

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 91 of 2021

**Petition of M/s Atnu Solar Power Pvt. Ltd. seeking extension of the SCOD of the Project
to actual date of commissioning**

M/s Atnu Solar Power Pvt. Ltd. (ASPL) Petitioner
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Coram

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

Appearance:

For the Petitioner : Shri. Vishrov Mukerjee (Adv.)
For the Respondent : Shri. Kiran Gandhi (Adv)

ORDER

Date: 2 November 2021

1. M/s Atnu Solar Power Pvt. Ltd. (ASPL) has filed this Case dated 03 August 2021 seeking extension of the Scheduled Commercial Operation Date (SCOD) in respect of the 10 MW Solar Power Plant located at Kinwat, District- Nanded from 31 December 2020 (SCOD) to actual Commercial Operation Date (COD) i.e., 28 January 2021. ASPL has further, claimed refund of Rs. 31.11 Lakhs appropriated by MSEDCL towards liquidated damages by invocation of ASPL's bank guarantee along with carrying cost for commissioning of project beyond SCOD.

2. Main prayers of the Petitioner are as follows:

- a) *Extend the Scheduled Commissioning Date of the Project from 30.12.2020 to 28.01.2021;*
- b) *Declare that MSEDCL was not entitled to recover monies towards liquidated damages from ASPL;*
- c) *Direct MSEDCL to refund the amount of Rs. 31,11,111/- appropriated by invocation of ASPL's bank guarantee along with carrying cost;*
- d) *Direct MSEDCL to procure power in accordance with Article 3.4.3 of the PPA to offset the loss caused to ASPL on account of non-availability of evacuation facility; and*
- e) *Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

3. ASPL in its Petition has stated as follows:

- 3.1. In terms of Article 3.3.1 of the Power Purchase Agreement (PPA) dated 27 December 2018, ASPL was required to commission the 10 MW Solar Power Plan Project located at Kinwat, Nanded by 27 January 2020 i.e., within 13 months from the date of execution of the PPA. The Project commissioning was delayed due to outbreak of COVID-19 and imposition of lockdown. Further, the delay was compounded by Right of Way (RoW) related issues.
- 3.2. Subsequently, extension has been granted up to 24 August 2020 in terms of the Office Memorandum dated 13 August 2020 issued by Ministry of New and Renewable Energy (MNRE). On 30 November 2020, ASPL applied for further extension of SCOD of the Project till 31 December 2020.
- 3.3. ASPL was ready to commission the Project by 25 December 2020. However, the Project could only be commissioned on 28 January 2021, resulting in a delay of 28 days. The commissioning was accepted by MSEDCL unconditionally.
- 3.4. The delay in commissioning of the Project between 25 December 2020 and 28 January 2021 was due to inordinate delays by MSEDCL's local offices in certifying the actual commissioning by ASPL despite issuance of Permission to Commission (PTC) by Chief Engineer (Renewable Energy) MSEDCL Head Office on 30 December 2020.

- 3.5. On 03 March 2021, MSEDCL granted extension of SCOD up to 31 December 2020. However, it has categorically rejected the extension claim for the period between 31 December 2020 and 28 January 2021, despite the delay being attributable solely to MSEDCL. MSEDCL ought to have allowed extension of SCOD, accounting for its delay in approval processes, till the actual date of commissioning.
- 3.6. MSEDCL has levied liquidated damages of Rs 31.11 Lakhs for the delay in commissioning the Project and on 02 July 2021, invoked the PBG submitted by ASPL.
- 3.7. ASPL provided following chronology of events pertaining to Case:

Date	Event
19 October 2019	Chief Engineer (Renewable Energy) MSEDCL wrote to Chief Engineer (Nanded Zone) to arrange for augmentation of the existing 3.15 MVA to 5 MVA at the 33/11 kV Bodhadi Substation.
24 October 2019	MSEDCL granted conditional Grid Connectivity to ASPL for the Project at 11kV level of 33/11 kV Bodhadi Substation. Grid Connectivity was subject to augmentation of existing 3.15 MVA power transformer to 5 MVA.
19 March 2020	ASPL wrote to MSEDCL seeking extension of at least 6 months in commissioning all the Projects being implemented under the 'Mukhyamantri Saur Krishi Vahini Yojana' (including present 10 MW Kinwat Project). ASPL mentioned various administrative and field level issues.
28 April 2020	ASPL issued a Force Majeure Notice to MSEDCL in terms of Article 8 of the PPA on account of imposition of lockdown by Ministry of Home Affairs and State Government. It was stated that extension of 6 months sought vide letter dated 19 March 2020 would not be adequate.
27 July 2020 and 03 September 2020	ASPL requested MSEDCL to augment the transformer at 33/11 kV Bodhadi Substation
10 September 2020	ASPL intimated MSEDCL that project is likely to be commissioned by 15 November 2020
14 September 2020	MSEDCL granted 5 months extension for SCOD in terms of the MNRE OM dated 13 August 2020. Accordingly, MSEDCL revised the SCOD from 31 March 2020 to 24 August 2020.
30 November 2020	ASPL assured that it was taking all possible steps to commission the 10 MW Kinwat Project by 31 December 2020. Accordingly, ASPL requested MSEDCL to extend SCOD for the Project upto 31

Date	Event
	December 2020.
07 December 2020	MSEDCL approved ASPL's request for extension of grid connectivity for the 10MW Project. Accordingly, the extension was granted up to 23 April 2021.
25 December 2020	ASPL submitted its documents seeking Permission to Commission (PTC).
30 December 2020	Chief Engineer (Renewable Energy) granted PTC to ASPL's solar power plant.
05 January 2021	Superintending Engineer (Nanded Circle) inter-alia informed Chief Engineer (Renewable Energy) with a copy to ASPL that the approval for the augmentation of the Power Transformer from 3.15 MVA to 5 MVA had not yet been received from the Corporate Office of MSEDCL as well as certain formalities that are yet to be completed by ASPL.
07 January 2021	ASPL provided point wise Reply to letter dated 05 January 2021.
14 January 2021	CE RE informed SE Nanded that till the time Augmentation take place, it is recommended that for all the feeders emanating from S/Stn daytime 3 phase availability be provided. Planned outages may be avoided during solar generation period.
19 January 2021	Superintending Engineer (Nanded Circle) wrote to Executive Engineer (Testing Division) for pre-commissioning of HT supply.
27 January 2021	Superintending Engineer (Nanded Circle) wrote to Superintending Engineer (TQA) and provided pre-release joint inspection reports in respect of project. Approval was sought for release of two auxiliary power HT connections and solar evacuation from Bay I & II.
29 January 2021	CE (O&M) Nanded, MSEDCL certified that ASPL's 10 MW Project had been synchronised and connected to the grid at 18:30 hours on 28 January 2021.
20 February 2021	ASPL sought further extension of SCOD to actual date of commissioning on account of COVID-19 restrictions and RoW issues.
03 March 2021	MSEDCL granted approval for extension of SCOD for the Project without encashment of Performance Bank Guarantee only till 31 December 2020 instead of 28 January 2021
02 July 2021	Union Bank of India informed ASPL that, based on the request of MSEDCL for invocation of Bank Guarantee, the Bank Guarantee had been invoked for an amount of Rs. 31,11,111/- and payment had been made to MSEDCL.

- 3.8. It is pertinent to note that Chief Engineer (Renewable Energy) vide letter dated 19 October 2019 requested Chief Engineer (Nanded Zone) to carry out the augmentation of the Power Transformers at Bodhadi 33/11 kV Substation. However, the same has not been augmented yet. Because of the adequate local load, the augmentation of the transformer capacity from 3.15 MVA to 5 MVA was not required for project commissioning. Non-augmentation of the transformer capacity impacted only full load generation (which incidentally happens only during an hour during afternoon tentatively between 13:00 hrs to 14:00 hrs).
- 3.9. Superintending Engineer (Nanded Circle) on 05 January 2021 raised queries to Chief Engineer (Renewable Energy) on requirement of augmentation of transformer capacity for commissioning the Project. However, it was only on 19 January 2021, that Superintending Engineer (Nanded Circle) directed Executive Engineer (Testing), MSEDCL to proceed with Pre-commissioning procedure. Thereby, a delay of 20 days was caused by internal deliberations of MSEDCL and the same is not attributable to ASPL. Thereafter, on 20 January 2021 and 22 January 2021, Testing Team of MSEDCL visited the Project and after conducting the initial tests suggested certain changes. The said changes were carried out and completed by ASPL on 27 January 2021 after which Executive Engineer (Testing) gave a clearance to Superintending Engineer (Nanded Circle) for further processing. In the past for similar projects the activities from PTC approval to COD is completed within 3 to 10 days. However, in the present case a delay of over 28 days was caused by MSEDCL in granting the permission for commissioning and synchronisation.
- 3.10. ASPL was ready for commissioning and was awaiting MSEDCL's approval. In this regard, it may be noted that Article 3.4.3 of the PPA provides that if the Plant is ready but the requisite evacuation facility is not ready as on SCOD, then ASPL is entitled to generation compensation considering the excess generation by ASPL in the succeeding three Contract Years. The excess power generated shall be procured by MSEDCL at the PPA tariff so as to offset the loss.
- 3.11. For substantiating the case, ASPL referred to Judgements of Hon'ble Appellate Tribunal for Electricity (APTEL) in *Chamundeshwari Electricity Supply Company Ltd. (CESC) v. Saisudhir Energy (Chitradurga) Pvt. Ltd & Ors.*, Appeal No. 176 of 2015 (Judgment dated 21 March 2018) and *SEI Aditi Power Private Limited & Ors. v. Karnataka Electricity Regulatory Commission & Ors.* – Appeal No. 360 of 2019 (Judgment dated 14 July 2021). In the said matter the APTEL held that the delay by transmission licensee / distribution licensee in creating the infrastructure for evacuation of power is beyond the control of the generating company and amounts to a Force Majeure event. Considering the referred Judgements, MSEDCL is precluded from imposing any liquidated damages on account of alleged delay in commissioning the Project. It is submitted that the delay is on account of delay in grant of commissioning and synchronisation approvals by MSEDCL and the same

constitutes a 'Force Majeure Event' under the PPA. Hence, ASPL cannot be held liable for the same. ASPL also relied upon Order of Central Electricity Regulatory Commission in '*Rising Sun Energy Private Limited and Others v. NTPC Ltd.*': (2019) SCC OnLine CERC 118 wherein CERC, granted extension of SCOD to a generating company that had been delayed due to non-availability of transmission and evacuation infrastructure.

- 3.12. ASPL also relied upon the Commission's Order dated 20 June 2020 in Case No. 78 of 2020 titled '*ACME Heergarh Powertech Pvt. Ltd. v. MSEDCL*'. In the said Order the Commission granted extension of SCOD for solar Projects on account of Force Majeure and conditions beyond the reasonable control of parties. Outbreak of COVID-19, imposition of nationwide lockdown and disruption of supply chain has already been recognised as a ground for extension of SCOD.
- 3.13. In the Commissioning Certificate dated 29 January 2021 granted by MSEDCL to ASPL, MSEDCL did not reserve any of its right qua SCOD being allowed would not be the actual date of commissioning. Therefore, having accepted the date of commissioning as 28 January 2021, MSEDCL is barred from considering the SCOD as 31 December 2020. In this regard, reliance is placed on Section 55 of the Indian Contract Act, 1872.
- 3.14. MSEDCL has levied liquidated damages on ASPL in terms of Article 3.3. of the PPA, however, MSEDCL has failed to demonstrate actual loss caused on account of delay in commissioning by ASPL. It is settled law that even if a provision/clause of an agreement provides for liquidated damages, the same has to be considered on account of the actual loss caused to the party and compensation is to be granted accordingly. Mere claim of damages by one party does not make the other party liable until the liability is adjudicated by a Court. The same is held by the Hon'ble Supreme Court of India in *Kailash Nath Associates v. Delhi Development Authority*: (2015) 4 SCC 136.
- 3.15. MSEDCL has levied Liquidated Damages on ASPL for delay in commissioning of the Project in spite of the delay being on account of failure of MSEDCL to provide permission to synchronize ASPL's project to the Grid. It is trite that a party cannot take advantage of its own wrong.

4. Respondent MSEDCL in its Reply dated 23 September 2021 submitted as below:

- 4.1. ASPPL failed to achieve financial closure and SCOD as required within the period stipulated in PPA. Despite extension of time, ASPL failed to fulfill the said obligation. In view of the default committed by ASPL, MSEDCL is entitled to invoke PBG as per the provisions of the PPA.

- 4.2. ASPL under shelter of pandemic situation claiming delay as Force Majeure and justifying the delay on account of non-completion of transformer augmentation work at 33/11 kV Bodhadi Substation. ASPL failed to submit the required permissions and documents. MSEDCL was ready for synchronising; when ASPL complied with all required documents/permissions and resolution of queries. Thus, MSEDCL denies that delay is attributed to MSEDCL.
- 4.3. The PPA expressly stipulated that ASPL was responsible for obtaining all consents required for developing, financing, constructing, operating and maintenance of the project and maintainability/ reviewing all such consents in order to carry out its obligations under PPA as per Article 3. It was also ASPL's responsibility to investigate the location before entering into the Agreement and if it is not suitable ASPL had option to change the location as per clause 3.2 of Request for Selection (RfS).
- 4.4. Earlier at the time of bidding, ASPL had selected location at Village Lingi, Taluka Kinwat, Dist. Nanded at 33/11 kV Umri Substation. As per clause 3.2 of RfS, ASPL opted choice for change of location and selected 33/11 Gokunda kV Substation at village Mangabodi, Taluka Kinwat, Dist. Nanded. MSEDCL issued Grid Connectivity on 27 May 2019.

Due to unavailability of suitable land parcel, ASPL on 19 August 2019, again requested change in location from 33/11 kV Gokunda Substation to 33/11 kV Bodhadi Substation at Village Pimparphodi, Taluka Kinwat, Dist. Nanded. The request for change of location was made after the date of financial closure. Even after this delay, MSEDCL accepted the request of ASPL without forfeiting the PBG and issued Grid Connectivity on 24 October 2019. MSEDCL then entered into a supplementary Agreement on 24 January 2020. As per provisions of RfP, ASPL is responsible to select the location after inspection and investigate the locations which are feasible to supply Power.

MSEDCL has contended that ASPL knew that the power transformer at Bodhadi Substation was under rated i.e.8.15 MVA instead of 10 MVA. Thus, ASPL was aware of the Technical constraint at the said location, but ASPL has selected the location and accepted full responsibility for its condition.

- 4.5. ASPL from time to time made an application for extension of time for SCOD for all Seven projects (including present project) on the ground of COVID-19 situation and MSEDCL granted extensions as requested without levy of Liquidated Damages. A table below shows the Project/location wise SCOD/Extension date/ Delays days in SCOD:

Location of Project	Extended SCOD	Extension requested	Delay in days w.r.to 24.08.2020
Tal: Kannad, Dist:Aurangabad.	24.08.2020	20.08.2020	NA
Tal: Mohol, Dist: Solapur.	24.08.2020	17.10.2020	52

Location of Project	Extended SCOD	Extension requested	Delay in days w.r.to 24.08.2020
Tal: Parner, Dist:Ahmednagar.	24.08.2020	25.11.2020	91
Tal: Mantha, Dist: Jalna.	24.08.2020	25.08.2020	1
Tal: Wadwani,Dist: Beed.	24.08.2020	08.09.2020	13
Tal: Jamkhed, Dist:Ahmednagar.	24.08.2020	25.08.2020	1
Tal: Kinwat, Dist: Nanded.	24.08.2020	31.12.2020	128 (actual delay 156 w.r.to 29.01.2021)

- 4.6. SCOD of Projects was 27 January 2020. At the request made by ASPL, 1st extension for SCOD for all seven projects was granted for 2 months. It is pertinent to note that not a single project was commissioned by ASPL till the said extended period. Thereafter, on account of outbreak of pandemic (COVID-19) as per Ministry of New & Renewable Energy (MNRE) Guidelines, extension of time for SCOD was granted upto 24 August 2020 without levy of Liquidated Damages.
- 4.7. As per the terms, financial closure was to be completed by 27 July 2019. At the request made by ASPL MSEDCL extended the said date up to December 2020 without levy of any penalty as per Article 4.2.2 of PPA.
- 4.8. ASPL vide its letter dated 30 November 2020 sought extension of SCOD for 10 MW of Taluka Kinwat on the ground of Labour and ROW problems till 31 December 2020 which was granted by MSEDCL. It is pertinent to note that MSEDCL has given 11 months of extension from the original SCOD. If extension of MNRE is excluded, then the project is delayed by 7 months.
- 4.9. As per PPA Article 3.3, for the delay of 7 months, MSEDCL would have forfeited the whole PBG of Rs 2 crores resulting in reduction of the tariff by 15 paise/kWh (0.5 paise x 30 days) for 10 MW solar project of M/s ASPL.
- 4.10. As per Article 4.1.1 of PPA, ASPL requires to apply for PTC of the project 30 days before the SCOD. ASPL sought the permission on 24 December 2020 before the extended date of SCOD only to save its skin for any Liquidated Damages.
- 4.11. MSEDCL vide its letter dated 30 December 2020 had given its approval for PTC with a validity of 30 days. The validity of 30 days has been given to ASPL to enable it to comply with all the compliances and queries raised by the Nodal office.

- 4.12. ASPL vide its letter dated 07 January 2021 complied with certain queries. ASPL submitted Provisional Charging Permission dated 09 January 2021 and Agreement with consumers dated 19 January 2021.
- 4.13. ASPL vide its letter dated 27 January 2021 complied with the queries raised by the Testing Team of MSEDCL. After receipt of all the compliances and fulfilling the obligations of ASPL, a pre-release joint inspection was carried out on 27 January 2021 and on 28 January 2021 the project at village Pimparfodi, Taluka Kinwat Dist. Nanded was Synchronized and for supply of power to the grid, the generating plant was connected.
- 4.14. As soon as ASPL complied with all the requirements, the project in question was commissioned with capacity of 10 MW. It is admitted position that there were delays on the part of ASPL in fulfilling the obligations and in providing the required documents as well as in declaring SCOD in terms of the provision of the PPA as per the extended period. As the project was not commissioned for the extended period, therefore as per the provisions of the PPA, MSEDCL is entitled to levy liquidated damages.
- 4.15. ASPL submitted all the required documents and fulfilled its obligation only on 27 January 2021. Thus, ASPL is not entitled to extension of SCOD upto the actual date of commissioning.
- 4.16. ASPL misinterpreted Section 55 of the Indian Contract Act, 1872. The PPA shall have to be considered in its entirety and its proper appreciation of intent of the parties. It is denied that by accepting the commissioning and issuing the commissioning certificate, MSEDCL unconditionally accepted the performance by ASPL and therefore MSEDCL is not entitled to claim any damages. It is submitted that issuance of the commissioning certificate does not operate as waiver of the terms and conditions stipulated in the PPA. Mere acceptance of the commissioning should not be taken to amount to waiver.
- 4.17. It is settled principle of law that no party can take advantage of its own wrong. It is to be noted that ASPL by its letter dated 30 November 2020 requested for extension of SCOD upto 31 December 2020 and thereafter never sought any extension of SCOD till the commissioning of the project. Considering the interest of public at large, extension was granted by MSEDCL upto 31 December 2020 and thereafter it accepted the commissioning of the project.
- 4.18. It is settled law that in case of a breach, the aggrieved parties must be compensated and restored to the same position it would have been in, had the contract been performed. In the present case ASPL and MSEDCL specifically contemplated the liquidated damages for breaches and/or delay at the time of making the contract, therefore undoubtedly MSEDCL

is entitled to receive compensation by way of liquidated damages from ASPL who is in breach of the PPA, whether or not actual damage was proved to have been caused by such breach.

5. E-Hearing in this matter was held on 28 September 2021. During the hearing, ASPL and MSEDCL reiterated submissions made in the Petition and Reply to the Petition, respectively. ASPL circulated its notes of argument during the hearing.

6. **Petitioner ASPL in its Additional Submission dated 30 September 2021 submitted as below:**

6.1. The delays faced in commissioning the Project may be categorised into following two phases:

(a) Phase 1 (27 January 2020 to 31 December 2020): Phase 1 pertains to delay caused by Force Majeure event due to outbreak of COVID-19 and imposition of consequential lockdown coupled with other factors such as unusual heavy rains in the State of Maharashtra, Land and Right of Way related issues at site, delay in sanction of Grid connectivity & grant of evacuation approvals, delay in obtaining registration from MEDA etc.

(b) Phase 2 (31 December 2020 to 28 January 2021): This delay is attributable to MSEDCL due to its failure in not being able to complete the commissioning procedure for ASPL's Project.

MSEDCL Vide its letter dated 03 March 2021 has allowed the extension of SCOD for Phase 1 but not considered the delay from 31 December 2020 to 28 January 2021.

6.2. The COD declared by MSEDCL (i.e. 28 January 2021) was granted under the same facts and circumstances that existed as on 25 December 2020, when ASPL sought PTC. The transformer at Bodhadi Substation has not been augmented by MSEDCL till date, which is the main ground mentioned in Superintending Engineer's (Nanded Circle) letter dated 05 January 2021 for not permitting commissioning of the Project. Despite that, subsequently ASPL has been permitted on 28 January 2021 to commission the Project.

6.3. While issuing the commissioning certificate on 29 January 2021, MSEDCL has not given/issued any notice qua its intention to claim damages from ASPL for delay in commissioning. Therefore, MSEDCL is now precluded from levying liquidated damages belatedly.

- 6.4. On 30 November 2020, ASPL submitted its application for extension of SCOD. While this application was pending, MSEDCL accepted the commissioning of the project unconditionally. Having accepted the commissioning, MSEDCL is legally prohibited from claiming any compensation.
- 6.5. ASPL asserted that the project was ready to commission since 25 December 2020, but got delayed on account of following:
- (a) Insistence of Superintending Engineer (Nanded Circle), for augmentation of one transformer at Bodhadi Substation from 3.15 MVA to 5 MVA. Permission for augmentation had not been received from MSEDCL since 2019.
- (b) Superintending Engineer (Nanded Circle) refused to execute Consumer Agreement for drawal of start-up power.
- 6.6. Existing transformation capacity of 8.15 MVA (3.15 MVA+5 MVA) at Bodhadi Substation has not been augmented till date and the same is being used for power evacuation from the generating plant. There was no reason for Superintending Engineer (Nanded Circle) to delay commencement of the project.
- 6.7. For similar projects, the activities from PTC approval to COD is completed within 3 to 10 days. The same is evident from the other commissioned projects of ASPL under the 'Mukhyamantri Saur Krishi Vahini Yojana', (all tied up with MSEDCL) as under:

Projects	PTC Application (a)	PTC Approval (b)	SCOD (c)	No. of Days for Commissioning from PTC Approval (c) – (b)
10 MW Kannad	08-08-20	12-08-20	20-08-20	8
10 MW Jamkhed	13-08-20	20-08-20	25-08-20	5
10 MW Mantha	13-08-20	15-08-20	25-08-20	10
10 MW Wadwani	24-08-20	31-08-20	08-09-20	8
10 MW Mohol	01-10-20	13-10-20	17-10-20	4
10 MW Parner	04-11-20	20-11-20	25-11-20	5
10 MW Akkalkot	08-10-20	13-10-20	16-10-20	3
10 MW Kinwat	25-12-20	30-12-20	28-01-21	28

However, in the present case a delay of over 28 days was caused by MSEDCL in granting the permission of commissioning and synchronisation.

- 6.8. Delay on account of MSEDCL in granting the commissioning approval has delayed the commissioning of the Project. Such a delay is for reasons beyond ASPL's control and qualifies as a Force Majeure event under the PPA and in terms of the APTEL's Orders.
- 6.9. ASPL vide letter dated 27 July 2020 and 03 September 2020 has repeatedly followed up with MSEDCL for augmentation of the transformer at Bodhadi Substation. Further, vide letter dated 07 January 2021 in the interest of the Project and for timely commissioning, ASPL undertook to restrict generation up to 8.15 MVA Transformer capacity till transformer augmentation at 33/11 KV Bodhadi Substation. ASPL's correspondence clearly suffices ASPL's efforts to commission the project in timely manner.
- 6.10. ASPL vide letter dated 07 January 2021 had submitted the Consumer Agreement on Rs. 200 Stamp Paper to Nanded Circle, MSEDCL but Superintending Engineer (Nanded Circle) refused to execute the Agreement citing pendency of Bodhadi Transformer augmentation.
- 6.11. ASPL's letter dated 27 January 2021 was in response to the queries raised by MSEDCL during the site visit on 22 January 2021. These issues were promptly resolved by ASPL. They could have been resolved earlier if MSEDCL had not delayed the Project inspection.
- 6.12. MSEDCL's contention that ASPL delayed attaining the Financial Closure due to which MSEDCL is entitled to forfeit the PBG is erroneous. In terms of the PPA, ASPL was to attain Financial Closure by July 2019. However, due to reasons beyond the control of ASPL, the Financial Closure was attained only on 31 December 2019. However, the delay in attaining Financial Closure was informed to MSEDCL and MSEDCL vide letter dated 15 June 2020 acknowledged the same.
- 6.13. Once MSEDCL has granted extension, the timelines in the PPA stand revised. Therefore, in the present proceedings, no prejudice can be caused to ASPL for previous extensions that have admittedly been granted by MSEDCL.
- 6.14. MSEDCL is required to quantify and prove the loss it has incurred on account of the alleged delay in commissioning the Project. Hence, imposition of liquidated damages and invocation of bank guarantee by MSEDCL is contrary to Section 74 of the Indian Contract Act, 1872.

Commission's Analysis and Rulings:

7. The instant Case has been filed by ASPL seeking extension of the SCOD in respect of its 10 MW Solar Power Plant located at Kinwat, District- Nanded from 31 December 2020 to actual

COD i.e., 28 January 2021. ASPL claims refund of Rs. 31.11 Lakhs appropriated by MSEDCL towards liquidated damages by invocation of bank guarantee along with carrying cost for delay in commissioning of the project beyond SCOD.

8. The Commission notes that there has been delay in commissioning of the Project. The delays are categorized into two phases being for the period from 27 January 2020 to 31 December 2020 (Phase 1) and from 31 December 2020 to 28 January 2021 i.e. actual COD (Phase 2). MSEDCL vide its letter dated 03 March 2021 has accorded its consent for extension of SCOD up to 31 December 2020. The dispute in hand is on account of appropriation of ASPL's Bank Guarantee by MSEDCL for delay in phase 2. Hence, the Commission is dealing with issues pertaining to phase 2.
9. Based on the pleadings and submission, following events are worth noting in phase 2 delay period:

Date	Event
25 December 2020	ASPL submitted its documents seeking Permission to Commission (PTC) and intimated its readiness to Commission the plant.
30 December 2020	Chief Engineer (Renewable Energy) MSEDCL issued PTC to ASPL's 10 MW Solar Power Project. The said permission to commission was granted subject to condition that all statutory clearances are obtained by the Generator.
05 January 2021	Superintending Engineer (Nanded Circle) flagged various issues and non-compliance of quires by ASPL. Major issues raised: <ol style="list-style-type: none"> 1. Non-receipt of technical sanction to proposal for augmentation of power transformer at 33/11 kV Bodhadi Substation. 2. Non-submission of material approval documents, Test report for installation and Permission of Electrical Inspector.
07 January 2021	ASPL approached SE Nanded along with documents of compliance. ASPL requested to arrange Testing of Bay of evacuation system.
14 January 2021	Till the time augmentation takes place Chief Engineer (Renewable Energy) recommended that for all the feeders emanating from Substation, daytime 3 phase availability be provided. Planned outages may be avoided during solar generation period.
19 January 2021	Superintending Engineer (Nanded Circle) directed Executive Engineer Testing for pre-commissioning testing.
27 January 2021	Superintending Engineer (Nanded Circle) sought approval from SE TQA for release of two number of auxiliary power HT connections and solar evacuation from Bay-I and Bay-II

29 January 2021	Superintending Engineer (Nanded Circle) issued full commissioning certificate for ASPL project.
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10. Accordingly, following principle issues emerge in the instant matter for consideration:

- a. Whether transformer augmentation is essential prerequisite for project operation? and who is responsible for transformer augmentation works?
- b. Whether the delay in the commencement of supply from ASPL's 10 MW solar power project was on account of reasons not attributable to the Petitioner?
- c. Whether MSEDCL is entitled to recover compensation towards liquidated damages from ASPL?
- d. Whether ASPL is eligible for compensation in accordance with Article 3.4.3 of the PPA to offset the loss caused on account of non-availability of evacuation facility?

The Commission is addressing above issues in the following paragraphs.

11. Issue A: Whether transformer augmentation is essential prerequisite for project operation and who is responsible for transformer augmentation works?

11.1. ASPL stated that on 19 October 2019, Chief Engineer (Renewable Energy) intimated Chief Engineer (Nanded Zone) that the connectivity of ASPL's Project is feasible subject to augmentation of existing 3.15 MVA transformer to 5 MVA transformer in MSEDCL's 33/11 kV Bodhadi Substation. Further, Chief Engineer (Nanded Zone) had been requested to arrange for augmentation to meet the feasibility criteria. On 24 October 2019, MSEDCL communicated the grant of Grid Connectivity to ASPL's Project at 11kV level of 33/11 kV Bodhadi Substation. It is pertinent to note that the said Grid Connectivity was granted subject to augmentation of power transformers installed at 33/11 kV Bodhadi Substation.

11.2. On 27 July 2020 and 03 September 2020, ASPL requested MSEDCL to augment the transformers of the 33/11 kV Bodhadi Substation. On 7 December 2020, MSEDCL granted first extension to Grid Connectivity. The validity of grid connectivity is extended up to 23 April 2021, keeping terms and conditions unchanged.

11.3. To counter ASPL's contention MSEDCL submitted that ASPL has changed the project location twice and it is the responsibility of ASPL to select the location after inspection and investigation which are feasible to supply Power. ASPL was aware of technical capacity

constraints at 33/11 kV Bodhadi Substation. Still ASPL opted to select the said location accepting full responsibility.

- 11.4. From documents on record, it is evident that 33/11 kV Bodhadi Substation is having 2 power transformers with capacities of 3.15 MVA and 5 MVA (cumulative capacity of 8.15 MVA). In this project, delivery point is 11 kV bus bar level at 33/11 kV Bodhadi Substation. At Substation, 2 separate bays have been created for evacuating the power. As project is of 10 MW capacity, for evacuating the peak generation, in absence of any local load at least 10 MVA transformation capacity is required.
- 11.5. The Commission also notes that MSEDCL has also contended that ASPL has repeatedly requested for change of site location. In this regard, the Commission notes that as requested by ASPL, MSEDCL has also granted approval for change of project location, one of which is post financial closure. Once, MSEDCL has approved such request, now MSEDCL cannot raise objection on ASPL changing project location.
- 11.6. Hence, the only issue that remains to be decided is the responsibility of each of the party under the PPA with respect to evacuation infrastructure. With regards to Grid Connectivity, RfS document stipulated following conditionalities:

“

3.7 Connectivity with the Grid

1. *The project should be designed for delivery of energy at 11 / 22 kV level Substation of MSEDCL.*
2. *The responsibility of getting the grid connectivity with MSEDCL shall entirely be of the successful bidder. The successful bidder shall submit documentary evidence for securing connectivity with grid from MSEDCL within 7 months from the date of signing of PPA.*
3. *The transmission of power up to **the point of interconnection and energy accounting infrastructure shall be the responsibility of the successful bidder** at his own cost. The maintenance of Transmission / Distribution system up to the interconnection point shall be responsibility of the Bidder.*

.....” (***Emphasis added***)

It is pertinent to note that interconnection point has been defined in RfS and PPA which reads as below:

“Interconnection Point”; shall mean the point(s) of connection(s) at which the project is connected to the grid i.e. it shall be at 11 / 22 kV bus bar level of Substation of MSEDCL.

Further, PPA provides for a definition of Delivery Point and Interconnection Facilities, which reads as given below:

“Delivery Point” shall mean the point(s) of connection(s) at which energy is delivered into the Grid system i.e. the Interconnection Point.

“Interconnection Facilities” in respect of the Power Producer shall mean all the facilities installed by the Power Producer to enable MSEDCL to receive the Delivered Energy from the Project at the Delivery Point, including transformers, and associated equipment, relay and switching equipment, protective devices and safety equipment and transmission lines from the project to nearest sub-station.

Article 3.3. RfS document provides for project scope, which reads as below:

“

3.3 Project Scope:

The successful bidder shall set up Solar PV Power Project(s) including the transmission/Distribution network up to the Delivery Point in line with Section 3.7, at its own cost (including but not limited to open access charges till the delivery point) and in accordance to the provisions of this RfS document. All approvals, permits and clearances required for setting up of the Project (including connectivity) and those required from State Government and local bodies shall be in the scope of the successful bidder. However, the selection of Projects would be technology agnostic within PV technology and crystalline silicon or thin film, etc. with or without Trackers can be installed. In order to ensure only quality systems are installed, the Bidders shall strictly comply with the technical parameters detailed in the Annexure -A....”

(Emphasis added)

From conjoint reading of provisions of RfS and PPA, it is evident that ASPL is responsible for development of sub-transmission/distribution system for power evacuation up to the delivery point including energy accounting infrastructure. In the present case, delivery point is 11 kV bus-bar of 33/11 kV Bodhadi Substation. Therefore, ASPL cannot be held responsible for development of system beyond 11 kV bus-bar.

11.7. Beyond delivery point (towards transformers side) responsibility lies with MSEDCL. Therefore, Chief Engineer (Renewable Energy) vide its letter dated 19 October 2019 to Chief Engineer (Nanded Zone) requested to arrange for augmentation of power transformer and the tentative timelines for said works and scheme associated with said works. Accordingly, Grid connectivity dated 24 October 2019 granted to ASPL was subject to following:

“

1. This grid connectivity is subjected to augmentation of commissioned capacity of power transformer installed at 33/11 kV Bodhadi S/s from 8.15 MVA to 10 MVA.”

The above conditionalities clarify that the said augmentation of power transformers at 33/11 kV Bodhadi Sub-Station is a pre-requisite for project commissioning and onus of augmenting such transformer lies with MSEDCL.

12. Issue B: Whether the delay in the commencement of supply from ASPL’s 10 MW solar power project was on account of reasons not attributable to the Petitioner?

12.1. ASPL in its submission has stated that it was ready to commission the Project on 25 December 2020. Chief Engineer (Renewable Energy) vide its letter dated 30 December 2020 granted PTC to the project. Subsequent to grant of PTC, Superintending Engineer (Nanded Circle) vide its letter dated 5 January 2021 raised various issues including non-receipt of approval for augmentation of power transformer at 33/11 kV Bodhadi Substation.

12.2. MSEDCL has contended that as per Article 4.1.1. of PPA, ASPL is mandated to provide at least thirty days written notice to the MSEDCL mentioning the date on which it intends to synchronize the project to Grid System. ASPL sought the PTC on 24 December 2020. MSEDCL vide its letter dated 30 December 2020 had given its approval for PTC with a validity of 30 days. The validity of 30 days has been given to ASPL to enable to comply with all compliances and queries raised by the Superintending Engineer (Nanded Circle). The PPA expressly stipulated that ASPL is responsible for obtaining all consents required for developing, financing, constructing, operating and maintenance of the project and maintainability/ reviewing all such consents in order to carry its obligations.

12.3. As regards the notice for synchronization, the Commission notes that Article 4.1.1 of the PPA states as follows:

“

4.1 Synchronization, Commissioning and Commercial Operation

4.1.1 The Power Producer shall give at least thirty days written notice to the SLDC/SNA and MSEDCL, of the date on which it intends to synchronize the Power Project to Grid System.

4.1.2. Subject to Article 4.1.1, the Power Project may be synchronized by the Power Producer to the Grid System when it meets all the connection conditions prescribed in the Grid Code and otherwise meets all other Indian legal requirement for synchronization to the Grid System.

4.1.3. The synchronization equipment and all necessary arrangements/ equipment including Remote Terminal Unit (RTU) for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the Power Producer at its generation facility of the Power Project at its own cost. The Power Producer shall synchronize its system with the Grid System only after the approval of SLDC or MSEDCL.

.....”

From a plain reading of Article 4.1.1 of the PPA, it is clear that such notice was to be given to concerned SLDC/SNA and MSEDCL. Further, subject to such notice, if project is fulfilling all legal requirement including grid connectivity, it is allowed to synchronize the project with the Grid. Accordingly, ASPL vide letter dated 24 December 2020 i.e. prior to extended SCOD i.e. 31 December 2020 has requested PTC from MSEDCL which was granted by MSEDCL on 30 December 2020. Once, PTC has been granted, issue of giving at least 30 days' notice becomes infructuous.

12.4. The Commission further notes that letter of Superintending Engineer (Nanded Circle) to Chief Engineer (Renewable Energy) dated 05 January 2021 and Reply of Chief Engineer (Renewable Energy) dated 14 January 2021 are more relevant to capture the actual status of the project. Superintending Engineer (Nanded Circle) vide letter dated 05 January 2021 reported following major pending issues, without which project cannot be commissioned:

- Sanction for transformer augmentation works is pending at MSEDCL's Corporate Office.
- Test report for installation of equipment's not submitted by Generators or his Licensed Electrical Contractor.
- Pending execution of agreement with MSEDCL on Rs.200/- Bond for release of connections

- Pending consent for executing evacuation works under 1.3% DDF scheme.
- Minor works at project site.

In response to the above letter dated 05 January 2021, Chief Engineer (Renewable Energy) vide its dated 14 January 2021 clarified that transformer augmentation proposal is under process at MSEDCL's Corporate level. With regards to commissioning, Chief Engineer (Renewable Energy) recommended following:

“The subject was also referred to testing section of Corporate office and it has informed that till the time for augmentation of existing transformer, it is recommended that on all 11 kV feeders, three phase supply is to be made available in day time. There are two 11 kV feeders on 5 MVA transformer having load more than 3.6 MW on each feeders. So these feeders may be switched on in such a way that, maximum load will be available during peak generation of the solar. On 3.15 MVA transformer, two 11 kV feeders, that is to be used in day time for three phase supply i.e. 9.00 to 17.00 hrs. Planned outages are to be avoided during solar generation period.”

By mentioning above recommendation, Chief Engineer (Renewable Energy) directed Superintending Engineer (Nanded Circle) to commission the project.

- 12.5. From above, it is clear that on 14 January 2021, MSEDCL explicitly directed to commission the project without transformer augmentation work which is a prerequisite in grid connectivity and sanction of evacuation system. As mentioned in Para 11.17, MSEDCL is responsible for transformer augmentation work. Hence, delay attributable up to 14 January 2021 is not on account of ASPL.
- 12.6. As regards other compliances, it is noted that MSEDCL has insisted on furnishing test certificates, agreement with MSEDCL (for startup connections) and consent for executing work under 1.3% DDF scheme. The Commission notes that all these documents are just procedural aspects and would have been easily complied with if MSEDCL had specifically requested for the same earlier.
- 12.7. After clarification from Chief Engineer (Renewable Energy) on 14 January 2021, ASPL on 18 January 2021 provided the material test certificates for conductor & poles of overhead lines and permission for charging of electrical installation. After the said compliance, Superintending Engineer (Nanded Circle) vide its letter dated 19 January 2021 directed the concerned Testing teams to carry out pre-release joint inspection. On 27 January 2021, after completion of pre-release joint inspection Superintending Engineer (Nanded Circle) sought approval for releasing two number of auxiliary power HT connections and Solar evacuation

from Bay-I and Bay-II from Superintending Engineer (TQA). Clearly, post 18 January 2021, all administrative and testing formalities of project were procedural parts of MSEDCL for releasing and charging infrastructure. Procedural formalities of MSEDCL cannot be attributable to delay on part of ASPL.

12.8. Thus, it is clear that as on date of issuance of PTC i.e. 30 December 2020, ASPL was in position to commission the project. MSEDCL was not ready with evacuation infrastructure beyond interconnection point i.e. augmentation of transformer was pending, and said project is finally commissioned without augmenting such power transformer. Hence, MSEDCL is clearly in default of its obligation in present matter. Non-submission of documents by ASPL as claimed by MSEDCL is just a procedural aspect which could have been complied with if MSEDCL has raised it earlier. Also list of such documents to be submitted at the time of commissioning of the project was not part of the PPA. Hence, ASPL cannot be held responsible for delay in commissioning of the project beyond 30 December 2020. Further, from the details submitted in para 6.7 above, it is observed that post issuance of PTC, other project of ASPL has been commissioned within 3 days. Same would have been possible in present case, if MSEDCL has taken proactive approach at earlier instances only.

13. Issue C: Whether MSEDCL is entitled to recover compensation towards liquidated damages from ASPL?

13.1. Relevant provisions of PPA related to liquidated damages provided as under:

“

3.3. Liquidated damages for delay in Commissioning the project/Solar Photovoltaic Grid Interactive Power Plant beyond Scheduled Commercial Operation Date:

3.3.1 The Projects shall be commissioned within a period of 13 (thirteen) months from the date of execution of the PPA.

3.3.2 The Power Producer shall have to submit Commissioning Certificate as verified, inspected and certified by SLDC/MSEDCL. In case of failure to achieve this milestone, MSEDCL shall forfeit the Performance Bank Guarantee (PBG) in the following manner:

a) Delay upto six (6) months from SCOD- MSEDCL will forfeit total Performance Bank Guarantee on per day basis and proportionate to the balance capacity not commissioned.

b) In case the commissioning of project is delayed beyond six (6) months from

SCOD, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned. The maximum time period allowed for commissioning of the full Contracted Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 25 months from the date of execution of PPA or till the Tariff becomes zero, whichever is earlier.

- c) *In case, the Commissioning of the project is delayed beyond this period as mentioned in Article (b) above, the PPA capacity shall stand reduced/mended to the capacity commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the Contracted Capacity.”*

Further, Article 4.2.3 provides for following:

“

4.2.3 If the Power Producer fails to commission the project/Unit on or before Scheduled Commercial Operation Date, MSEDCL shall have the right to forfeit the Performance Bank Guarantee without prejudice to the other rights of the Power Producer under this Agreement as per Article 3.3.”

Thus, above Articles of PPA provide that liquidated damages can be levied by MSEDCL only when ASPL is unable to commence supply of power to MSEDCL by SCOD.

- 13.2. ASPL has relied upon Force Majeure clause under the PPA and contended that delay in commissioning of the project is beyond its control and hence it is covered by Force Majeure wherein party affected need not pay any compensation. The Commission notes that Force Majeure clause under the PPA reads as follows:

“8.1 Force Majeure Events:

8.1.1 Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstances (a “Force Majeure Event”) beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:

.....

8.1.3 The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which

such party knew or should reasonably have known of the commencement of the event of Force Majeure.

.....

8.2 Available Relief for a Force Majeure Event:

8.2.1 No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

.....

8.2.3 Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events. ”

Thus, as per above provisions of PPA, if party is not able to perform its obligation on account of event which is beyond its control, then it can be considered as Force Majeure Event and during occurrence and continuation of such event, affected party is free from its obligations under the PPA and need not to pay any payment for inability to perform such obligations under the PPA. However, it is mandatory to issue notice within 7 days from occurrence of Force Majeure Event to other party.

13.3. The Commission also notes that Hon’ble APTEL in its judgment dated 14 July 2021 in Appeal No. 360 of 2019 (appeal filed by Solar developers and BESCO and KPTCL were respondents) has held that non-availability of evacuation infrastructure is to be treated as Force Majeure Event. Relevant part of the Judgment is reproduced below:

“117. The ratio of the above said Judgment squarely applies to the facts of the present Appeal on hand; therefore, we opine that the Respondent Commission ought to have held that the failure on the part of the Respondent KPTCL to create infrastructure for evacuation in time amounts to force majeure event. Hence, we are of the opinion that the Respondent Commission erred so far as delay in evacuation infrastructure being completed as force majeure event.

.....

122. Over and above this, we note that in the letter dated 09.09.2016, the Appellants pointed out that all works were completed and request for start-up power was already made to KPTCL. This intimation was not disputed by BESCO. They have mentioned in the said letter that interconnection was not given on account of reasons beyond their control on account of non-completion of evacuation infrastructure. Therefore, we are of the opinion that this letter addressed to BESCO constitutes force majeure notice.”

APTEL in above judgment has also held that although specific notice of Force Majeure was not issued, letters indicating readiness of generator and pointing out non-availability of evacuation infrastructure (which is not within the scope of the generator) can be treated as Force Majeure Notice.

13.4. In the present matter, at para 11.7 above, the Commission has held that responsibility of setting up of evacuation infrastructure beyond the interconnection point was of MSEDCL and hence work of augmentation of power transformer at Bodhadi substation was within the scope of MSEDCL. Further in para 12.8 above, it is held that by 30 December 2020 which is within extended SCOD of 31 December 2020, ASPL's project was ready for commissioning but work of augmentation of transformer (which is within the scope of MSEDCL) was not ready. It is also a fact that project was finally commissioned without augmenting such power transformer by putting restriction on peak power generation of ASPL's Solar power plant. Thus, it is evident that required evacuation infrastructure (which is responsibility of MSEDCL) was not ready which was beyond the control of ASPL and hence as per above quoted judgment of APTEL and provisions of PPA, such event needs to be treated as Force Majeure Event. As far as issue of Force Majeure Notice is concerned, ASPL vide its letters dated 27 July 2020 and 03 September 2020 have reminded MSEDCL about pending work of augmentation of power transformer and its criticalness for commissioning of the project. Said letters are to be treated as Force Majeure Notice, especially when it is MSEDCL's own responsibility of augmenting such power transformer.

13.5. In view of the above, the Commission holds that ASPL's project under consideration is affected by Force Majeure event of non-availability of evacuation infrastructure which is beyond its control. In fact, said event of Force Majeure is still continuing as said power transformer is yet to be augmented and hence power evacuation is being undertaken at reduced capacity. Hence, as per PPA provisions, no compensation needs to be paid by ASPL for delayed commissioning of the project beyond extended SCOD of 31 December 2020 which is delayed due to event of Force Majeure.

13.6. Therefore, the Commission holds that liquidated damages shall not be levied for the period of delay and MSEDCL is directed to return the forfeited amount along with carrying cost within a month from date of this Order. Carrying cost shall be computed at the rate prescribed under the PPA for Late Payment.

13.7. Further for the reasons stated above, SCOD of ASPL's 10 MW Solar project located at Kinwat, Nanded stand extended to actual date of commissioning i.e. 28 January 2021.

14. Issue D: Whether ASPL is eligible for compensation in accordance with Article 3.4.3 of

the PPA to offset the loss caused on account of non-availability of evacuation facility?

14.1. The Commission notes that ASPL is seeking compensation in terms of Article 3.4.3 of the PPA. Article 3.4.3 reads as below:

“

3.4.3 However, if the plant is ready but necessary evacuation is not ready on Schedule Commercial operation date, the generation loss shall be calculated considering the normative CUF of 19%. Corresponding to this generation loss, considering the excess generation by the power Producer in the succeeding 3 (three) Contract Years, shall be procured by MSEDCL at the PPA tariff so as to offset this loss”

14.2. MSEDCL's reply is silent on this issue. But the Commission notes that ASPL in its letter dated 7 January 2021 to Chief Engineer (Renewable Energy) requested to permit charging of 10 MW solar Plant in existing system. In the said letter ASPL has undertaken that post commissioning of the project it will restrict the generation to 8.15 MW at Bodhadi Substation end until augmentation of power transformer is completed by MSEDCL. The above undertaking does not mention compensation claim on account of incomplete evacuation system and it is inferred therefore, that ASPL has forgone its claim.

14.3. As noted at para 12.4, MSEDCL vide its letter dated 14 January 2021 directed to commission the project without transformer augmentation and has proposed to carry out local load management at Substation level giving daytime three phase supply availability on feeders emanating from Bodhadi Substation. Thus, MSEDCL has tried to accommodate maximum possible power generated by ASPL's project.

14.4. Considering above, the claim of ASPL for compensation in accordance with Article 3.4.3 of the PPA is not admissible. But MSEDCL is hereby directed to execute the transformer augmentation works within six (6) months from the date of this Order and report the compliance.

15. Hence, the following Order.

ORDER

1. The Case No. 91 of 2021 is partly allowed.

2. In terms of ruling in Para 13, Scheduled Commissioning Date of the Project stands extended to actual date of commissioning i.e. 28 January 2021.

3. MSEDCL is directed to refund the amount of Rs. 31,11,111/- appropriated by invocation of ASPL's bank guarantee along with carrying cost within a month from date of this Order.
4. MSEDCL is directed to take up the Transformer Augmentation work on priority and shall augment the power transformer at 33/11 kV Bodhadi Substation within 6 months from the date of Order and report the compliance.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

