

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 39 of 2022

Petition of M/s. Sunfree Paschim Renewable Energy Private Limited seeking relief on account of Change in Law due to the increase in Goods and Service Tax rates on Solar Panels/ Modules and increase in Custom Duty on Solar inverters.

M/s Sunfree Paschim Renewable Energy Private Limited (SPREPL).....Petitioner

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Case No. 41 of 2022

Petition of M/s. Nature International Private Limited seeking relief on account of Change in Law due to the increase in Goods and Service Tax rates on Solar Panels/ Modules and increase in Custom Duty on Solar inverters.

M/s Nature International Private Limited (NIPL) Petitioner

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Coram

Sanjay Kumar, Chairperson

I.M. Bohari, Member

Mukesh Khullar, Member

Appearance in both the Cases:

For the Petitioners: : Ms. Dipali Sheth (Adv.)

For the Respondent :Shri. Kiran Gandhi (Adv)

COMMON ORDER

Date: 4 August, 2022

1. M/s. Sunfree Paschim Renewable Energy Private Limited (SPREPL) has filed the case on 11 February 2022 against Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) which is registered as Case No.39 of 2022. SPREPL is Special Purpose Vehicle (SPV) formed by M/s Sukhbir Agro Energy Ltd pursuant to becoming successful bidder under RFS dated 31 December 2019 issued by MSEDCL for setting up solar projects under Mukhyamantri Saur Krishi Vahini Yojana (MSKVY).
2. M/s Nature International Private Limited (NIPL) has filed the case on 11 February 2022 against MSEDCL which is registered as Case No. 41 of 2022. NIPL is also one of the successful bidders under same RFS dated 31 December 2019 issued by MSEDCL for setting up solar projects under MSKVY.
3. Both generators have approached the Commission seeking extension of SCOD and appropriate relief on account of Change in Law as provided under Power Purchase Agreement (PPA) dated 30 September 2020 due to the increase in Goods and Service Tax rates on Solar Panels/Modules and increase in Custom Duty on solar inverters under the provisions of the Electricity Act, 2003 and more particularly under Sections 86 (e), (f), (k), of the Electricity Act, 2003.
4. As both the Cases are based on the same bidding process and subsequent PPA, with consent of parties, the Commission heard both the matters together and is deciding these cases through this Common Order.
5. **Prayers of Petitioners are as follows:**

Case No.39 of 2022 (SPREPL Vs MSEDCL):

- a) *Hold and declare change in rate of GST applicable on solar panels/ modules and other solar operated devices pursuant to Ministry of Finance, Government of India's notification dated September 30, 2021 bearing Notification No. 8/2021-Integrated Tax (Rate) amounts to Change in Law event under the PPA;*
- b) *Hold and declare change and increase of basic customs duty on solar invertors pursuant to Ministry of Finance, Government of India's notification dated February 01, 2021 bearing No. 7/2021-Customs amounts to Change in Law Article 9.3.1 of the PPA;*
- c) *Direct MSEDCL to reimburse the Petitioner for the corresponding increase in the Project cost on account of increase in GST rates and basic customs duty i.e. Rs. 3,73,15,055/-*

(Rupees Three Crores Seventy Three Lakh Fifteen Thousand and Fifty Five Only) due to change in the rates of GST and basic customs duty;

OR

Increase the tariff payable by MSEDCL to the Petitioner under the PPA to put the Petitioner in same economic position pursuant to the corresponding increase in the Project cost on account of increase in GST rates and basic customs duty i.e. Rs. 3,73,15055/- (Rupees Three Crores Seventy Three Lakh Fifteen Thousand and Fifty Five Only) due to change in the rates of GST and basic customs duty;

- d) Direct MSEDCL to pay carrying cost on such GST amount and basic custom duty @ 15 p.a. from date of import i.e.; till payment or realization thereof;*
- e) Direct MSEDCL to grant extension of SCOD as on December 30, 2021 without imposing any penalty on the Petitioner and declare December 30, 2021 as SCOD for the Petitioner's Project;*
- f) Direct MSEDCL not to encash the Performance Bank Guarantee as submitted by the Petitioner and immediately release the same as per Clause 4.2.3 of the PPA;*

Prayers in Case No.41 of 2022 (NIPL Vs MSEDCL) are similar with only change in amount of compensation as prayed in Prayer Clause c) above. The amount specified in Case No.41 of 2022 is Rs. 1,86,87,773/- (Rupees One Crore Eighty-Six Lakh Eighty-Seven Thousand Seven Hundred and Seventy-Three Only) on account of change in the rates of GST and basic customs duty. Further, following additional prayers have been made in Case No. 41 of 2022.

- g) Direct MSEDCL to pay costs for the present Petition; and*
- h) Pass such further order(s) as the Hon'ble Commission may deem just in the facts of the present case."*

6. Petitioners in their individual Petitions have stated as follows:

6.1. MSEDCL floated a Tender on 31 December 2019 to procure 50 MW (AC) from projects through competitive bidding process under MSKVY. The Commission vide its Order dated 16 May, 2020 in Case No. 80 of 2020 had adopted the Tariff discovered in that bidding process. Petitioners solar project are part of successful bidders.

6.2. The letter of Award ("LOA") was issued by MSEDCL to Petitioners for development of the solar power project as per following details:

Name of Bidder	Date of LOA	Capacity Allotted	Location of Project	Tariff (Rs. Per Unit)	Tenure (years)
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Sukhbir Agro Energy Ltd	12 June 2020	20 MW	33/11 kV Surdi Substation (10 MW)	3.30	25
			33/11 kV Chikharde Substation (10 MW)	3.30	25
Nature International Pvt. Ltd.	12 June 2020	10 MW	33/11 kV Waravade Substation	3.30	25

- 6.3. In mid of March 2020, the World Health Organization declared COVID-19 as a pandemic. The Government of India and Government of Maharashtra with sole objective of curbing the spread of virus, imposed lock down vide notification dated 24 March 2020. In view of these circumstances, Petitioners vide its letter dated 13 July, 2020 and 14 August, 2020 sought extension of Scheduled Commercial Operation Date (“SCOD”) till 31 December, 2021 due to disruption of supply chain of materials on account of Covid-19 outbreak around the world. Petitioners had further informed MSEDCL that there was delay in execution of PPA due to lockdown situation and therefore without signing of PPA, the Petitioners couldnot proceed with land acquisition, financial closure or any activity related to establishment of solar power plant.
- 6.4. Pursuant to LOA, Sukhbir Agro Energy Ltd. formed SPV viz SPREPL for execution of 20 MW solar projects.
- 6.5. PPAs were executed between the Petitioners and MSEDCL on 30 September, 2020 for respective solar capacities mentioned in table at para 6.2. above.
- 6.6. Vide letter dated 19 October, 2020, MSEDCL granted the extension of Financial Closure (“FC”) and SCOD to Petitioners for seventy-four (74) days. Thus the dates for the first FC were revised from 11 December 2020 to 23 February 2021 and the SCOD for the 2nd FC were revised from 11 June, 2021 to 23 August, 2021.
- 6.7. Vide letter dated 19 January, 2021 the Petitioners requested MSEDCL to grant approval for change in location of the solar power plants on the basis of Clause 3.2 of the RfS dated 31 December, 2019 wherein, the bidder was allowed to change the location within the same district/circle.
- 6.8. Vide a notification dated 1 February, 2021 bearing No. 07/2021-Customs, customs duty on solar invertors was hiked to 20% (twenty percent) by Ministry of Finance, Government of India. Further, MNRE vide its notification dated 25 February, 2021 had clarified discontinuation of benefit of concessional customs duty in respect of items imported such as invertors.

- 6.9. Vide letter dated 8 February, 2021, the Petitioners once again sought extension of three (3) months (from 23 February 2021) for FC i.e. till 24 May, 2021 and extension of SCOD till 31 December, 2021 on the grounds of challenges faced due to second wave of Covid-19 and once again requested to grant approval for revised location.
- 6.10. Vide letter dated 14 April, 2021, the Petitioners requested MSEDCL to grant four (4) months extension of FC without penalty till 24 June, 2021 and extension of SCOD till 31 March 2022
- 6.11. On 15 April, 2021, MSEDCL granted extension of FC till 23 May, 2021. However, SCOD was unchanged as 23 August, 2021. Further, amended PPA for change in location of solar power was executed on 15 April, 2021.
- 6.12. MNRE vide notification dated 12 May, 2021 granted a blanket extension of five months for all renewable energy projects having SCOD on or after 1 April, 2021 due to second surge of COVID-19 pandemic.
- 6.13. The Petitioners once again requested MSEDCL to grant extension of SCOD till 31 March, 2022 vide letters dated 12 May, 2021, 18 May, 2021 3 June, 2021 and 6 August, 2021. MSEDCL vide its letter dated 6 August, 2021 extended the SCOD of the Project till 7 November, 2021.
- 6.14. Petitioners submitted undertaking dated 4 September 2021 to MSEDCL in compliance of directions contained in MNRE notification dated 12 May 2021 wherein the Petitioners undertook that no termination due to force majeure would be claimed due to extension being granted by MSEDCL and Petitioners shall not claim any increase in the project cost, including Interest During Construction (IDC) or upward revision of tariff due to any extension being granted by MSEDCL.
- 6.15. Meanwhile, Ministry of Finance, vide Notification dated 30 September 2021 increased GST on the solar power devices from five percent (5%) to twelve percent (12%). On the basis of this GST Notification, Petitioners vide its letter dated 7 October, 2021 informed MSEDCL that increase in the GST rates on solar modules and other solar operated devices from five percent (5%) to twelve percent (12%) will directly affect the cost of Project and the same amounts to Change in Law as per provisions of PPA.
- 6.16. MNRE vide notification dated 15 September 2021 clarified that time extension of two and half months for SCOD will be given to the renewable energy developers only on the condition that such developers will not claim increase in cost due to change in law events in future. However, MNRE vide subsequent notification dated 3 November 2021 provided

clarification for its earlier notifications and directed that change in law shall continue to be governed by provisions of PPA and to be decided by appropriate commission.

- 6.17. MSEDCL vide its letter dated 9 November, 2021 gave seven (7) days' notice to Petitioners and informed the Petitioners that it would encash the Performance Bank Guarantee ("PBG") given by the Petitioner since there had been delay in commissioning of the Project from SCOD i.e., 7 November 2021. In reply vide its letter dated 10 November 2021, Petitioners requested the MSEDCL not to encash PBG till the time decision of granting extension of SCOD till 31 March 2022 was decided.
- 6.18. Further the construction of the solar power plant was already completed by the Petitioners and hence Petitioners started taking steps seeking various required permission for commissioning the solar power plant. Energy Department, Govt of Maharashtra vide letter dated 20 December 2021 granted charging permission for the projects. MSEDCL vide letter dated 23 December 2021 granted NOC to commission the solar project. MSEDCL vide letter dated 30 December 2021 granted permission to commission solar project. Accordingly, project got commissioned on 30 December 2021.
- 6.19. Therefore, due to MSEDCL's delay in granting approval for extension of the SCOD and increase in the GST rates on solar panels/modules during such period, the Petitioner had to incur additional cost for procuring the solar panels/ modules and inverters.
- 6.20. PPA contemplates that the parties to the Project are to be restituted to the same economic position, if such parties are adversely impacted by any Change in Law event as contained in Article 9 of the PPA. Accordingly, increase in the GST rates is a Change in Law event in so far as it amounts to an increase of a tax rates, subsequent to the submission of the bid by the Petitioners.
- 6.21. Petitioners are eligible to claim carrying cost for the costs incurred by the Petitioner due to the Change in Law event. The same has been awarded by Hon'ble the APTEL in Appeal No. 215 of 2021 vide Order dated 20 September, 2021 to similarly placed generators.
- 6.22. Change in rates of GST and customs duty on solar inverters squarely fall under ambit of change in law for which the Petitioners should be restituted.
- 6.23. Petitioners have claimed following impact on account of Change in Law events:

Particulate	Case No. 39 of 2022 (SPREPL)	Case No. 41 of 2022 (NIPL)
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Impact of increased GST rate (Rs)	3,27,46,179/-	1,64,40,790/-
Impact of additional Custom Duty (Rs)	29,95,978/-	22,46,983/-

7. MSEDCL, vide submission dated 9 May, 2022 in Case No. 39 of 2022 and vide submission dated 11 May 2022 in Case No. 41 of 2022 has stated the following:

- 7.1. MSEDCL has granted extension of time to achieve FC till 8 February, 2021 and SCOD till 7 November 2021, without penalty/liquidated damages. Change of location permission was also granted.
- 7.2. As per MNRE Notification dated 12 May 2021 MSEDCL granted extension of SCOD. As per the said notification the Petitioner has given an undertaking dated 4 September 2021 wherein it is specifically stated that the Petitioner shall not claim any interest in the project cost including interest or upward revision of tariff due to any extension.
- 7.3. The Petitioner was well aware of the increase in custom duty (Notification dated 1 February 2021) at the time of giving undertaking dated 4 September 2021. Thus, it is submitted that the Petitioner is not entitled to any increase in custom duty.
- 7.4. MNRE vide its clarification dated 15 September 2021 specifically clarified that the time extension of 2.5 months vide notification dated 29 June 2021 had been given is an out of contract concession extended to RE Projects and the same can be claimed provided that they do not claim any increase in project cost and option was available to RE Developers for not claiming the time extension as per the notifications dated 12 May 2021 and 29 June 2021 but approached the appropriate Forum for claiming appropriate time extension.
- 7.5. MSEDCL has granted extension as per MNRE notification dated 15 September 2021. Thus, the Petitioner is not entitled to any increase in the cost of the project on account of increase in GST and Custom Duty.
- 7.6. Without prejudice to the aforesaid paragraph it is submitted that to ascertain the actual impact of the change in law events on the tariff, it is necessary for the Petitioner to submit the actual computation exercised by it to arrive at the bid amount of Rs.3.30 per unit to ascertain whether the bidding amount would have undoubtedly factored in, as a risk some margin qua additional cost which may be incurred.
- 7.7. There is no provision under the PPA which stipulates carrying cost on compensation due to change in law.
- 7.8. Without prejudice to its contentions stated above, if the Commission were to allow the Change in Law impact, then the same be subjected to proof of co-relation between the

equipment installed on site as part of the project and the solar equipment imported by the Petitioner and all other relevant documentary proof.

- 7.9. As regards the contention in respect of deemed approval to extension of SCOD of the projects, in the facts and circumstances of the case, the plea raised by Petitioner is completely an after thought and is an attempt to avoid liability under the PPA. It is settled principle of law that no party can take advantage of its own wrong. It is admitted position that Petitioner failed to achieve SCOD as per the extended period.
- 7.10. While issuing PTC, MSEDCL has clearly mentioned that the PTC is issued without any prejudice to the terms & conditions of PPA. Therefore, upon Petitioners' failure to commence the project within the extended period, MSEDCL is entitled to Liquidated Damages as provided in the PPA.
- 7.11. MSEDCL has issued LOA to Petitioners on 12 June 2020. As per RfS and PPA, Petitioners can change location before PPA and also after signing of PPA before FC. Petitioner has applied for change of location on 19 January 2021 i.e., almost 7 months after issuing LoA. Thus, there is delay from Petitioners itself for applying for change in location. This shows the lackadaisical approach of the Petitioner and hence it is settled principle of law that no party can take advantage of its own wrong.

8. Petitioners vide their Rejoinders dated 13 May 2022 stated as follows:

- 8.1. Delay in execution of PPA with MSEDCL was due to lockdown situation in Covid-19 and therefore, without signing of PPA, Petitioners could not proceed with land acquisition, financial closure or any activity related to establishment of solar power plant. Therefore, delay that occurred in achieving the SCOD was not attributable to Petitioners. Petitioners have time and again vide various letters dated 14 April 2021, 12 May 2021, 18 May 2021, 3 June 2021 and 6 August 2021 informed MSEDCL to consider the adverse effects of lockdown and grant extension to achieving SCOD.
- 8.2. MSEDCL had granted an extension vide their letter dated 6 August 2021 to achieve FC till 7 August 2021 i.e., for one (1) day and not 8 February, 2021 as stated in the Reply and extension for SCOD was granted only for three (3) months after FC which is unjustified as the tasks required to be completed between FC and SCOD require minimum period of six (6) months. Further after extension granted by MSEDCL for achieving SCOD by 7 November 2021, Petitioners vide their letters dated 18 August 2021 and 18 October 2021 highlighted the practical difficulties faced in achieving SCOD and requested MSEDCL to extend SCOD to 31 March 2022 as the project was delayed due to factors such as : (i) prolonged effect of pandemic and upsurge in COVID waves; (ii) delay in signing of amended PPA by MSEDCL which led to delay of undertaking works by two (2) months; (iii) issues

of supply of components from China. Hence, the Petitioners have time and again along with the proof appraised and requested MSEDCL to grant extension.

- 8.3. Undertaking dated 4 September 2021 given to MSEDCL was only in compliance with the directions contained in MNRE Notification dated 12 May 2021. Petitioners were forced to file such an Undertaking as it was a specific requirement directed by MNRE. It is imperative to note that submission of such undertaking was as per the notification and Petitioners cannot be held liable for the same when subsequent clarifications were provided vide Circular dated 3 November 2021 which states that change in law shall be governed by the PPA.
- 8.4. Petitioners have entered into a PPA with MSEDCL on 30 September 2020 and the Notification of Government of India, Ministry of Finance regarding increase in the custom duty on solar inverter was issued only on 1 February 2021. Such change could never be pre-considered or assumed beforehand at time of entering into PPA. Further the impact of such change in law was realized by the Petitioners on raising of invoice by its supplier on 5 November, 2021. However due to an inadvertent error and due to Petitioners' offices working partially on account of pandemic, the notice of such change in law could not be given to MSEDCL. Thus, Petitioners are entitled to compensation on account of such change in law event. Further, Petitioners are also eligible to claim carrying cost for the cost incurred due to change in law event.
- 8.5. The impact of the increase in GST and custom duty pursuant to Change in Law event is evident from invoices annexed to the Petition and has been certified by a Chartered Accountant. The Petitioners are further ready to provide all documents and information needed by MSEDCL.
- 8.6. It is important to note that MSEDCL acknowledged Covid-19 Force Majeure event and extended the FC from 23 February 2021 to 23 May 2021 but did not grant extension in SCOD for the same period. The PPA specifically provides for a period of 6 months between FC and SCOD. Therefore, MSEDCL ought to have extended SCOD from 23 August 2021 to 23 November 2021. Thus, subsequent extensions granted by MSEDCL vide letter dated 6 August 2021 ought to have been calculated as 76 days from 23 November 2021 which would be 5 February 2022. Petitioners have commissioned their projects on 30 December 2021 which is within such date of SCOD.
- 8.7. Petitioners requested MSEDCL to grant approval for change in location of the solar project on the basis of RfS wherein the bidder was allowed to change the location within the same district/circle once before signing of PPA. Due to COVID-19 when all government offices were working only partially and there was a global supply crisis, Petitioners as soon as getting aware of location not being suitable intimated MSEDCL. It was on account of

MSEDCL's delay in approving the location change which led to delay of undertaking works by 2 months.

9. During the e-hearing held on 13 May 2022, parties reiterated their respective submissions.

10. MSEDCL vide additional common submission dated 20 May 2022 stated as follows:

10.1. The Commission may duly examine and decide the cases considering the fact that as per Article 3.1 (ii) of PPA dated 30 September 2020, the Petitioners were required to obtain financial closure within six months from the date of the issuance of LOA and SCOD within twelve months from the date of the issuance of LOA. MSEDCL has granted extension of time considering the Covid situation and MNRE Notification to the Petitioners to achieve SCOD till 7 November 2021 and financial closure till 23 May, 2021 without levy of penalty / liquidated damages. Thus, MSEDCL has granted extension of five months for SCOD as per MNRE Notification.

10.2. MSEDCL has denied that delay in execution of the amended PPA led to delay of the project. As per clause 3.2 of RfS dated 31 December 2019, Petitioners were entitled to change the location within the same district/circle once before the signing of PPA and once after signing of PPA before FC. Thus, Petitioner was allowed and should have applied for change of location after the issuance of LoA and before signing of PPA. It is submitted that PPA was executed on 30 September 2020. However, the Petitioner on 19 January 2021 i.e., after 7 months of issuance of LoA and 3.5 months of the PPA, made a request for approval of change of location of the project. The said request was granted by the MSEDCL and copy of the PPA amendment was provided to the Petitioner on 24 March 2021.

10.3. MNRE vide its Notification dated 3 November 2021 constituted Dispute Resolution Mechanism due to project schedule for commissioning which were likely to get affected. However, the Petitioner did not approach the said DRC for extension of SCOD and to avoid liquidated damages by blaming the Respondent instead.

10.4. MSEDCL granted permission to commission the project vide its letter dated 30 December 2021 with a caveat that the said permission was issued without prejudice to the terms and conditions of RfS and PPA. Therefore, it is denied that by granting final commissioning certificate has given a deemed approval to extension of SCOD of the project.

10.5. As per Article 9.3 of the PPA the Petitioner requires to give notice of change in law within seven days after becoming aware of same or should reasonably have known of the change in law. The notification dated 1 February 2021 is in public domain and though the Petitioner was aware of so called change in law event, the Petitioner failed to give such Notice in respect of change in law events of increase in custom duty as per Article 9.3 of PPA.

- 10.6. The Petitioner is now contending that due to inadvertent error notice of such change in law could not be given. Thus, the Petitioners have admitted that notice of change in law had not been given as required under the provisions of the PPA and therefore the Petitioners are not entitled to any increase of custom duty.
- 10.7. The Ministry of Finance issued the notification dated 30 September 2021 whereby it increased GST on Solar Power based devices, generator and PV cells. The PPA was executed on 30 September 2020 and as per PPA SCOD was 11 June 2021. If the project was completed as per the time period contemplated in PPA, the so-called increase in GST was not attracted, however due to delay in commission project which is entirely attributed to the Petitioner, the Petitioner is liable to pay the GST and now the Petitioner is blaming the MSEDCL for non-grant of extension.
- 10.8. The Petitioners opted to give an undertaking as per MNRE Notification which specifically clarified that extension of time had been given as an out of contract concession and the said option could be availed provided there was no claim for any increase in project cost. Any subsequent clarification by the MNRE Notification dated 3 November 2021 cannot supersede any existing and binding legal undertaking.
- 10.9. There is no provision under the PPA which stipulates the carrying cost. Intention of the parties to the PPA was abundantly clear regarding non entitlement of the carrying cost and therefore under any circumstances the carrying cost cannot be granted.
- 10.10. The Commission may consider the delay and inaction on the part of the Petitioner. Since the Petitioner failed to commence the project within the extended period, MSEDCL is entitled to liquidated damages.

Commission's Analysis and Rulings

11. SPREPL and NIPL have filed the present Petitions seeking extension of SCOD, compensation for the increase in costs on account of Change in Law due to increase in Goods and Service Tax rates on Solar Panels/ Modules and increase in Custom Duty on Solar inverters post submission of bid.
12. Considering the material placed on record and arguments made during hearing, the Commission frames following issues for its considerations:
- a. Whether the Petitioners are eligible for extension of SCOD upto actual date of commissioning?
 - b. Whether Petitioners are eligible for Change in Law compensation in view of undertaking dated 4 September 2021?

- c. Whether Notification dated 1 February 2021 resulting in change in Basic Custom Duty from 5% to 20% qualifies as Change in Law Event?
- d. Whether Notification dated 30 September, 2021 resulting in Change in GST rate qualifies as Change in Law Event?

If above issue get answered in affirmative then, below mentioned issues will be also be required to be addressed.

- e. Ascertainment of principal claim amount along with GST and Custom Duty in both the cases.
- f. What are the modalities for carrying cost?
- g. What should be the methodology and the frequency of payment of compensation amount?

The Commission is addressing above issues in the following paragraphs.

13. Issue a: Whether the Petitioners are eligible for extension of SCOD upto actual date of commissioning?

13.1. Before dealing with the issues, the Commission deems it appropriate to first tabulate the chronology of events that happened in the present matter:

Sr. No	Particulars	SPREPL (39/2022)	NIPL (41/2022)
1	RFS publication	31 December, 2019	
2	LOA date	12 June, 2020	
4	Date of signing the PPA	30 September, 2020	
5	Initial date of FC	11 December, 2020	
6	Initial date of SCOD	11 June, 2021	
7	Application for change of location	19 January, 2021	
8	First extended date for FC vide MSEDCL letter 19 October, 2020.	23 February, 2021	
9	First extended date for SCOD vide MSEDCL letter 19 October, 2020.	23 August, 2021	
10	Approval for change of location granted	15 April, 2021	
11	Second extended date for FC vide MSEDCL letter dated 15 April, 2021.	23 May, 2021	
12	Second extended date of SCOD vide MSEDCL letter dated 15 April, 2021.	23 August, 2021 (Unchanged)	

13	Final extended date of FC vide MSEDCL letter dated 6 August 2021	7 August, 2021
14	Final extended date of SCOD vide MSEDCL letter dated 6 August 2021	7 November, 2021
15	COD achieved on	30 December, 2021

Thus, there is a delay of 54 days from the final extended SCOD i.e. 7 November 2021 to actual commissioning date of 30 December 2021.

- 13.2. The Commission notes that original SCOD date was 11 June 2021 which was initially extended by MSEDCL to 23 August 2021 by relying on MNRE Office Memorandum dated 30 March 2020/13 August 2020 which stipulates that RE projects were to be give extension of 5 months (pertaining to 25 March 2020 to 24 August 2020) on account of first wave of Covid-19 pandemic. Thereafter, MSEDCL extended SCOD to 7 November 2021 by relying on MNRE Office Memorandum dated 12 June 2021/29 June 2021 which stipulated that RE projects were to be given extension of 2.5 months (pertaining to 1 April 2021 to 15 June 2021) on account of second wave of Covid-19 pandemic.
- 13.3. Petitioners have contended that after initial extension of SCOD to 23 August 2021, while granting second extension vide letter dated 15 April 2021, MSEDCL has only extended FC date by 3 months (23 February to 23 May 2021) but kept SCOD unaltered i.e. 23 August 2021. Bid document stipulates 6 months' period between FC and SCOD. Hence, while extending FC vide letter dated 15 April 2021, MSEDCL ought to have extend SCOD by 3 months. If such 3 months period is considered then, actual SCOD would have been well within that period. Petitioners have also contended that MSEDCL has delayed approval for Change in location of project which delayed the project by 2 months. Without approval of location, project activities could not be proceeded with. If such delay in approval of change of location is considered, then also delay in commissioning i.e. 54 days is well within the limit. Hence, Petitioners have contended that their SCOD should be extended to actual date of commissioning i.e. 30 December 2021 without any penalty.
- 13.4. While opposing these contentions, MSEDCL has stated that it has granted extension of time to the Petitioners considering the Covid situation and MNRE Notification. Since Petitioners failed to commence the project within the extended period, MSEDCL is entitled to liquidated damages. Regarding contention of delay in approving change of location, MSEDCL has stated that as per RfS, Petitioners were entitled to change the location once before the signing of PPA and once after signing of PPA but before FC. Thus, Petitioner should have applied for change of location after the issuance of LoA and before signing of PPA. It is submitted by MSEDCL that PPA was executed 30 September 2020. However, the Petitioner on 19 January 2021 i.e., after 7 months of issuance of LoA and 3.5 months