

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 61 of 2021

Case of Brihanmumbai Electric Supply and Transport Undertaking for condonation and approval of the inadvertent delay and deficiency in the course of procurement of 100 MW power from Manikaran Power Limited as per the directives of the Commission in Case No 324 of 2020 dated 30 March 2020.

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

Brihanmumbai Electric Supply and Transport Undertaking: - Petitioner
Vs
Manikaran Power LimitedImpleaded Respondent

Appearance

For Petitioner: -Shri. Harvinder Toor (Adv.)
For Impleaded Respondent: -Shri. Anand Ganeshan (Adv.)

ORDER

Date: 12 July, 2021

1. Brihanmumbai Electric Supply and Transport Undertaking (**BEST**) has filed this Case on 29 April 2021 under Sections 61, 62, 63 and 86 of the Electricity Act, 2003(**EA, 2003**) read with Regulations 35 to 41, 92, 93 and 94 of the MERC (Conduct of Business) Regulations, 2004 for condonation and approval of the inadvertent delay and deficiency in the course of procurement of 100 MW power from Manikaran Power Limited (**MPL**) as per the directives of the Commission in Case No 324 of 2020 dated 30 March, 2020.

2. **BEST's main prayers are as under:**

- a. *For condonation and approval of the inadvertent delay and deficiency in the course of procurement of 100 MW power from Manikaran Power Ltd. stated under the Hon'ble MERC's (i) Order dated 02.01.2019 passed in Case No. 249 of 2018, and (ii) Order dated 30.03.2020 passed in Case No. 324 of 2019;*

3. **BEST in its Petition has stated as follows:**

- 3.1 The Commission vide its Order in Case No 25 of 2017 dated 23 September, 2017 has directed BEST to undergo competitive bidding for 750 MW procurement of power for 3 time slots from FY 2018-19 to FY 2027-28. As the bidding process suffered various problems, the Commission vide its Order in Case No 176 of 2017 dated 27 February, 2018 cancelled the tender and directed BEST to carry out retendering for 750 MW for the 5 years period from 1 April, 2019 to 31 March, 2024 extending the existing contract of Tata Power Company Limited – Distribution (**TPC-D**) by one year i.e. up to 31 March, 2019.
- 3.2 BEST has carried out retendering process through Discovery of Efficient Electricity Price (DEEP) portal during April to June 2018 and discovered following rates for 3 time slots:

Bids	Time	Bidder	Capacity offered (MW)	Discovered Rate Rs./Unit
Bid I	RTC	Manikaran Power Ltd.	100	3.94
		MSEDCL	200	3.94
Bid II	7.00 hrs to 24.00 hrs.	MSEDCL	200	5.20
Bid III	9.00 to 19.00 hrs.	Tata Power Co. Ltd.	250	4.21

- 3.3 BEST had revised its proposal to procure power from Bid I (300 MW) + TPC Hydro (229 MW) + TPC-G Unit 5(256 MW) and filed a petition on 28 August, 2018. However, considering transmission constraints, BEST had further revised its proposal to procure only 100 MW from MPL under Bid-I along with extension of existing Power Purchase Agreement (**PPA**) with TPC-G in Case No. 249 of 2018 dated 2 January, 2019.
- 3.4 Considering transmission constraints for power flow in Mumbai without running Unit-5 of TPC-G at Technical Minimum, the Commission has approved revised proposal of BEST to procure only 100 MW from MPL under Bid-I along with extension of existing PPA with TPC-G in Case No. 249 of 2018 dated 2 January, 2019 and adopted rate of Rs. 3.94 /kWh for procurement of 100 MW of power from MPL for the period of 1 April, 2019 to 31 March, 2024 and further directed BEST to submit signed PPA for records of the Commission.

3.5 The Commission in its MYT Order dated 30 March, 2020 in Case No. 324 of 2019 has made certain observation regarding the delay in procurement of power by BEST from MPL. Flow of power from MPL was expected to start from 1 April, 2019, but delayed due to the reasons as submitted by BEST such as imposition of code of conduct of Lok Sabha elections & National Company Law Tribunal (NCLT) proceedings of Sai Wardha Power Generation Limited (SWPGL) which is the power source of MPL. Further BEST has not initiated various penalty provisions as per PPA against MPL. Based on the explanation submitted by BSET in this regard, the Commission in MYT Tariff Order directed BSET as follows:

BEST is directed to file separate Petition for approval of delay in supply of power from Manikaran covering aspects like various measures that were available to BEST under the terms of the PPA to address the delay in supply and the provisions which were actually invoked by BEST in this regard

3.6 In accordance with above directives, BEST has filed present Petition. BEST has provided following reasons for delayed execution of PPA with MPL:

- a. MPL has envisaged to source power from SWPGL, who was going through NCLT proceedings before November 2018 and there was uncertainty in supplying power due to these proceedings. BEST has conducted various meetings with MPL and SWPGL to assess the outcome of NCLT Proceedings. Further on account of Code of Conduct for Lok Sabha Election 2019, the matter of power procurement was recommended for prior approval of the Election Commission which was approved on 25 March 2019. Thereafter BEST had issued Letter of Assurance (LoA) on 26 March, 2019 in favor of MPL.
- b. After assessing the NCLT Outcome and probable timeline for power flow from SWPGL, PPA was signed on 24 May, 2019.
- c. After signing the PPA, BEST requested MPL to take steps for early commencement of power supply. While both the parties initiated the process to fulfil the Conditions Precedent as per the terms of the PPA, SWPGL was admitted to Corporate Insolvency Resolution Process (CIRP) by the NCLT, Hyderabad. BEST had discussed the matter with MPL and SWPGL. SWPGL informed that all the major decisions related to operation of plants were to be approved by the Committee of Creditors (CoC)/NCLT.
- d. As per PPA clause 4.1.2(a), 4.1.2(e) and clause 13.1 BEST shall have the obligation to execute Default Escrow Agreement and supplier has the obligation to seek Open Access for carrying electricity from the power station to delivery point. Both the parties could not fulfil the conditions within stipulated period. MPL failed to fulfil this condition because of pending NCLT case due to which Medium Term Open Access (MTOA) application could not be submitted in time by MPL. Whereas

Default Escrow Agreement was entered between MPL and BEST only on 15 March 2021.

- e. After the approval of the Resolution Plan under the Order dated 17 October, 2019 of NCLT, MPL with the approval of SWPGL, finally submitted the Application for MTOA to Maharashtra State Electricity Transmission Company Limited (MSETCL) on 29 November, 2019. The permission for MTOA was obtained on 1 March, 2020 and subsequently, power flow commenced on 1 March, 2020.
- 3.7 It is not possible to predict the outcome of the NCLT proceedings and further anticipating the commencement of supply from MPL. In that situation BEST has procured short term power through DEEP Portal and through power exchanges to mitigate the shortfall and tried to minimize power purchase cost. The average rate of this power purchase is Rs 3.26/ kWh which is less than Rs 3.94/kWh which is the rate discovered through bid submitted by MPL. There was no adverse financial impact on the consumers of BEST due to delay in power procurement from MPL.
- 3.8 Provisions under Article 18 (Compensation for Breach of Agreement) and Article 19 (Termination) of PPA provide to address the issue of delay in commencement of power supply. BEST has not invoked these provisions considering the time required for new tendering process. Also, it would have defeated the purpose of bringing the power to Mumbai at competitive rate from the source outside the Mumbai and to reduce dependency on the embedded generation.
- 3.9 MPL and BEST could not fulfil in time the Conditions precedent mentioned in PPA for reasons beyond their control and it was not intentional.
- a. As per Clause 13.2 of PPA, BEST was required to provide Letter of Credit (LoC) of Rs. 30 crores approximately which could be drawn by MPL for recovery of payment due against monthly invoice. Due to Covid-19 Pandemic, BEST's revenue recovery on a daily basis, stood drastically reduced and it was not in a position to open LoC of about Rs. 30 crores. Therefore, with the consent of MPL, BEST has provided a weekly revolving LoC of only Rs. 7.37 crores to MPL.
 - b. As per Clause 13.1 of PPA, BEST was required to open Default Escrow Account in favour of MPL for an amount equal to Rs. 45 crores. Had BEST opened the Default Escrow Account for Rs. 45 crores, the same amount would have been blocked in the Escrow Account for about 11 days every month. This would have greatly affected the availability of working capital (cash flow) during this period. Due to the Covid pandemic, revenue recovery was drastically affected and opening Escrow Account as per PPA would have hampered the day-to-day business of BEST Undertaking. Therefore, with the consent of MPL, BEST entered into a Supplementary Agreement for Default Escrow Agreement where new clause 13.1.3(A) was inserted thereby relaxing the requirement of withholding Rs. 45 crores in the Escrow Account subject to a condition that if monthly payment of bill amount due is not made before due

date (default conditions defined in the Supplementary Agreement), it shall become obligatory to withhold Rs. 45 crores in the Default Escrow Account upon the occurrence of default. BEST has paid monthly invoices raised by MPL within stipulated period for power flow from March 2020 onwards without making any default till date.

- c. MPL and BEST could not fulfil the Conditions Precedent as per aforesaid Clauses of the PPA. BEST has not suffered any Damages during this period as the power purchase cost was lower as compared to MPL. Further BEST is paying regular power purchase bills from March 2020 onwards without making any default till date. Thus, MPL also has not suffered any Damages due to non-compliances of Conditions Precedent by BEST within stipulated period. Both have mutually agreed for not levying damages on account of not fulfilling the Conditions Precedent given in Article 4 of the PPA.

3.10 Further BEST could not explore the option of substitute supply as envisaged under the Clause 10.3 of the PPA as the condition is applicable only if the supply of power is commenced. But in the present case no supply of power was commenced by MPL.

3.11 The delay and deficiency were unintentional and beyond the control of BEST. It is requested to condone and approve the inadvertent delay and deficiency in the course of procurement of 100 MW power from MPL.

4. MPL in its submission dated 19 May, 2021 has stated as follows:

4.1 BEST has issued LoA to MPL on 26 March, 2019 and PPA was executed on 24 May, 2019 after getting power purchase approval and adoption of rate of Rs 3.94/ kWh discovered through competitive bidding process under Section 63 of EA, 2003 by the Commission vide order dated 2 January 2019.

4.2 Original tender documents envisaged the commencement of power supply from 1 April 2019. After execution of PPA only, MPL would have been in a position to take any further action in relation to the other compliances including obtaining open access etc. Therefore, considering the actual dates there has been no delay in the present case.

4.3 As per RFP, LoA was to be issued on 16 July, 2018 and PPA was to be signed on 26 July, 2018, for commencement of supply after 8 months i.e. from 1 April, 2019. Considering the timelines as per RFP and execution of PPA on 24 May, 2020, the commencement of supply would be from February 2020. However, considering the issue of relaxation sought for in the condition precedent by BEST, the power supply could commence from 1 March, 2020. There is no dispute between the parties on the delay and time period for commencement, and the parties have now been performing as per the provisions of the PPA.

- 4.4 The delay in the fulfilment of Conditions Precedent as per clause 4.1 of PPA has been for the greater period on behalf of BEST, and the delay if any of MPL is subsumed in the delay of BEST. However, there has been no adverse action taken by either Party for the delay, considering the reasons for the delay and the intention of the parties to perform the PPA.
- 4.5 Extended period in accordance with the PPA for fulfilment of the condition precedent was required by MPL owing to Corporate Insolvency Resolution Process of SWPGL through which power was to be supplied which finally concluded on 17 October, 2019 by way of NCLT Order. The conditions have been fulfilled by MPL within the extended period as provided in the PPA, except for the open access permission, which was also procured within a week of the period provided. In any event, this was also much prior to the conditions subsequent being fulfilled by the Petitioner.
- 4.6 Owing to severe financial constraint faced by BEST certain deficiencies [deviations] from the existing terms and conditions as contained in the PPA were required to be made and MPL was requested to give its consent to such deficiency by way of relaxing certain provisions relating to maintaining minimum monthly amount in the default escrow account, deed of hypothecation and opening of LoC in favour of Replying Party in accordance with the PPA and as a result MPL permitted BEST to: (i) provide letter of credit to the Replying Party for an amount of Rs. 7.37 crore being equivalent to minimum weekly payment as against required amount of Rs. 30 crores being equivalent to minimum monthly payment as envisaged under Clause 13.2 of the PPA; (ii) dispensing with the condition of withholding amount equivalent to 20% (twenty percent) of the annual capacity charge (Minimum Monthly Payment) in the default escrow account for payment to MPL against each monthly invoice subject to the understanding recorded in Supplementary Agreement dated 18 March 2021.
- 4.7 It is requested therefore to accord its approval for continuation of power flow and approve delay/deficiency on the part of respective Party(s).

5. At the time of E-hearing held on 11 June, 2020:

- 5.1 Advocate of BEST reiterated the submission made in the Petition. He stated that the delay in executing the PPA is not intentional considering the election period and NCLT proceedings of SWPGL. MPL sources the power from SWPGL for supply to BEST. BEST has requested to condone the delay. Further in absence of MPL power, BEST has fulfilled the demand of the consumers through short term power purchase with an average rate of Rs 3.86/kWh which is less than the power purchase rate of MPL. Therefore, there is no financial burden on the consumers of BEST. It is requested therefore to condone the delay and approve continuing the power procurement from MPL.
- 5.2 Advocate of MPL reiterated the submissions regarding the reasons of delay and informed that they are supplying power to BEST with effect from 1 March, 2020. It is therefore

requested to condone the delay and approve the current arrangement of power purchase by MPL.

Commission's Analysis and Ruling:

6. Present petition has been filed by the BEST on account of this Commission's observations and directives in MYT Order relating to power procurement from MPL. The Commission in that Order had observed that power procurement from MPL was to start from 1 April, 2019, but BEST has projected to start such power procurement from 1 March, 2020 i.e. with delay of 11 months. Relevant part of Commission's observations and ruling in this regard is reproduced below:

"The Commission has observed that BEST has not envisaged any power availability from Manikaran Power Limited (Manikaran). The Commission in its Order in Case No. 249 of 2018 dated 2 January, 2019 allowed BEST to sign medium term PPA with Manikaran for 100 MW and power was supposed to start from April, 2019. As submitted by BEST, due to Code of Conduct imposed for General Lok Sabha Elections, BEST had forwarded the proposal of execution of PPA to the Chief Secretary, Mantaralaya as well as Election Commission and approval was received by end of March, 2019. BEST has issued Letter of Award on 26 March, 2019 and after undertaking balance process, signed PPA on 24 May, 2019. The Commission does not accept the reason for delay in process on account of Code of Conduct of Lok Sabha Elections as it was imposed on 10 March, 2019 which is more than 2 months from the date of issuance of Order by the Commission. After getting approval Order from the Commission, BEST should have immediately issued Letter of Award if they required the power supply to start from 1 April 2019. Even after getting approvals from Chief Secretary and Election Commission, it took around 2 months to sign the PPA between BEST and Manikaran. BEST has not provided any reasons for this delay of 2 months. The Commission notes that overall there is delay in process by 5 months from the date of issuance of Order by the Commission and signing of PPA. The Commission notes that there were no external factors which have resulted in delay in signing of PPA and it is purely on account of delay attributable to either BEST or Manikaran.

BEST has further submitted that during process to fulfil the Conditions Precedent as per the terms of the PPA, M/s SaiWardha Power Generation Ltd. (SWPGL), with whom Manikaran had tied up for supply of power to BEST, was admitted to Corporate Insolvency Resolution Process by the NCLT, Hyderabad. Hence, Manikaran was not able to file MTOA application as Resolution Plan of SWPGL was approved by NCLT on 17 October, 2017. The Commission notes that BEST has provided reasons for further delay, however, it has not provided details of measures taken by it to overcome this problem.

The PPA signed between BEST and Manikaran has various provisions relating to the actions to be initiated in case of delay in supply of power by the supplier. BEST has not provided details regarding the course of action taken by it relating to the delay

in supply of power from Manikaran. BEST has not provided details whether they have invoked any clause related to Damages for delay in supply of power by the Supplier as per the terms of the PPA. The PPA also has a clause pertaining to substitution of supply by the supplier in case of any issues with the existing source. BEST has also not provided any details whether they have explored option of substitution of supply as envisaged under the PPA.

The Commission expresses its serious displeasure over such delay in procurement of power even after getting timely approval from the Commission. *To meet the power purchase requirement, BEST has purchased short-term power through Bilateral/ Exchange during FY 2019-20. BEST in its Petition submitted that it has purchased short-term power at rate of Rs. 4.12/ kWh during first six months of FY 2019-20 and considered short-term power purchase rate of Rs. 4.00 /kWh for FY 2019-20. As submitted by BEST, power purchase cost of Manikaran was approved at rate of Rs.3.98 /kWh.*

....

*BEST has considered power supply from Manikaran from FY 2020-21 onwards for five years whereas it was scheduled to supply power from FY 2019-20 onwards for five years. The Commission in its approval of the PPA has approved the starting date of supply of power from Manikaran Power as 1 April 2019. **However, considering that the power supply will now only start on 1 April, 2020, BEST is directed to file separate Petition for approval of delay in supply of power from Manikaran covering aspects like various measures that were available to BEST under the terms of the PPA to address the delay in supply and the provisions which were actually invoked by BEST in this regard.***

The Commission in above Order observed that as power supply from MPL (@3.98/kWh) is delayed, BEST has procured power from short term sources in 1st half of FY 2019-20 at average rate of Rs. 4.12/kWh and in second half proposed rate of Rs.4.00/kWh for short term power procurement. The Commission notes that BEST has mentioned reasons for delay but did not mention any action taken under the PPA for such delayed supply. The Commission expressed displeasure over such delay in actual scheduling of power under approved PPA for 5 years and directed BEST to file separate petition for approval of such delay in supply of power from MPL.

7. Accordingly, BEST has filed this Petition wherein it is stated that on account of code of conduct of Lok Sabha Elections and uncertainty in the flow of Power due to NCLT proceeding of SWPGL there was delay in executing PPA between BEST and MPL. However, BEST has not terminated the PPA considering the time span required for carrying out the new tendering process. During this period, BEST has purchased short term power at an average price of Rs 3.86/ kWh which is less than the approved price of MPL (Rs 3.94/ kWh), thus reducing the burden on consumers. Further, parties to PPA have not claimed any damages from each other and there is no dispute between parties. Hence, it is requested to condone such delay in starting supply of power under PPA. MPL

in its submission has echoed the submission of BEST and requested to condone such delay.

8. Considering submissions made in the matter, request made in this Petition needs to be validated on the following aspects:
 - a. Whether there is any adverse impact on power procurement expenses of BEST due to such delay in supply of power from approved PPA with MPL?
 - b. Whether BEST has taken recourse to various provisions available in PPA to deal with such delay in supply of power?
 - c. Whether such delay in power supply can be condoned?

The Commission is addressing these issues in following paragraphs.

9. **Issue A: Whether there is any adverse impact on power procurement expenses of BEST due to such delay in supply of power from approved PPA with MPL?**

9.1 As stated earlier in this Order, supply of power under 100 MW PPA with MPL was to be started from 1 April, 2019. However, actual supply under this PPA started from 1 March, 2020. Thus, there is delay of 11 months in commencement of power supply. During this period, BEST has procured power from short term sources. As stated by BEST, such short-term power procurement is at rate which is lower than the tariff under the PPA with MPL. Hence, BEST has contended that there is no adverse financial implication on its power procurement cost.

9.2 In this regard, the Commission notes that in its MYT Order dated 30 March, 2020, it has undertaken provisional true-up of FY 2019-20 based on actual data up to September 2019 and projections for the period of October 2019 to March 2020. Due to delay in supply of power from MPL, the Commission has considered such shortfall be fulfilled by short-term power procurement at rate of Rs 4/ kWh. In present Petition, BEST has stated that its actual short term power procurement rate for FY 2019-20 is Rs 3.86/kWh. Details of the same are as follows:

Power Purchase from Bilateral power sources & Power exchange from April'2019 to Feb'2020														
Sr. No.	Detail		Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	TOTAL
Quantum:														
1	Bilateral Power Purchase	Mus	25.55	49.08	35.75	0.00	0.00	0.00	84.46	16.64	0.00	0.00	0.00	211.48
2	Purchase through Power exchange		17.48	27.48	33.81	32.11	45.97	67.44	12.60	44.47	96.19	15.98	43.19	436.72
	Total qtm. Of power purchase through bilateral & Px source (A)		43.03	76.56	69.55	32.11	45.97	67.44	97.06	61.11	96.19	15.98	43.19	648.20
Cost:														
3	Bilateral Power Purchase	Rs. in Crs	15.40	27.45	20.02	0.00	0.00	0.00	33.17	7.63	0.00	0.00	0.00	103.67
4	Purchase through Power exchange		6.48	10.82	12.33	10.71	14.94	19.73	4.09	14.98	32.27	5.45	14.81	146.60
	Total power purchase cost through bilateral & Px source (B)		21.88	38.28	32.35	10.71	14.94	19.73	37.26	22.61	32.27	5.45	14.81	250.27
5	Average Rate/unit (B/A)*10	Rs./unit	5.08	5.00	4.65	3.34	3.25	2.93	3.84	3.70	3.35	3.41	3.43	3.86

9.3 Based on above stated actual average Short Term power purchase rate of Rs 3.86/ kWh which is less than PPA rate of MPL i.e. Rs 3.94/ kWh and Rs 4/ kWh envisaged in MYT Order, BEST has stated that there is no adverse impact of delay in supply of power from MPL. Although prima facie it seems no adverse impact on power purchase cost, in the opinion of the Commission, such simplistic approach may not reflect correct picture. BEST cannot ignore the fact that power from MPL can also be used for replacing some of its costly long term power procurement from Tata Power on the Merit Order Despatch Principles. Therefore, while calculating impact of delay in supply from MPL, BEST should also have factored in any such lost opportunity. The Commission is not at all intending to indulge in fault finding exercise, but such analysis is a must for making continuous improvement in power procurement strategies. Therefore, the Commission directs BEST to submit such improved analysis during upcoming MTR proceeding wherein trueing up of FY 2019-20 will be undertaken. Based on such submissions, the Commission will take appropriate decision on power purchase expenses for FY 2019-20.

10. Issue B: Whether BEST has taken recourse to various provisions available in PPA to deal with such delay in supply of power?

10.1 The Commission notes that vide its Order dated 2 January 2019, it has adopted tariff of Rs. 3.94/kWh for supply of 100 MW on medium term basis for 5 years from MPL, with power supply start date of 1 April, 2019. Post this order, BEST has issued LoA to MPL on 26 March, 2019 and signed PPA on 24 May, 2019. Thus, BEST took almost 5 months for signing of the PPA. Further, post signing of PPA, actual power supply started from 1 March, 2020 i.e. after 9 months.

10.2 While justifying delay in signing of PPA, BEST stated that on account of Code of Conduct for Lok Sabha Election 2019, the matter of power procurement was recommended for prior approval of the Election Commission which was approved on 25 March 2019. Thereafter BEST had issued LoA on 26 March, 2019 in favor of MPL. As MPL's power sources i.e. SWPGL was under NCLT proceedings, after assessing the NCLT outcome and probable timeline for power flow from SWPGL, PPA was signed on 24 May, 2019. Post signing of PPA, SWPGL was admitted to Corporate Insolvency Resolution Process by NCLT and hence subsequent process of obtaining Open Access

for sourcing power was not undertaken. After the approval of the Resolution Plan under the Order dated 17 October, 2019 of NCLT, MPL with the approval of SWPGL, finally submitted the Application for MTOA to MSETCL on 29 November 2019. The permission for MTOA was obtained on 1 March, 2020 and subsequently, power flow commenced on 1 March, 2020.

10.3 The Commission notes that although above justification for delay in power supply from MPL seems reasonable, but at the same time it is equally important to understand what alternatives and provisions that were available with BEST. It is equally important to examine whether the provisions/alternatives were acted upon by BEST. There were options available to BEST under Article 18 (Compensation for Breach of Agreement) and Article 19 (Termination) of PPA in view of delay in supply of power, however, BEST has not acted upon it citing the reason that termination of such PPA and then going for new tendering process would have required more time, which would have increased its dependency on embedded generation.

10.4 In this regard the Commission notes that BEST was aware about the fact that the NCLT proceedings of SWPGL (which is generator contracted by MPL under back-to-back arrangement) were going on and there is likely to be uncertainty of the timelines for commencing the supply from MPL. Considering such uncertainty, BEST could have assessed the market trend and could have initiated new tender instead of indefinitely waiting for the outcome of NCLT. If BEST would have assessed the situation early, power could have been made available by second quarter of FY 2019-20.

10.5 The Commission also notes that although there is delay on part of generator, BEST also faced difficulties in complying with conditions stipulated under the PPA. On account of adverse financial situation due to Covid-19 circumstances, MPL has agreed for (i) BEST providing letter of credit of Rs. 7.37 crore (being equivalent to minimum weekly payment) as against amount of Rs. 30 crores (being equivalent to minimum monthly payment) as envisaged under Clause 13.2 of the PPA; (ii) dispensing with the condition of withholding amount equivalent to 20% of the annual capacity charge (Minimum Monthly Payment) in the default escrow account subject to the condition that if monthly payment of bill amount due is not made before due date it shall become obligatory to withhold Rs. 45 crores in the Default Escrow Account upon the occurrence of default. Supplementary Agreement to that effect has been signed on 18 March 2021 i.e. after one year from start of power supply.

10.6 Thus, although BEST has not taken recourse available under the PPA for delayed power supply, BEST was also not able to fulfil its obligations under the PPA within stipulated time. Thus, prima facie both parties to the PPA have defaulted on their respective obligations.

11. Issue C: Whether such delay in power supply can be condoned?

11.1 As observed in earlier part of this Order, prima facie there is no adverse impact of delayed supply of power in FY 2019-20. Exact impact can be ascertained at the time of MTR proceeding when BEST files more detailed analysis as ordered in para 9.3 above. Also there seems to be default from both side in complying with their respective obligations under the PPA. Further, through mutual agreement, parties have agreed to reduce financial obligations of BEST relating to payment security mechanism which helps BEST in this difficult situation of Covid-19 circumstance. Further, both parties have agreed to not claim any damages for delays under the PPA.

11.2 Considering the above facts, the Commission condones the delay in supply of power. However, in future, BEST should be more vigilant about its power procurement planning and take timely decisions. The Commission cautions BEST that though in this case, short term power procurement rate for FY 2019-20 was relatively lower than the tariff of MPL, such situation may not be always the same.

11.3 Accordingly, the Commission allows the condonation in delayed power supply by MPL and allows actual start date of said PPA as 1 March 2020 as against scheduled date of 1 April 2019.

12. Hence, following Order:

ORDER

- 1. Case No. 61 of 2021 is partly allowed.**
- 2. The Commission condones the delay for execution of Power Purchase Agreement and approves the continuation of power from Manikaran Power Limited to Brihanmumbai Electric Supply and Transport Undertaking and revises the start date as 1 March 2020.**
- 3. Brihanmumbai Electric Supply and Transport Undertaking to submit detailed analysis of power purchase expenses for FY 2019-20 as directed in para 9.3 above in its upcoming Mid Term Review Petition.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary



