

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 141 of 2021

Case of MSEDCL seeking approval for Adoption of Tariff for Long Term Procurement of 111 MW Power under ‘Mukhyamantri Saur Krishi Vahini Yojana’ from 2 to 10 MW Capacity Projects connected to Distribution Network under Section 63 of The Electricity Act 2003 for meeting its Solar Renewable Purchase Obligations

M/s Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)

: Petitioner

- 1 M/s. Balaji Stone Crusher
- 2 M/s. Tangent solar Power & Infrastructures
- 3 M/s. Pragati Multi Services
- 4 M/s. Kasturi Electricals & Engineering
- 5 M/s. Maharashtra State Road Development Corp.
Ltd
- 6 Smt.Archana Jalindar Wadekar
- 7 M/s. Basant Agro Tech India Ltd
- 8 M/s. Jai shrikrishna Enterprises Dhule.
- 9 M/s. Bafna Solar & Infra Pvt Ltd
- 10 Smt. Asmita Sanjay Gore
- 11 Shri. Bhauraj Shankarao Kavathe
- 12 M/s. Econest Globcare Pvt Ltd
- 13 M/s. Sauravi Global Investment
- 14 M/s. Reddy Construction
- 15 M/s. Shivprasad Motors
- 16 M/s. VRN Constructions
- 17 Smt. Surekha Sharad Patil
- 18 M/s. Shri Satyasai Baba Infra Ventures Pvt Ltd
- 19 M/s. Ashish Dall Industries
- 20 Shri. Suresh Ramrao Pensalwar
- 21 Shri. Prakash Gurappa Tonne
- 22 M/s. Suninfra Energies Pvt Ltd
- 23 M/s. Shri Ramkrishna Solar Furniture &

: Respondents

Electrical Supply

- 24 M/s. Rajlakshmi Constructions
- 25 M/s. R B Ghodke Infrastructure Private Limited
- 26 M/s. Gorakshasidhi Solar Power Private Limited
- 27 M/s. Mauli Cotex
- 28 M/s. Minakshi Trading Company
- 29 M/s. Parvati Energy Recreation
- 30 Shri. Amar Avinash Yerolkar
- 31 M/s. Shree Kashi Vishwanath Infra Projects Pvt. Ltd
- 32 M/s. Ganesh Enterprises
- 33 M/s. Shiv Sharda Auto Lines Pvt..Ltd.

: Respondents

Coram

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

Appearance:

For the Petitioner
For the Respondents

: Smt. Kavita Gharat, CE RE
: Shri. Aditya Singh (Adv)
Shri. Ganesh P. Sawant
Shri. Durgesh Maru
Shri. Abhijeet Deshmukh
Shri. Sunil Deshmukh
Smt. Archana Wadekar

ORDER

Date: 3 December 2021

1. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) filed the present petition on 29 October 2021 seeking approval for adoption of tariff for long term procurement of 111 MW Power under 'Mukhyamantri Saur Krishi Vahini Yojana (MSKVY)' from 2 MW to 10 MW Capacity Projects connected to Distribution Network. The said petition is filed under the provisions of Section 63 of The Electricity Act, 2003 for meeting the Solar Renewable Purchase Obligations (RPO). Further, MSEDCL has sought approval to the RfS and PPA

document floated for 1300 MW tender under ‘Mukhyamantri Saur Krishi Vahini Yojana’.

2. MSEDCL’s main prayers are as follows:

- a) To admit the Petition as per the provisions under Section 63 of the Electricity Act (EA), 2003.*
- b) To accord approval for adoption of tariff as mentioned in table under para 3.5 and signing of PPA with successful bidder for 111 MW solar power as discovered through Competitive bidding conducted by MSEDCL.*
- c) To accord approval to the RfS and PPA document floated.*
- d) To accord approval to made this power eligible for meeting the Solar RPO requirement of MSEDCL.*
- e) To consider the submission made by the Petitioner and consider the same positively while deciding the Petition as well as for further actions;*

3. MSEDCL in its Case has stated as follows:

- 31 The Commission vide its Order dated 18 December 2020 in Case No. 214 of 2020 has accorded its approval to proceed with continuous bidding process for selection of bidder at ceiling tariff of Rs. 3.30 per unit under MSKVY.
- 32 In the meantime, tariff of Rs. 2.36 per unit was discovered in SECI tendered projects located in Rajasthan. Therefore, MSEDCL decided to float tenders for solar power under decentralized solar project with revised ceiling rate of Rs. 3.05 per unit with cumulative capacity 1300 MW.
- 33 Considering the prevalent market conditions and as per the MNRE guidelines of decentralized solar plants dated 13 December 2019, MSEDCL floated district wise 30 tenders on 22 April 2021 for procurement of solar power through competitive bidding. The same is intimated by MSEDCL to the Commission vide its letter dated 11 May 2021. The last date of submission of bid was 11 June 2021.
- 34 Total 35 bids for 15 districts were received with total cumulative bidding capacity of 115 MW. Technical bids were opened on 16 June 2021. Details are depicted in table below:

Sr. No.	Circle	Tender No.	Name of Bidder	Tender Capacity (MW)	Bid capacity
1	Amravati	T-02	M/s Balaji Stone Crusher	50	2
2			M/s Tangent solar Power & Infrastructures		3
3	Buldhana	T-03	M/s Pragati Multi Services	50	5
4	Yavatmal	T-04	Kasturi Electricals & Engineer	50	3
5	Washim	T-06	Maharashtra State Road Development Corporation Ltd	50	5
6	Akola	T-11	Archana Jalindar Wadekar	50	3
7			Basant Agro Tech India Ltd		2
8	Dhule	T-14	Jai shrikrishna Enterprieses Dhule.	50	2
9			Bafna Solar & Infra Pvt Ltd		2
10	Ahmednagar	T-16	Gorakshasidhi Solar Power Pvt Ltd**	50	2
11			Asmita Sanjay Gore		2
12	Solapur	T-17	Bhauraj Shankarao Kavathe	50	2
13	Satara	T-20	Econest Globcare Pvt Ltd	50	2
14	Aurangabad	T-22	Sauravi Global Investment	50	10
15	Latur	T-23	Reddy Construction	50	3
16		T-23	Shivprasad Motors		2
17		T-23	VRN Constructions		2
18		T-23	Surekha Sharad Patil		2
19		T-23	Shri Satyasai Baba Infra Ventures Private Limited		2
20		T-23	Horizon Landmarks Private Limited**		2
21		T-23	Ashish Dall Industries		2
22		T-23	Suresh Ramrao Pensalwar		2
23		T-23	Prakash Gurappa Tonne		5
24	Jalna	T-24	Suninfra Energies Pvt Ltd	50	3
25	Parbhani	T-25	Shree Ramkrushna Solar Furniture ELE. Supply	50	4
26			Rajlakshmi Constructions		2
27			R B Ghodke Infrastructure Pvt. Ltd.		2
28	Beed	T-27	Gorakshasidhi Solar Power Pvt. Ltd.	50	3
29			Mauli Cotex		6
30			Minakshi Trading Company		2
31			Parvati Energy Recreation		2
32			Shiv Sharda Auto Lines Pvt Ltd		12
33	Nanded	T-29	Amar Avinash Yerolkar	50	5
34			Shree Kashi Vishwanath Infra Projects Private Ltd		5
35			Ganesh Enterprises		2
	Total			1300	115

35 During technical scrutiny, two bidders (** from above table) namely M/s Horizon

Landmarks Pvt. Ltd. & M/s Gorakshasidhi Solar Power Pvt. Ltd. were disqualified as Net worth of both the companies was found to be lower than the eligible criteria set out in tender document.

- 36 The financial bids of balance 33 bidders were opened on 06 July 2021. The rates quoted by the bidders are as below:

Sr. No.	Name of Bidder	Capacity per location MW	Tariff rate
1	M/s Balaji Stone Crusher	2	3
2	M/s Tangent solar Power & Infrastructures	3	3.05
3	Pragati Multi Services	5	3.05
4	Kasturi Electricals & Engineer	3	3.05
5	Maharashtra State Road Development Corp. Ltd	5	3.05
6	Archana Jalindar Wadekar	3	3.02
7	Basant Agro Tech India Ltd	2	3.05
8	Jai shrikrishna Enterprises Dhule.	2	3.05
9	Bafna Solar & Infra Pvt Ltd	2	3.05
10	Asmita Sanjay Gore	2	3.02
11	Bhauraj Shankarao Kavathe	2	3.05
12	Econest Globcare Pvt Ltd	2	3.00
13	Sauravi Global Investment	10	3.00
14	Reddy Construction	3	3.05
15	Shivprasad Motors	2	3.05
16	VRN Constructions	2	3.05
17	Surekha Sharad Patil	2	3.05
18	Shri Satyasai Baba Infra Ventures Pvt Ltd	2	3.05
19	Ashish Dall Industries	2	3.05
20	Suresh Ramrao Pensalwar	2	3.05
21	Prakash Gurappa Tonne	5	3.05
22	Suninfra Energies Pvt Ltd	3	3.05
23	Shree Ramkrushna Solar Furniture ELE. Supply	4	3.00
24	Rajlakshmi Constructions	2	3.00
25	R B Ghodke Infrastructure Private Limited	2	3.05
26	Gorakshasidhi Solar Power Private Limited	3	3.03
27	Mauli Cotex	6	3.05

Sr. No.	Name of Bidder	Capacity per location MW	Tariff rate
28	Minakshi Trading Company	2	3.05
29	Parvati Energy Recreation	2	3.05
30	Shiv Sharda Auto Lines Pvt. Ltd.	12	3.05
31	Amar Avinash Yerolkar	5	3.05
32	Shree Kashi Vishwanath Infra Projects Pvt Ltd	5	3.05
33	Ganesh Enterprises	2	3.05
	Total	111	

37. MSEDCL prayed to the Commission for adoption of Tariff for above 111 MW solar power discovered through competitive bidding process under Section 63 of the Electricity Act, 2003.
4. At the e-hearing through video conferencing held on 9 November 2021, the Representative of the MSEDCL requested the Commission for adoption of tariff discovered through competitive bidding process under MSKVY for the cumulative Solar capacity of 111 MW. Advocate and Representatives of Respondents sought time for making their written submission. The Commission allowed parties to submit their say in timebound manner.
5. Following sixteen (16) Respondent Generators submitted their submission 15 November 2021.

Sr. No.	Name of Generators
1	Pragati Multi Services
2	Reddy Construction
3	Shivprasad Motors
4	VRN Constructions
5	Surekha Sharad Patil
6	Shri Satyasai Baba Infra Ventures Pvt Ltd
7	Ashish Dall Industries
8	Suresh Ramrao Pensalwar
9	Prakash Gurappa Tonne
10	R B Ghodke Infrastructure Private Limited
11	Minakshi Trading Company
12	Parvati Energy Recreation
13	Amar Avinash Yerolkar
14	Shree Kashi Vishwanath Infra Projects Pvt Ltd
15	Ganesh Enterprises
16	Maharashtra State Road Development Corp. Ltd

All above Respondents have raised common issue of disruption in supply of solar equipment manufacturing from China and increase in GST rate. For simplicity, submissions of Respondent (1 to 15) are summarized below:

- 51 Article 8.1 of the Draft PPA which is a part of RfS dated 22 April 2021 provides for Force Majeure event and its implications.
- 52 It is an industrial practice to procure modules and cells from China. Chinese Government has imposed the reduction of electricity usage in several of their provinces leading to disruption in manufacturing ability of modules manufacturers. There is no detailed information available in public domain which can give visibility on the timeline of the impact of this restrictions in China. This event has severely impacted our ability to procure modules and cells. All leading manufacturers have issued Force Majeure notices. Considering above stated event, Respondents are requesting the Commission to recognise such events as a Force Majeure Events.
- 53 Clause 9 of the Draft PPA which is a part of RfS states that Change in Law shall refer to the occurrence of any of the following events after the last date of the bid submission, including:
- (i) the enactment of any new law; or
 - (ii) an amendment, modification or repeal of an existing law; or
 - (iii) the requirement to obtain a new consent, permit or license; or
 - (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Producer; or
 - (v) any change in the rates of any Taxes, Duties and Cess which have a direct effect on the Project.
- 54 Ministry of Finance on 30 September 2021 vide Notification No. 08 /2021 increased Goods and Service Tax (GST) on import of Solar Modules and Solar Inverter from 5% to 12% ("MoF Notification"). Last date of the bid submission was 11 June 2021, and MoF Notification is increasing Goods and Service Tax (GST) from 5% to 12%, therefore MoF Notification will be considered as a Change in Law Event.
- 55 Adoption of tariff, declaration of Force Majeure and approval of change in law are responsibilities of the Commission in exercise of its Regulatory Powers under Section 86(1)(b) of the Electricity Act, 2003.
- 56 Above said events having occurred after the bid deadline and before adoption of tariff, the proper stage for their consideration is in the same proceedings wherein the bid discovered price is being adopted.
- 57 Hon'ble APTEL in its Judgement in Appeal Nos. 21 of 2019 and 73 of 2019 (Talwandi Sabo

Power Limited v Punjab State Electricity Regulatory) categorically held that regulatory certainty is essential for a project developer, as indeed for the other stakeholders in such projects.

- 58 Hon'ble APTEL in the matter of Green Infra Renewable Energy Limited Vs. RERC & Ors. (Appeal No. 251 of 2021) held as follows:

“16. During the hearing, we pointedly asked but no regulation or contractual clause or, for that matter, any other provision was shown as could reflect an inhibition or prohibition against consideration of claim of change in law compensation at the stage of adoption of the tariff discovered by the bid process under Section 63 of the Electricity Act, 2003. We agree with the appellant that deferring such claim for later date creates a whole lot of confusion and, what is of utmost concern to the project developers, regulatory uncertainty and consequent difficulties in attaining financial closure. It cannot be ignored that the impact on the cost of the development of the project of such change in law events that have occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price renders the bid price unrealistic and in terms of Section 86 (1) (b) of the Electricity Act, it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, may be first by declaration and followed up by detailed tariff orders. If the event referred to actually constitutes change in law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a change in law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage.”

- 59 Alleged ambiguity needs to be clarified so that Respondents are able to perform its obligations under the PPA towards the spirit and national goals of development of renewable energy.
- 5.10 MSRDC mentioned that post submission of bid, the GST has increased to 12%. Further, the solar project components cost is also increased. Any further delay will further affect the solar project cost and viability. There could be increase in tax/rates till the project is commissioned. MSRDC requested the Commission to accord its approval to bidding process and further signing of PPA. Further, to avoid multiplicity of proceedings the directions may be issued to MSEDCL to revise the tariff considering the GST impact or permit MSRDC to submit a fresh Petition for tariff revision under appropriate provisions on commissioning of project.

6. MSEDCL in its Rejoinder dated 18 November 2021 stated as follows:

- 6.1 Respondents are seeking reliefs under the draft PPA and not under the PPA executed

between the parties. The purpose of the present Petition is to seek approval for tariff adoption which is discovered competitively as per Section 63 of the Electricity Act, 2003.

62 Thus, it is only after tariff adoption, Letter of Award (LoA) will be issued and PPA will be executed. Therefore, in absence of PPA, requests of Respondents become null and void.

63 Since the PPA is yet to be signed, presently no agreement exists between the parties and as such, it is premature to seek declaration of the disruption in manufacturing capacity at China as a Force Majeure Event.

64 It is the commercial decision of the Respondent Generators to procure solar cells and modules from China. The RfS/PPA document, nowhere mentioned to procure modules from China only. Respondent Generators can avoid procuring solar modules from China using better technical expertise/alternate remedies available in the market and thereby can avoid implication due to the reason as cited by the Respondent Generators.

65 Respondent Generators should comply with the MNRE's notification regarding ALMM List which is specified in the RfS document is reproduced below:

“

3.3 Project Scope

.....

Bidder shall comply with MNRE Notification dated 10.03.2021 regarding Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement for Compulsory Registration) Order, 2019”

China modules are not listed in the recent updated List I of ALMM Order, 2019 issued by the MNRE F.No. 283/54/2018-GRID SOLAR-Part (1) dated 29 September 2021.

66 LoA for the present solar project is not yet issued and PPA is also not signed. Therefore, timelines for the procurement and commissioning of the project are not known at present. Further, it is industrial practice to procure modules after Financial Closure i.e, 06 months after LoA. By that time the present scenario of the solar module manufacturing industry in the China may not remain same. So, declaring force majeure is premature.

67 In view of the above, procurement of modules from China is a commercial call of the Respondent Generators and getting benefit out of it by seeking force majeure event is not acceptable.

68 Section 86(1)(b) of the Electricity Act, 2003 stipulates that the Commission has powers to regulate electricity purchase and procurement process through agreements and at this stage

no agreement is in existence with the Respondent.

- 69 The Commission may declare the Change in law after the execution of PPA as per the provisions stipulated under the PPA.
- 6.10 Respondents' action of filing such objection may delay the adoption process, thereby leaving a short time with MSEDCL for further activities for completing the tender process along with execution of PPA as the validity of some of the Bank Guarantees against EMD are likely to expire at the end of November and some by mid-December.

Commission's Analysis and Rulings

7. MSEDCL has filed present Petition for adoption of tariff discovered for 111 MW solar power through competitive bidding process under Section 63 of the EA, 2003. During the proceeding, although successful bidders have supported the Petition, but have requested the Commission to declare in principle approval for Force Majeure Event and Change in Law event highlighted by them in adoption order itself. Therefore, following issues need to be decided in the present matter:
- a. Adoption of Tariff discovered through Competitive Bidding process
 - b. Approval of Force Majeure Event and Change in Law event along with tariff adoption order.

The Commission is addressing above issues in the following paragraphs.

8. Issue A: Adoption of Tariff discovered through Competitive Bidding Process:

- 8.1. Prior to present Petition, MSEDCL had approached the Commission in Case No.214 of 2020 seeking permission to float the tenders under MSKVY with the deviation in MNRE Guidelines for Development of Decentralised Solar Power Plants dated 13 December 2019 to initiate the tendering process with the ceiling Tariff of Rs. 3.30 per unit.
- 8.2. In the above said proceedings, the Commission vide its Order dated 18 December 2020 accorded its approval to consider the minimum CUF of 19% instead of 15% and thereby allowed deviation sought in MNRE Guidelines. Further, regarding ceiling Tariff rate, the Commission has stated that ceiling rate shall be determined by the DISCOM as per its own due diligence. Competitiveness of such rate shall be dealt with by the Commission at the time of adoption of tariff.

- 8.3. Accordingly, considering the results of recently concluded tendering processes, MSEDCL floated tenders with cumulative capacity 1300 MW with ceiling rate of Rs. 3.05 per unit under MSKVY. No deviation or changes have been made by MSEDCL in RfS and Draft PPA documents. Only change is with respect to ceiling Tariffs, which is lowered from 3.30 per unit to 3.05 per unit.
- 8.4. The Commission further notes that MSEDCL has conducted transparent process of competitive bidding for procurement of Solar power. As against 1300 MW bid, MSEDCL received 111 MW qualified bid. The Tariff received for various projects with cumulative capacity of 111 MW under different Districts is summarized below:

Sr. No.	Name of Bidder	Capacity per location MW	Tariff rate
1	M/s Balaji Stone Crusher	2	3
2	M/s Tangent solar Power & Infrastructures	3	3.05
3	Pragati Multi Services	5	3.05
4	Kasturi Electricals & Engineer	3	3.05
5	Maharashtra State Road Development Corp. Ltd	5	3.05
6	Archana Jalindar Wadekar	3	3.02
7	Basant Agro Tech India Ltd	2	3.05
8	Jai shrikrishna Enterprises Dhule.	2	3.05
9	Bafna Solar & Infra Pvt Ltd	2	3.05
10	Asmita Sanjay Gore	2	3.02
11	Bhauraj Shankarao Kavathe	2	3.05
12	Econest Globcare Pvt Ltd	2	3.00
13	Sauravi Global Investment	10	3.00
14	Reddy Construction	3	3.05
15	Shivprasad Motors	2	3.05
16	VRN Constructions	2	3.05
17	Surekha Sharad Patil	2	3.05
18	Shri Satyasai Baba Infra Ventures Pvt Ltd	2	3.05
19	Ashish Dall Industries	2	3.05
20	Suresh Ramrao Pensalwar	2	3.05
21	Prakash Gurappa Tonne	5	3.05
22	Suninfra Energies Pvt Ltd	3	3.05
23	Shree Ramkrushna Solar Furniture ELE. Supply	4	3.00
24	Rajlakshmi Constructions	2	3.00

Sr. No.	Name of Bidder	Capacity per location MW	Tariff rate
25	R B Ghodke Infrastructure Private Limited	2	3.05
26	Gorakshasidhi Solar Power Private Limited	3	3.03
27	Mauli Cotex	6	3.05
28	Minakshi Trading Company	2	3.05
29	Parvati Energy Recreation	2	3.05
30	Shiv Sharda Auto Lines Pvt. Ltd.	12	3.05
31	Amar Avinash Yerolkar	5	3.05
32	Shree Kashi Vishwanath Infra Projects Pvt Ltd	5	3.05
33	Ganesh Enterprises	2	3.05
	Total	111	

- 8.5. The Commission notes that in Order dated 16 May 2020 in Case No. 80 of 2020, it has adopted the discovered tariff of Rs.3.29 to Rs.3.30 per unit for various projects under MSKVY with cumulative capacity of 283 MW under different circles of MSEDCL. The Tariff discovered in present bidding is well below such tariff adopted earlier and is reflective of current market trends.
- 8.6. Accordingly, in line with the mandate under Section 63 of the Electricity Act 2003, the Commission deems it fit to adopt and approve tariff as highlighted in above para 8.4 for 111 MW Cumulative Solar projects on long term basis (for the period of 25 years).
- 8.7. The Commission notes that MSEDCL in prayer 'c' has requested for approval of RfS and PPA document floated during this bidding process. However, the Commission has already approved such documents in its earlier Order dated 18 December 2020 in Case No. 214 of 2020 with certain changes. In present proceeding, MSEDCL has not highlighted any deviation which requires approval of the Commission. Hence, this prayer does not require any fresh ruling.

9. Issue B: Approval of Force Majeure Event and Change in Law event along with tariff adoption order

- 9.1. Respondent has requested Commission to declare disruption in manufacturing capacity at China as a Force Majeure Event and Ministry of Finance Notification No. 08 /2021-(30 September 2021) relating to increase in GST rate as a change in law event. For supplementing their argument, Respondents have relied upon the Judgement of Hon'ble APTEL in the matter of Green Infra Renewable Energy Limited Vs. RERC & Ors. (Appeal No. 251 of 2021)

dated 12 October 2021.

- 9.2. While opposing such contentions MSEDCL has stated that Respondents are seeking reliefs based on provisions of draft PPA, but PPA is yet to be signed and will be executed post adoption order of the Commission in the present matter. Hence, such request of Respondents should be considered as void ab initio. MSEDCL has further contended that procurement of material starts only after financial closures (6 months from date of PPA). Issues highlighted by the Respondents may undergo change during such period. Hence, requests made by Respondents are also premature and need to be rejected.
- 9.3. The Commission notes that scope of present Petition is limited to tariff adoption. This Commission has never received such request of allowing approval for Force Majeure and Change in Law event along with tariff adoption petition. But in the present case, Respondents have requested such relief by relying upon Hon'ble APTEL Judgement in Appeal No. 251 of 2021 dated 12 October 2021 which ruled as follows:

“

*16. During the hearing, we pointedly asked but **no regulation or contractual clause or, for that matter, any other provision was shown as could reflect an inhibition or prohibition against consideration of claim of change in law compensation at the stage of adoption of the tariff discovered by the bid process under Section 63 of the Electricity Act, 2003.** We agree with the appellant that deferring such claim for later date creates a whole lot of confusion and, **what is of utmost concern to the project developers, regulatory uncertainty and consequent difficulties in attaining financial closure.** It cannot be ignored that the impact on the cost of the development of the project of such change in law events that have occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price renders the bid price unrealistic and in terms of Section 86 (1) (b) of the Electricity Act, it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, may be first by declaration and followed up by detailed tariff orders. **If the event referred to actually constitutes change in law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a change in law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage. (Emphasis added)***

Thus, in the above judgment, Hon'ble APTEL has ruled that in order to provide regulatory certainty to the project developer, Change in Law can be recognized at the time of tariff adoption and admissible relief can be quantify at the appropriate stage latter. However, in the said judgment, it is important to note that even after specific query from the APTEL, concerned parties were not able to point out any provisions which prohibits approval of Change in Law along with tariff adoption process and hence the APTEL has ruled as above. However, in present matter MSEDCL has specifically objected that such approval cannot be

granted as PPA/agreement is yet to be signed between the parties.

- 9.4. In this regard, the Commission notes that issues related to Change in law and Force Majeure are adjudicated by the Commission based on relevant provisions of PPA and in exercise of its regulatory powers under Section 86(1)(b) and (f) of the Electricity Act 2003. Section 86(1)(b) of the Electricity Act, 2003 stipulates following:

“86 (1)

(b) *regulate electricity purchase and procurement process of distribution licensees including **the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power** for distribution and supply within the State”.* (Emphasis added)

Clearly PPA/agreement is mandatory prerequisite for any of the power procurement. Admittedly, in the present case, MSEDCL will execute PPA with respective respondents only after the Commission issues tariff adoption Order. Hence, as on date, there is no valid PPA/agreement between parties based on which such claims of Change in Law or Force Majeure can be made.

- 9.5. Even if it is assumed that Respondents have participated in the bidding process with intention to sign PPA and hence provisions of draft PPA can be relied upon for declaring Force Majeure and Change in Law event, then also it is important to note that draft PPA does not have any provision of declaring such in-principle approval and in fact requires parties to claim such relief only when actually affected by such event. It is industrial practice to place purchase orders for the project equipment only after Financial Closure (for which 6 months period from date of signing of PPA is provided). Further, most of such equipment are received on site only few months before commissioning dates. Hence, considerable time is available for actual purchase of equipment. During such period, purported difficulties in China may be resolved beside the fact that bidding document does not mandate purchase of equipment only from China. Similarly, rate of GST may undergo change during such period. Hence, it is premature for the Respondents to claim such relief at this stage.
- 9.6. The Commission notes that main thrust of the APTEL Judgment dated 12 October 2021 quoted in para 9.3 above is to provide regulatory certainty about Change in Law claims to the project developers. In present case, Respondents are claiming increase in GST rate as Change in Law event. Hon’ble APTEL in recent judgment dated 20 September 2021 in Appeal No. 215 of 2021 (Tata Renewable Energy Ltd. Vs MSEDCL) has already held that increase in GST rate is Change in Law event. Hence, there is precedence based on which Respondents in present matter after considering factual aspects of their respective case would also be eligible to claim Change in Law compensation for increased in GST rate once it actually affected and

incurred such additional expenses. Therefore, Respondents shall approach at appropriate time with all relevant documents for such Change in Law claims.

10. Hence, the following Order.

ORDER

1. Case No. 141 of 2021 is allowed.
2. The Commission accords its approval procurement of 111 MW on long term basis from grid connected Solar power projects under 'Mukhyamantri Saur Krishi Vahini Yojana' as stated in Para 8.6 and allows MSEDCL to enter into Power Purchase Agreement with the successful bidder for a period of Twenty-Five years.
3. The Solar Power procured from these projects shall be eligible towards fulfilment of Maharashtra State Electricity Distribution Co. Ltd.'s Solar RPO for the respective periods.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

