

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 4 of 2021**

**Case of Avaada Energy Pvt. Ltd. seeking issuance of appropriate Order(s)/ directions(s) to MSEDCL inter alia executing the power purchase agreement pursuant to the adoption of tariff by the Commission vide its Order dated 15 May 2020 and letter of award dated 17 June 2020**

M/S Avaada Energy Pvt Ltd ..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd. .... Respondent

**Coram**  
**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

**Appearance:**

For the Petitioner : Shri. Sanjay Sen (Adv)  
For the Respondent : Shri. Abhishek Khare (Adv)

**ORDER**

**Date: 16 February, 2021**

1. M/S Avaada Energy Pvt Ltd (**AEPL**) has filed this Case dated 19 January 2021 against Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) seeking issuance of appropriate Order(s)/ directions(s) to MSEDCL inter alia executing the Power Purchase Agreement (**PPA**) pursuant to the adoption of tariff by the Commission vide its Order dated 15 May 2020 and Letter of Award (LoA) dated 17 June 2020. Further, AEPL also seeking Orders / directions restraining MSEDCL from taking any coercive action.

2. **Main prayers of the Petitioner are as follows:**

**Interim Prayer**

- (a) *Issue Ex-Parte, ad-Interim appropriate direction(s) / order(s) against Respondent - Maharashtra State Electricity Distribution Company Limited to not take any precipitative / coercive action against the Petitioner and its SPVs including invocation / encashment of the Performance Bank Guarantee and the Earnest Money Deposit furnished in its favour by the Petitioner or its SPV, till the final disposal of the present petition; and / or*
- (b) *Issue Ex-Parte, ad-Interim appropriate direction(s) / order(s) against Respondent - Maharashtra State Electricity Distribution Company Limited to maintain the status quo in relation to the subject matter of the present petition till the final disposal of the present petition; and / or*
- (c) *Pass such other and further order(s) / direction(s) that this Hon'ble Commission may deem fit in the interest of justice and equity and facts and circumstances of the present proceedings.*

**Main Prayer**

- (a) *Hold and declare that the Petitioner being the successful bidder under the RFS dated 27.12.2019 read with Order dated 15.05.2020 passed by this Hon'ble Commission in Case No. 81 of 2020, to supply power to Respondent – Maharashtra State Electricity Distribution Company Limited;*
- (b) *Hold and declare that the Respondent – Maharashtra State Electricity Distribution Company Limited is bound to offtake power at the discovered tariff in terms of the bidding documents dated 27.12.2019 read with Order dated 15.05.2020 passed by this Hon'ble Commission in Case No. 81 of 2020;*
- (c) *Direct the Respondent – Maharashtra State Electricity Distribution Company Limited to execute Power Purchase Agreement(s) for supply of 250 MW with the Petitioner's SPV namely, Avaada Green Sustainable Energy Pvt. Ltd and allow in favour of the Petitioner or its SPV, any consequential relief(s), arising out of the delay in execution of the said Power Purchase Agreement(s) at the behest Respondent – Maharashtra State Electricity Distribution Company Limited;*

(d) Pass such other and further order(s) / direction(s) that this Hon'ble Commission may deem fit in the interest of justice and equity and facts and circumstances of the present proceedings.

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

3.1. The present Petition is filed by AEPL against inaction of MSEDCL for avoiding its fructified and reciprocal obligation by not executing the PPA in compliance of the LoA dated 17 June 2020.

3.2. MSEDCL issued Request for Selection (RfS), on 27 December 2019, for procurement of power on long term basis through competitive bidding process followed by reverse e-auction from 500 MW intra state grid connected solar photovoltaic power projects. Out of 500 MW capacity tendered, the following capacity was subscribed and allotted to the following two bidders:

Sr. No.	Name of the Bidder	Quantum (in MW)	Price (Rs./kWh)
1.	Tata Power Renewable Energy Ltd.	100	2.90
2.	Avaada Energy Pvt. Ltd.	250	2.90
<b>Total</b>		<b>350</b>	

3.3. In terms of the Clause 3.9 of the RfS, AEPL has submitted bank guarantee dated 7 March 20 amounting Rs. 10 Crores issued by State Bank India as Earnest Money Deposit (EMD) against above bid.

3.4. Subsequent to bidding exercise, MSEDCL approached the Commission vide Case No. 81 of 2020 for long term procurement of 350 MW intra-state solar power at tariff discovered in the competitive bidding process. The Commission vide Order dated 15 May 2020, adopted the tariff at the rate of Rs. 2.90 per unit under Section 63 of the Electricity Act, 2003.

3.5. Post order of the Commission adopting discovered tariff, MSEDCL issued LoA dated 17 June 2020 for procurement of power from 250 MW (150 +100 MW) Solar PV project as under:

Capacity Awarded (in MW <sub>AC</sub> )	Location	Name of Substation	Tariff (in INR/kWH) (at Maharashtra STU/ MSETCL periphery)	Terms of PPA
250	i) 150 MW at Village Pangaon, Dist. Solapur	220/33 kV Vairag	2.90	25 years from CoD
	ii) 100 MW at Village Gheradi, Dist. Solapur	132 kV Bhalwani		

- 3.6. Thereafter, AEPL vide its letter dated 24 June 2020 communicated its acceptance to the LoA and also informed MSEDCL that the said project of 250 MW (150 +100 MW) shall be implemented under its SPV Company (100% Subsidiary) – Avaada MH Sustainable Energy Pvt Ltd. (Avaada MH).
- 3.7. Subsequently, AEPL vide letter dated 08 July 2020 requested MSEDCL to grant them time up to 31 October 2020 to submit Performance Bank Guarantee (PBG) for signing of PPA, in view of the Maharashtra Government extending the lockdown in the State due to coronavirus pandemic and recommendation of the Government of India to the State agencies to extend the timelines of the project. In the meantime, AEPL vide their letter dated 15 July 2020 submitted the documents for execution of PPA in the name of their SPV company, Avaada MH. The said request of AEPL was allowed by MSEDCL vide their email dated 28 July 2020, letters dated 31 July 2020 and 06 August 2020 and was granted time for submission of PBG up to 31 October 2020.
- 3.8. AEPL vide their letter dated 20 October 2020, requested MSEDCL that due to financial & operational challenges, it be allowed signing of PPA in two (2) separate SPV Companies namely Avaada MH & Avaada Green Sustainable Energy Pvt Ltd. (Avaada Green), both being 100% subsidiaries of AEPL. The said request of AEPL for signing of the PPA in the name of two SPVs was rejected by MSEDCL vide their letter dated 09 November 2020 and asked AEPL to submit the PBG and thereafter execute the PPA.
- 3.9. Meanwhile, AEPL vide its letter dated 06 November 2020 has already submitted the requisite documents of the SPV Company i.e., Avaada Green to seek consent of MSEDCL for signing of the PPA.
- 3.10. Accordingly, keeping in view of the said MSEDCL decision, AEPL vide letter dated 17 November 2020 informed to MSEDCL that AEPL will sign PPA in the name of single SPV Company (100% Subsidiary) – namely Avaada Green and to withdraw its earlier request for signing of PPA in the name of Avaada MH. AEPL has already submitted all requisite documents of Avaada Green vide its previous letter dated 06 November 2020.
- 3.11. In terms of Clause 3.9(ii) of the RfS, and within the stipulated time period, AEPL on 18 November 2020 has furnished a PBG in the name of Avaada Green to MSEDCL for Rs. 35 Crore. The said PBG would remain in force till 31 July 2022.
- 3.12. It is pertinent to note that AEPL in order to fulfill their obligations under the proposed PPA and meet timelines in a timely manner (especially keeping in mind that effective date of PPA was going to remain 17.07.2020), has undertaken the following activities:

- (a) Identified land for 100 MW and 150 MW at two locations and accordingly entered into MoUs with several land aggregators and executed Sale Agreements for more than 550 acres of the land.
  - (b) Finalised the EPC contract.
  - (c) Placed orders for modules on 17 December 2020 for which the delivery is expected by May 2021.
  - (d) Received recommendation by MEDA and Grid Co-ordination Committee for issuance of In-Principle Connectivity.
- 3.13. While coordinating with MSEDCL for signing of the PPA in the name of Avaada Green, it was understood from MSEDCL that the signing of the PPA will take some more time and also owing to pandemic and financial difficulties, AEPL vide their letter dated 27 November 2020 requested for extension of time for signing of PPA till 31 December 2020 and in terms of the PBG dated 09 November 2020 having been submitted, requested the Respondents to release EMD BG of Rs. 10 Crores.
- 3.14. Subsequently, AEPL received a letter dated 30 December 2020 from the MSEDCL wherein MSEDCL alleged that AEPL had failed to submit the PBG and EMD will be forfeited.
- 3.15. In response, AEPL clarified its position including requesting MSEDCL not to encash the EMD Bank Guarantee and requested for further extension of time up to 31 January 2021 for signing of PPA with the 'Effective Date' of PPA being 17 July 2020.
- 3.16. In response to AEPL's communication dated 30 December 2020, MSEDCL issued letter dated 31 December 2020 to AEPL and also sent an email to the bankers of the Petitioner (i.e. the State Bank of India) to extend EMD BG upto 31 March 2021 and accordingly the Bank has extended the EMD BG upto 31 March 2021.
- 3.17. AEPL vide letter dated 04 January 2021, reiterated its request for the execution of the PPA and requested to communicate the date for signing of the PPA and discharge of the EMD BG of Rs. 10 Crores. AEPL has also stated that if MSEDCL has any reservation against the signing of PPA in the SPV Company i.e., Avaada Green, AEPL is willing to sign the PPA in its SPV Company i.e., Avaada MH, both being 100% subsidiary of AEPL. Till date there is no response on the said letter from MSEDCL's end.
- 3.18. AEPL being the lawful recipient of LoA dated 17 June 2020 has the lawful right to establish the Project and having been awarded the LoA and having met with all the requisite

necessities and requirements the case of AEPL is governed by doctrine of legitimate expectation.

- 3.19. AEPL has undertaken several activities apart from taking connectivity approval from MSETCL. This is further to the fact that AEPL has accepted all the conditions including accepting SCOD, financial closure date and effective date of PPA as 17 July 2020 as contemplated by MSEDCL.
- 3.20. AEPL has complied with all its obligation (i.e. submission all requisite documents and PBG) under the RfS and no provisions of the RfS are violated by AEPL which entitles the Respondents to forfeit the EMD amount, encash the PBG and/or terminate the LOA. Any variation made or extension sought to submit the PBG and execute the PPA by the AEPL was duly agreed and accepted by MSEDCL.
- 3.21. In terms of bidding process, MSEDCL has already executed a PPA with Tata Power Renewable Energy Ltd (being the other successful bidder in the same bid) for 100 MW at the adopted tariff of Rs. 2.90/- per unit and it is only judicious, fair and equitable that the AEPL being similarly placed as with Tata Power Renewable Energy Ltd is also treated in the similar manner by MSEDCL executing requisite PPA.
- 3.22. The requests for extension of time to execute PPA and issuance of PBG through a different AEPL's entity was made only because several employees including senior official in the Petitioner company were detected with COVID-19 due to which key decision making was stalled. Because of several COVID-19 cases being detected in AEPL's corporate office located at Mumbai, the usual pace of business was severely/adversely hampered. The said adverse impact of COVID-19 is completely beyond the reasonable control of the AEPL and even qualifies as a force majeure event. In such scenario, any invocation/encashment of PBG will lead to irreparable injury and will cause grave prejudice to AEPL and will certainly lead to unjust enrichment of MSEDCL.
- 3.23. MSEDCL has unjustly, and unreasonably issued the Letter dated 30 December 2020 by arbitrarily attempting to forfeit the EMD submitted towards bid security under Clause No. 3.9(iv) and 3.10 of the RfS. The impugned letter is unsustainable and completely perverse/bad in the eyes of law. Therefore, AEPL by this Petition seeks the intervention/ approval of the Commission to resolve issues herein raised and also pass such directions as it deems appropriate to ensure that the interest of AEPL is protected.

4. **MSEDCL in its reply dated 11 February,2021 submitted as below:**
- 4.1. Subsequent to the Commission's Order dated 15 May 2020, MSEDCL issued LoA dated 17 June 2020 to AEPL, which stated that AEPL was required to execute the PPA within a period of one month as per the RfS.
- 4.2. AEPL vide communication dated 24 June 2020, acknowledged the LOA issued and intimated to MSEDCL that the project would be developed/executed through its SPV Company– Avaada MH which is a fully owned subsidiary company of AEPL. It was also stated by AEPL that PBG and all requisite documents of the SPV Company will be duly submitted to MSEDCL as per the terms of RfS, for signing of PPA between MSEDCL and the SPV.
- 4.3. The furnishing of the PBG is provided for at Clause 3.9 of the RfS and which reads as below:  
“  
3.9  
.....  
*ii. Performance Bank Guarantee (PBG):*  
*The Bidders selected by MSEDCL, based on this RfS shall submit the **Performance Bank Guarantee (PBG) of INR14 Lakh/MW according to the Format 6.3 B, issued in favour of MSEDCL with a validity period up to 6 months from Scheduled Commercial Operation Date, 2 days prior to signing of PPA.***  
.....”
- 4.4. However, AEPL vide letter dated 08 July 2020 requested MSEDCL to grant them time upto 31 October 2020 to submit PBG for signing the PPA citing the lockdown situation due to COVID-19 pandemic. Further, AEPL cited liquidity crisis due to COVID-19 pandemic. It is pertinent to note AEPL has not cited the COVID-19 pandemic while giving acceptance to the LOA or during the tariff adoption proceedings before the Commission. Thus, AEPL deviated from RfS condition by requesting additional time to sign the PPA.
- 4.5. MSEDCL as per the terms of RfS considered the request of AEPL subject to the exclusive condition that the effective date of PPA shall remain 17 July 2020 as per LoA and no change in Scheduled Commercial Operation Date (SCOD) vide letter dated 06 August 2020. AEPL vide letter dated 06 August 2020 has given plain acceptance for the same without any conditions and informed that it will submit the PBG before 31 October 2020.
- 4.6. As per stipulations of RfS it is necessary to execute PPA with single SPV. AEPL vide its letter dated 20 October 2020 (i.e. only ten days before the expiry of the allowed extension for signing and executing PPA which was 31 October 2020) requested for executing PPA



in the name of two SPVs and again sought deviation from RfS conditions. By its letter date 09 November 2020, MSEDCL has informed AEPL that two separate PPAs cannot be executed.

- 4.7. Instead of signing PPA upto 31 October 2020 AEPL vide letter dated 22 October 2020 again requested MSEDCL to extend the timelines for submission of PBG and signing of PPA upto 30 November 2020. AEPL also requested that PBG for its another Project which is having PPA with MSEDCL under phase –II be discharged/ released worth Rs. 49 crores. This request is also against the provisions of RfS.
- 4.8. On 06 November 2020, AEPL *suo moto* submitted the documents for its new SPV company Avaada Green. Further on 17 November 2020, AEPL withdrew its earlier request of signing of PPA in name of Avaada MH and requested signing of PPA in name of Avaada Green. Then on 18 November 2020, AEPL submitted PBG in the name of Avaada Green for a sum of Rs. 35 Crores and requested discharge of EMD Bank Guarantee to Rs 10 Crore without adherence to its earlier acceptance of executing PPA upto 31 October 2020. By letter dated 27 November 2020, AEPL once again sought extension of time till 31 December 2020 to execute PPA between Avaada Green and MSEDCL.
- 4.9. On 30 December 2020, MSEDCL considering the failure of AEPL to execute the PPA by 31 October 2020 addressed a letter to AEPL for forfeiting the EMD deposited by AEPL as per the Clauses 3.9 (IV) and 3.10 of the RfS.
- 4.10. In response to the above-mentioned letter, AEPL vide letter date 04 January 2021, stated that if MSEDCL has any reservations against the signing of PPA under the proposed SPV Company Avaada Green, AEPL is willing to sign the PPA under the name of its SPV Company Avaada MH.
- 4.11. MSEDCL submits that AEPL has not adhered to the RfS provisions and has failed to submit the Bank Guarantee as stipulated by the clause 3.9 (iv) of the RfS and hence the EMD Bank Guarantee stands liable to be forfeited. Relevant clauses in RfS reads as follows:  
“  
3.9  
iv. *The successful bidders are required to sign PPA with the MSEDCL **within 30 days after the date of issue of LoA.** Subsequent extension in this timeline shall be finalized and agreed by MSEDCL. In case, MSEDCL offers to execute the PPA with the Selected Bidder and if the Selected Bidder does not submit the requisite documents as per Section 3.11 or does not meet eligibility criteria upon submission of documents or does not execute the PPA within the stipulated time period, **then the Bank Guarantee submitted towards EMD shall be forfeited by MSEDCL and the selected Project(s) shall stand cancelled.***



### **3.10 Forfeiture of EMD:**

*The BG towards EMD shall be forfeited by MSEDCL in following cases:*

- i. If the bidder withdraws or varies the bid after due date and time of bid submission and during the validity of the bid;*
- ii. In case, MSEDCL offers to execute the PPA with the Selected Bidder and if the selected bidder does not submit the requisite documents as per Section 3.11;*
- iii. If after date of issue of LOA, it is found that the documents furnished by the bidder during RfS are misleading or misrepresented in any way and that relevant facts have been suppressed;*
- iv. If the bidder fails to furnish required Performance Bank Guarantee in accordance with Section 3.9.”*

4.12. Given the above provisions and that AEPL has unconditionally accepted the terms and conditions, it is clear that in the event their Project gets selected and they are not able to submit Bank Guarantee of the requisite value(s) towards PBG for the selected Projects within due time as mentioned in clause 3.9, then MSEDCL shall have the right to forfeit the EMD submitted by the bidder and return the balance amount (if any) for the value of EMD pertaining to unsuccessful capacity. Thus, any demand of AEPL by way of approaching the Commission is nothing but an attempt to circumvent the provisions of the RfS. Accordingly, this Petition is liable to be dismissed on this ground alone.

4.13. As the terms and conditions of the RfS are clear with respect to the provision of execution of PPA and consequent actions, AEPL cannot invoke the regulatory powers of the Commission to modify the RfS and the PPA.

4.14. As regards the contention of AEPL that it should be placed similar to M/s. Tata Power Renewable Energy Ltd. which was also a successful bidder in this bid, it is submitted that AEPL cannot be placed on an equal footing with Tata Power as they have delayed the execution of PPA whereas Tata Power has timely executed the PPA on 16 September 2020.

4.15. MSEDCL submits that the market conditions over the period within which the PPA was expected to be executed and the current position have undergone significant changes. The market conditions changed in light of recently discovered tariffs pertaining to SECI bids in Rajasthan where the tariffs have abruptly reduced upto Rs. 2.00/- per unit. Incidentally, Gujarat's 500 MW Auction has also set a new record low Solar Tariff of Rs1.99/kWh.

Further, AEPL can participate in any new upcoming tenders of MSPGCL, SECI, NTPC, etc.

- 4.16. In view of the above it is most humbly submitted that the AEPL's prayers deserves to be rejected as AEPL failed to adhere to the provisions of RFS.
5. At the E-hearing held on 12 February 2021, both parties reiterated their submission made in Petition/Reply.

**Commission's Analysis and Rulings:**

6. Present Petition has been filed by AEPL seeking directives to MSEDCL for execution of PPA for supply of 250 MW solar power in terms of LOA dated 17 Jun 2020 issued by MSEDCL.
7. The Commission notes that subsequent to competitive bidding conducted by MSEDCL for 500 MW intra-state power procurement from Solar project, the Commission vide Order dated 15 May 2020 has adopted the tariff of Rs. 2.90/kWh for supply of 350 MW of solar power. Relevant part of the Order is reproduced below:

*"12. In view of the foregoing, the Commission opines that the discovered rate of Rs. 2.90 per unit is generally as per the existing market conditions for the Solar Project being setup in Maharashtra. Further, in line with the mandate under Section 63 of the EA, the Commission deems it fit to adopt the tariff and approves Tariff discovered by MSEDCL for procurement of 350 MW of Solar power on long term basis (for the period of 25 years) from grid connected Solar projects for meeting its Solar RPO:*

<b>Sr. No.</b>	<b>Name of Bidder</b>	<b>Quantum (in MW)</b>	<b>Price (Rs. Per Unit)</b>
<b>1.</b>	<b>Tata Power Renewable Energy Ltd.</b>	<b>100</b>	<b>2.90</b>
<b>2.</b>	<b>Avaada Energy Pvt. Ltd</b>	<b>250</b>	<b>2.90</b>
<b>Total</b>		<b>350</b>	

”

8. Post issuance of above Order of the Commission, MSEDCL issued LOA to the selected bidders on 17 June 2020. As per below quoted provision of RfS, PPA needs to be signed within 30 days from date of issuance of LOA:

*“iv. The successful bidders are required to sign PPA with the MSEDCL within 30 days after the date of issue of LoA. Subsequent extension in this timeline shall be finalized and agreed by MSEDCL. In case, MSEDCL offers to execute the PPA with the Selected Bidder*

*and if the Selected Bidder does not submit the requisite documents as per Section 3.11 or does not meet eligibility criteria upon submission of documents or does not execute the PPA within the stipulated time period, then the Bank Guarantee submitted towards EMD shall be forfeited by MSEDCL and the selected Project(s) shall stand cancelled.”*  
*[emphasis added]*

Thus, in terms of above quoted RfS provision, PPA should have been signed before 17 July 2020, failing which Bank Guarantee towards EMD could be forfeited by MSEDCL. Above quoted clause also has provision of extending date of signing of PPA.

9. Accordingly considering difficulties cited by AEPL on account of COVID-19 pandemic, MSEDCL agreed to extend date of signing of PPA to 31 October 2020 with condition that effective date under the PPA will remain as 17 July 2020. AEPL has accepted such condition and stated that milestone such as Financial Closure and Scheduled COD shall be achieved with reference to the effective date of 17 July 2020. Thus, both parties have consented for extension of PPA signing date to 31 October 2020 with effective date of PPA as 17 July 2020.
10. However, AEPL has subsequently sought further extensions for signing of PPAs to which MSEDCL is not agreeable and hence issued letter to AEPL for invoking the Bank Guarantee towards EMD. It is also pertinent to note that initially AEPL has informed MSEDCL that PPA will be signed by its 100% subsidiary i.e. Avaada MH, however subsequently requested MSEDCL to allow signing of two separate PPAs with Avaada Green and Avaada MH, both of which are 100% subsidiary of AEPL, which was rejected by MSEDCL in terms of provisions of RfS (during the hearing, AEPL has agreed that such request of theirs was not strictly in accordance with RfS). Thereafter, AEPL has submitted documents and PBG in the name of Avaada Green for signing of PPA. MSEDCL has not accepted such request as Avaada MH is the entity which was communicated by AEPL for signing of PPA. Thereafter, AEPL has informed MSEDCL that it is ready for signing of PPA in the name of the any entity i.e. Avaada Green or Avaada MH and requested further time upto 31 December 2020 for signing of PPA.
11. With this background, the Commission notes that MSEDCL through its reply in the present matter has suggested that as signing of PPA (which originally should have signed before 17 July 2020) has been delayed and as AEPL is still requesting additional time for signing of PPA, LOA issued to AEPL needs to be cancelled after invoking Bank Guarantee towards EMD. In this regard, the Commission notes that although RfS provides for signing of PPA within 30 days from date of issuance of LoA, both parties have agreed to extend such date upto 31 October 2020 in view of COVID-19 pandemic. While extending such date, MSEDCL has rightfully protected its interest by keeping milestone dates i.e. Financial Closure and Scheduled COD with reference to 17 July 2020 and not to date of signing of PPA. AEPL has

agreed for the same. Hence, in the opinion of the Commission, MSEDCL would not have any adverse impact due to such delayed signing of PPA.

12. MSEDCL contended that due to such delay in signing of PPA, in the meantime the market conditions have changed and now solar power is available at lower rate than Rs. 2.90/kWh at which PPA in present case is to be signed. In this regard, as explained above, even though signing of PPA has been delayed, as agreed by both parties' effective date will remain as 17 July 2020. Further, recent discovered rates mentioned by MSEDCL in its Petition are for the project to be located in Rajasthan and Gujarat and buying entities were SECI and GUVNL. In the opinion of the Commission, each tender is a separate process and it is quite possible that the rates received in different tenders may not be directly comparable. There are many factors which are accounted for while deciding the rate by the tenderer. Thus, a direct comparison between this tender and the tenders of SECI and GUVNL referred by MSEDCL may not be directly comparable. Thus it is incorrect to compare the rate discovered in those bidding with MSEDCL's bid which was limited to intra-state and that the rates received in this MSEDCL tender is based on factors concerning MSEDCL. More importantly, the tariff has been adopted by the Commission as petitioned by MSEDCL. The petition for tariff adoption filed by MSEDCL has been justified by them. Further, non-signing of PPA with successful bidder, even after tariff being adopted by the Commission, would have negative impact on prospective bidders and may impact future bids of MSEDCL. Thus, since SCOD to be achieved is with reference to the effective date of PPA which remains unchanged, tariff is adopted by the Commission and since there is requirement of RE (Solar) power to meet its RPO, there seems to be no justifiable reason for MSEDCL to deny the signing of PPA.

13. Further, the Commission notes that AEPL has stated that following activities have been undertaken by it towards execution of project post receipt of LOA:

- a. Identified land for 100 MW and 150 MW at two locations and accordingly entered into MoUs with land aggregators and executed Sale Agreements for more than 550 acres of the land.
- b. Finalised the EPC contract.
- c. Placed orders for modules on 17 December 2020 for which the delivery is expected by May 2021.
- d. Received recommendation by MEDA and Grid Co-ordination Committee for issuance of In- Principle Connectivity

Such advance preparatory work undertaken by AEPL shows its seriousness towards execution of the project. The commission also notes that AEPL had submitted PBG of Rs. 35 Cr in the

name of Avaada Green which has been disputed by MSEDCL as the PBG should have been submitted in name of Avaada MH (as per the LOA provisions) and also which is prior condition for signing of PPA. Further, during the e-hearing, the parties had a differing version on the wrong PBG (Avaada Green) that is claimed to have been returned by MSEDCL which as per AEPL it had not received it. The Commission is not inclined to go into these details as the same are now inconsequential.

14. Further, it is also a fact that both parties have agreed for extended period for signing of PPA on account of difficulties due to COVID-19 pandemic. The Commission in its recent Orders has held that COVID-19 pandemic is Force Majeure event and during such Force Majeure period parties to the contract are relieved from their respective obligation. In the present matter, such obligation is limited to signing of PPA. Even though one cannot deny that during pandemic situation, AEPL itself has initially requested time upto 31 October 2020 and subsequently sought further extension of time, the same needs to be considered prudently especially when MSEDCL has no adverse financial impact as effective date under the PPA remains the same i.e. 17 July 2020.
15. The Commission also notes the issue of signing of PPA with subsidiary of AEPL. AEPL being one of the established industry participants is well acquainted with solar bidding process. It should not have delayed the process by unnecessarily proposing signing of two separate PPAs with subsidiaries and on refusal by MSEDCL, submit documents for signing of PPA with subsidiary which is not with whom it has originally proposed to sign the PPA. All these actions were avoidable and have led to delay in the process of signing of PPA and possibly compelled MSEDCL to initiate action as per provisions of RfS. Had it submitted required documents within extended time period, MSEDCL would have been required to sign PPA with AEPL as it has signed with Tata Renewable (other successful bidder in same bidding process). Therefore, the Commission expresses its displeasure and directs AEPL not to indulge in such practice in future and take appropriate steps immediately and strictly as per provisions of RfS.
16. In view of the above, the Commission directs both the parties to complete the formalities under the RfS including submission of PBG from the proper entity and sign PPA of 250 MW at a tariff rate adopted by the Commission in Order dated 15 May 2020 within 2 weeks from issuance of this Order. Out of these two weeks, AEPL shall comply with all its obligations within one week of this order and MSEDCL shall thereafter in one-week scrutinise and sign the PPA as per the provisions of the RfS.
17. During these two weeks, MSEDCL shall not take any coercive action including encashment of Bank Guarantee towards EMD.

18. The Commission is well aware of the provisions of the RfS and in normal course would not have intervened in this case. However, considering the pandemic situation, both parties having agreed for certain deviation to achieve the contract and most importantly since there will be no adverse impact on MSEDCL (since SCOD to be achieved is with reference to the effective date of PPA which remains unchanged), the Commission ruled as above.

19. Hence, the following Order:

**ORDER**

1. **The Case No. 4 of 2021 is partly allowed.**
2. **Both the parties to complete the formalities under the RfS as detailed in Para 17 above.**
3. **MSEDCL shall not take any coercive action including encashment of Bank Guarantee towards EMD for two weeks from the date of this order.**

Sd/-  
(Mukesh Khullar)  
**Member**

Sd/-  
(I.M. Bohari)  
**Member**

