past same has been allowed by the Commission subject to prudence check.
- 4.7. With respect to "per unit compensation basis of the declared CUF", RSPPL has requested to allow range of (25.20% to 30.80%) i.e. +/- 10% of declared CUF which is 28%. The proposed compensation in similar such cases is based on per unit and the reconciliation will be done at the end of financial year hence any under or over generation above declared CUF will be reconciled at the end of financial year.
- 4.8. Further, MSEDCL submits that the modality, manner and formula for calculation of impact of "Change in Law" has 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.

5. RSPPL in its Rejoinder dated 30 May, 2020 submitted as follows:

- 5.1. With respect to the verification of RFID, the Commission in the Order dated 13 November, 2019 has directed the Respondent (MSEDCL) to undertake a sample verification of RFID tags and other documents within a period of 45 days prior to discharging compensation and directed the Petitioner (Azure Power Thirty-Four Private Limited) to submit details of all RFID tags within a period of six months. In this regard, considering the total number of

modules installed by RSPPL are 10,94,301, it is extremely time consuming and impractical for RSPPL to provide details of all RFID tags within a period of 6 months.

- 5.2. ISO 2859-1/IS 2500 Part I released by the Bureau of Indian Standards, also lays down an acceptance sampling system for inspection by attributes, which is indexed as per Acceptance quality limit. The sample size varies based on the Inspection Levels. Typically, in the Solar Industry, the General Inspection Level-1 is followed wherein the sample size for modules above 5,00,000 is 500. Accordingly, given that even for verification of the standard of the modules, the sample size is 500, it would be a prudent practice to submit the RFID tags on a sample basis.
- 5.3. Further, it is submitted that RSPPL would not possess an RFID scanner/reader, which typically would be imported by RSPPL leading to an incremental cost of Rs. 1.25-1.5 lakhs.
- 5.4. Thus, in light of the cost and in order to build in efficiency in the process of verification, it is submitted that the RFID tags may be verified on a sample basis of 500 modules which is the basis as indicated in ISO 2859 for General Inspection Level-1. The process of verification may be allowed within a period of 6 months and the compensation should be released basis an undertaking given by MSEDCL that the details of the sample RFID tags would be given within a period of 6 months. Further, should the Commission be inclined to take a view that the entire set of RFID tags ought to be verified, then it is prayed that an extended period of 2 years may be granted for providing these details as it a tedious and time consuming process which would not be completed within a period of 6 months.
- 5.5. With respect to SGD compensation to be paid per unit and not in lumpsum, as per the Article 9.2.1, of the PPA, the quantum and mechanism of payment of compensation is required to be determined by the Commission. Accordingly, it cannot be said that the PPA only contemplates payment of compensation on a per unit tariff basis only and not on a lumpsum basis.
- 5.6. Further, the one-time compensation payable would effectively lead to a lesser burden on the final consumers in as much as the quantum of carrying costs being passed on to the consumer would be effectively lower.
- 5.7. The Tariff Order relied upon by RSPPL to claim carrying cost has been so relied as to provide persuasive precedence and as a guidance. In this regard, RSPPL submits that while it is true that the present project is pursuant to bids under Section 63, however, recourse to Tariff Orders under Section 62 is warranted and necessitated in the absence of any benchmark under the PPA. It is submitted that the same logic is applicable in respect of tariffs quoted under bidding process in Section 63 of the Electricity Act as all bidders do factor such cost, even while quoting tariff under Section 63 of the Electricity Act.

- 5.8. The carrying costs cannot be treated at par with delayed payments made by MSEDCL under the PPA, in as much as the edifice of granting carrying costs is a principle of restitution i.e. to place RSPPL in the same financial position as if the change in law not occurred. Meaning thereby that RSPPL would be granted carrying costs to the extent of the actual costs (interest cost or return on equity) incurred by them so that RSPPL can be restored to the same economic position.
- 5.9. In a separate claim filed by a related company of RSPPL, the carrying cost has been determined by SECI at 10.41% which is based on the CERC RE Tariff Order dated 19 March 2019. Thus, it emerges that even in other cases, where the tariff has been arrived at on the basis of a competitive bid, the carrying cost has been determined on the basis of the RE Tariff Order. Further, even in such cases, the carrying cost is higher than 9.30%, which has been considered in the present case.
- 5.10. MSEDCL has sought to aver that the PPA did not provide for servicing of debt through self and consequently compensation as envisaged in the Order dated 13 November 2019 cannot be granted to RSPPL for its own commercial call. RSPPL submits that aforesaid averments are erroneous and proceed on a fallacious understanding of the provisions of the PPA. In this regard, it is further submitted that:
- i. RSPPL's requirement to service the debt through self, arose only on account of the change in law event of imposition of SGD on the import of solar cells and modules. Thus, the 'change in law' event was the trigger for the servicing of additional debt. Had there been no event of 'change in law' RSPPL would never have been saddled with an additional SGD amount. The carrying cost on the additional capital expenditure incurred, which arose outside the terms of the PPA, cannot now be denied on the sole basis that the requirement to service debt through self was never mentioned in the RfS and it was RSPPL's commercial call.
 - ii. RSPPL had no option but to fund the entire amount of SGD through their equity. This is evident from a bare perusal of the Sanction Letter dated 26 March, 2019 for the Rupee Term Loan issued by the Rural Electrification Corporation Limited (REC) for the present project, where it has been specified that the disbursement made to RSPPL would not include SGD and RSPPL would be liable to arrange the additional funds on his own account without recourse to the lender/ project securities until the tariff is increased by the State Commission/ relevant agency. Thus, RSPPL funded the entire amount of SGD through their own equity.
 - iii. As per Clause 9.2.1 of the PPA clearly stipulates that the Power Producer to be placed in same financial position as it would have been, had there been no such occurrence

of change in Law. There is no express embargo that if the party finances the amount through its own equity, then it would not be granted carrying cost. Under these circumstances, MSEDCL's contention that additional cost on account of self - financing would not be eligible for grant of carrying cost, tantamounts to supplanting/ affixing additional conditions for seeking relief of change in law. With the increase in the costs due to the change in law events explained above, the carrying costs of the projects have also increased as compared to requirement and rate prevalent at the time of bid. Accordingly, RSPPL is eligible for carrying cost on the basis explained in the foregoing paragraphs.

6. At the e-hearing through video conferencing held on 9 June 2020, the representative of RSPPL and MSEDCL reiterated their submission in the Petition. MSEDCL impressed upon the necessity of getting details of RFID tags to ensure that the modules which are installed under the current PPA are eligible for SGD. RSPPL contended that for the entire PPA capacity, the installed modules are eligible for SGD. Further, there are about 11 Lakhs modules installed at site and getting details from each module will take time period of more than 2 years.

Commission's Analysis and Rulings

7. RSPPL has filed this Case seeking approval and determination of the compensation under "Change in law" on account of the introduction of SGD for its 250 MW Solar Project having PPA for sale of power to MSEDCL. RSPPL has contended that it has incurred an additional cost of ~Rs 125 Cr. on account of SDG (including IGST) for import of Solar PV Modules of capacity of 362.5 MW and accordingly it is seeking compensation of this amount and carrying cost of ~Rs. 8.39 Cr from MSEDCL by relying on restitution principle of the PPA.
8. The Commission notes that the PPA between RSPPL and MSEDCL has following provisions relating to Change in Law:

" Article 9: CHANGE IN LAW

9.1 Definitions In this Article 9, the following terms shall have the following meanings:

"Change in Law" shall refer to the occurrence of any of the following events after the last date of the bid submission, including

- (i) the enactment of any new law; or*
- (ii) an amendment, modification or repeal of an existing law; or*
- (iii) the requirement to obtain a new consent, permit or license; or*
- (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Power Producer; or*

(v) *any change in the rates of any Taxes, Duties and Cess which have a direct effect on the Project.*

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.

9.2 Relief for 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."

Thus, any event eligible under Article 9.1, that occurred after bid submission date qualifies as Change in Law event. And 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.

9. The Commission notes that RSPPL is one of the successful bidders of MSEDCL's 1000 MW bid for procurement of Solar power, tariff for which was adopted by Commission in its Order dated 29 June 2018 in Case No. 164 of 2018. Other successful bidders such as M/s Azure Power, M/s Tata Renewables, M/s Adani Renewable and M/s ACME Solar have already approached before this Commission claiming imposition of SGD as Change in Law. As these bidders had approached prior to commissioning of their project, the Commission in its Order while declaring that imposition of SGD is a Change in Law event, directed these Bidders to approach the Commission after commissioning of the project with details of actual incurred expenditures. Thereafter, post commissioning of their projects, these project developers have approached for compensation on account of imposition of SGD under Change in Law provisions of the PPA. The Commission through respective Orders in the matter of Petition filed by these Solar project developers have allowed compensation on account of imposition of SGD. One of such Orders is in Case No. 259 of 2019 dated 13 November 2019 for M/s Azure Power. Both the parties in present matter i.e. RSPPL and MSEDCL have relied on this Order dated 13 November 2019.
10. The Commission also notes that unlike other project developers mentioned in above paragraph, who have twice approached this Commission viz prior to CoD for declaration of imposition of SGD as Change in Law event and post CoD for compensation on account of Change in Law, RSPPL in present Petition is seeking both these relief through same Petition as its project has been commissioned on 27 October 2019 and bills for actual expenses incurred on SGD have been filed.
11. Having heard the parties, the Commission frames following issues for its consideration in the present matter:
 - a. Whether imposition of Safeguard Duty is Change in Law under the PPA?
 - b. Whether required documents for scrutiny of Change in Law claim have been filed?
 - 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.

12. Issue A: Whether imposition of Safeguard Duty is Change in Law under the PPA?

- 12.1. RSPPL has stated that last date of Bid Submission was 14 May 2018. Subsequent to that dated Central Government vide its Notification No. 1/2018 (SG) dated 30 July, 2018, has imposed SGD on the import of Solar Cells/ modules. RSPPL has contended that as the SGD Notification came into effect much after the last date of bid submission, such imposition of safeguard duty would qualify as a change in law under Article 9.1 of the PPA. RSPPL has relied upon Commission's Order dated 13 November 2019 wherein for identical PPA of M/s Azure Power, this Commission has held that imposition of SGD is Change in Law event,
- 12.2. MSEDCL has not opposed RSPPL contention and has stated that this Commission has already held that imposition of SGD as a Change in Law event. They also relied upon Commission's Order dated 13 November 2019 for this purpose.
- 12.3. As stated in para 8 above, Order dated 13 November 2019 is in the matter of M/s Azure Power who along with RSPPL was one of the successful bidders for MSEDCL's 1000 MW bid. As PPAs of RSPPL and M/s Azure Power have been signed against the same bid, these are identical PPAs barring project specific differences. Hence, Commission's dispensation in Order dated 13 November 2019 which was based on PPA of M/s Azure Power is applicable in the present matter also.
- 12.4. Relevant part of Commission's Order dated 13 November 2019 is reproduced below:

“6. APTFPL had initially filed a Petition in Case No. 27 of 2019 seeking the approval and determination of compensation on account of Change in Law for Solar Project. The Commission in its Order dated 22 April, 2019 gave the following dispensation:

“13. Accordingly, the Commission rules that the Ministry of Finance Notification dated 30 July, 2018 imposing Safeguard Duty is an event of Change in Law under PPA signed between APTFPL and MSEDCL for 130 MW Solar PV capacity. Additional expenditure and other consequential impacts on account of such Change in Law event shall be considered on actual basis for reimbursement subject to prudent check. Accordingly, APTFPL 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. The issue of carrying cost can also be dealt with appropriately at that stage.”

As provisions of PPA and Bid Submission date in present matter are identical with that of M/s Azure Power, above ruling of the Commission is squarely applicable in the present matter as well.

- 12.5. Accordingly, the Commission rules that imposition of SGD by Central Government vide notification dated 30 July, 2018 is a Change in Law event as per provisions of PPA and RSPPL shall be eligible for compensation for the same.

13. Issue B: Whether required documents for scrutiny of Change in Law claim have been filed?

- 13.1. RSPPL has stated that for claiming compensation under Change in Law provisions of PPA, entire shipping details, i.e. the Module Supplier's Name, Capacity in MWp, Module wattage, invoice number, invoice date, bills of entry number, bill of entry date, invoice amount, SGD, GST (5% with SGD included), challan numbers, challan date, date of payment etc. evidencing payment of duty have been submitted. Regarding RFID tags, RSPPL has stated that considering the 10,94,301 number of modules installed, it is extremely time consuming and impractical for RSPPL to provide details of all RFID tags within a period of 6 months and would require 2 year period for the same. Instead of submitting details of all RFID tags, RSPPL has suggested that it should be allowed to submit RFID tag on sample basis and MSEDCL can also verify such modules based on sample verification as per ISO 2859-1/IS 2500 Part I released by the Bureau of Indian Standards.
- 13.2. MSEDCL in its reply has not raised any objection or deficiency in the documents submitted by RSPPL and instead has only requested that principle adopted in Order dated 13 November 2019 should also be adopted in present matter.
- 13.3. 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 for verification of Change in Law claim. Further, the same is also as per the provisions of the contract. However, RSPPL 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.
- 13.4. Further, 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. RSPPL has contended that submission of RFID tags for all modules will take 2 years and hence requested submission of RFID tag on sample basis. In the opinion of the Commission such request of RSPPL cannot be

granted in view of provisions of PPA. Therefore, RSPPL is directed to submit details of RFID tags for all modules on priority to MSEDCL. However, it is admitted fact that verification of such large numbers of RFID tags would take substantial time, hence in order to avoid further delay in payment of compensation and thereby accumulation of carrying cost, RSPPL 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 SGD. Thereafter MSEDCL shall act upon such undertaking given by RSPPL and ascertain the compensation amount under Change in Law. MSEDCL shall complete this process within 15 days from date of this Order. Such ascertaining of compensation amount will be at risk and cost of the RSPPL. In Parallel, additional documents, if required, shall be sought and scrutiny of the documents 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. RSPPL 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.

14. Issue C : What is the Capacity of Solar Modules eligible for compensation under Change in Law?

- 14.1. 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:

“
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.*
- 14.2. In view of the above ruling of the Commission, for fulfilling the contractual obligation of supplying 250 MW (AC) capacity to MSEDCL, RSPPL is entitled to Change in law for a maximum DC capacity of 368.42 MW DC [$(28\%/19\%) \times 250$ MW = 368.42 MW]. However, the installed DC capacity of RSPPL is 362.50 MW only which is within the maximum limit as specified by the Commission. The Commission also notes that the PPA also provides option to Generator to revise CUF within one year from date of commissioning of the project. RSPPL 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 installed capacity is upwardly revised
- 14.3. In view of the above, based on present declared CUF of 28%, the Commission accepts DC capacity of 362.50 MW installed by RSPPL for compensation payable under Change in Law.
15. **Issue D: What should be rate of interest for Carrying Cost?**

- 15.1. The Commission notes that there is no dispute amongst the parties relating to allowing carrying cost as per the restitution principle of the PPA. However, both parties are in dispute on rate of interest for such carrying cost. RSPPL has contended that it has funded the entire amount of SGD through its equity. To demonstrate this, RSPPL has provided conditions of its Rupee Term Loan issued by REC which requires RSPPL to arrange the additional funds for SGD on his own account without recourse to the lender/ project securities until the tariff is increased by the State Commission. Therefore, RSPPL has proposed following carrying cost for providing compensation:
- i. Rate on return on equity of 16% grossed up with MAT (effective rate of 20.39%) for the period upto the date when the Commission passes an Order approving the increased tariff payable on account of SGD.
 - ii. Post approval from Commission, carrying cost would be based on weighted average cost of capital computed based on the interest rate of 11.31 % (in relation to the debt) and pre-tax return on Equity at 20.39% (adjusted to MAT and corporate tax) for first 10 years and 22.57% for subsequent years for normative debt equity ratio.
- 15.2. MSEDCL has opposed such request of RSPPL 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. MSEDCL has further submitted that RfS does not envisage or mention anywhere about the debt equity ratio. It is up to the developer to opt for debt or self/internal funding for the project. This being a project whose tariff has been discovered through competitive bidding under Section 63 of the EA, the interest rates as prescribed in the Commission's RE Tariff Order which was issued under Section 62 of the EA, cannot be made applicable in the present case. Further, APTEL Judgment in the matter of Sasan power Ltd. v. CERC & Others cited by RSPPL cannot be made applicable in present matter as it is in the context of station heat rate and auxiliary consumption.
- 15.3. In this regard, 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 a tool to earn additional compensation. Use of weighted average cost of capital or rate of Return on Equity would provide higher compensation than time value of money and hence is not appropriate for use as interest rate for carrying cost.
- 15.4. 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 referred as rate for carrying cost to work out the financing cost.

- 15.5. 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 the 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 RSPPL'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.
- 15.6. 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.

16. **Issue E: What is the Methodology for payment of Compensation under Change in Law?**

- 16.1. RSPPL has proposed two options for payment of compensation on account of Change in Law viz. a) per unit rate and b) Lumpsum payment. RSPPL has contended that carrying cost needs to be allowed in these both options. Whereas MSEDCL has stated that principles approved by the Commission in recent Order dated 13 November 2019 should be adopted.
- 16.2. 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 the present matter. RSPPL has contended that it has incurred an additional cost of Rs 125.31 Cr. on account of SGD (including IGST) on import of Solar PV Modules of capacity of 362.50 MW. As ruled in para 14.3 above, all 362.50 MW of Solar PV Modules are to be considered for Change in Law computation. MSEDCL needs to verify RSPPL'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, RSPPL shall be eligible for carrying cost from the date it paid such amount to Government Authorities till the date of this Order. As stated in para 15.6 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.

- 16.3. 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 for discount, which has not been offered by RSPPL in the 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 RSPPL within a week from ascertaining amount of compensation to be paid.

- 16.4. 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:*

- i. 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.*
 - ii. 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.*
 - iii. 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.*
 - iv. 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.*
 - v. 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 since the only difference in this case is that project capacity of 250 MW at CUF of 28%.

- 16.5. Although, RSPPL has agreed with the above mechanism, it has stated that PPA allows deviation of +/- 10% of the declared CUF for the entire PPA duration of 25 years and hence pegging a fixed CUF for per-unit compensation is not correct. MSEDCL has not made any specific suggestions in this regard.
- 16.6. The Commission notes that Article 5.5.1 of the PPA mandates power producer to maintain generation so as to achieve CUF in the range of $\pm 10\%$ of their declared value. Thus, PPA allows variation of $\pm 10\%$ in declared CUF. Therefore, although the Commission has used single number of CUF in above quoted per-unit compensation mechanism, said CUF needs to be read with allowable variation in Article 5.5.1 of the PPA. For this purpose, although per unit charge at the start of each financial year needs to be decided based on declared CUF, year-end reconciliation at end of each financial year shall be undertaken as per actual CUF within range $\pm 10\%$ of declared CUF. With this limited clarification, mechanism of per unit compensation stipulated at para 16.4 above shall be applicable.

17. Hence, the following Order:

ORDER

- 1. Case No. 8 of 2020 is partly allowed.**
- 2. Central Government's Notification dated 30 July 2018 imposing Safeguard Duty qualifies as Change in Law event.**
- 3. M/s ReNew Solar Power Private Limited 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 362.50 MW of Solar module/panel installed at project location. It shall provide undertaking that all modules installed at project site for supplying power to Maharashtra State Electricity Distribution Company Ltd. have been imported from the Country/ies which are subjected to Safeguard Duty.**
- 4. Maharashtra State Electricity Distribution Co. Ltd. shall act upon such undertaking given by M/s ReNew Solar Power Private Limited and ascertain the compensation amount under Change in Law. Such ascertainment of compensation amount will be at risk and cost of the M/s ReNew Solar Power Private Limited. Maharashtra State Electricity Distribution Co. Ltd. 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.

5. Compensation for Change in Law event shall be computed and paid as per methodology prescribed under Paras No. 16.2 to 16.6 above.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

