

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 175 of 2020

Case of M/s. ACME Heergarh Powertech Pvt. Ltd seeking issuance of Appropriate Order(S)/ Direction(S) for a mechanism for recovery of the compensation to offset financial/ commercial impact of Change in Law events on account of increase in capital cost due to imposition of Safeguard Duty by the Ministry of Finance (Government of India)

ACME Heergarh Powertech Pvt. Ltd.

..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd.

..... Respondent

Coram

Shri Sanjay Kumar, Chairperson
Shri I.M. Bohari, Member
Shri Mukesh Khullar, Member

Appearance

For the

Petitioner

: Smt. Hemant Sahai (Adv.)

Respondent

: Sh. Rahul Chouhan (Adv.)

ORDER

Date: 19 May, 2021

1. ACME Heergarh Powertech Pvt. Ltd. (**AHPPL**) has filed this Petition dated 23 August 2020 seeking issuance of direction/Order for a mechanism for recovery of the compensation to offset financial/ commercial impact of Change in Law events on account of increase in capital cost due to imposition of Safeguard Duty (**SGD**) by way of Notification 2/2020-Customs (SG)

dated 29 July 2020 issued by the Department of Revenue, Ministry of Finance (MoF), Government of India (GoI).

2. Petitioner's main prayers are as follows:

- a) *Declare and hold that imposition of Safeguard Duty by virtue of Notification No. 2/2020- Customs (SG) dated 29.07.2020 on import of solar modules qualifies as 'Change in Law' in terms of Article 9 of the PPA dated 21.08.2019 executed between the Petitioner and MSEDCL and the Petitioner is entitled to consequent relief thereunder.*
- b) *Grant carrying cost from the date of impact till reimbursement by the Respondent.*
- c) *Direct Respondent No. 1 to complete reconciliation within 15 days from date of claim submission by Petitioner and make payment within 21 days from date of claim submission by Petitioner as per methodology stated in the Petition.*

3. Petitioner in their Case have stated as follows:

- 3.1. MSEDCL had floated tender for procurement of 1000MW power from Solar Power Projects through Competitive Bidding (followed by Reverse Auction) vide its Request for Selection (RfS) on 5 December 2018.
- 3.2. Pursuant to the issuance of RfS, MSEDCL received proposals from various bidders including M/s Acme Solar Holdings Limited (ASHL). After evaluation of the Proposal received MSEDCL accepted the bids, declared ASHL as the successful bidder which quoted a tariff of Rs. 2.74 per unit. Thereafter, MSEDCL issued Letter of Award (LOA) on 19 March 2019 for development of the Project.
- 3.3. MSEDCL approached the Commission seeking approval for adoption of tariff for long term procurement of 1000 MW Solar power under Section 63 of the Electricity Act, 2003 (EA) for meeting the Solar Renewable Purchase Obligations (RPO). This included ASPL's Project of 300MW for which the tariff to be adopted was Rs. 2.74 per unit. The Commission accorded its approval for procurement and adoption of tariff on 27 May 2019.
- 3.4. ASHL incorporated AHPPL (as Special Purpose Vehicle (SPV)) and the Power Purchase Agreement (PPA) was signed with MSEDCL on 21 August 2019. As per the Article 3.1 and Article 3.3.1 of the PPA the actual effective start date for achievement of Financial Closure (FC) is 26 June 2019.

- 3.5. AHPPL had placed Purchase orders for supply of solar modules and inverters from suppliers located in China in the month of December 2019 considering the Project was supposed to be commissioned by 25 June 2021, and duly performed its obligation relating to placing of work order well in time. However, due to outbreak of COVID-19 in China in December, 2019 and thereafter across world, the suppliers informed about Force Majeure situation and intimated that delivery date of equipment will be delayed and exact date for the same cannot as yet be ascertained.
- 3.6. Pursuant thereto and due diligence with its Chinese suppliers and spread of COVID-19 across various parts of world including India, AHPPL issued Force Majeure Notice dated 21 February 2020 to MSEDCL under Article 8.1 of the PPA intimating MSEDCL about the occurrence of Force Majeure w.e.f 31 December 2019.
- 3.7. Outbreak of COVID-19 and the ensuing uncertainty in delivery of solar modules and inverters from China, made it impossible for AHPPL to perform its obligations within the prescribed timeline of 24 months and even with the maximum limit of time extension up to 30 months. Owing to the above circumstances and denial on behalf of MSEDCL to accept the contents of the Force Majeure Notice dated 21 February 2020, AHPPL was constrained to approach the Commission vide its Case No. 78 of 2020. The Commission by its Order dated 20 June 2020 in Case No. 78 of 2020, was pleased to grant an extension of timelines of achieving FC and SCOD of the Project for a period starting from notice of Force Majeure i.e. 21 February 2020 till supply chain is restored and lockdown is lifted completely, plus 30 days.
- 3.8. The Directorate General of Trade Remedies, Ministry of Commerce and Industry, Government of India (DGTR), pursuant to an application filed by Indian Solar Manufacturers, by way of Final Findings dated 18 July 2020 recommended the imposition of SGD under Section 8B(1) of the Customs Tariff Act, 1975 on imports of “Solar Cells whether or not assembled in modules or panels”.
- 3.9. On 29 July 2020, the Central Government through SGD Notification 2020 has imposed safeguard duty as per the following rates on the import of “Solar Cells whether or not assembled in modules or panels” for the period from 30 July 2020 to 30 July 2021:
- (a) Fourteen point nine percent ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July, 2020 to 29th January, 2021 (both days inclusive); and

(b) Fourteen point five percent ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th January, 2021 to 29th July, 2021 (both days inclusive).

- 3.10. The present Petition is being filed seeking compensation due to additional cost on account of issuance of SGD Notification 2020 imposing safeguard duty at the rates prescribed therein on the import of solar cells and modules, for another one year from 30 July 2020 to 30 July 2021. The issuance of the said SGD Notification 2020 is in continuation / extension/modification of the already imposed SGD by virtue of Notification dated 30 July 2018. This has resulted in an increase in additional capital expenditure and has thus, adversely impacted the business.
- 3.11. Imposition of SGD on the import of solar cells and modules, pursuant to the SGD Notification would be treated as a Change in Law event in the terms of the PPA as such imposition is a law imposed by the Central Government by virtue of the SGD Notification 2020 and would be squarely covered by the definition of Change in Law as provisioned in Article 9. Thus, the imposition of SGD on imported cells and modules would in effect tantamount to an incremental tax cost accrued on the setting up of the solar power project
- 3.12. The Commission has issued several Orders upholding the validity of the SGD Notification 2018 as Change in Law.
- 3.13. Further, since the SGD has been imposed after the date of bid submission i.e. 22 January 2019, the Change in Law pertaining to taxes and duties after the date of bid submission shall be to the account of MSEDCL.
- 3.14. AHPPL has issued the notice to MSEDCL on 30 July 2020 intimating it about the imposition of safeguard duty on the import of solar cells and modules (which approximately constitute 60%-70% of the total project cost) which would directly impact the project by considerably increasing the entire project cost. Further, vide the aforesaid notice, AHPPL also requested MSEDCL that the imposition of SGD ought to be acknowledged as a Change in Law under the PPA and consequently any additional costs incurred should be reimbursed.
- 3.15. In terms of Article 9.2.1 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. Thus, AHPPL is entitled to interest on incremental working capital at normative interest rate to put AHPPL to the same economic position as if Change in Law had not occurred.

- 3.16. The Hon'ble Appellate Tribunal for Electricity (APTEL) as well in a plethora of cases such as A. No. 210 of 2017, A. No. 193 of 2017 and A. No. 111 of 2017 has allowed carrying cost upon the amount allowed as compensation for "Change in Law" events.
- 3.17. 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. Carrying costs, being based on the principle of restitution ought to be granted from the effective date till the date of disbursement of actual compensation to AHPPL.
- 3.18. AHPPL is entitled to the compensation for Change in Law alongwith carrying cost. The said Change in law compensation can be made by MSEDCL in any one of the following manner:
- i. payment of entire aggregate principal amount of SGD 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 the incremental investment towards capex. The carrying cost shall 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. The weighted average rate as per MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015 (hereinafter referred to as "MERC RE Tariff Regulations") is 13.41% [(SBI MCLR + 300 basis points x Debt) + (Return on Equity pre-tax x Equity) i.e. (10% x 70%) + (21.38% x 30%) = 13.41% per annum] (Calculation has been done assuming the SBI MCLR @ 7% per annum as on date of filing petition , and the same shall be suitably modified at the time of reconciliation, basis the SBI MCLR prevailing at such time).

OR

- ii. payment of entire aggregate principal amount of Safeguard duty 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 weighted average annuity rate as per MERC RE Tariff Regulations is 13.41% [(10% x 70%) + (21.38% x 30%) =13.41% ((SBI MCLR + 300 basis points x Debt) + (Return on Equity pre-tax x Equity = Weighted average rate))] 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.

Similarly, the carrying cost for the period from the date of the financial liability on account of the SGD till commissioning shall also be 13.41% p.a. 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. Payment of entire aggregate principal amount of SGD 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 Commission may calculate an incremental tariff specific to this determinate amount of SGD (plus carrying cost upto COD) by applying the normative financial principles set out in the MERC RE Tariff Regulations. 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, shall be payable in lumpsum to ACME along with the Late Payment Surcharge (LPS) specified in the PPA, if any.

3.19. The Commission may determine the methodology of compensation by approving any of the above three proposed methodologies so that AHPPL may not be required to approach this Commission again as it leads to further delay of another 4-5 months which puts additional burden of carrying cost to the end consumer of Maharashtra.

3.20. The Commission has already devised mechanism to calculate the DC capacity upto which a developer is entitled for Change in law compensation in Case No. 259 of 2019 in the matter of Azure Power Thirty- Four Private Limited vs. MSEDCL. As per the mechanism provided by MERC, the DC capacity upto which a developer is entitled for Change in Law compensation is calculated as: $\text{The declared CUF in PPA} / \text{Minimum CUF in RfS} \times \text{PPA capacity}$. Accordingly, AHPPL is entitled to compensation towards Safeguard duty for a DC capacity of upto 469.7 MW considering declared CUF of 29.75% in the PPA.

3.21. Pursuant to the Commission's appropriate directions with respect to adoption of a particular method for the payment of compensation, AHPPL undertakes to provide the requisite documents after commissioning the project, for the purposes of reconciliation and one to one correlation within 15 days from the date of actual commissioning.

4. **MSEDCL in its reply dated 12 November 2020 has stated as under:**

- 4.1. As per Article 9.3 of the PPA, AHPPL has to issue Notice intimating the occurrence of a Change in Law event. However, the Notice so issued as per the referred clause has to not only intimate the occurrence of a change in law event, but has to also specify precise details of the effect of such Change in Law on MSEDCL for seeking reliefs under Article 9.2 of the PPA (as required under Article 9.3.3 (b)).
- 4.2. In the present case, the Change in Law Notice issued by AHPPL is devoid of such details as required under Article 9.3.3 (b) of the PPA. Further, even the present petition also does not contain any details vis-à-vis the details of the effect of such Change in Law event.
- 4.3. Claim of AHPPL is not based on actual costs incurred with underlying support materials. In line with Article 9 of the PPA, it is the responsibility of AHPPL to provide supporting documents to substantiate its claim. The Petition would be maintainable only when AHPPL places on record the entire particulars along with documentary evidences, then only it is possible to undertake the prudence check of the claim submitted under Change in Law.
- 4.4. The compensation is aimed at putting the affected party in the same financial position as if the “Change in Law” had never occurred and therefore actual impact of SGD needs to be considered. Since the actual impact of SGD can only be ascertained when the project achieves COD, therefore, the impact on the project cost and impact of such on tariff should be determined at the time of COD of the project while considering only the actual payment made against SGD, duly presented with documentary evidence.
- 4.5. Further, AHPPL would be eligible to claim only the additional burden arising from the SGD for import of goods i.e. the difference between the obligation before imposing SGD vide SGD Notification 2020 and the present obligation after application of SGD Notification 2020. However, in absence of any details about the additional liability, it is mere presumption on the part of AHPPL to seek compensation. The Commission vide its Common Order dated 15 February 2019 passed in Case Nos. 276 of 2018, 325 of 2018 and 340 of 2018 has appreciated the said objections raised by MSEDCL.
- 4.6. Since setting up of the Project is still underway and as such the dates for achieving FC and SCOD have already been extended by the Commission, it is premature to assess any impact of SGD in absolute numbers in absence of any substantiating documents.
- 4.7. Further, as per Article 9.2 of PPA, the mechanism of compensation is to be determined by the Commission. The actual impact of SGD on the project cost should be spread out across the life of the solar power project just like any other component of the project. The SGD is capital expenditure in nature and is required to be spread out over the balance life of the assets. Also, spreading the impact across the project life not only ensures the seriousness of the developer towards project with regards to its risk, reward and uncertainty other than the

ones specifically provisioned in the PPA, associated with the solar power project continue to be linked with the project and are not passed on to the consumers at a time, but also ensures that all the business and project development risks (other than the ones specified and provisioned in the PPA) subsumed by the project developer continue to be borne by them.

- 4.8. AHPPL has also approached the Commission through another petition in Case No. 162 of 2020 seeking return and replacement of its Performance Bank Guarantee with some other alternate instrument which is not as efficiently enforceable as a Bank Guarantee, in event AHPPL fails to fulfil its obligations under the PPA. It is the apprehension of MSEDCL that AHPPL does not intend to complete the Project, and any relief granted at this stage could adversely affect the interests of MSEDCL in event the AHPPL abandons the Project before its commissioning.
- 4.9. Accordingly, the Petitioner has to provide substantial documentary evidence in support of the petition such as but not limited to:
 - a. Details of the date, vendor etc. to whom the Purchase Order is placed;
 - b. The origin of the country from where the order is placed along with the technology;
 - c. Date on which the invoices are raised;
 - d. Date on which solar cells or module or panel are imported into India along with Bill of Entries/ Bill of Lading;
 - e. Actual impact of Safeguard Duty in addition with GST for procurement of such goods supported by Duty Challans;
 - f. Date on which the goods have been delivered to the Petitioner at the site for commissioning of the said project;
- 4.10. MSEDCL requests the Commission to dismiss the petition in the present case, with direction to approach the Commission when AHPPL is actually impacted by the SGD Notification 2020 with supporting documents to substantiate the actual payments made by it towards SGD.
- 4.11. AHPPL was well aware of the imposition of the SGD by Central Government to safeguard the interest of domestic Industry. The PPA has been executed dated 21 August 2019 for which the RfS was published on dated 5 December 2018, well after the SGD notification dated 30 July 2018.

- 4.12. Although the SCOD was 25 June 2021, there is a possibility that, AHPPL has factored in the impact of SGD in anticipation of extension of SGD.
- 4.13. As the tariff is determined under competitive bidding, the onus of demonstrating that AHPPL had not factored the impact of SGD while submitting the bid lies solely with AHPPL.
- 4.14. The actual SCOD of the Project was 25 June 2021 before the issuance of Order dated 20 June 2020 in Case No. 78 of 2020. However, pursuant to the above order issued by the Commission, the SCOD of the Project is bound to get extended by at least 6-7 months.
- 4.15. Further, it is a prudent industry practice followed by almost every solar project developer whereby the solar modules / panels are imported after all other equipments / structures / works are completed at the project site, so as to avoid dumping of solar modules / panels at site.
- 4.16. It is highly probable that the solar modules/panels which will be imported by AHPPL for the Project, may be imported after the operating duration of the SGD Notification 2020, i.e., after 29 July 2021, hence, may not even be subjected to imposition of SGD.
- 4.17. It is reiterated that the present petition is not maintainable in the present form at the present stage.

5. AHPPL in its rejoinder dated 30 December 2020 has stated as under:

- 5.1. Since SGD notification 2020 was neither issued at the time of bidding nor factored in the bid tariff, it was not a part of project cost. Hence, in absence of the relief as prayed for, no lender will fund the additional cost due to SGD Notification 2020. In absence of such Change in Law approval and mechanism of reimbursement, AHPPL will not be able to approach any lender to fund the additional cost funded by lender. Further, it will reduce the burden of carrying cost to the end consumers of Maharashtra as approaching this commission post COD will take additional period of 3-4 months which will have an impact of carrying cost under the PPA which is not in the public interest. AHPPL is not seeking any payments at this stage and will provide all the required documents (invoices, Bill of Entries etc) of SGD in terms of this Commission's order to MSEDCL post COD.
- 5.2. Further the reliance placed by MSEDCL on the Commission's Common Order dated 15 February 2019 passed in Case Nos. 276 of 2018, 325 of 2018 and 340 of 2018 is erroneous since: The prayer of AHPPL in the present petition is similar to the one as was raised in the above matter, simpliciter limited to seeking declaration of the SGD Notification as Change

in Law and to determine the compensation mechanism and the timeline for making payments on the submission of the requisite details and documents on the actual cost incurred and not seeking allowance of additional liability on the mere presumption of the expenditure to be incurred.

- 5.3. Further, MSEDCL through its contents in para 13 has submitted that the actual impact of SGD should be spread across the life of the Project. AHPPL has submitted the three options that can be a fair method of compensating. The said claims should be reimbursed as one time lump sum as it would reduce the additional burden of carrying cost to MSEDCL and end consumers of Maharashtra. In case reimbursement of SGD claims is spread across the life of project then AHPPL will have to arrange this additional cost from lenders. In such case, only 70% of the additional cost would be funded by lenders at the applicable rate (presently most of the RE projects are funded by REC Ltd/PFC/IREDA at 10.5%-10.75% p.a.) while the remaining 30% of the additional cost would be required to be infused by AHPPL in the form of Equity. The additional cost is reimbursed over a certain amount of period, then the rate of carrying cost should reflect both cost of debt and return on equity as explained in the petition. In respect to the method as submitted by the MSEDCL (SGD should be spread across the life of the Project), AHPPL in the Petition has already proposed a methodology inline with MSEDCL's proposal.
- 5.4. MSEDCL (albeit falsely and unworthy of any consideration whatsoever) has stated that since the AHPPL had approached the Commission through its Case No. 78 of 2020 claiming 'frustration' of PPA and Case No. 162 of 2020 seeking return of Performance Bank Guarantee with certain other alternate instrument, it is the apprehension of MSEDCL that AHPPL does not intend to complete the project. The contentions of MSEDCL are outrightly rejected not only for being unlawful and illogical but also for being a vain attempt to misguide the Commission. It is most respectfully submitted that taking into consideration the grounds as raised by AHPPL in Case No. 78 of 2020, the Commission granted an extension of time for completion of the project. MSEDCL is well aware that AHPPL has not appealed against the said Order and is committed to the completion of the project, however, it chooses to make baseless and avoidable aspersions. Further, as on date the status of the project is as follows:
- (a) Financial Closure: Binding sanction letter from REC limited submitted to MSEDCL
 - (b) Land Acquisition: 1119 acres land acquired and documents submitted to MSEDCL
- 5.5. AHPPL also relies on the contents of MNRE Letter dated 12 March 2020 and addendum dated 23 March 2020 which inter alia provided that Central Electricity Regulatory Commission (CERC) has already approved the 'Change in Law' compensation for GST and

SGD, therefore, MNRE directed that there is now no need for the developers to approach the CERC for each case individually. Since a majority of solar projects were already under development when the SGD and GST were announced, they came under a clause “Change in Law.”

6. At the e-hearing through video conferencing held on 15 April 2021, the representative of the Parties reiterated their submissions. The Advocate of AHPPL submitted that as per the extension provided by the Commission in Case No. 78 of 2020, the new SCOD for the project is 28 December 2021. Further, he relied upon the Commission’s Order dated 5 March 2021 in Case No. 218 of 2020 in the matter of Tata Power Renewable Energy Ltd. (TPREL) v. Tata Power Company Ltd. (Distribution) (TPCD) for the reliefs sought in the instant matter.

7. **AHPPL made the below additional submissions through its written notes of arguments submitted on 23 April 2021:**

7.1. The Commission vide its Order dated 5 March 2021 passed in Case No. 218 of 2020 in the matter of TPREL v. TPCD has declared imposition of SGD vide SGD Notification 2020 as a Change in Law event. In the said Order, the Commission had analyzed the Change in Law Provision which is pari materia with the provision of the PPA and held that notification of new law or amendment of existing law or introduction/change in tax, duty or cess subsequent to bid submission date qualifies as Change in Law.

7.2. AHPPL, by this petition is requesting the Commission to approve SGD Notification 2020 as Change in Law and also devise the mechanism of reimbursement as prayed in the present petition with direction that the amount to be reimbursement will be considered only on actual basis.

8. **On 26 April 2021, MSEDCL filed its written submissions:**

8.1. With respect to AHPPL’s submission that the Commission in its Order dated 5 March 2021 in Case No. 218 of 2020 declaring imposition of SGD vide SGD Notification 2020 as Change in Law, MSEDCL accepts imposition of SGD Notification to be change in law event, however, it is still a matter of dispute that whether or not such change in law event is applicable to the present case.

8.2. As per Article 9.3 of the PPA, AHPPL has to issue Notice intimating the occurrence of a Change in Law event, which it had issued on 30 July 2020. However, the Notice so issued as per the referred clause has to not only intimate the occurrence of a change in law event, but has to also specify precise details of the effect of such Change in Law on MSEDCL for seeking reliefs under Article 9.2 of the PPA.

- 8.3. Since the actual impact of Safeguard Duty can only be ascertained when the project achieves COD, therefore, the impact of SGD on the project cost and its impact on tariff should be determined at the time of COD of the project while considering only the actual payment made against SGD, duly presented with documentary evidences.
- 8.4. Further, AHPPL would be eligible to claim only the additional burden arising from the SGD for import of goods i.e. the difference between the obligation before imposing SGD vide SGD Notification 2020 and the present obligation after application of SGD Notification 2020. However, in absence of any details about the additional liability, it is mere presumption on the part of AHPPL to seek compensation towards complete impact which it may face in future due to SGD Notification.

Commission's Analysis and Rulings

9. AHPPL has filed this Petition seeking issuance of directions for a mechanism for recovery of the compensation to offset financial/ commercial impact of Change in Law events on account of increase in capital cost due to imposition of SGD by MoF's notification dated 29 July 2020.
10. The Commission notes that in response to the RfS document issued by MSEDCL for procurement of 1000 MW solar projects, ASHL was declared one of the successful bidders for development of 300 MW solar project at tariff of Rs. 2.74/kWh after competitive bidding process was duly carried out under Section 63 of the EA in February 2019. Afterwards, adoption of competitively discovered rate was approved by the Commission vide Order dated 27 May 2019 in Case No. 87 of 2019. AHPPL is a SPV incorporated by ASHL for setting up of the said 300 MW solar power project.
11. The Commission further notes that at the time of floating the RfS and subsequently at E-reverse auction, the MoF's Notification dated 30 July 2018 on imposition of SGD was in force. However, the validity of such enforcement was till 29 July 2020. Subsequently, MoF vide notification dated 29 July 2020 extended the applicability of the SGD for the period from 30 July 2020 to 29 July 2021 at the following rates:
 - i. fourteen point nine per cent (14.9%) ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30 July 2020 to 29 January 2021 (both days inclusive); and
 - ii. fourteen point five per cent (14.5%) ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30 January 2021 to 29 July 2021 (both days inclusive)

12. AHPPL has submitted that the SGD Notification dated 29 July 2020 was not issued at the time of bid and hence the same was not factored in the quoted tariff and was not considered as a part of project cost and hence is a Change in Law event. AHPPL has submitted that it is eligible for the compensation for Change in Law along with the carrying cost of the same and has proposed different alternatives as mechanism for compensation in its Petition. It has further submitted that in absence of such Change in Law approval and mechanism of reimbursement, AHPPL will not be able to approach any lender to fund the additional cost. Further, it will reduce the burden of carrying cost to the end consumers of Maharashtra as approaching this commission post COD will take additional period of 3-4 months which will have an impact of carrying cost under the PPA which is not in the public interest.
13. Further, AHPPL has argued that similar dispensation has been granted by the Commission vide its Order dated 5 March 2021 passed in Case No. 218 of 2020 in the matter of Tata Power Renewable Energy Ltd. v. Tata Power Company Ltd. (Distribution).
14. While opposing AHPPL's claim, MSEDCL stated that compensation under Change in Law provisions has to be allowed based on actual expenses after prudency check. But AHPPL has not submitted documents to established actual expenses and hence this Petition is premature and needs to be rejected.
15. The Commission notes that AHPPL has relied upon the Commission's Order dated 5 March 2021 passed in Case No. 218 of 2020 in the matter of TPREL v. TPCD wherein the Commission has acknowledged the MoF's Notification dated 29 July 2020 as Change in Law. The relevant excerpt from the Order is reproduced below:

“ORDER

1. The Case No. 218 of 2020 is allowed.

2. Ministry of Finance's Notification dated 29 July 2020 extending imposition of Safeguard Duty qualifies as Change in Law event.” [emphasis added]

Therefore, the Commission in respect of fact of Case No. 218 of 2020 has already declared imposition of MoF's Notification dated 29 July 2020 on extension of SGD as a Change in Law event. Said judgment will be applicable to all similarly placed situations.

16. SGD is levied on arrival of solar module/panel at Indian jurisdiction. In present matter, AHPPL has not provided any status of actual import of solar panel/module. It has only stated that as per Original plan it has placed purchase order with Chinese supplier on December 2019, however due to outbreak of Covid-19 pandemic, said supply order is impacted by Force

Majeure. Original SCoD of the project as per PPA was 25 June 2021, which was just one month before expiry (29 July 2021) of applicability of SGD notification dated 29 July 2020. However, considering Force Majeure event, the Commission vide its Order dated 20 June 2020 has allowed extension of SCoD by the period for which supply chain was disrupted due to Covid-19 pandemic plus 30 days. In most of cases of Force Majeure of Covid-19 pandemic, considering MNRE advice, blanket extension of 5 months has been granted to project developers and still developers are requesting for further extension considering ongoing pandemic situation. Said situation would also be true for the project under present Petition and hence it is safe to assume that original SCoD (25 June 2021) of AHPPL's project could get extended at least by five months (25 November 2021) or more. Under such circumstances, as per industrial practice, solar panel/module is imported just few months before such revised SCoD and hence could be beyond the last date (29 July 2021) of applicability of SGD notification dated 29 July 2020 and hence no SGD may apply.

17. In Case No. 218 of 2020, where the Commission has held MoF's Notification dated 29 July 2020 on extension of SGD as a Change in Law event, SCoD of solar power project was 3 July 2021 i.e. before the last date of applicability of said notification. Whereas in present case, as explained in earlier paragraph, it is most likely that revised SCoD could/would be beyond such last date of applicability of notification. Further, AHPPL has not provided any details and the status of the actual import of solar panel / modules for the projects which are subjected to such SGD.
18. In view of above, since possibility of levying SGD as per notification dated 29 July 2020 on the solar panel/module itself is doubtful, holding such notification as Change in Law event would be extremely premature. Although the Commission notes the concerns and intentions behind this Petition (raising funds from financial institutes for increased expenses and to reduce time lag in payment of compensation), without a reasonable possibility that AHPPL will be actually affected (and will be incurring the additional expenses), the Commission cannot hold that such notification as Change in Law event at this stage.
19. The Commission accepts and reiterates that imposition of SGD is eligible for consideration under Change in Law (subject to fulfilment of the stipulated conditions under Change in Law) but the same cannot be considered at this stage in respect of this petition for the reasons mentioned above. However, in case actual import of solar panel/modules is undertaken before 29 July 2021 and SGD is paid as per notification dated 29 July 2020, then AHPPL would be eligible to seek compensation as per Change in Law provisions of the PPA.
20. Hence, the following Order:

ORDER

1. Case No. 175 of 2020 is dismissed.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I.M. Bohari)
Member**

**Sd/-
(Shri Sanjay Kumar)
Chairperson**

