

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 64 of 2019

Case of Maharashtra State Electricity Distribution Co. Ltd. seeking approval for adoption of Tariff discovered for Long Term Procurement of 1170 MW Solar Power under 'Mukhyamantri Saur Krishi Vahini Yojana' for meeting the Solar Renewable Purchase Obligations.

And

Miscellaneous Application No. 7 of 2019

Intervention application of Shri. Nitin Shetty challenging the bidding process undertaken by MSEDCL under Section 63 of the Electricity Act 2003.

Coram

I. M. Bohari, Member
Mukesh Khullar, Member

Maharashtra State Electricity Distribution Company Limited (**MSEDCL**)..... Petitioner

Avaada Energy Pvt. Ltd. (AEPL) Impleaded Respondent No.1
Green Horse Solar Pvt Ltd (GHSPL) Impleaded Respondent No.2
KosolEnergiePvt. Ltd. (KEPL) Impleaded Respondent No.3
IBS Solar Ventures India B.V. (ISVI)Impleaded Respondent No.4
Sukhbir Agro Energy Ltd. (SAEL)Impleaded Respondent No.5

Appearance

For MSEDCL	: Ms. Kavita Gharat
For Impleaded Respondent No.1	: Shri Rajiv Mestry (Rep.)
For Impleaded Respondent No.2	: Shri Vikas Aggarwal (Rep.)
For Impleaded Respondent No.3	: None
For Impleaded Respondent No.4	: Shri Sandeep Saxena (Rep.)
For Impleaded Respondent No.5	: None
For Intervener	: Ms. Neha Mehta

ORDER

Date: 7 June, 2019

1. MSEDCL has filed this Case dated 12 March, 2019 for approval and adoption of Tariff for Long Term Procurement of 1170 MW Solar Power to be set up under ‘*Mukhyamantri Saur Krishi Vahini Yojana*’ to meet MSEDCL’s Solar Renewable Purchase Obligations (RPO).

2. **MSEDCL’s main prayers are as follows:**

- a. *To accord approval for adoption of tariff as mentioned in table under para 3.11 and signing of PPA with successful bidders for 1170 MW solar power as discovered through Competitive bidding conducted by MSEDCL.*
- b. *To accord approval to make this power eligible for meeting the Solar RPO requirement of MSEDCL.*

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

- 3.1 The Commission vide Order dated 16 October, 2018 in Case No. 270 of 2018 has accorded approval for initialization of the competitive bidding process with deviation in the MoP’s Bidding Guidelines for minimum project capacity (i.e. 2 MW instead of 5 MW at single location) for procurement of solar power under “Mukhyamantri Saur Krishi Vahini Yojana” with total quantum of 1400 MW.
- 3.2 MSEDCL floated district wise 30 tenders on 7 January, 2019 and 8 January, 2019 to procure cumulative 1400 MW Solar Power from 2 to 10 MW capacity projects to be connected to distribution network in 30 Circles.
- 3.3 MSEDCL in compliance with the MoP’s Competitive bidding guidelines intimated the Commission regarding floating of these tenders vide letter dated 1 February, 2019.
- 3.4 MSEDCL has incorporated additional conditions for increasing participation in the bidding process as below:

S. No.	Original Clause	Additional Condition	Justification
1	The bidder is allowed to change the location once till the time of Financial Closure i.e within 10 months from the date of signing of PPA.	The bidder is allowed to change the location twice, before signing of PPA and second time till the time of achievement of Financial Closure i.e within 10 months from the date of signing of PPA.	Considering the difficulties in acquisition of land and as per the request by the participants in pre-bid meeting.

3.5 The bids for 21 Districts are received with total cumulative bidding capacity of 1172 MW. The details are as below:

S.No.	Circle	Tender No.	Name of Bidder	Cumulative Bidding Capacity(MW)
1	Buldhana Circle	T-02	AEPL	50
2	Amaravati Circle	T-03	AEPL	50
3	Washim Circle	T-07	AEPL	50
4	Malegaon Circle	T-12	GHSPL	30
5	Nasik (U) Circle	T-15	AEPL	50
6	A' Nagar Circle	T-18	AEPL	50
7	Sangli Circle	T-19	AEPL	50
8	Satara Circle	T-21	AEPL	50
9	Aurangabad Circle	T-24	AEPL	50
10	Latur Circle	T-25	AEPL	50
11	Jalna Circle	T-26	AEPL	50
12	Parbhani Circle	T-27	AEPL	50
13	Hingoli Circle	T-28	AEPL	50
14	Beed Circle	T-29	AEPL	50
15	Nanded Circle	T-31	AEPL	50
16	Jalgaon	T-13	GHSPL	20
			AEPL	50
17	Dhule	T-14	KEPL	10
			GHSPL	30
			AEPL	50
18	Nandurbar	T-16	GHSPL	20
			AEPL	50
19	Solapur	T-17	ISVI	10
			SAEL	30
			AEPL	50
20	Osmanbad	T-30	ISVI	20
			AEPL	50
21	Yavatmal	T-05	Sumansudha Solar	2
			AEPL	50
			Total	1172

3.6 All the bidders were technically qualified except M/s Sumansudha Solar. During scrutinizing the technical bid documents, it was observed that M/s Sumansudha Solar presently was a proprietor owned firm which is not an eligible bidder as per the terms and conditions of RFS, hence was technically disqualified.

3.7 The financial bids for 5 circles where the bid capacity is more than 50 MW was opened on 21 February, 2019 and reverse auctions for 5 circles were carried out on 21 February, 2019.

S No	Circle	Tender No.	Max. Capacity Circle wise (MW)	Name of Bidder	Initial Bid		After Reverse bidding	
					Capacity (MW)	Rate (Rs/kWh)	Capacity (MW)	Rate (Rs/kWh)
1	Jalgaon	T-13	50	GHSPL	20	3.3	20	3.3
				AEPL	50	3.3	50	3.3
2	Dhule	T-14	50	KEPL	10	3.16	10	3.16
				GHSPL	30	3.3	30	3.3
				AEPL	50	3.3	50	3.3
3	Nandurbar	T-16	50	GHSPL	20	3.3	20	3.3
				AEPL	50	3.3	50	3.3
4	Solapur	T-17	50	ISVI	10	3.3	10	3.29
				SAEL	30	3.28	30	3.28
				AEPL	50	3.3	50	3.3
5	Osmanbad	T-30	50	ISVI	20	3.3	20	3.29
				AEPL	50	3.3	50	3.3
				Total	390		390	

3.8 As per the provision of RFS for increase in maximum capacity limit from 50 MW to 100 MW for a District/circle, MSEDCL using its discretion decided to procure a total of 70 MW capacity for Jalgaon, Nandurbar & Osmanabad Circles each and 90 MW capacity for Dhule & Solapur circles each at the Tariff discovered after e-reverse auction, keeping in view the advantages of Mukhyamantri Saur Krishi Vahini Yojana.

3.9 The details of financial bids for 16 Circles where single bid was received are as follows:

S.No.	Circle	Tender No.	Maximum Capacity Circle wise (MW)	Name of Bidder	Cumulative Bidding Capacity (MW)	Rate Rs./kWh
1	Buldhana Circle	T-02	50	AEPL	50	3.30
2	Amaravati Circle	T-03	50	AEPL	50	3.30
3	Yavatmal Circle	T-05	50	AEPL	50	3.30
4	Washim Circle	T-07	50	AEPL	50	3.30
5	Malegaon Circle	T-12	50	GHSPL	30	3.30
6	Nasik (U) Circle	T-15	50	AEPL	50	3.30
7	A' Nagar Circle	T-18	50	AEPL	50	3.30
8	Sangli Circle	T-19	50	AEPL	50	3.30

S.No.	Circle	Tender No.	Maximum Capacity Circle wise (MW)	Name of Bidder	Cumulative Bidding Capacity (MW)	Rate Rs./kWh
9	Satara Circle	T-21	50	AEPL	50	3.30
10	Aurangabad Circle	T-24	50	AEPL	50	3.30
11	Latur Circle	T-25	50	AEPL	50	3.30
12	Jalna Circle	T-26	50	AEPL	50	3.30
13	Parbhani Circle	T-27	50	AEPL	50	3.30
14	Hingoli Circle	T-28	50	AEPL	50	3.30
15	Beed Circle	T-29	50	AEPL	50	3.30
16	Nanded Circle	T-31	50	AEPL	50	3.30
				Total	780	

3.10 In the tender documents, there is a provision that on completion of Techno-commercial bid evaluation, if it is found that only one bidder is eligible; opening of the financial bid of the bidder will be at the discretion of MSEDCL. Thereafter MSEDCL will take appropriate action by taking necessary approval from the Commission.

3.11 MSEDCL has submitted this Petition for adoption of following tariff discovered through competitive bidding process under Section 63 of the Electricity Act, 2003:

S.No.	Circle	Tender No.	Name of Bidder	Cumulative Bidding Capacity (MW)	Rate (Rs/kWh)
1	Buldhana Circle	T-02	AEPL	50	3.30
2	Amaravati Circle	T-03	AEPL	50	3.30
3	Yavatmal Circle	T-05	AEPL	50	3.30
4	Washim Circle	T-07	AEPL	50	3.30
5	Malegaon Circle	T-12	GHSPL	30	3.30
6	Nasik (U) Circle	T-15	AEPL	50	3.30

S.No.	Circle	Tender No.	Name of Bidder	Cumulative Bidding Capacity (MW)	Rate (Rs/kWh)
7	A' Nagar Circle	T-18	AEPL	50	3.30
8	Sangli Circle	T-19	AEPL	50	3.30
9	Satara Circle	T-21	AEPL	50	3.30
10	Aurangabad Circle	T-24	AEPL	50	3.30
11	Latur Circle	T-25	AEPL	50	3.30
12	Jalna Circle	T-26	AEPL	50	3.30
13	Parbhani Circle	T-27	AEPL	50	3.30
14	Hingoli Circle	T-28	AEPL	50	3.30
15	Beed Circle	T-29	AEPL	50	3.30
16	Nanded Circle	T-31	AEPL	50	3.30
17	Jalgaon	T-13	GHSPL	20	3.30
			AEPL	50	3.30
18	Dhule	T-14	KEPL	10	3.16
			GHSPL	30	3.30
			AEPL	50	3.30
19	Nandurbar	T-16	GHSPL	20	3.30
			AEPL	50	3.30
20	Solapur	T-17	ISVI	10	3.29
			SAEL	30	3.28
			AEPL	50	3.30
21	Osmanabad	T-30	ISVI	20	3.29
			AEPL	50	3.30
			Total	1170	

3.12 MSEDCL requested the Commission to allow it to sign PPA for a period of 25 years with successful bidders at the tariff discovered through competitive bidding process for procurement of 1170MW solar power under Mukhyamantri Saur Krishi Vahini Yojana.

4. At the first hearing held on 28 March, 2019, representative of MSEDCL reiterated its submission as made in its Petition. The representative of AEPL submitted that as they received the Petition copy a day before, they requested some time to file their reply. The Commission granted 2 weeks' time to AEPL to file its response.
5. During pendency of matter, on 8 April, 2019, an Intervention Application which is registered as MA No. 7 of 2019 was filed by Shri. Nitin Sanjiva Shetty, resident of 2/B/18 Anand Praksh Satyam CHS, Kondivitta Village, Andheri (E), Mumbai – 400059, challenging the bidding process undertaken by the MSEDCL. The main contentions filed under MA No. 7 of 2019 are as under:
 - 5.1. The Intervener is a consumer in the State of Maharashtra and is vitally affected by the tariff determination process of the MSEDCL since the ultimate liability to pay these tariffs would be upon the consumers.
 - 5.2. The Commission is bound by the provisions of the Electricity Act, 2003 and regulations framed there under. Safeguarding the interest of the consumer is a paramount objective of the Commission which is reflected in the MERC (Conduct of Business) Regulations, 2004.
 - 5.3. Due to the nature of the eligibility and other conditions in MSEDCL's tender i.e., inadequate time period for evaluation of the bid including due diligence of land for setting up solar projects spread across in 30 districts of Maharashtra, only few bidders showed interest and hence single bids were received for each category from the bid winners.
 - 5.4. MSEDCL did not call for any fresh tenders or take any other steps to ensure that there is competitive bidding. Instead, it has blindly accepted the single bids received. MSEDCL failed to conduct a transparent process of bidding in accordance with the guidelines issued by the Central Government and keeping in mind the interest of the consumer of the State.
 - 5.5. The requirements of transparency, reasonableness and fair play were not complied with. The legislative mandate of Section 63 of the Act requires the Commission to adopt the tariff only if such tariff has been determined through: (a) transparent process of bidding; and (b) in accordance with the guidelines issued by the Central Government. The Commission is also required to ascertain whether the tariff discovered is reasonable or not i.e. the tariff is in alignment with the prevalent market prices. Unless these conditions are satisfied, the Commission should not adopt the tariff and in fact would refuse to adopt the tariff.
 - 5.6. The process adopted in the present case defies all norms and basic principles of reasonableness and transparency. The guidelines issued by the Central Vigilance

Commission for tendering by public authorities also lay down an obligation to ensure that there is fair competition. The CVC Guidelines further provide that award of contracts in case of a single tender is to be resorted to only under exceptional circumstances such as natural calamities and emergencies or there were no bids to repeated tenders or where only one supplier has been licensed (proprietary item) in respect of goods sought to be procured.

- 5.7. The Commission is requested to dismiss the present Petition and direct MSEDCL to conduct retendering of the said tender.
6. In its Reply dated 4 May, 2019 (received on 6 May, 2019) opposing MA No. 7 of 2019, MSEDCL stated that:
 - 6.1. The address mentioned by the Intervener is of Andheri, Mumbai which is not area of supply of MSEDCL and therefore, he is not consumer of MSEDCL. Also, he has not participated in the present bidding process and hence is not an affected party. The Intervener has no locus standi to file the intervention application.
 - 6.2. The Ministry of Power (MoP) vide its notification dated 3 August, 2017 has issued guidelines under Section 63 of the Electricity Act 2003 for tariff based competitive bidding for long term procurement of 5MW and above from grid connected Solar PV Power Project.
 - 6.3. Meanwhile, the Govt. of Maharashtra (GoM) vide Government Resolution (G.R) dated 14 June, 2017 has formulated a policy under "Mukhyamantri Saur Krishi Vahini Yojana" aimed at supply of power to AG consumers during day time by installation of Solar projects on Public Private Partnership (PPP) basis by MAHAGENCO or MSPGCL.
 - 6.4. The GoM vide G.R. dated 17 March, 2018 modified the earlier G.R dated 14 June, 2017 of "Mukhyamantri Saur Krishi Vahini Yojana". Accordingly, the GoM has appointed MSEDCL as implementation agency in addition to MSPGCL for flexibility and speedy implementation of scheme for giving day time power to AG consumers.
 - 6.5. The Commission vide Order dated 16 October, 2018 in Case No. 270 of 2018 has accorded approval for initialization of the competitive bidding process with deviation in the MoP's Bidding Guidelines for minimum project capacity (i.e. 2 MW instead of 5 MW at single location) for procurement of solar power under 'Mukhyamantri Saur Krishi Vahini Yojana' with total quantum of 1400 MW.
 - 6.6. To meet out the Solar RPO as per the directives of the Commission and extend day time power supply to Agricultural consumers as per Mukhyamantri Saur Krishi Vahini Yojana, MSEDCL had floated 30 district-wise tenders inviting proposals vide its RfS

No. MSEDCL/CE/RE/FY2018-19/1400 MW/ Solar/T-07 to T-36 dated 15 September, 2018 and 16 September, 2018 as per the MoP guidelines. For these tenders MSEDCL has extended the bid submission date 4 times from 22 October, 2018 to 19 December, 2018. However, only two bidders offered their bids for 5 different districts and different tenders viz T-07(Solapur), T-11(Satara), T-14 (Buldhana) ,T-30 (Osmanabad) and T-33(Jalgaon).

- 6.7. In spite of acceptance of request regarding relaxation of certain conditions of the tenders, MSEDCL could receive bids for 5 Districts/Circles for a total of 180 MW solar capacities with rates ranging from Rs. 3.29 to 3.30 per unit.
- 6.8. As only 180 MW were received against first tender of 1400 MW dated 15 September, 2018 and 16 September, 2018; MSEDCL on similar lines has floated second time, 30 tenders vide Rfs No. MSEDCL/CE/RE/2019/1400 MW/ Solar/T-02 to T-15 dated 07/01/2019 & (T-17 to T-31) dated 8 January, 2019 with ceiling tariff of Rs.3.30 per unit.
- 6.9. Considering the poor response for various tenders, MSEDCL has from time to time initiated the process of re-tendering. Wide publicity was given to such tendering process by publishing advertisements in 4 daily newspapers. In spite of this, MSEDCL could get bid for only 1172 MW solar capacity in the present tender for which petitions has been filed.
- 6.10. In the approved tender documents, there is a provision that, *“on completion of Techno-commercial bid evaluation, if it is found that only one bidder is eligible; opening of the financial bid of the bidder will be at the discretion of MSEDCL. Thereafter MSEDCL will take appropriate action by taking necessary approval from MERC.”*
- 6.11. In view of the above condition in bid document, MSEDCL opened financial bids where single bid was received and has requested the Commission to accept the single bids received. The rates are acceptable to MSEDCL as the bids are received within ceiling rate. However, MSEDCL will take final action only after approval of the Commission.
- 6.12. Meanwhile, due to non-receipt of any bid in 9 districts, MSEDCL has re-tendered for the solar capacity in 9 districts. In spite of re-tendering, MSEDCL could not receive a single bid for these districts.
- 6.13. The GoM GR No.CPA-2014/C.No.82/Part-III/Industry-4 dated 30 October, 2015, provision no. 4.4.3.1 states that, if after the re-tendering process the bids received are less than 3, then the tender floating authority can proceed further and execute purchase agreement with the lowest bidder in accordance with the tender conditions. Therefore, as per the guidelines of GoM, MSEDCL has initiated process of re-tendering and further procedure.

6.14. The e-tendering process was carried out in a fair and transparent manner through TCIL platform and the tariff discovered are below/at par with the ceiling tariff fixed by MSEDCL.

6.15. In view of above submissions, MSEDCL requested the Commission to dismiss the MA 07 of 2019.

7. AEPL in its Reply dated 7 May, 2019 stated that:

7.1. Prior to initiation of the competitive bidding process for setting up 1400 MW capacity solar power projects in 30 (thirty) districts of Maharashtra under the 'Mukhyamantri Saur Krishi Vahini Yojana', the Department of Revenue, Ministry of Finance, Government of India had imposed safeguard duty vide its notification dated 30 July, 2018 on import of 'solar cells whether or not assembled in modules or panels' with effect from the date of Notification i.e. 30 July, 2018, which was to be applicable for two (2) years i.e. till 29 July, 2020.

7.2. MSEDCL had floated 30 district wise tenders on 7 January, 2019 and 8 January, 2019. Bidding documents circulated by MSEDCL did not include any provision to allow any change in tariff post finalization of the same after the open-bidding and e-auction process.

7.3. To attract more bidders MSEDCL had also sought to change certain terms of the bids vide various addenda inter alia relating to Ceiling Tariff and Scheduled Commercial Operation Date. Through the relevant addenda, MSEDCL had revised the original terms of the RfS and increased the Ceiling Tariff to Rs. 3.30/ Unit, as well as the Scheduled Commercial Operation Date to the effect that it would mean the date not exceeding 18 (eighteen) months from the date of execution of the power purchase agreement.

7.4. Pursuant to such revisions, AEPL participated in the tenders floated by MSEDCL for the Projects. AEPL's bids for the applicable districts were accepted by MSEDCL for the tariff rates. Post accepting the bids, MSEDCL issued letters confirming to AEPL the terms of the tariff as well as other relevant details of the Project (as applicable to AEPL for the circles/districts where it has participated in the bidding process). Thereafter, MSEDCL has filed the present Petition and Case No. 7 of 2019 to seek directions for adoption of the tariff as decided between the parties for solar power projects having capacity of 1170MW and 180MW respectively.

7.5. The Petition bearing Case No. 7 of 2019 for solar power projects having 180MW was heard by the Commission and directions were passed vide its order dated February 15, 2019 for finalization of the tariff for the 180MW solar power projects. Out of the 180MW solar power projects, AEPL was required to set up 150MW solar power

projects in the districts of Satara, Buldhana and Jalgaon under the ‘Mukhyamantri Saur Krishi Vahini Yojana’. The Order also directed that:

“16.MSEDCL has justified the increased ceiling rate by computing the extra cost on account of Safeguard Duty, the Commission notes that the Ministry of New and Renewable Energy (MNRE) vide its letter dated 24.08.2018 had directed SECI that, in the RfS Maximum Permissible tariff including Safeguard Duty should be fixed with the condition that, if later it is found that no Safeguard Duty has been paid by the bidder on the modules used in the project then the bid tariff will be reduced by Rs. 0.18/Unit. In line with the approach taken by MNRE, in the instant case too, Commission allows the ceiling rate as fixed by MSEDCL subject to the condition that in case it is found that the safe guard duty is not paid by the bidders, then Rs. 0.18/Unit may be reduced from there tariff.....”

- 7.6. Vide the aforesaid Order, the Commission had issued directions for reduction of the agreed tariff by Rs.0.18/unit in the event it is found that, no safeguard duty was paid by the successful bidder for the modules used in the relevant project. Such reduction led to massive financial implications for the bidders as the provision for Safeguard Duty itself was not included in the financial bid submitted by the bidders. While adopting the tariff discovered through competitive bidding, the Commission has imposed additional conditions over and above the terms of the RfS Documents and its Addenda, effectively post facto changing the conditions relating to the bidding, which was not envisaged under the RfS Documents and its Addenda.
- 7.7. Thereafter MSEDCL had filed a Review Petition bearing Case No. 56 of 2019, seeking review of the Order dated 15.02.2019 to the extent of imposition of reduction of Rs. 0.18/unit in the event Safeguard Duty which is not paid by the successful bidder. The Commission vide order dated 22April,2019 while dismissing the Review Petition filed by MSEDCL, had opined as follows:

“
15. In view of the above analysis, the Commission is of the opinion that there is no merit in the review Petition filed by MSEDCL and hence it needs to be rejected.

16. At the same time, the Commission is also conscious of the fact that when such condition was not there in the bidding documents, it would not be appropriate to include it at the tariff adoption stage. But the Commission is compelled to do that because of circumstances as explained above. However, the Commission clarifies that such condition of deduction of Rs. 0.18 per unit is applicable only when bidder imports solar panel / module from the Countries to whom safeguard duties have been made applicable. It is not applicable for import of solar panel / module from other countries or sourcing it from domestic manufacturers. Further, in order to maintain fairness of the competitive bidding process, the Commission suggests to MSEDCL

that it should allow the bidders to withdraw its bid if condition imposed by this Commission in impugned Order alongwith the clarification given in this order as to the source of procurement of solar panels, are not acceptable to the bidder. MSEDCL may include such places where bids have been withdrawn in the next round of competitive bidding process.”

- 7.8. The Notification imposing Safeguard Duty is valid only for a period of two years, i.e. from July, 2018 to July 2020, accordingly AEPL did not factor in Safeguard duty while submitting its Financial Bid in February, 2019. The present Project will be commissioned post July 2020, i.e. the period when Safeguard duty would not be in force/ applicable. AEPL did not envisage applicability of the Safeguard Duty for the Project and did not include the provision of the same while submitting its Financial Bid to MSEDCL. If such a reduction in the tariff is made applicable for the 1170MW solar power project, the tariff approval for which is sought in the present Petition, AEPL will suffer from massive financial implications as the provision for Safeguard Duty itself was not included in the financial bid submitted by AEPL.
- 7.9. In the event there is any change in the terms of the Notification thereby allowing applicability of safeguard duty post July 2020, the same shall be considered/ treated as Change in Law and the tariff shall be revised in accordance with the terms of the power purchase agreements executed between the parties.
- 7.10. The period of eighteen (18) months for scheduled commercial operation date shall be applicable from the date of signing of the PPA, which has still not been executed between the parties. Post signing of the PPA at this stage as well, the SCOD shall be sometime in the month of November 2020, i.e. beyond July 2020. Accordingly, the directions relating to reduction of Rs. 0.18/unit in the tariff in the event of non-payment of Safeguard Duty should not be made applicable.
8. At the second hearing held on 8 May, 2019, representative of AEPL reiterated its submission as made on 7 May, 2019. The representative of GHSPL submitted that they did not factor the impact of Safeguard Duty in the tariff quoted by them in the bid. As per their timeline to develop the projects, they would import the Solar PV modules beyond the date of applicability of Safeguard Duty and any reduction in the quoted tariff of Rs. 3.30/unit will make the project unviable. The Commission inquired about the quoted tariff being higher as compared to the previous bids conducted under ‘Mukhyamantri Saur Krishi Vahini Yojana’ for which the tariff was adopted by the Commission. GHSPL submitted that the project cost has increased due to the increase in Module cost in the international market and the increasing INR - Dollar Exchange rate.
9. During the hearing, the representative of the Intervener, Nitin Sanjiva Shetty, requested the Commission to allow time to file its reply to the response submitted by MSEDCL in

MA No. 7 of 2019. The Commission granted 7 days time to the Intervener and 2 days there after to MSEDCL to file its final reply.

10. AEPL filed additional submissions dated 10 May, 2019 which is along the same lines as has been summarized at para. 7 of this Order and is, therefore, not being set out again here except the following:

10.1. If reduction in the tariff of Rs. 0.18/- (as already directed by the Commission in Case No. 7 of 2019) is made applicable for the 1170 MW solar power project, the tariff approval for which is sought in the present Petition, AEPL shall suffer grave prejudice and significant financial losses to the tune of Rs. 749 Crores as the provision for Safeguard Duty itself was not included in the financial bid submitted by AEPL for 1000 MW.

10.2. In the event the Commission is of the view that reduction in tariff by Rs. 0.18/unit ought to be applied irrespective of the fact whether the successful bidder has factored-in and/or incurred safeguard duty or not, then the Commission must follow the same approach as has been adopted by the Commission in its order dated 22 April, 2019 passed in Case No. 56 of 2019, in the interest of justice and fair play.

11. The Intervener in its submission dated 13 May, 2019 stated that:

11.1. MSEDCL has objected to the intervention application. The intervention has been filed with the intention of protecting the interests of consumers. The Intervener has raised issues in respect of the approach to tariff fixation and in particular, the bidding process. Intervener is sufficiently authorized to intervene in the present proceedings and the Commission may kindly allow its intervention application.

11.2. MSEDCL failed to conduct a transparent process of bidding in accordance with the guidelines issued by the Central Government and keeping the interest of the consumer in mind. Intervener submits that the MSEDCL is proceeding with the tariff fixation process in violation of legal norms and commercial sensibility by accepting single acceptable bids since:

11.3. The larger consumer interest requires that there should be fresh bidding in cases only a single bid has been received in the first instance to ensure that a competitive tariff is determined.

12. MSEDCL in its Reply dated 23 May, 2019, reiterated its earlier submissions and mentioned following:

12.1. The clause no. 8.6 of MoP guidelines for tariff based competitive bidding process for procurement of power from grid connected solar PV panel projects also allows

procurement of the power if the number of qualified bidders are less than two with consent of Appropriate Commission.

12.2. As per section 63 of Electricity Act 2003, *the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*”

12.3. Accordingly, MSEDCL prays to the Commission to dismiss the M. A. No. 07 of 2019 filed by Mr. Nitin Sanjiva Shetty (Intervener) and adopt the tariff discovered for Long-Term Procurement of 1170 MW Solar Power under 'Mukhyamantri Saur Krishi Vahini Yojana'.

Commission's Analysis and Rulings

13. MSEDCL under the instant Petition has sought approval for Adoption of tariff for 1170 MW Solar power under the 'Mukhyamantri Saur Krishi Vahini Yojana' with 2 to 10 MW Capacity projects to be connected to distribution network for meeting its Solar RPO requirement.

14. MSEDCL has floated district wise 30 tenders on 7 January, 2019 and 8 January, 2019 for cumulative Solar Power capacity of 1400 MW to be connected to distribution network, with ceiling rate of Rs. 3.30/unit. MSEDCL received single bids in 16 circles and multiple bids for 5 circles. As in these Circles, cumulative bid capacity was more than 50 MW, reverse auctions for 5 circles were carried out on 21 February, 2019 after opening the financial bids. Accordingly, MSEDCL has requested for adoption of tariff as shown in para 3.11 above with cumulative solar capacity of 1170 MW.

15. Shri. Nitin Shetty through its intervention application objected to such adoption of tariff on the ground that MSEDCL is proposing tariff based on single bid without going for retendering. MSEDCL has objected to such Intervention on the issue of his locus standi and also clarified that it had given wide publicity to the tendering process by publishing advertisements in 4 daily newspapers. Further, due to poor response MSEDCL had extended the bid submission date four times and despite that it could only receive bids for only 1172 MW as against bid capacity of 1400 MW. It has also clarified that for 9 Circles it has not received any bid even after extending bid submission date / retendering it for 5 times. Hence, as provided in bid documents, MSEDCL has proposed to adopt the tariff quoted in single bid which is lower or at par with ceiling tariff.

16. The Commission is of the opinion that MSEDCL has carried out a transparent bidding process and has given sufficient time to the bidders to submit their bids. The contention of the Intervener that the bidding process was not transparent as it did not give sufficient time to the bidders which resulted in single bids for many circles does not hold any merit. As clarified by MSEDCL, inspite of extending the bid submission date 4 times, it has

received single bid in 16 Circles. Hence, there is no merit in objection of Intervener and accordingly, the Commission thinks it fit to reject the prayers of Intervener.

17. MSEDCL having conducted competitive bidding process transparently and as per MoP Guidelines, the Commission still needs to verify whether rate discovered are reasonable before the same could be adopted under Section 63 of the Electricity Act, 2003.
18. The Commission notes that out of 1170 MW proposed for adoption, 10 MW has tariff rate of Rs. 3.16/unit, 60 MW has rate Rs. 3.28 or 3.29/unit and balance 1100 MW has been quoted at a tariff of Rs. 3.30/unit.
19. During the hearing, Solar generators (Impleaded Parties) have clarified that they have not factored in the impact of Safe Guard Duty in their quoted tariff as they will be procuring Solar PV Modules/Panels post July 2020 which will be beyond the applicability period of Safeguard Duty. Under such circumstances, for comparing reasonability of rate discovered under present bidding process, tariff adopted under similar circumstance (before imposition of safe guard duty) needs to be compared.
20. The Commission notes that vide its Order dated 27 November, 2018 in Case No. 277 of 2018, it has adopted tariff of Rs. 3.09 to 3.15 per Unit for 235 MW proposed by MSEDCL under Mukhyamantri Saur Krishi Vahini Yojana. Said bidding process took place before imposition of Safeguard Duty and hence the rate adopted i.e. Rs. 3.09 to 3.15/unit was without considering Safe Guard Duty.
21. Further, in its recent Order dated 27 May, 2019 in Case No. 87 of 2019, the Commission has adopted rate of Rs. 2.74 to 2.75/unit at Maharashtra periphery for supply of 1000 MW of Solar power capacity to MSEDCL. Bidding process of that 1000 MW Solar Capacity was conducted in the same month of January/February, 2019 wherein bidding process of 1400 MW for Mukhyamantri Saur Krishi Vahini Yojana (subject matter of present case) was conducted. Hence, legal and financial conditions prevailing at the time of these two bids were similar. Normalizing the conditions of both the tenders relating to connectivity level by factoring the associated costs, the discovered rate of Rs. 2.74/unit at Maharashtra periphery in the tender for 1000 MW, will rework to Rs. 3.10/unit at 11 kV after adding the losses at transmission and distribution level upto 11 kV. Such factoring of losses is for generic comparison of the likely cost of power to the Distribution licensee for injection of solar energy at same voltage level.
22. Cost of generation for Solar project developer is normally independent of the injection at voltage level and predominantly depends upon cost of land (depending upon location of project), capital cost and O&M expenses. It is important to mention that rate of Rs. 2.74/unit quoted by M/s Shiv Solar Pvt. Ltd is for 50 MW project located in Maharashtra (Tender for 1000 MW).

23. Rates proposed in the present Petition appears to be on the higher side as compared to the tariff adopted by the Commission. Solar Generators have tried to justify such increase based on increasing cost of Solar PV Modules/Panels in the International Market and the increasing USD-INR Exchange Rate. The Commission analyzed the Solar PV Module/Panel rates and found that as per Report of Mercom Capital Group published in January, 2019, the Solar Modules Prices have been consistently falling in international market and have stabilized at that level since December, 2018. Further, there is no major fluctuation in the USD-INR Exchange Rate for over 6 months. Hence, the rationale provided for increased rate of Solar power under present bidding doesn't look plausible.
24. It is important to note that the Commission in its Order under Case No 7 of 2019 dated 15 February, 2019, while adopting tariff discovered for 180 MW of Solar Power under Mukhyamantri Saur Krishi Vahini Yojanahad directed to reduce 18 paise/unit from discovered rate of Rs. 3.29-3.30/unit. In its subsequent Order dated 22 April, 2019, the Commission has clarified this dispensation as follows:

“16. At the same time, the Commission is also conscious of the fact that when such condition was not there in the bidding documents, it would not be appropriate to include it at the tariff adoption stage. But the Commission is compelled to do that because of circumstances as explained above. However, the Commission clarifies that such condition of deduction of Rs. 0.18 per unit is applicable only when bidder imports solar panel / module from the Countries to whom safeguard duties have been made applicable. It is not applicable for import of solar panel / module from other countries or sourcing it from domestic manufacturers. Further, in order to maintain fairness of the competitive bidding process, the Commission suggests to MSEDCL that it should allow the bidders to withdraw its bid if condition imposed by this Commission in impugned Order alongwith the clarification given in this order as to the source of procurement of solar panels, are not acceptable to the bidder. MSEDCL may include such places where bids have been withdrawn in the next round of competitive bidding process.”

25. In the present case, Solar Generators have clarified that the impact of present notification of Safe Guard Duty is applicable till 29 July, 2020, and as they are planning to import solar module post this date, impact of Safeguard Duty has not been factored in the quoted tariff. However, they have further clarified that if any new Safeguard Duty is imposed after July, 2020, same shall be treated as Change in Law and compensation, if any, for the same shall be followed as per the terms of PPA.
26. In view of the above, rate proposed for adoption under present Petition is clearly not in accordance with recent rates discovered by MSEDCL and so adopted by this Commission by various Orders which includes the adoption of rates of Rs.3.10/unit under Mukhyamantri Saur Krishi Vahini Yojana. However, considering the importance of the Scheme and its benefit to the system and the farmers, the Commission thinks fit to direct

MSEDCL to renegotiate the tariff with the bidders to bring the same in the range of tariffs as has been adopted by the Commission recently. In case the renegotiated tariffs are similar and in the range as per the adopted tariffs in Case No 277 of 2018 dated 27 November, 2018, the Commission deems the same approved and no new Petition needs to be filed.

27. Such negotiations may enable MSEDCL to procure part quantum of the tendered power from the generators who are willing to supply power at the rates which have been discovered in similar tender. This action is possible for MSEDCL as the tender for procurement is in stand alone / small capacities. This will ensure that part procurement will commence immediately. For balance quantum if necessary, MSEDCL may take further action by re-tendering the balance/ required quantity.

28. Hence, the following Order:

ORDER

1. **Relief sought in Case No. 64 of 2019 is partly allowed.**
2. **Maharashtra State Electricity Distribution Co. Ltd to renegotiate the tariff with the bidders and take action as per the para 26 and 27 above.**
3. **Miscellaneous Application No. 7 of 2019 is rejected.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member


(Dr. Rajendra Ambekar)
I/c Secretary

