



(A Govt. of Maharashtra Undertaking)
CIN: U40109MH2005SGC153645

Maharashtra State Electricity Distribution Co. Ltd.

Office of the Chief Engineer (Renewable Energy)
"Prakashgad", 5th Floor, Station Road, Bandra (E), Mumbai -400 051.
Tel.: (O) 26474211, Fax : (022) 2658 0656
Email: cere@mahadiscom.in. Website: www.mahadiscom.com

No. CE/RE/Solar/MERC/

No 35178

Date:

21 DEC 2019

To,
The Secretary,
Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1, World Trade Centre,
Cuffe Parade, Colaba, Mumbai – 400 005.

Sub: Filing of petition for seeking compensation as per Power Sale Agreement executed between MSEDCL (Distribution Licensee) and Solar Energy Corporation of India Limited (SECI) (Intermediary Procurer) under section 86 (1) (f) of the Electricity Act, 2003 and compensation on account of delay in achieving the Scheduled Commercial Operation Date ("SCOD") as per Power Purchase Agreement executed between Solar Energy Corporation of India Limited (SECI) (Intermediary Procurer) and Solar Power Developer (SPD) by the respondent.

Respected Sir,

Please find enclosed herewith the petition for seeking ~~pending~~ compensation as per Power Sale Agreement executed between MSEDCL (Distribution Licensee) and Solar Energy Corporation of India Limited (SECI) (Intermediary Procurer) under section 86 (1) (f) of the Electricity Act, 2003 and compensation on account of delay in achieving the Scheduled Commercial Operation Date ("SCOD") as per Power Purchase Agreement executed between Solar Energy Corporation of India Limited (SECI) (Intermediary Procurer) and Solar Power Developer (SPD) by the respondent.

The requisite fees amounting of Rs.10,000/- is submitted through RTGS with UTR No. MAHBH19354646531 on dated 20.12.2019

Thanking you.

Yours faithfully,

Chief Engineer (Renewable Energy)

Copy s. w. r. to: The Director (Commercial), MSEDCL, Mumbai.

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION

AT MUMBAI

CASE NO: _____ OF 2019



IN THE MATTER OF:

PETITION FOR SEEKING COMPENSATION AS PER POWER SALE AGREEMENT EXECUTED BETWEEN MSEDCL (DISTRIBUTION LICENSEE) AND SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI) (INTERMEDIARY PROCURER) UNDER SECTION 86 (1) (F) OF THE ELECTRICITY ACT, 2003.

AND

IN THE MATTER OF:

PETITION SEEKING COMPENSATION ON ACCOUNT OF DELAY IN ACHIEVING THE SCHEDULED COMMERCIAL OPERATION DATE ("SCOD") AS PER POWER PURCHASE AGREEMENT EXECUTED BETWEEN SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI) (INTERMEDIARY PROCURER) AND SOLAR POWER DEVELOPER (SPD) BY THE RESPONDENT

AND

IN THE MATTER OF:

Maharashtra State Electricity Distribution Company Limited

....Petitioner


Versus

Solar Energy Corporation of India Limited

....Respondent

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**BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

AT MUMBAI

CASE NO: ____ OF 2019

IN THE MATTER OF:

PETITION FOR SEEKING COMPENSATION AS PER POWER SALE AGREEMENT EXECUTED BETWEEN MSEDCL (DISTRIBUTION LICENSEE) AND SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI) (INTERMEDIARY PROCURER) UNDER SECTION 86 (1) (F) OF THE ELECTRICITY ACT, 2003.

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AND

IN THE MATTER OF:

Maharashtra State Electricity Distribution Company Limited

Chief Engineer (Renewable)

Plot No G-9, 5th Floor, Prakashgad,

Anant Kanekar Marg, Bandra (East),

Mumbai – 400051

Email: ceremsedcl@gmail.com

.....**Petitioner**

Versus

Solar Energy Corporation of India Limited

1st Floor, A- Wing, D-3, District Center


Saket, New Delhi- 110017

.....**Respondent**

MOST RESPECTFULLY SHOWETH:


- a. The present Petition is being filed by MSEDCL seeking appropriate compensation to be paid by the Respondent for not supplying power as per contract in respect of 500 MW Power Sale Agreement (“PSA”) executed under the scheme of JNNSM PHASE-II, BATCH-III and from 450 MW quantum from 500 MW Power Sale Agreement (“PSA”) executed under the scheme of JNNSM PHASE-II, BATCH-IV.

1. DESCRIPITON OF PARTIES:

- 
- (i) Maharashtra State Electricity Distribution Company Limited hereinafter referred to as the ("**Petitioner**" or "**MSEDCL**") is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005.
- (ii) Solar Energy Corporation of India Limited hereinafter referred to as the ("**Respondent No. 1**" or "**SECI**") has been identified by the Government of India as the implementing agency for purchase and sale of grid connected Solar PV power at 33 kV or above under Phase-II, Batch-III of the Jawaharlal Nehru National Solar Mission of Government of India as well as purchase and sale of grid connected Solar PV power at 33 kV or above under Phase-II, Batch-IV of the Jawaharlal Nehru National Solar Mission of Government of India.

2. FACTS IN BRIEF:

- (i) Government of India (hereinafter referred to as "GoI") / Ministry of New and Renewable Energy (hereinafter referred to as "MNRE") had announced Jawaharlal Nehru




National Solar Mission (hereinafter referred to as "JNNSM") in 2009 and had set ambitious target for setting up of 100 GW solar power projects by the end of 2022.

- (ii) Under Phase-II, Batch-III of JNNSM, MNRE announced a Scheme for "Setting up of 2000 MW Grid-connected Solar PV Power Projects-State Specific VGF (Viability Gap Funding) Scheme (hereinafter referred to as "the Guidelines") which was proposed to be implemented by Solar Energy Corporation of India (hereinafter referred to as "SECI"), Gol.
- (iii) MNRE vide its letter dated 19.12.2014 sought consent of State utilities about participation in VGF (State Specific) scheme to be implemented by SECI under JNNSM Phase-II as Batch-III. The power procured under the said scheme could be utilized for fulfilment of Solar RPO target.
- (iv) MSEDCL had given consent to MNRE vide Letter dated 28th January, 2015 to participate in the proposed JNNSM Phase II Batch III for procurement of 500 MW solar power from SECI which was available at cheaper rate (less than MERC determined feed in tariff) in order to meet the target of Solar RPO of MSEDCL.



- (v) SECI carried out the competitive bidding for selection of solar power developers for 500 MW solar power projects to be set up in the State of Maharashtra for MSEDCL vide RfS No. SECI/JNNSM/P-2/B-3/RfS/MH/082015 dated 27.08.2015 and SECI/JNNSM/P-2/B-3/RfS/MH/022016 dated 24.02.2016.
- (vi) SECI and MSEDCL entered into two (2) Power Sale Agreement (“PSA”) on 04.11.2016 and 01.12.2016 wherein SECI undertook to sale “Solar Power” to MSEDCL as per the terms of the PSA by buying the same from the selected “Solar Power Developers” on back to back basis. A copy of the PSA’s dated 04.11.2016 and 01.12.2016 is annexed and marked herewith as **Annexure A** and **B** respectively.
- (vii) Under the PSA’s, SECI was mandated to Power Purchase Agreements (“PPA”) and VGF Securitization Agreements (“VGFSAs”) with the selected “Solar Power Developers”.
- (viii) The definition of PSA clearly specifies that PPA shall mean including its recitals and Schedules, amended or modified from time to time in accordance with the terms thereof. The SECI-Solar Project Developer PPA is the schedule to PSA; it means it is the integral part of PSA. Also, SECI itself has agreed that it is back to back arrangement.

- 
- (ix) The scheduled commissioning dates for Batch-III projects were 10/05/2017 for Open (450 MW) and 16/08/2017 for Domestic Content category requirement (DCR) (50 MW) category projects respectively. Also, the scheduled commissioning dates for Batch-IV projects were 23/12/2017.
- (x) The agreed capacity of power to be sold by SECI to MSEDCL under both the PSA's dated 04.11.2016 and 01.12.2016 was 500 MW respectively.
- (xi) On 20.02.2017, this Hon'ble Commission vide its Order passed in Case No. 109/2016 approved the procurement of power by MSEDCL from SECI for fulfillment of its RPO. A copy of the Order dated 20.02.2017 passed by the Hon'ble Commission is annexed and marked herewith as **Annexure- C.**
- (xii) SECI started supplying power to MSEDCL from Jun-2017 in phased manner. However the commissioning of some of the projects which SECI has tied up for sale of power to MSEDCL got delayed which has led to shortfall in supply of power as agreed under the PSA executed between MSEDCL and SECI. Further as per terms of Power Purchase Agreement (between SECI and Solar Power Developer), there are penalty provisions for delay in

commissioning of projects such as encashment of PBG, reduction in tariff etc.



(xiii) SECI has failed to fulfill its material obligations, which resulted in to additional shortfall for meeting the solar RPO target by MSEDCL & compelled MSEDCL to procure REC's.

(xiv) On 21.02.2018, MSEDCL issued first notice regarding SECI's failure to comply material obligations under PSA as per Article 9 & Article 10.

9.1.2 SECI event of default:

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a SECI's Event of Default:

.....

(iv) except where due to any SECI's failure to comply with its material obligations, the SECI is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SECI within thirty (30) days of receipt of first notice in this regard given by the Buying Utility.

10.1.2 The SECI shall indemnify, defend and hold the Buying Utility harmless against:


.....
 b) any and all losses, damages, costs and expenses except under SECI-SPD PPAs including legal costs, fines, penalties and interest actually suffered or incurred by the Buying Utility from third party claims arising by reason of:

(i) breach by the SECI of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the SECI, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Buying Utility, its contractors, servants or agents, or.....

A copy of the letter dated 21.02.2018 passed by the Hon'ble Commission is annexed and marked herewith as **Annexure- D.**

(xv) On 12.04.2019, MSEDCL wrote letter to SECI claiming compensation in view of short supply of power by SECI





and other applicable compensations due to delay in Commissioning of projects. A copy of the letter dated 12.04.2019 is annexed and marked herewith as **Annexure- E.**

(xvi) On 29.04.2019, SECI vide its letter denied all claims made by MSEDCL claiming compensation on account of delayed commissioning. A copy of the letter dated 29.04.2019 is annexed and marked herewith as **Annexure- F.**

(xvii) On 04.10.2019, MSEDCL wrote another letter intimating SECI that it shall pay to SECI as per the revised tariff (reduced tariff) in view of its material breach of obligations under the PSA. A copy of the letter dated 04.10.2019 is annexed and marked herewith as **Annexure- G.**

(xviii) On 11.10.2019, again SECI denied all claims raised by MSEDCL towards compensation.

(xix) Hence, the present Petition.

3. PERIOD OF DISPUTE AND COMPENSATION CLAIMED:

As per the clauses of Power Sale Agreements and Power Purchase Agreement, which has been reproduced subsequently in the present petition, the claim for the short fall in minimum energy under clause 6.8.2 of PSA and reduction in tariff under

the clause 4.6 of PPA from the date of COD for Contract Year 2017-18 and 2018-19.

(A) Compensation for short supply of committed energy:

- (i) As regards the compensation related to the short supply of minimum energy, the clause regarding compensation for short supply of energy states as under:


6.8.2: *The Buying Utility, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SECI beyond **1114.374 (Batch-III)/ 1040.303(Batch-IV)** Million kWh (MU) as per PPAs signed by SECI with the SPD for solar PV Projects. If for any Contract Year, it is found that the SECI has not been able to supply minimum energy of **861.308(Batch-III) / 803.87(Batch-IV)** Million kWh (MU) till the end of 10 years and **810.454(Batch-III)/ 756.584 (Batch-IV)** Million kWh (MU) for the rest of the term of the Agreement, as per PPAs signed by SECI with the SPDs for solar PV Projects, on account of reasons solely attributable to the SECI, the such non-compliance shall make SECI liable to pay such compensation and SECI shall duly recover such compensation from the SPDs under the SECI-SPD PPAs to enable the Buying Utilities to pay such amount. This compensation shall be equal to the compensation payable (including RECs) by the Buying Utility towards non-meeting of*

RPOs, if such compensation is ordered by the State Commission and proportional to the amount of shortfall in solar energy during the Contract Year. This compensation shall be subject to the adjustment made in energy generated in case of non-availability of grid for evacuation which is beyond the control of SPD and for Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.(emphasis added).

- (ii) As per above clause No.6.8.2 of PSA,the revised claim for the short fall in minimum energy from the date of COD for Contract Year 2017-18 and 2018-19 is as under,

Batch	Contract Year	Minimum Energy Committed during Contract year (Mus) till 10 years	Minimum Committed Energy during Contract year on pro-rata (Mus)	Actual Energy Supplied during Contract year (Mus)	Short fall in Minimum Energy supplied in Mus	Amount in Crores calculated at a rate of Rs.1.90 per REC
Batch-III (500 MW)	FY 2017-18	861.108	766.74	413.96	329.660	62.94
	FY 2018-19	861.108	861.108	810.342	50.766	9.65
Batch-IV (500 MW)	FY 2017-18	803.87	215.83	6.494	209.34	39.77
	FY 2018-19	803.87	803.87	700.391	103.48	19.66
					Total	131.72 Crs

As per the PSA, the minimum energy to be supplied by SECI from Batch III & Batch IV is 861.108 MUs & 803.87 MUs respectively. However, there is cumulative shortfall of



693.246 Mus for supply of minimum committed energy during FY 2017-18 & FY 2018-19 from Batch III & Batch IV by SECI. The total claim amount for shortfall in minimum energy comes as Rs. 131.72 Crores considering the REC rate of Rs. 1.90 during that period.

The SECI is liable to pay the compensation as above.

(B) Compensation / Reduction in tariff on account for delay in commission of the Project:

- (iii) It is to submit that, the Power Sale Agreement is back to back basis to Power Purchase Agreement. The sale and delivery of power by SECI to MSEDCL on terms and conditions contained in the PSA are enforceable on back to back basis of the terms and conditions in the PPA. MSEDCL shall also be eligible for compensation as per provisions under PPA.
- (iv) The relevant provision contained in Article 4.6 of the Power Purchase Agreement (PPA) between SECI and SPD regarding Liquidated Damages for delay in commencement of supply of power to SECI are reproduced as follows:

4.6.1 If the SPD is unable to commence supply of power to SECI by the Scheduled Commissioning Date other than for the



reasons specified in Article 4.5.1~ the SPD shall pay to SECI, damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

- a) Delay up to one (1) month - SECI will encash 20% of the total Performance BG on per day basis and proportionate to the Capacity not commissioned.
- b) Delay of more than one (1) month and up to three months - SECI will encash remaining Performance BG on per day basis and proportionate to the Capacity not commissioned.

In case the commissioning of the Power Project is delayed beyond three (3) months from the Scheduled Commissioning Date, the pre-fixed tariff given in the Article 9.1 shall be reduced at the rate of half paisa (0.50 paisa) per kWh per day of delay for the delay in such remaining capacity which is not commissioned.

- 4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in pre-fixed tariff shall be limited to twenty four (24) months from the date of signing of this Agreement. In case, the commissioning of the Power Project is delayed beyond twenty four (24) months from the date of signing of this Agreement, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced/ amended to the Project Capacity Commissioned within twenty four (24) months of signing of PPA and the PPA for the balance Capacity will



stand terminated and shall be reduced from the project capacity.

4.6.3 *However, if as a consequence of delay in commissioning, the applicable tariff changes, that part of the capacity of the project for which the commissioning has been delayed shall be paid at a tariff as per Article 9.2 of this Agreement.*

(v) Further, in regard to the compensation related to the reduction in tariff as above, the relevant Article 5 of PSA states as under:

5.1.1. *“the Tariff for Solar Power of individual projects shall be the tariff determined from the reverse auction process mentioned in the RfS plus trading margin of Rs. 0.07 /kWh (maximum possible being Rs. 4.50/kWh including trading margin of Rs. 0.07/ kWh) fixed for entire term of this Agreement. (Emphasis Added)*

(vi) Thus, under clause 5.1.1 makes it amply clear that the SECI is entitled for trading margin of Rs. 0.07/kwh only and apart from this trading margin, there is no provisions under the PSA or PPA which specifies that the benefit accruing on account of the reduction in the tariff is for the benefit of SECI.

(vii) Further, it has already been agreed by SECI that it is the only intermediary facilitator and cannot have the facility of



guaranteeing either the purchase of electricity from SPDs or sale of electricity to MSEDCL in time. Thus, SECI shall not have any claim on tariff reduction under clause 4.6 of PPA and the same effect shall be passed on to MSEDCL, who is the procurer of power in this arrangement.

- (viii) Based on the data available with this office as per the provisions of the PPA which is part of PSA, MSEDCL has calculated the reduced tariff at which the power is required to be sold to MSEDCL:

Name of developer	Tariff rate as per PSA	Tariff rate reduction in Rs/Kwh	Revised tariff rate in Rs/Kwh
Talettutayi Solar Projects Four Pvt. Ltd	4.50	0.01	4.49
Krishna Windfarms developers	4.50	0.015	4.485
Gale Solarfarms Private Ltd	4.50	0.77	3.73
Tornado Solarfarms Ltd	4.50	0.315	4.185
Parampujya Solar Energy Pvt. Ltd	4.50	0.5	4.00
Solar Edge Power and Energy Pvt. Ltd.(2V)	4.50	0.02	4.48
JBM Solar Energy Pvt. Ltd.	4.50	0.13	4.37
Canadian Solar Energy Holding Singapore 2 PTE. Ltd.(Fermi Solarfarms Private Ltd)	4.50	0.11	4.39
MH Parbhani Power Private Limited.	4.50	1.37	3.13
M/s. Flexirural Urja Jalgaon Limited	4.50	1.37	3.13

- (ix) Further, since SECI is raising the invoices and claiming the bills at PSA tariff only i.e. Rs. 4.50 without giving any effect on account of reduction in tariff as submitted above; the



SECI shall reimburse the payment of Rs.13.74 Crs. towards the amount for reduction of tariff from CoD to 31.03.2019 for the solar projects as mentioned above at Sr. No. (viii).

The SECI is liable to pay the compensation as above and is required to issue the invoices at revised tariff.

4. APPLICABLE PROVISIONS OF LAW:

- **Section 86. (Functions of State Commission): ---**

(1) The State Commission shall discharge the following functions, namely: -

(f) ***adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;***

5. IMPORTANT CLAUSES OF "POWER SALE AGREEMENT":

(i) The name: **"Power Sale Agreement"**


(ii) Definition of SERC- **"shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint**

Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;

- (iii) Definition of SLDC- **“shall mean State Load Dispatch Centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;**
- (iv) Article 5- **The Tariff for Solar Power of individual projects shall be the tariff determined from the reverse auction process mentioned in the RfS plus trading margin of Rs. 0.07/kWh (maximum possible being Rs. 4.50/kWh including trading margin of Rs. 0.07/ kWh) fixed for entire term of this Agreement.**

6. GROUNDS FOR PETITION (WITHOUT PREJUDICE TO ONE ANOTHER):

- (a) That the short-supply of power by SECI below the agreed quantum has led to non-fulfillment of RPO by MSEDCL which has constrained it to meet its RPO through different sources leading to added financial costs.



(b) That MSEDCL entered into the PSA's with SECI after due approval from this Hon'ble Commission only with the intention to fulfill its RPO. However, the short-supply of power below the agreed quantum by SECI has defeated the said purpose.

(c) That charging of trading margin by SECI @ 7 Paisa per unit means that it is acting as a **"Intermediary Procurer/Trader"**. It is submitted that Rule 9 of the Electricity Rules, 2005 is an enabling provision which enables an electricity trader to trade power all across India with an Inter-State trading license granted by CERC. But whenever such electricity trading transaction is completed exclusively in a certain State (in the present case, Maharashtra) then it is that State Commission which would have jurisdiction over the said transaction and such trading transactions would be amendable to the jurisdiction of such State Commission. Rule 9 of Electricity Rules, 2005 is reproduced as under:

9. Inter-State trading Licence.-


A Licence issued by the Central Commission under section 14 read with



clause (e) of sub-section (1) of section 79 of the Act to an electricity trader for Inter-State Operations shall also entitle such electricity trader to undertake purchase of electricity from a seller in a State and resell such electricity to a buyer in the same State, without the need to take a separate licence for intra-state trading from the State Commission of such State.

(d) That this Hon'ble Commission vide its order dated 27.11.2018 passed in Case No. 141 of 2018 has clearly held that even if a trader had no trading license granted by the MERC but if trading transaction of buying and selling of power has happened within the periphery of Maharashtra i.e. Intra-State then the Hon'ble Commission would have jurisdiction over the said transaction. Relevant excerpts of the said order is reproduced as under:

11. SARFPL has highlighted the order of the Hon'ble Supreme Court in the matter of Grid Corporation of Orissa



Limited Versus Gajendra Haldea & Others which has held that there is no restriction on the CERC trading licensee to obtain a separate license from the State Commission for Intra-State trading of electricity. Further, the Order has maintained that an electricity trader is governed by the State Commission under whose jurisdiction the sale and purchase transaction is executed.

12. The Commission notes its order passed on 2 June 2016 in case no 71 of 2014. In this case, GEPL invoked the jurisdiction of this Commission in seeking relief under Rule 9 of the Electricity Rules 2005 even when it was not having Intra-State trading licence. Commission granted the relief to GEPL while treating sale transaction of a generator in Maharashtra with the utility in Karnataka as Intra-State in nature. The Commission holds that present

proceedings are clearly Intra-State in nature, though with GEPL as respondent and therefore, similar dispensation is warranted even though GEPL was holding only Inter-State trading licence at the expiry of its Intra-State trading licence.

13. Further, the Commission in its recent Order dated 15 October, 2018 in Case No. 242 of 2018 has underscored that though GEPL has been granted Inter-State Trading License by CERC, it has been carrying out Intra-State transactions under Rule 9 of Electricity Rules, 2005. The Commission, in that Order, has maintained that even though GEPL was holding Inter-State Trading License from CERC, and was trading power within the periphery of Maharashtra by buying and selling power from generators and consumers in Maharashtra, it has the



jurisdiction of all such Intra-State
Transaction of power.

.....

A copy of the Order dated 27.11.2018 passed in Case No. 141 of 2018 is annexed and marked hereto as **Annexure- H**.

(e) That another trading licensee namely GEPL being an electricity trader, holding an Inter-State trading license granted by CERC, following the same proposition as held in the above judgments/orders, filed a Petition in the year 2014 being case No. 71 of 2014 before the MERC for adjudication of disputes between GEPL (Trading Licensee) and MSLDC. The said case was a unique case as:

- i. GEPL filed a Petition in MERC in the capacity of an electricity trader.
- ii. GEPL had no trading license granted by MERC in the year 2014.
- iii. GEPL was holding an Inter-State trading license granted by CERC.





- iv. The generator through whom GEPL intended to sell power was located in Maharashtra
- v. The Power was supposed to be sold by GEPL being an electricity trader to Karnataka but the "Delivery Point" of the power was in Maharashtra.

(f) The said case was adjudicated by MERC even though GEPL had no trading license granted by MERC as MERC held that the sale and purchase of energy was within the State of Maharashtra. Relevant excerpts of the said Order is reproduced as under:

15.3 *The Commission has accepted the submissions of MSLDC that*

.....

In light of MSLDC's submission and its response to the STOA application made by the Petitioner, the Commission is of the view that the Open Access transaction in the instant case is of Intra-State nature.

A copy of the Order dated 02.06.2014 passed by MERC in Case No. 71 of 2014 is annexed and marked hereto as **Annexure- I**.

(g) That enabling provision of law in the form of Rule 9 of the Electricity Rules, 2005 cannot in any manner whatsoever take away the jurisdiction of the MERC regarding purely intra-state transaction of electricity. Moreover, enabling provision has to be read with provisions of Section 86 of Electricity Act, 2003 which clearly states that in case of transactions purely within the State; it would be the State Commission which would have jurisdiction over such transactions.


(h) That the Judgment dated 11 April, 2017 in Energy Watchdog passed by the Hon'ble Supreme Court squarely applies to the present case to substantiate the point that CERC's jurisdiction would be ousted in case, the transaction is purely within the State. Relevant excerpts of the said judgment is reproduced as under:

“ 22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of




electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in sub-clauses (a), (b), and (d), and "intra-state" in sub-clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes





place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State"

[Emphasis added]



A copy of the Judgment dated 11 April, 2017 in Energy Watchdog passed by the Hon'ble Supreme Court is annexed and marked hereto as **Annexure- J**.

- (i) That this Hon'ble Commission vide its Order dated 20.02.2017 passed in Case No. 109/2016 on the basis of which the present PSA's were entered into by MSEDCL has categorically held that all Generators supplying power under the JNNSM scheme are located in Maharashtra meaning thereby that the injection point and drawal point of power is within the State of Maharashtra. Relevant excerpts of the said Order is reproduced as under:

8. *The Commission notes that the Solar power is being or is proposed to be procured by MSEDCL under the JNNSM, which is a scheme of the MNRE. MSEDCL has stated and MEDA has confirmed that the Solar Projects cited in the Petition are located in Maharashtra. The Commission also notes that MSEDCL has so far fallen*

short of its Solar RPO targets, and that the rates for Solar power procurement under JNNSM are below the preferential tariff determined by it. In these circumstances, the Commission approves MSEDCL's proposal since it meets the test of the 2nd proviso to Regulation 7.2 of the RPO Regulations, 2016 (quoted above). Accordingly, the power procured by MSEDCL from Solar Projects under the JNNSM would be counted against its RPO target and is allowed upto that extent. MSEDCL shall provide details of such procurement, with supporting material, as a part of its Aggregate Revenue Requirement in its Mid-Term Review Petition.

- (j) That SECI is duty bound to compensate MSEDCL for the amount of losses which MSEDCL has suffered on account of short-supply of power below the agreed quantum as per the PSA's as it has defeated the very purpose for



which MSEDCL entered into the PSA's with SECI i.e for complying with its RPO.

(k) The short supply by SECI has resulted into following non-fulfillment of solar RPO of MSEDCL for FY 2017-18 and FY 2018-19.

FY	Solar RPO (%)		Solar RPO in MUs		Shortfall in MUs	
	Target	Achievement	Target	Achievement	Overall	Due to SECI's non-fulfillment
2017-18	2.00	0.79	2438	962	1476	539
2018-19 (Provisional)	2.75	1.74	3600	2279	1321	154.24

(l) That MSEDCL being a state utility cannot allow saddling of unnecessary costs and risk on common consumers on account of defaults of a seller i.e. SECI.

7. The Petitioner states that this Hon'ble Commission has the sole jurisdiction to adjudicate the present dispute.
8. The Petitioner states that there is no delay in filing the present petition and the same is filed well within limitation.
9. The Petitioner craves leave of this Hon'ble Commission to add/amend/substitute the present petition with the prior permission of this Hon'ble Commission.



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2021

PRAYER:

In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

- a) Hold and declare that SECI has been unable to perform its timely commitments under the PSA's for delivery of the agreed quantum of power:
- b) Direct SECI to compensate MSEDCL to the tune of Rs. 131.72 Crs. (As per Para- 3) as losses on account of short-supply by SECI thereby forcing MSEDCL to fulfill its RPO targets through other mechanism/sources:
- c) Direct SECI to reimburse the payment of Rs.13.74 Crs. towards the amount for reduction of tariff from CoD to 31.03.2019 for the solar projects as mentioned at Sr. No. 3 (viii) of the Petition.
- d) Direct SECI to raise future invoices with respect to Batch-III and Batch-IV projects at the revised tariff rates as mentioned at Sr. No. 3 (viii) of the Petition.
- e) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date: _____

Place: Mumbai

Bharat
Petitioner

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION

AT MUMBAI

CASE NO: ____ OF 2019

IN THE MATTER OF:

PETITION FOR SEEKING COMPENSATION AS PER POWER SALE AGREEMENT EXECUTED BETWEEN MSEDCL (DISTRIBUTION LICENSEE) AND SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI) (INTERMEDIARY PROCURER) UNDER SECTION 86 (1) (F) OF THE ELECTRICITY ACT, 2003.

AND

IN THE MATTER OF:

PETITION SEEKING COMPENSATION ON ACCOUNT OF DELAY IN ACHIEVING THE SCHEDULED COMMERCIAL OPERATION DATE ("SCOD") AS PER POWER PURCHASE AGREEMENT EXECUTED BETWEEN SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI) (INTERMEDIARY PROCURER) AND SOLAR POWER DEVELOPER (SPD) BY THE RESPONDENT

AND

IN THE MATTER OF:

The Chief Engineer (Renewable Energy),

Maharashtra State Electricity Distribution Co. Ltd

Plot No G-9, Prakashgad, 5th floor, Station Road,

Bandra (East), Mumbai – 400051

E-mail : ceremsedcl@gmail.com

..... Petitioner

Affidavit verifying the Petition

I, Kavita K. Gharat, aged 42 years, having my office at MSEDCL, Prakashgad, Bandra (E), Mumbai- 400 051, do hereby solemnly affirm and state as under;

I am Chief Engineer (Renewable Energy) of the Maharashtra State Electricity Distribution Co. Ltd, (herein after referred to as "MSEDCL" for the sake of brevity), in the above matter and am duly authorized to make this affidavit.

The statements made in the enclosed petition are based on the information received from the concerned officers of the Company and I believe them to be true.

I say that there are no proceedings pending in any court of law/ tribunal or arbitrator or any other authority, wherein the Petitioners are a party and where issues arising and/or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission.

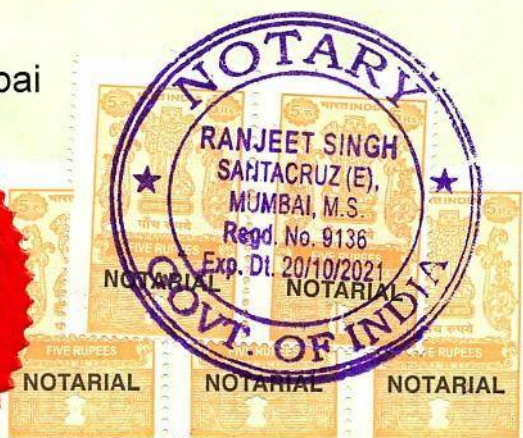
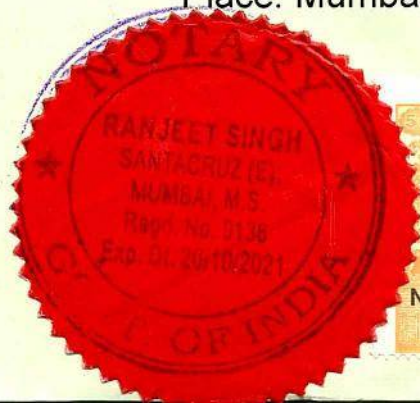
I solemnly affirm at Mumbai on this 19th December 2019 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

K. Gharat

Chief Engineer (Renewable Energy)

Identified before me

Place: Mumbai



BEFORE ME

RANJEET SINGH
 M.Sc.LL.B
 NOTARY
 MAHARASHTRA
 GOVT. OF INDIA
 20 DEC 2019