

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

Case No. 50 of 2022

Case of Maharashtra State Electricity Distribution Company Ltd. seeking approval for adoption of tariff discovered for long term procurement of 385.3 MW solar power under ‘Mukhyamantri Saur Krishi Vahini Yojana’ from 2 to 10 MW capacity projects connected to distribution network, under Section 63 of the Electricity Act, 2003 for meeting its Solar Renewable Purchase Obligations.

M/s Maharashtra State Electricity Distribution Company Ltd.) : Petitioner

- 1 M/s Aqua Dynamic Solution.
- 2 M/s Aneja Foods Pvt Ltd.
- 3 M/s Avichal Textile Mills
- 4 M/s Gorakshasiddhi Solar Power Pvt.
- 5 M/s Juniper Green Energy Pvt Ltd.
- 6 M/s Kagwade Associates.
- 7 M/s Kalika Ginning & Pressing Pvt Ltd.
- 8 M/s Kalpataru Global Alloys Pvt Ltd.
- 9 Shri Laxmi Narayan Sarkate.
- 10 Maharashtra State Road Development Corporation Ltd.
- 11 M/s Maharashtra Vidhyut Nigam Pvt Ltd
- 12 M/s MGR & Sons Company.
- 13 M/s Mr.Rupesh Pundlikrao Deshmukh
- 14 Shri Ranjan Mukund Babre.

Respondents

Coram

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

Appearance:

For the Petitioner

: Smt. Kavita Gharat, CE, RE

For the Respondents

: Smt. Deepa Chavan (Adv)
Shri Sunil Arora
Shri Gaikwad

ORDER

Date: 6 May 2022

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) filed the present Petition, being Case No. 50 of 2022 on 10 March 2022 seeking approval for the adoption of tariff for long term procurement of 385.3 MW solar Power under 'Mukhyamantri Saur Krishi Vahini Yojana (MSKVY) from 2 MW to 10 MW Capacity Projects connected to Distribution Network. The said Petition is filed under provisions of Section 63 of the Electricity Act, 2003 (the EA) for meeting the Solar Renewable Purchase Obligations (RPO).

2. MSEDCL's main prayers are as follows:

- a) *To admit the Petition as per the provisions under Section 63 of the Electricity Act (EA), 2003.*
- b) *To accord approval for adoption of tariff as mentioned in table under para 3.4 and signing of PPA with successful bidder for 385.3 MW solar power as discovered through Competitive bidding conducted by MSEDCL.*
- c) *To accord approval for signing of PPA with Shri Mahalaxmi Jagdamba Sansthan for 1.168 MW solar power at tariff of Rs 3.05/- p.u.*
- d) *To accord approval to the RfS and PPA document floated for 1250 MW tender under MSKVY.*
- e) *To accord approval to made this power eligible for meeting the Solar RPO requirement of MSEDCL.*
- f) *To consider the submission made by the Petitioner and consider the same positively while deciding the Petition as well as for further actions;*

3. MSEDCL in its Case has stated as follows:

3.1 The Commission vide its Order dated 18 December, 2020 in Case No. 214 of 2020 has

accorded approval to proceed with continuous bidding process for selection of bidder at ceiling tariff of Rs. 3.30 per unit under MSKVY.

- 32 Meanwhile, the market conditions were changed and the lowest of the discovered Tariff was reached at Rs. 2.36 per unit in one of the Solar Energy Corporation of India (SECI) tenders for large inter/intra-state projects at EHV level.
- 33 On 30 September 2021, Ministry of Finance, Government of India vide Notification No. 08 /2021 increased Goods and Service Tax (GST) on import of Solar Modules and Solar Inverter from 5% to 12% (“MoF Notification”).
- 34 In the Tender floated by MSEDCL for 1300 MW under MSKVY, MSEDCL received low response with cumulative capacity of 111 MW with ceiling Tariff of Rs. 3.05 per unit.
- 35 The Commission vide Order dated 3 December 2021 in Case No. 141 of 2021 accorded approval for procurement of the said 111 MW from grid-connected Solar power projects for 25 Years, at a discovered tariff of Rs 3.00 per unit to Rs 3.05 per unit in MSEDCL’s 30 district wise tenders dated 22 April, 2021 under MSKVY.
- 36 Further, MSEDCL floated 1250 MW Solar tenders under MSKVY on 28 October 2021 with an increased ceiling rate of Rs. 3.10 per unit, considering the impact of the above said MoF notification and low response in the previous Tender. The last date of bid submission Bid was 31 December 2021.
- 37 During various discussions with the prospective bidders, MSEDCL observed that availability of land is one of the hindrance for development of solar projects in Maharashtra. Therefore, to facilitate the prospective bidders, MSEDCL developed an online land bank portal in which farmers could apply to lease their lands to solar developers for solar projects. The prospective bidders may choose land from the list made available to them along with tender documents. If the prospective bidder selects land from the available land list, then the related terms and conditions in the tender documents for renting the lands from land portal are as below:
 - a. Lease rent for lands to be paid to the landowner is Rs 30,000/- per acre per year with a yearly 3% increment.
 - b. The tenure for the lease agreement to be between 26 to 30 years as mutually agreed by both the parties (landowner and the bidder).
 - c. MSEDCL will make a monthly payment of lease rent as declared by the successful bidder in its agreement directly in the bank account of landowner as declared by the successful bidder, by deducting it from the monthly generation payment due to the developer/bidder.
 - d. All the Tax liability and any other statutory liability with respect to land lease will be borne by the successful bidder.

38 MSEDCL received 15 bids with a total cumulative capacity of 388.3 MW. Technical bids were opened on 07 January 2022 and during technical scrutiny of bid documents, M/s Munot Industries (bid capacity of 3 MW) was found disqualified due to Net worth being less than the required amount as per eligibility criteria. Financial bids for 14 qualified bidders out of total 15 bids (385.3 MW) were opened on 19 January 2022. The details are as below:

Sr.No	Tender No.	Name of Bidder	Capacity per location (MW)	Quoted Tariff (Rs/unit)
1	T-41	Aqua Dynamic Solution	28	3.10
2	T-41	Aneja Foods Pvt Ltd	8	3.10
3	T-41	Avichal Textile Mills	2	3.10
4	T-41	Gorakshasiddhi Solar Power Pvt Ltd	129	3.10
5	T-41	Juniper Green Energy Pvt Ltd	170	3.10
6	T-41	Kagwade Associates	2	3.05
7	T-41	Kalika Ginning & Pressing Pvt Ltd	3.30	3.10
8	T-41	Kalpataru Global Alloys Pvt Ltd	3	3.10
9	T-41	Laxmi Narayan Sarkate	2	3.10
10	T-41	Maharashtra State Road Development Corporation Ltd	4	3.10
11	T-41	Maharashtra Vidhyut Nigam Pvt Ltd	10	3.10
12	T-41	MGR & Sons Company	20	3.10
13	T-41	Mr.Rupesh Pundlikrao Deshmukh	2	3.10
14	T-41	Ranjan mukund babre	2	3.10
15	T-42	Munot Industries	3	Technically Disqualified

39 Apart from the Tendering process, MSEDCL received an application on 20 January, 2022 from M/s. Shri Mahalakshmi Jagdamba Sansthan (M/s. SMJS) requesting MSEDCL to sign PPA with MSEDCL for 1.168 MW solar power project at Koradi, Tal-Kamptee, Dist-Nagpur. M/s SMJS informed MSEDCL that it was unable to participate in the tender, as the Minimum bidding capacity under MSKVY Tender is 2 MW and therefore, requested for the signing of PPA at the discovered Tariff in MSKVY's 1250 MW Tenders.

3.10 MSEDCL submitted that MSKVY has multifold benefits such as reduction in distribution losses in addition to fulfillment of RPO target and therefore, to encourage the decentralized solar projects with connectivity at 11 kV level, MSEDCL requested the Commission to consider the procurement of power from said 1.168 MW solar capacity at the lowest tariff of Rs 3.05/- per unit discovered in competitive bidding under MSKVY as per following Regulations of the RE Tariff Regulations, 2019.

“7.3 The tariff for RE Power Projects below threshold limit of eligibility for participating in Competitive Bidding shall be considered equal to the following cases, in order of

priority:

- (a) Latest Tariff discovered through Competitive Bidding by concerned Distribution Licensee for similar RE project and adopted by the appropriate Commission*
- (b) The Tariff discovered through Competitive Bidding for similar RE project by Other Distribution Licensee(s) in the State and adopted by the appropriate Commission.*
- (c) The Tariff discovered through Competitive Bidding for similar RE project in the Country and adopted by the appropriate Commission... ”.*

3.11 MSEDCL prayed to the Commission for the adoption of Tariff for above 385.3 MW Solar power discovered through the competitive bidding process under Section 63 of the EA, 2003. MSEDCL has also prayed for power procurement from 1.168 MW solar power project of Shri. Mahalakshmi Jagdamba Sansthan, situated at Koradi at the latest lowest Tariff discovered of Rs. 3.05 per unit.

4. At the e-hearing through video conferencing held on 12 April, 2022:

- 4.1. Representative of the MSEDCL requested the Commission for adoption of Tariff discovered through the competitive bidding process under MSKVY for the cumulative solar capacity of 385.3 MW and to allow power procurement from 1.168 MW solar power project of Shri. Mahalakshmi Jagdamba Sansthan, situated at Koradi at the latest lowest Tariff discovered of Rs. 3.05 per unit.
- 4.2. Advocate of M/s Juniper Green Energy Pvt Ltd, Respondent No. 5, Smt. Deepa Chavan stated that Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued by the Ministry of Power under Section 63 of the EA, 2003 and duly notified in the official gazette, state that projects shall be commissioned, within a period of 18 months from the date of execution of the PPA. Any deviation from the same shall be subject to the approval of the Appropriate Commission in terms of Clause 18 of the Competitive Bidding Guidelines. She further stated that the de-centralised Guidelines on which MSEDCL relied upon while floating the Tender under MSKVY is just an Office Memorandum and not notified under Section 63 of the EA, 2003 however, the MSEDCL has held a competitive bidding process under Section 63 of the EA, 2003 and therefore, the period for commissioning of the project shall be 18 months from the date of signing of PPA.
- 4.3. The Commission directed M/s Juniper Green Energy Pvt Ltd to make its submission on the issue raised by it during the hearing and directed MSEDCL to respond to the submission of M/s Juniper Green Energy Pvt Ltd.

5. Juniper in its Submission dated 14 April, 2022 stated as follows:

- 5.1. Pursuant to the RfS, M/s. Juniper Green Energy Private Limited (M/s. JGEPL) was selected as the successful bidder for the development and commissioning of 170 MW (AC) Solar Power Project in Maharashtra in MSEDCL's Tender dated 28 October, 2021 under MSKVY.
- 5.2. M/s. JGEPL made its submission on the following two points:
- 5.3. **SCOD of the Project to be considered as 18 months from the date of PPA in terms of Guidelines for Tariff Based Competitive Bidding Process**
 - 5.3.1. SCOD under RfS issued under MSKVY is based on the Guidelines for Development of Decentralized Solar Power Plants dated 13 December, 2019 issued by the MNRE through office memorandum (De-centralised Guidelines). Accordingly, timelines under the MSEDCL's RfS dated 28 October, 2021 as well as draft PPA set out SCOD for the Project as 12 months from the issuance of the Letter of Award (LoA). It is pertinent to note that the procurement process is being undertaken under Section 63 of the EA, 2003.
 - 5.3.2. However, Guidelines for Tariff Based Competitive Bidding Process (CBG) for Procurement of Power from Grid Connected Solar PV Power Projects issued by the Ministry of Power under Section 63 of the EA, 2003) and duly notified in the official gazette, state that the projects shall be commissioned, within a period of 18 months from the date of execution of the PPA.
 - 5.3.3. Any deviation from the same shall be subject to the approval of the Appropriate Commission in terms of Clause 18 of the Competitive Bidding Guidelines.
 - 5.3.4. Guidelines for De-centralised solar projects vide MNRE Office Memorandum (OM) dated 13 December, 2019 have been issued by way of an OM and not under Section 63 of the EA, 2003 according to which, SCOD shall be within 12 months from the issuance of LoA.
 - 5.3.5. RfS and draft PPA need to be consistent with the CBG since these have force of law. A conjoint reading of Clause 2.1.2 and Clause 18 of the CBG clarifies that bidding documents are mandatorily required to be prepared in conformity with the said Guidelines and any deviation by the procurer is required to be approved by the Appropriate Commission.
 - 5.3.6. It is pertinent to note that under the present Petition, MSEDCL is also seeking approval of the RfS which is yet to be approved by the Commission.

5.4. Delay in achieving SCOD on account of Covid-19 and subsequent supply chain disruptions.

5.4.1. Covid-19 has been recognized as a force majeure event under various Central Government Notifications. Further, supply chain disruptions on account of Covid-19 are also well documented.

5.4.2. Due to the trickle-down effect of Covid-19, project developers are facing various domestic capacity and international supply constraints. Further, international manufacturing and supply have been affected due to the recent outbreak of another wave of Covid-19 and the consequent lockdown in China. There is currently no clarity on when international travel will normalize. In order to comply with the timelines under the PPA, it is imperative that the SCOD of the Project be considered as 18 months from the execution of the PPA which will also be in accordance with the CBG.

5.4.3. The installed aggregate manufacturing capacity under the Approved List of Models and Manufacturers (ALMM) list (total of 11 GW) prepared by MNRE, is grossly inadequate to meet the demand of approximately 20 GW per annum in the country. None of the Chinese manufacturers are notified under the ALMM list yet. The import of raw materials (like solar cells) for domestic manufacture of solar modules is also affected due to Covid-19 and consequent lockdowns in China.

5.4.4. Project development activities like financing and approvals can start only after the execution of the PPA since LOA is not a binding contract and takes equal time for projects under MSKVY as other solar projects. Similarly, land acquisition and procurement also take a similar time. So, the distinction between projects under MSKVY and other projects should not be made for the determination of completion of timelines.

5.4.5. Since submission pertaining to the timeline for SCOD is in line with statutory requirements as well as general difficulties, as such it will not cause any prejudice to anyone.

6. MSEDCL in its additional submission dated 23 April, 2022 stated as follows:

6.1. MSEDCL has prepared the tender documents for power procurement from de-centralised solar projects under MSKVY in line with the decentralized guidelines notified on 13 December, 2019. The same was approved by the Commission vide Order dated 16 May, 2020 in Case No. 80 of 2020.

6.2. Subsequently, MSEDCL approached the Commission for approval of open tender process under MSKVY along with the tender documents based on decentralized

Guidelines dated 13 December, 2019. The Commission approved the said tender documents vide its Order dated 18 December, 2020 in Case No. 214 of 2020.

- 6.3. Thereafter, MSEDCL conducted the competitive bidding process for 1300 MW capacity with these approved documents and till date, 22 MW capacity has been contracted.
- 6.4. It is only in this tender, that MSEDCL, in order to facilitate the bidders, has introduced an option for the selection of land from the land bank portal, and the same is incorporated in the tender documents. However, the said provision is not in the decentralized guidelines and hence MSEDCL in this Petition proposed to Commission to approve the same. This is the only modification proposed in the tender document and the rest of the clauses and provisions are as per the tender documents already approved by the Commission in Case No. 214 of 2020. Thus, therefore, MSEDCL is not deviating from its approved tender documents.
- 6.5. Further, as regards the contention raised with respect to ALMM Order, it is submitted that MNRE office memorandum dated 10 March, 2021 mandates MSEDCL to procure Solar power from the projects wherein the modules are enlisted in ALMM list. The relevant excerpts of MNRE office memorandum dated 10 March, 2021 are as follows:

4 In accordance with the ALMM order dated 02.01 .2019 and amendment thereto:

- i. The enlistment shall be valid for two years and can be renewed on submission of necessary documents.*
- ii. The Ministry is empowered to conduct production & sale audit and random quality test, inspection of facility at any time to ensure the compliance and in case of any non-compliance, the enlisted manufacturer shall be removed from ALMM.*
- iii. The Approved list of Models and Manufacturers (ALMM) will be uploaded on the MNRE website and will be monthly updated.*
- iv. Only the models and manufacturers included in this list shall be eligible for use in Government / Government assisted Projects / Projects under Government schemes & Programmes, installed in the country, including Projects set up for sale of electricity to Government under the Guidelines issued by Central Government under section 63 of Electricity Act, 2003 and amendment thereof. The word "Government" shall include Central Government, State Government, Central Public Sector Enterprises, State Public Sector Enterprises and Central and State Organizations / Autonomous bodies.*

- 6.6. Nevertheless, during the pre-bid meeting, Juniper has raised queries and the same were replied by MSEDCL as mentioned below :

Existing Clause	Proposed Modifications	MSEDCL's response
“Effective Date” shall mean the date of issuance of LoA (Letter of Award);	“Effective Date” shall mean the date of execution of Power Purchase Agreement (PPA) by both the parties or date of handing over of original signed copy by MSEDCL to SPD whichever is later;	As per MNRE decentralised guidelines, timelines of SCOD are considered from LoA, hence effective date shall be considered from LoA date. The request is not accepted. The Bidder has to adhere to RFS provisions only.
“SCOD” or “Scheduled Commercial Operation Date” shall mean the date as declared by the Successful Bidder in the PPA which shall not exceed 12 (Twelve) months from the date of issuance of LoA.	“SCOD” or “Scheduled Commercial Operation Date” shall mean the date as declared by the Successful Bidder in the PPA which shall not exceed 18 (Eighteen) months from Effective Date .	
.....Bidder shall comply with MNRE Notification dated 10.03.2021 regarding Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement for Compulsory Registration) Order, 2019.Bidder shall comply with MNRE Notification dated 10.03.2021 regarding Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement for Compulsory Registration) Order, 2019.	The request is not accepted. The Bidder has to adhere with RFS provisions only.

6.7. MSEDCL published the replies to pre-bid queries on 9 December, 2021.

6.8. M/s. JGEPL’s contention regarding deviation from CBG and necessity of the Commission’s approval needs to be rejected at this belated stage when it voluntarily proceeded with bid submission even after the rejection to the similar pre-bid queries raised by M/s. JGEPL, during the bid submission.

6.9. Alternatively, MSEDCL submitted that M/s. JGEPL participated in the tendering process, got the benefits of the process, got selected, and now raised objection which is not tenable and hence M/s. JGEPL is estopped from raising such pleas by the principle of estoppel under law. Therefore, MSEDCL prayed not to consider the objections as they are not acceptable and tenable.

Commission’s Analysis and Rulings

7. MSEDCL has filed present Petition for adoption of Tariff discovered for 385.3 MW Solar capacity through competitive bidding process under Section 63 of the EA, 2003 and approval for power procurement from 1.168 MW solar power project of Shri. Mahalakshmi Jagdamba Sansthan situated at Koradi at the latest lowest Tariff discovered of Rs. 3.05 per unit. During the proceeding, M/s. JGEPL raised the issues regarding the commissioning period considered under competitive bidding process. Therefore, following issues need to be decided in the present

matter:

- A. Adoption of Tariff through the competitive bidding process
- B. Approval for procurement of power from Shri Mahalakshmi Jagdamba Sansthan at competitively discovered Tariff.
- C. Consideration of SCOD of 18 months from signing of PPA as per CBG.

8. Issue A: Adoption of Tariff through the competitive bidding process

- 8.1. Prior to the present Petition, MSEDCL had approached the Commission in Case No. 214 of 2020 seeking permission to float the tenders under MSKVY with the deviation in MNRE Guidelines for Development of Decentralised Solar Power Plants dated 13 December 2019 to initiate the tendering process with the ceiling Tariff of Rs. 3.30 per unit.
- 8.2. In the above-said proceedings, the Commission vide its Order dated 18 December 2020 allowed deviation sought by MSEDCL in MNRE decentralized Guidelines to consider the minimum CUF of 19% instead of 15%. In the said Order, the Commission allowed MSEDCL to proceed with a continuous bidding process for the selection of bidder under MSKVY, subject to the changes in the bidding document suggested regarding allowable Change in Law compensation.
- 8.3. Further, the Commission vide Order dated 3 December, 2021 in Case No. 141 of 2021 adopted the Tariff for 111 MW Solar Power discovered through a competitive bidding process conducted by MSEDCL based on the approved tender documents.
- 8.4. The Commission further notes that MSEDCL has conducted a transparent process of competitive bidding for the procurement of Solar power. MSEDCL increased the ceiling Tariff of Rs. 3.10 per unit, considering the impact of an increase in GST on import of Solar Modules and Solar Inverter from 5% to 12% notified by Ministry of Finance vide Notification No. 08/2021. As against 1250 MW bid, MSEDCL received 385.3 MW qualified bid. The Tariff received for various projects with a cumulative capacity of 385.3 MW is summarized below:

Sr. No.	Name of Bidder	Capacity (MW)	Tariff (Rs/unit)
1	Aqua Dynamic Solution	28	3.10
2	Aneja Foods Pvt Ltd	8	3.10
3	Avichal Textile Mills	2	3.10
4	Gorakhasiddhi Solar Power Pvt Ltd	129	3.10
5	Juniper Green Energy Pvt Ltd	170	3.10
6	Kagwade Associates	2	3.05
7	Kalika Ginning & Pressing Pvt Ltd	3.30	3.10
8	Kalpataru Global Alloys Pvt Ltd	3	3.10

Sr. No.	Name of Bidder	Capacity (MW)	Tariff (Rs/unit)
9	Laxmi Narayan Sarkate	2	3.10
10	Maharashtra State Road Development Corporation Ltd	4	3.10
11	Maharashtra Vidhyut Nigam Pvt Ltd	10	3.10
12	MGR & Sons Company	20	3.10
13	Mr.Rupesh Pundlikrao Deshmukh	2	3.10
14	Ranjan mukund babre	2	3.10
	Total	385.3	

8.5. The Commission notes that in Order dated 3 December, 2021 in Case No. 141 of 2021, it has adopted the discovered tariff of Rs.3.00 to Rs.3.05 per unit for various projects under MSKVY with a cumulative capacity of 111 MW under different circles of MSEDCL. In the further Tender, MSEDCL increased the ceiling Tariff to Rs. 3.10 per unit on account of an increase in the GST on solar modules and inverters. Therefore, the Tariff discovered in the present bidding process in the range of 3.05 to 3.10 per unit looks appropriate, considering the impact of the same, and seems reflective of current market trends.

8.6. Accordingly, in line with the mandate under Section 63 of the Electricity Act, 2003, the Commission deems it fit to adopt and approve tariff as highlighted in above para 8.4 for 385.3 MW Cumulative Solar projects on a long term basis (for the period of 25 years).

8.7. The Commission notes that MSEDCL in prayer 'd' has requested for approval of RfS and PPA document floated during this bidding process. However, the Commission has already approved such documents in its earlier Order dated 18 December 2020 in Case No. 214 of 2020 with certain changes. The Commission considers MSEDCL's submission that it has added some clauses in the tender documents, regarding the provision of the land portal to the prospective bidders along with the various terms and conditions for leasing land. The Commission welcomes and appreciates such initiatives of developing the land portal for increasing response to the MSKVY tenders, which as such is not a deviation from the decentralized Guidelines but is a facilitation to the prospective bidders. However, in the present proceeding, MSEDCL has not sought approval for any deviation which requires approval of the Commission. Hence, this prayer does not require any fresh ruling.

9. Issue B: Approval for procurement of power from Shri Mahalakshmi Jagdamba Sansthan at competitively discovered Tariff.

9.1. The Commission notes the submission of MSEDCL that it has received an application on 20 January, 2022 from M/s Shri Mahalakshmi Jagdamba Sansthan (SMJS) requesting MSEDCL to sign PPA with MSEDCL for 1.168 MW solar power project at Koradi, Tal-Kamptee, Dist-

Nagpur, at the discovered Tariff in MSKVY's 1250 MW Tenders, as it was unable to participate in the tender due to the condition of minimum bidding capacity of 2 MW.

- 9.2. The Commission also notes the submission of MSEDCL to allow it to sign PPA with Ms. SMJS at lowest discovered Tariff of Rs. 3.05 per unit under MSEDCL's 1250 MW Tender under MSKVY, based on the enabling provision under the MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2019 regarding applicability of Tariff for the projects below threshold limit of eligibility for participating in Competitive Bidding and considering the multi-fold benefits of the de-centralised generation.
- 9.3. The Commission observes that in the present Case, the Solar project capacity of M/s. SMJS is 1.168 MW which is below the threshold limit of eligibility for participating in competitive bidding i.e. 2 MW. Therefore, as provided by the Regulation 7.3 of the MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2019 (reproduced in para 3.10 above), the Commission allows MSEDCL to sign the PPA with Ms. SMJS for 1.168 MW solar Project at Rs. 3.05 per unit, which is the lowest Tariff discovered in the latest competitive bidding process conducted by MSEDCL and adopted by the Commission through this Order.

10. Issue C: Consideration of SCOD of 18 months from signing of PPA as per CBG

- 10.1. The Commission notes the submission of the M/s. Juniper Green Energy Private Limited that guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects are issued by the Ministry of Power under Section 63 of the EA, 2003 and are duly notified in the official gazette. However, Guidelines for De-centralised solar projects are issued by the MNRE through Office Memorandum (OM) dated 13 December, 2019 and are not notified under Section 63 of the EA, 2003. Therefore, Commissioning period of 12 months provided in the MSEDCL's MSKVY Tender shall be 18 months as per CBG for Solar Projects. Also, MSEDCL has not taken any approval for the deviations from the Commission as per clause 18 of the CBG, while considering the commissioning period of 12 months in the tender document.
- 10.2. The Commission also notes the submission of the M/s. JGEPL that due to the trickle-down effect of Covid-19, project developers are facing various domestic capacity and international supply constraints. There is currently no clarity on when international travel will normalize, it is imperative to consider the SCOD of the Project as 18 months from the execution of the PPA which will also be in accordance with the CBG. Also, the installed aggregate manufacturing capacity under ALMM list (total of 11 GW) is grossly inadequate to meet the demand of approximately 20 GW per annum in the country and import of raw material (like solar cells) for domestic module manufacture is also affected due to Covid-19 and consequent lockdowns in China.

- 10.3. The Commission notes the submission of MSEDCL that facilitation of the land bank portal is the only modification in the tender document and the rest of the clauses and provisions are as per the tender documents already approved by the Commission in Case No. 214 of 2020 and thus, MSEDCL is not deviating from its approved tender documents.
- 10.4. The Commission also notes the submission of MSEDCL that M/s. JGEPL's contention regarding deviation from CBG and the necessity of the Commission's approval needs to be rejected at this belated stage when it voluntarily proceeded with bid submission even after the rejection of the similar pre-bid queries raised by M/s. JGEPL, during the bid submission. M/s. JGEPL is estopped from raising such pleas by the principle of estoppel under law. Therefore, MSEDCL prayed that the objections may not be considered as they are not acceptable and tenable.
- 10.5. The Commission is of the view that MSEDCL while issuing the Tender in the present matter has employed the tender documents approved by the Commission vide Order dated 18 December 2020 in Case No. 214 of 2020 with certain changes as directed by the Commission, according to which the commissioning period for the Solar project under MSKVY tender is 12 months from the date of LoA. Earlier to the present MSKVY tender, MSEDCL had conducted the competitive bidding with the same tender documents and received the capacity of 111 MW. The Commission has also adopted the Tariff for these 111 MW projects through Order dated 3 December 2021 in Case No. 141 of 2021. The Commission observes that even after the clarification issued by MSEDCL on pre-bid queries of M/s. JGEPL on the similar request for change in commissioning period, M/s. JGEPL willingly chose to participate in the present MSKVY tender and got selected in the tendering process.
- 10.6. At this stage of the proceeding of the Tariff adoption, the Commission can not accept the submission of M/s. JGEPL for consideration of the SCOD as 18 months instead of the 12 months as stipulated in the tender documents. M/s. JGEPL only after unconditional acceptance of the various terms and conditions in the RfS document has participated in the bidding process and has submitted its bid for 170 MW.
- 10.7. On the issue of Guidelines for De-centralised solar projects not notified under Section 63 and hence cannot be the basis for the competitive bidding process, the Commission notes that it is a settled legal position that the absence of guidelines notified by the GoI does not restrict the competitive bidding process. Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued by the MoP under Section 63 of the EA are applicable for large capacity solar project and not necessarily applicable for distributed and decentralized generation projects of relatively lower capacity. Hence, once MNRE has issued guidelines for the de-centralised solar project (which as per JGEPL not notified under Section 63), MSEDCL has submitted RfS for MSKVY based on

such Guidelines for de-centralised generation and the Commission has approved it. Hence, this contention of JGEPL is not misplaced and therefore not maintainable.

11. Hence, the following Order.

ORDER

1. Case No. 50 of 2022 is allowed.
2. The Commission accords its approval procurement of 385.3 MW on long-term basis from the Solar power projects connected to the Distribution Network under 'Mukhyamantri Saur Krishi Vahini Yojana' as stated in Para 8.4 and allows MSEDCL to enter into Power Purchase Agreement with the successful bidder for a period of Twenty-Five years.
3. The Commission also allows MSEDCL to sign PPA with Ms. SMJS for 1.168 MW solar Project at Rs. 3.05 per unit, which is the lowest Tariff discovered in the latest competitive bidding process conducted by MSEDCL and adopted by the Commission through this Order, after necessary modifications in the Draft PPA document of the MSKVY Tender for 1250 MW capacity.
4. MSEDCL shall submit a copies of the PPAs to the Commission within 15 days of entering into it.
5. The Solar Power procured from these projects shall be eligible towards fulfilment of Maharashtra State Electricity Distribution Co. Ltd.'s Solar RPO for the respective periods.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

