

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 14 of 2024**

**Case of Maharashtra State Power Generation Company Limited (MSPGCL) seeking approval of the Commission to enter into Power Purchase Agreement and a Tripartite Agreement with Ideal Energy Projects Ltd. pursuant to Case IV Bidding Phase- IV.**

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**IA No. 7 of 2024 in Case No. 14 of 2024**

**IA Filed by MSPGCL in the matter of Petition seeking approval of Ideal Energy Projects Limited as successful single Bidder and allow MSPGCL to enter into power purchase Agreement and Tripartite Agreement pursuant to Case -IV Phase – IV Bidding.**

**Coram**

**Sanjay Kumar, Chairperson  
Anand M. Limaye, Member  
Surendra J. Biyani, Member**

Maharashtra State Power Generation Co. Ltd. (MSPGCL) .....Petitioner

V/s

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) ..... Respondent No.1

Ideal Energy Projects Ltd. (IEPL) ..... Respondent No. 2

**Appearance**

For the Petitioner : Shri. Kishor Shirsat, MSPGCL  
For the Respondent No.1 : Shri. Dinesh Agrawal, MSEDCL  
For Respondent No.2 : Shri. Uday Kamat, IEPL

## ORDER

**Date: 27 February, 2024**

1. Maharashtra State Power Generation Company Limited (**MSPGCL**) has filed the Petition being Case No. 14 of 2024, on 31 January 2024 seeking approval of the Commission to enter into Power Purchase Agreement (PPA) with Ideal Energy Projects Ltd. (IEPL) and a Tri Partite Agreement (TPA) with MSEDCL and IEPL pursuant to Case IV Bidding Phase-IV.

2. **Main Prayers of MSPGCL are as follows:**

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- a) *Approve the selection of M/s Ideal Energy Projects Limited as successful single bidder as per MoP guidelines related to “Flexibility in utilization of domestic coal and other measures for reducing the cost of power generation”.*
- b) *Allow MSPGCL to enter in Power Purchase Agreement with M/s Ideal Energy Projects Limited and Tri-partite Agreement with M/s Ideal Energy Projects Limited and MSEDCL at tariff as negotiated with the bidder;*
- c) *Allow to consider flexibility of the operation of IPP unit under CASE IV Phase IV to be utilized for any four units of MSPGCL (i.e. any one unit of 3 unit of Nashik TPS and Bhusawal TPS Unit # 3);*
- d) *Allow to recover the variation in cost due to change in the grade of coal due to third party sampling and analysis under FAC mechanism;*
- e) *Allow to recover variation in cost of coal, duties and taxes on coal including surface transportation cost post the date of submission of bid to be allowed to claimed under FAC mechanism on monthly basis;*
- f) *Condone any error/omission and to give opportunity to rectify the same;*
- g) *Permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.....”*

3. **MSPGCL in its Petition has stated as under:**

3.1 The Central Electricity Authority (CEA) vide its Notification dated 8 June 2016, envisaged following five types for allowing flexibility of utilization of coal:

- **Case-1:** Use of Coal aggregated with the State in its own State Generating Stations
- **Case-2:** Use of Coal aggregated within one State in Generating Stations of other state’s utilities
- **Case-3:** Use of Coal aggregated with State in Central Generating Stations and vice versa
- **Case-4: Use of Coal by any State/ Central generating company in Private**

### **Generating Stations (IPPs)**

- **Case-5:** Use of coal assigned to the Central Generating Company in their own plants or any other more efficient plants.

3.2 The Guidelines for Case - IV type bidding were issued by CEA on 20 February 2017. The Government of Maharashtra (GoM) vide its Government Resolution (GR) dated 15 May 2017 appointed MSPGCL as State Notified Agency.

3.3 Based on the guidelines issued by MoP on 20 February 2017 and its subsequent amendment dated 15 June 2018, 25 October 2018, 18 November 2020, 13 April 2022 and 20 April, 2022 various features has been specified in the Methodology for use of coal by State in private Generating Stations (IPPs).

3.4 Accordingly, MSPGCL has implemented three phases of Coal tolling arrangements under Case IV Bidding in past as under:

Phase	Total Capacity of bid	Period	Name of the Successful bidder	Ceiling Tariff	Quoted Tariff	Capacity Offered
Phase I	400 MW	15 <sup>th</sup> April 2018 – 13 <sup>th</sup> January 2019	Dhariwal Infrastructures Ltd (DIL)	Rs. 2.80 / kWh	Rs. 2.760/kwh	185 MW
		21 <sup>st</sup> May 2018 (for 36 days) (Due to continuous defaults of IEPL in supplying power, a termination notice was issued to IEPL on 28th November 2018, and contract with IEPL was terminated.	Ideal Energy Projects limited (IEPL)			215 MW
Phase II	380 MW	2 <sup>nd</sup> Nov. 2019 to 31 <sup>st</sup> March 2022	Dhariwal Infrastructures Ltd (DIL)	Rs. 2.89/kWh	Rs. 2.889/kWh	185 MW
		Terminated at LOA stage due to event of default	Ideal Energy Projects limited (IEPL)			195 MW
Phase III	380 MW	2 October, 2022 to 31 March, 2024	Ideal Energy Projects limited (IEPL)	Rs. 3.359/kWh	Rs. 3.358/kWh	180 MW

3.5 The objective of Coal tolling arrangement is to optimize the cost of generation. Thus, the overall costs of power supplied under the tolling arrangement needs to be lower than the cost of generation from MSPGCL stations considered for tolling. Such optimization of the cost is on account of the efficient operational parameter and the reduction in landed cost of coal due to lower transit / transportation cost, whereby the coal procurement cost remains unaffected.

3.6 MSPGCL has implemented Case-IV bidding's three phases successfully, whereby two phases have been completed and third phase will complete on 31 March 2024. Now, MSPGCL has initiated the activities to implement the fourth phase.

3.7 MSPGCL has considered a few deviations against the MoP's Case IV Guidelines as per directives of GoM circular dated 10 July 2017. The deviations are as follows:

- a) Dispatch of the stations is governed based on merit order considerations, which is under the purview of SLDC, as per prevailing MOD Regulations. Therefore, MSPGCL has no control over the scheduling and dispatch, on the contrary, MSPGCL's stations are getting dispatch as per the relative ranking. Therefore, MSPGCL has no role to ensure scheduling of power more than 80% of the contracted power. In view of the this, without any default or non-compliance of MSPGCL / MSEDCL, if it is compelled to pay 10% of tariff discovered as compensation for schedule below 80% of contracted power, resulting to additional burden to the end consumers, which may defeat the purpose of Case-IV. Hence, MSPGCL maintain the status quo for Case IV bidding without considering the provision with respect to schedule of at least 80% of contracted power.
- b) Within 30 days, the amount to be payable against the invoice raised by IPP and MSPGCL. In case of delay in payment beyond 30 days, 1.5% of late payment surcharge will be applicable.
- c) MSEDCL will open irrevocable Revolving Letter of Credit (IRLC) in favour of MSPGCL and similar cascading IRLC to be established by MSPGCL in favour of IPP.

3.8 As per the provisions of the Case IV bidding Guidelines, MSPGCL had selected two Generating Stations i.e. Nashik Units No. 3 to 5 and Bhusawal Unit No. 3. The Ceiling Tariff was considered based on the coal mix, grade G11 and G12 and landed cost of coal from WCL for the Bhusawal Unit No. 3 and Nashik Units No. 3 to 5 along with the operating parameter as approved by the Commission in MTR Order dated 31st March 2023 for FY 2023-24. Accordingly, the ceiling Tariff of Rs. 3.509/kWh was considered for floating a tender under Case IV Phase IV arrangement.

3.9 The variable charges of these Units in last 6 months to highlight the comparison between the ceiling tariff and the actual tariff of the designated plant under Case IV as under:

Month	Bhusawal Unit #3	Nashik TPS
Apr-23	3.92	4.05
May-23	4.07	4.08
Jun-23	4.12	4.06
Jul-23	4.15	4.28
Aug-23	4.16	4.49
Sep-23	4.40	4.44
Average Tariff	4.14	4.23
Ceiling Tariff	3.51	3.51
<b>Saving</b>	<b>0.63</b>	<b>0.72</b>

3.10 By proposing Nashik Unit No 3 to 5 and Bhusawal Unit No. 3, under Case IV scheme, the burden on consumers will be lowered by 63 to 72 paise/kWh.

3.11 MSPGCL floated tender, under Case -IV (Phase IV) considering ceiling Tariff of Rs.3.509/kWh for purchase of 380 MW power on short term basis for a period of 36 months starting from 01 October 2023 to 30 September 2026 on Round the Clock (RTC) basis from Independent Power Producers (IPP) considering the use of coal from WCL Mines.

3.12 Notice inviting Tender (NIT) was issued on 27 July 2023 and Request for Proposal (RfP) was uploaded on Discovery of Efficient Electricity Price (DEEP) Portal on 27 July 2023. Subsequently, based on queries of the bidders Corrigendum to NIT was published in newspaper on 31 October 2023. The last date for online bid submission was 28 September 2023 which was further extended up to 7 November 2023. The date of opening of Bids which was initially kept on 29 September 2023 was also extended up to 8 November 2023.

3.13 In response to the RfP, only one Bidder has submitted its Bid before the deadline of Bid submission. (i.e., 7 November 2023) The Bid was opened on 8 November 2023 as under:

Bid	Name of Bidder	Name of the Plant	Location of the Power Station	Installed Capacity (MW)	Capacity Offered (MW)	% of total Capacity
1/1	Ideal Energy Projects Limited (IEPL)	Ideal Energy Projects Limited	Near Village Bela, Tah. - Umred, Dist.- Nagpur, State- Maharashtra, P.O.- Bela 441115	270 MW (1 x 270 MW)	180 MW	47% - 53%

3.14 A working Committee was constituted for technical and financial evaluation of the Bids. Based on the scrutiny of the documents submitted by the bidders, the Working Committee formed for Evaluation of Technical and Financial Bid recommended opening of price bid for M/s Ideal Energy Projects Limited as the technical bid was found meeting the qualifying requirements.

3.15 Based on the qualification of single bidder, i.e., IEPL, the Opening of initial price offer was undertaken through DEEP portal on 18 December 2023. The result of the initial price offering was as follows:

Price Header	Ideal Energy Projects Limited
Bid-Qty-MW	180
Ceiling Tariff	3.509
Bid Price-Rs/kWh	3.508
Min. Order Qty-MW	180

3.16 Since IEPL was the single bidder, the reverse auction could not be conducted on MSTC's DEEP portal. IEPL provided a discount of only Rs. 0.001 paise per unit on the ceiling tariff.

3.17 A negotiation meeting with IEPL (Single Successful bidder) was held on 2 January 2024 and was requested to IEPL to resubmit their offer. Thereafter, IEPL has made the submission post negotiation meeting with respect to the quoted tariff and quantity which is under:

Name of the Bidder	Quantum Offered	Ceiling Tariff	Initial Price Offered	Difference	Negotiated Price	Difference with ceiling tariff
Ideal Energy Projects P. Ltd. (IEPL)	180 MW	Rs. 3.509/kWh	Rs. 3.508/kWh	Rs. 0.001/kWh	Rs. 3.507/kWh	Rs. 0.002/kWh

3.18 As per Clause 4.3 (iii) of the Case IV Guidelines, the approval of the Commission is required for selection of bidder, if number of bidders responding to RfP is less than two. The relevant extract of the Case IV Guidelines is reproduced herein below:

*“4.3 E-Auction Process:*

*iii. To ensure competitiveness, the minimum number of Bidders should be at least two for each requisition. If the number of Bidders responding to the RFP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.”*  
(Emphasis Supplied)

3.19 In view of this, MSPGCL requests the Commission to approve the selection of IEPL done through the transparent bidding process on DEEP portal as per Guidelines issued by the MoP, GoI and allow MSPGCL to enter in PPA with IEPL and TPA with MSEDCL & IEPL.

3.20 MSPGCL informed MSEDCL about the coal tolling arrangement and sought consent from MSEDCL through multiple communications. MSEDCL has not yet replied to the letters from MSPGCL.

3.21 Considering the benefits of lower tariff to MSEDCL as envisaged in the tolling arrangement, MSPGCL requests the Commission to direct MSEDCL for entering into DPA / TPA at the earliest and sign tripartite agreement as per RfP documents issued by MSPGCL.

3.22 The Guidelines issued by MoP for “Flexibility in utilization of domestic coal and other measures for reducing the cost of power generation” dated 20 February 2017, have stated in para 8.2 (viii) that any change in cost of coal needs to be borne by Buyer. The relevant clause is reproduced as under:

*“viii. Any increase in cost of coal, duties and taxes on coal shall be borne by the Buyer during the contract period.”*

3.23 Accordingly, the Change in Law clause is incorporated in the Bid so as to adequately compensate the affected party for any change in rates, taxes, duties not envisaged at the

time of bidding, and which are not within the control of the parties of the bid. Similar clauses were also incorporated in Case-IV, Phase-I, Phase-II and Phase-III Bid.

3.24 Further, any change in rates of Notified coal, cost plus coal or Mine specific coal is not within the control of MSPGCL and is decided by Coal India Limited and the said cost is pass through to MSEDCL as per provisions of MYT Regulations, 2019.

3.25 As per the Bid condition, it is stated that only Coal of Grade G11 and G12 coal will be allocated to the IPP and will be billed accordingly. However, during the pre-bid query, bidder sought the treatment for the variation in cost due to upgrade in the grade of coal due to third party sampling and analysis resulting in an additional cost of coal which is not in control of the IPP or MSPGCL or CIL. Considering the practical difficulty in change in grade of coal under sampling by third party, MSPGCL has considered to allow such additional cost under FAC mechanism subject to approval of MSEDCL and directives of the Commission and accordingly, following clause was incorporated in the bidding document:

*“In case, during third-party sampling and analysis, any grade upgradation impact shall be allowed to pass through to IPP under FAC mechanism up to capping of 10% on monthly basis.”*

3.26 Accordingly, it is requested to allow the change in coal cost under FAC mechanism against the upgrading of the coal due to third party sampling which is uncontrollable in nature.

3.27 Bid submission date was 8 November 2023 and there was change in surface transportation cost vide Notification of WCL dated 14 December 2023 which is as per table provided below:

Surface Transportation Cost	21-06-2023 Rs/ Tonne	14-12-2023 Rs/ Tonne	Difference (Pre GST) Rs/ Tonne
0 TO 3 KM	42	46	4
3 TO 10 KM	74	80	6
10 TO 20 KM	134	134	0
ABOVE 20 KM	110%	110%	0

3.28 The tentative impact on account of this on the Tariff is @0.01 paisa/kWh.

3.29 In Clause 5.2.7 and 10.2 of draft PPA, it is specified that any variation in cost of coal, duties and taxes on coal post submission of date of the bid will be claimed under FAC mechanism on a monthly basis.

3.30 Based on above, the Commission is requested to allow claim towards increase in surface transportation cost w.e.f. 25 December 2023 and any other variation in cost of coal, duties and taxes on coal post the date of submission of bid i.e., 8 November 2023 to be

allowed as change in law and allowed to be claimed under FAC mechanism as per Draft PPA.

3.31 Further, as per MERC (State Grid Code) Regulations 2020 in case of claim for un-approved change in law, generating company shall file Petition before the Commission with its claim within one month from the first occurrence. The relevant extract of the Regulation is reproduced as under:

*“33.10 In case of claim for un-approved change of law, the Seller/Generating Company shall file Petition before the Commission with its claim for un-approved change of law for purpose of incorporation in the merit order stack within reasonable time period not exceeding period of one month from the date of its first occurrence with intimation to the concerned Buyer/Distribution Licensee, failing which the Commission may take appropriate view, while approving the claim of Seller/Generating Company towards principal component of claim of change of law or its claim of carrying cost thereof or both.”*

3.32 It is entitled of certain quantum of coal, which is supplied/allocated to all its thermal generating stations. In Case-IV bidding certain amount of coal of any specific generating station is allocated from the total quantum of available coal to bidder to take advantage of efficient performance parameters and lowering the cost of generation due to such efficiency parameter and transportation cost, thereby benefitting MSEDCL and its consumers.

3.33 MSPGCL requests the Commission to accord its approval to the arrangement under Case IV Phase IV.

**4. MSPGCL filed an Interlocutory Application in IA No. 7 of 2024 on 7 January, 2024 seeking urgent hearing in the matter and submitted as under:**

4.1 MSPGCL requests the Commission to conduct the immediate hearing and providing the approval of the arrangement at the earliest as the current contract under Case IV Phase 3 is getting expired on 31 March 2024 and the new contract under Case IV Phase 4 would need at least 20 days' time for signing of PPA, intimation to WCL, Advance payment of Coal for 10 days, preparation of performance bank guarantee by successful bidder and coal movement from WCL Coal Mine to IPPs generating station.

4.2 Further, it is likely that there will be high power demand in the State from the month of April 2024 considering summer season and past period data, hence availability of agreement shall facilitate in scheduling the power in Case IV mechanism.

4.3 An early decision by the Commission in this matter will enable MSPGCL to schedule power from 1 April 2024 considering the afore-mentioned procedural aspects under Case IV Phase -IV.



**5. MSEDCL in its reply dated 13 February 2024 has stated as under:**

5.1 It is observed that the ceiling tariff considered for tendering is lower than the last six months (prior to bidding) average variable cost of Bhusawal Unit No. 3 and Nashik TPS. MSPGCL has highlighted that there will be a saving of about 63 to 72 paise/kWh due to coal tolling arrangement under consideration. In view of such likely benefits envisaged by MSPGCL, MSEDCL requests the Commission to consider the request of MSPGCL to 'Approve the selection of Ideal Energy Projects Ltd as successful bidder' against any one Unit of MSPGCL's four Units (any one unit of Nashik TPS & Bhusawal-3) for supply of 180 MW RTC power.

5.2 Though the tender specifies that coal of Grade G11 & G12, MSPGCL shall take due care to allocate proper coal mix to minimise impact of CIL effect so that basic purpose of coal tolling arrangement to supply cheaper power does not get deviated. This will further minimise the backing down/zero scheduling for the IPP plant selected. Further, any impact due to allowance of grade upgradation based on third party sampling, shall be made pass through FAC mechanism.

5.3 MSPGCL has also clarified that the bid submission date was 8 November 2023 and there was change in surface transportation cost as per notification of WCL dated 14 December, 2023. In this respect MSEDCL submits that MSEDCL shall be allowed to pass through the CIL impact through FAC mechanism.

5.4 MSEDCL vide letter dated 16 November 2023 has communicated the consent for considering any one unit from proposed four Units of MSPGCL for coal tolling arrangement under Case-IV, Phase-4.

5.5 MSEDCL agrees with the contention of MSPGCL that CIL events are not within the control of the parties of the bid. However, parties in the bid can take actions to minimise the impact of such CIL events. Supply of cheaper coal to nullify/minimise the impact of CIL event will definitely minimise the compensation to be paid to the affected party due to CIL events.

5.6 As per RfP particulars and as mentioned by MSPGCL, commencement of supply is from 1 October 2023 or within 10 days from the date of LOA, whichever is later. As present Case-IV, Phase-3 scheme is valid upto 31 March 2024, MSEDCL requests the Commission to consider commencement date of supply as 1 April 2024 or any date thereafter for Case-IV, Phase-4. Accordingly, MSPGCL shall take care to issue LOA.

6. At the E- hearing held on 13 February, 2024 MSPGCL reiterated the submissions made in the IA No. 7 of 2024 and sought urgent hearing in the Case No. 14 of 2024. The Commission felt it appropriate to hear the main matter and permitted the parties to argue the main matter in Case No. 14 of 2024 immediately in the hearing. MSPGCL reiterated its submission as made in the Petition. MSEDCL and IEPL made their respective submissions. The

Commission in-principally allowed MSPGCL to go ahead in the tendering process and reserved the matter for Order.

**7. IEPL in its reply dated 17 February 2024 has stated that:**

7.1 IEPL concurs with the stand of MSPGCL as it is in line with standard bidding document/norms and Case IV Bidding Guidelines.

7.2 IEPL requests the Commission to approve the selection which is done through the transparent bidding process on DEEP portal as per the Guidelines issued by the MoP, GOI and allow MSPGCL to enter in PPA and TPA.

7.3 The overall tolling arrangement will result in savings in cost of generation as compared to existing Plant and will result in benefits to the end consumers.

7.4 Various provisions of the Change in Law have been incorporated in the Bid document and the Detail Procedure Agreement to be signed between MSPGCL and the successful Bidder and the Tripartite Agreement to be signed between MSPGCL, MSEDCL and the successful Bidder so as to adequately compensate the affected party for any change in rates, taxes, duties which are not in the control of the parties. Similar clauses were also incorporated in Case -IV, Phase-I, Phase -II, and Phase -III arrangements.

7.5 IEPL reiterates that any change in the coal cost needs to be borne by the buyer.

7.6 As per Regulation 10.2 of the MYT Regulations, 2019, any variation in cost of fuel shall be passed through under the Fuel Adjustment Charge as an adjustment in its Tariff on a monthly basis. Accordingly, the provisions are made in the DPA and TPA. IEPL requests the Commission to allow the methodology which is in line with the MYT Regulations, 2019.

**Commission's Analysis and Ruling:**

8. The Commission notes that the present Petition has been filed by MSPGCL seeking approval of the Commission to enter into Power Purchase Agreement with Ideal Energy Projects Ltd. and a Tripartite Agreement with MSEDCL and Ideal Energy Projects Ltd. pursuant to Case IV Bidding Phase- IV under Coal Tolling Arrangement.

9. The Commission notes MSPGCL's submission that in the bidding process there was a single qualified bidder and as per Clause 4.3 (iii) of the Case IV Bidding Guidelines, the approval of the Commission is required for selection of bidder, if number of bidders responding to RfP is less than two.

10. The Commission also notes that as per Clause 7 of the MoP Guidelines, under Case – IV, quantum and Tariff discovered through the bidding process is within the approved Tariff Orders, and hence the same will be considered to be deemed approved by the appropriate

Commission. Thus, the role of the Commission is limited to situation when number of Bidders responding to the RFP is less than two and procurer still wants to continue with the selection process then the consent of Appropriate Commission is required.

11. Accordingly, considering the submissions made in the matter, the Commission framed following three issues which need to be analyzed to arrive at conclusion as to whether the MSPGCL shall go ahead in the phase -IV of Case- IV bidding or otherwise.

**Issue No.1:** Whether MSPGCL has followed the due process of Competitive Bidding to ensure fair bidding process?

**Issue No. 2:** Whether the Coal Tolling arrangement proposed in phase -IV of Case -IV bidding is beneficial to the end consumers of MSEDCL?

**Issue No. 3:** Whether the Change in Law compensation shall be allowed at this stage?

Above issues are analyzed in the subsequent paragraphs

12. **Issue No.1: Whether MSPGCL has followed the due process of Competitive Bidding to ensure fair bidding process?**

12.1 The Commission notes that MSPGCL has followed one stage bidding process for selection of the bidder for award of the Contract. Two envelop method (Application & financial bid) in one stage method has been adopted by MSPGCL wherein the financial bids of only qualified Applicants are opened.

12.2 The Commission notes that Notice inviting Tender was issued on 27 July 2023 and Request for Proposal was uploaded on DEEP Portal on 27 July 2023. The last date for online submission was 28 September 2023 which was further extended up to 7 November 2023. The date of opening of bids which was initially kept on 29 September 2023 was also extended up to 8 November 2023. In terms of the bid specification, the potential bidders who have registered on MSTC's DEEP portal and paid the portal fees were allowed to download the tender document from the portal and seek clarifications/request changes on the terms and conditions of bid specification.

12.3 The Commission notes that MSPGCL vide Board Resolution dated 31 July 2023 has constituted a Committee for evaluation of bids to be submitted under Case-IV (Phase - IV)

12.4 The working Committee submitted its Report on 21 November 2023. It is evident from the Working Committee Report that the pre-bid Meeting was conducted on 8 August 2023 as per the Notice uploaded on the DEEP Portal.

12.5 The Commission also notes that there was a single bidder in the bid. The working Committee recommended to open price bid for IEPL as the technical bid was found meeting the qualifying requirements.

12.6 The Commission further notes that Clause 4.3 (iii) of the Case IV Guidelines, the consent of the Commission is required for selection of bidder, if number of bidders responding to RfP is less than two. The relevant extract of the Case IV Guidelines is reproduced herein below:

*“4.3 E-Auction Process:*

- i. The process of bidding shall be conducted electronically. For this purpose, provisions like registration, log in, downloading and uploading etc. in the e-Bidding portal shall be specified in the Bid document. The link for the e-Bidding portal shall be available on the website of Ministry of Power (www.powermin.nic.in). An event involves both e- Tender and e-Reverse auction process. Each event of the auction would require independent Digital Signature of the Bidder. An event may have requirement of power at different time and period.*
- ii. The process of e-Bidding shall be conducted online, in accordance with the provisions laid herein. Each e-Bidding event shall comprise of two parts i.e. e-Tender and e- Reverse Auction. An event may have multiple requisitions (i.e. independent requirements of power at different time or places). To participate in the event each Bidder will have to specify the source(s) of power for that particular bid. Each bid will have only one price per requisition accompanied by total quantum of power, the Bidder intends to supply and minimum threshold quantum acceptable to the Bidder. However, the Bidder shall have the option to choose the requisition of an event in which it intends to participate. Each of the bid will have to be signed by the Digital Signature of the Bidder.*
- iii. To ensure competitiveness, the minimum number of Bidders should be at least two for each requisition. **If the number of Bidders responding to the RFP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.**” (Emphasis Supplied)*

12.7 The Commission notes that IEPL and MSEDCL have concurred with the submissions of MSPGCL in respect of the bidding process.

12.8 The Government of India has introduced the DEEP Portal to ensure a transparent and fair competitive bidding process for procurement of Power. MSPGCL has conducted the bidding on DEEP portal. Further as there was single qualified bidder, the reverse auction

was not happened even though it was initially covered in the RfP. However, in subsequent negotiation bidder has offer rebate of Rs 0.001/kWh.

12.9 In view of the above, the Commission is inclined to accept the submission of MSPGCL on the issue of fairness of the bidding process and hence issue - I is decided in affirmative. The Commission in principle finds that the bidding process is fair.

**13. Issue No. 2: Whether the Coal Tolling arrangement proposed in phase -IV of Case - IV bidding is beneficial to the end consumers of MSEDCL?**

13.1 The Commission is of the opinion that the objective of coal tolling arrangement is to optimize the cost of generation and therefore it is necessary to ensure that the overall costs of power supplied under tolling arrangement is lower than the cost of generation from MSPGCL stations considered for tolling. Such optimization of the cost is on account of the efficient operational parameter and the reduction in landed cost of coal due to lower transit / transportation cost, whereby the coal procurement cost remains unaffected.

13.2 The Commission notes the submission of MSPGCL that it has selected two Generating Stations namely Nashik Units No. 3 to 5 and Bhusawal Unit No. 3. The Ceiling Tariff was considered based on the coal mix, grade G11 and G12 and landed cost of coal from WCL for the Bhusawal Unit # 3 and Nashik Units No. 3 to 5 along with the operating parameter as approved by the Commission in MTR Order dated 31 March 2023 for FY 2023-24. Accordingly, the ceiling tariff of Rs. 3.509/kWh was considered for floating a tender under Case IV Phase IV arrangement.

13.3 The Commission also notes that the variable charge for Nashik TPS during last six months April 2023 to September 2023 was Rs. 4.05, 4.08, 4.06, 4.28, 4.49, 4.44, 4.23 and 3.51 per kWh respectively which is higher than the ceiling Tariff decided for Energy charge under Case IV arrangement in phase – IV. Similarly, the variable charge for Bhusawal Unit No. 3 during last six months April 2023 to September 2023 was Rs. 3.92, 4.07, 4.12, 4.15, 4.16, 4.40, 4.14 and 3.51 per kWh respectively which is higher than the ceiling Tariff decided for Energy charge under Case IV arrangement in phase – IV.

13.4 IEPL has quoted Rs. 3.507/kWh which is lower than ceiling tariff of Rs. 3.509/kWh for supply of 180 MW of power. Therefore, the Commission is inclined to accept the submission of MSPGCL wherein it has envisaged the benefit of Rs. 0.63 to Rs. 0.72/kWh on account of this coal tolling arrangement. However, it would not be appropriate to conclude this issue in this proceeding without carrying out prudence check on the actual parameters. Therefore, MSPGCL shall submit actual benefits on account of Coal Tolling arrangement with complete details and impact on tariffs for power supplied under coal tolling arrangement in its upcoming Tariff Petition. Accordingly, the issue - II is disposed of.

**14. Issue No. 3: Whether the Change in Law compensation shall be allowed at this stage?**

14.1 MSPGCL requested the Commission to allow the change in coal cost under FAC mechanism against the upgrading of the coal due to third party sampling which is uncontrollable in nature. Further, post bid submission date of 8 November 2023, there was change in surface transportation cost which has tentative impact of the tariff is @0.01 paisa/kWh. As per Clause 5.2.7 and 10.2 of DPA, any variation in cost of coal, duties, and taxes on coal post submission of date of the bid will be claimed under FAC mechanism on a monthly basis. Accordingly, MSPGCL requested the Commission to allow claim of increase in surface transportation cost w.e.f. 25<sup>th</sup> December, 2023 and any other variation in cost of coal, duties and taxes on coal post the date of bid submission i.e., 8<sup>th</sup> November, 2023 as change in law and allowed to be claimed under FAC mechanism as per DPA.

14.2 In support of above submissions of MSPGCL, IEPL stated that various provisions of the Change in Law have been incorporated in the Bid document and the Detail Procedure Agreement to be signed between MSPGCL and the successful Bidder and the Tripartite Agreement to be signed between MSPGCL, MSEDCL and the successful Bidder so as to adequately compensate the affected party for any change in rates, taxes, duties which are not in the control of the parties. Similar clauses were also incorporated in Case -IV, Phase-I, Phase -II, and Phase -III arrangements. IEPL reiterates that any change in the coal cost needs to be borne by the buyer. IEPL requests the Commission to allow the methodology which is in line with the MYT Regulations, 2019.

14.3 The Commission notes the submission of MSEDCL wherein it agrees with the contention of MSPGCL that Change in Law events are not within the control of the parties of the bid. However, MSEDCL suggested that the parties in the bid (MSPGCL/IEPL) can take actions to minimise the impact of such CIL events. Supply of cheaper coal to nullify/minimise the impact of CIL event will definitely minimise the compensation to be paid to the affected party due to CIL events.

14.4 It is pertinent to note that the draft PPA which is submitted along-with the Petition has separate Article No. 13 for the Change in Law which is reproduced as under:

*Article 13. Change in Law*

*13.1.1 If as a result of Change in Law, restricted to Clause 13.1.3, there is a variation in costs, the supplier may so notify MSPGCL, and such revision in cost will be borne by MSPGCL and pass on under FAC mechanism to MSEDCL under the term and conditions as specified in the agreement dated 01/04/2009, whereby there will not be any revision in the tariff as quoted in the bid and agreed in this agreement. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 10 (Ten) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.*

*13.1.2. The parties to the agreement may agree to such change in law event or in case of any dispute may try to resolve the same amicably. Provided that if no agreement is*

*reached within 10 (Ten) days of the aforesaid notice and have disputed such claim of either of the parties, the same shall be settled in accordance with Article 15. For the avoidance of doubt, it is agreed that this Article 13 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement and as specified in clause 13.1.3.*

*13.1.3. Change in Law shall include and limited to any change in cost of coal duties and taxes on coal - (limited to Grade G11 and G12), railway freight and made applicable for supply of power by the seller and will be adjusted in the bid rate to be computed by MSPGCL for scheduling of power under MoD principle only. However, any change in transportation charges, in case of Road Transport needs to be borne by Seller. Any variation in cost due to Change in Law will be borne by MSPGCL and will be transferred to MSEDCL under FAC mechanism except transmission charges under the term and conditions as specified in the agreement dated 01/04/2009. With respect to change in Transmission Charges by way of order issued by appropriate Commission, the seller is allowed to claim the same directly from MSEDCL under the monthly billing mechanism as specified in Article 9 and Article 10.*

Which events amounts to Change in Law and which increased expenses are covered under Change in Law are very clear in the above said draft provision of PPA. From the submissions filed by MSPGCL, IEPL and MSEDCL, the Commission does not find any dispute between parties about allowing Change in Law compensation on account of events highlighted in this Petition. Therefore, once PPA and TPA are signed, parties shall comply with provisions of PPA for Change in Law events and pay eligible compensation to generator and thereafter pass on the same through FAC mechanism to avoid carrying cost for differed recovery.

15. In view of the above the Commission allows MSPGCL to go ahead with the bidding process in respect of IEPL. Further, the Commission also noted MSEDCL's submission that as existing Case-IV, Phase-3 scheme is valid upto 31 March 2024, commencement of supply under present Petition i.e. Case-IV, Phase-4 be considered from 1 April 2024 and accordingly directs MSPGCL to make necessary changes in PPA and TPA for commencement of power supply from 1 April 2024.
16. MSPGCL shall submit the copy of the PPA/TPA within a month after execution of the PPA for record of the Commission.
17. Hence, the following Order:

**ORDER**

- 1. The Petition in Case No. 14 of 2024 is allowed.**
- 2. MSPGCL to go ahead in the bidding process in respect of bid received from IEPL and sign the Contract at tariff of Rs. 3.507/kWh for 180 MW.**

3. MSPGCL shall file details of actual benefits accrued on account of Coal Tolling arrangement with complete details and impact on tariffs in its upcoming Tariff Petition.
4. Claims related to Change in Law event shall be treated as per provisions of PPA/TPA and be paid on monthly basis and be passed on through FAC mechanism on monthly basis.
5. MSPGCL shall submit the copy of the PPA/TPA within a month after execution of the PPA for record of the Commission.

Sd/ -  
(Surendra J. Biyani)  
Member

Sd/-  
(Anand M. Limaye)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Dr. Rajendra G. Ambekar)  
Secretary

