

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 128 of 2022**

**Petition of ACME Sikar Solar Pvt. Ltd. and ACME Solar Holdings Pvt. Ltd. seeking amendment of Effective Date of the Power Purchase Agreement and grant of approval to amend PPA.**

M/s. ACME Sikar Solar Pvt. Ltd. (ASSPL)	}	...	Petitioners
M/s. ACME Solar Holdings Pvt. Ltd. (ASHPL)			
Maharashtra State Electricity Distribution Company Limited (MSEDCL)...			Respondent

**Coram**

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

**Appearance:**

For the Petitioners :	Mr. Vishrov Mukerjee (Adv.)
For the Respondent :	Mr. Rahul Sinha (Adv.)

**ORDER**

**Date: 02 January 2023**

1. ACME Sikar Solar Pvt. Ltd and ACME Solar Holdings Pvt. Ltd filed the present Petition under Section 86 of the Electricity Act, 2003 on 16 June 2022 seeking amendment in effective date of the PPA.

2. **The Petitioner's prayers are as follows:**

- (a) *Hold and declare that the Effective Date of the PPA be considered as 06.05.2022 i.e., the date on which the PPA was executed and delivered by MSEDCL to ASSPL.*
- (b) *Issue directions that the time period for fulfilment of obligations by ASSPL under the PPA be considered from 06.05.2022.*
- (c) *Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case .*

3. **The Petitioners in their Case has stated as follows:**

3.1 M/s. ACME Sikar Solar Pvt. Ltd. (ASSPL) is a Special Purpose Vehicle (SPV) incorporated by M/s. ACME Solar Holdings Pvt. Ltd (ASHPL) for the development of 300 MW Solar PV power project located at Tehsil, District - Bikaner, State – Rajasthan for supply of power to MSEDCL.

3.2 Chronology of the event:

<b>Sr. No.</b>	<b>Event</b>	<b>Date</b>
1	MSEDCL vide Request for Selection No. MSEDCL/RE/2021/500 MW Solar/Ph-VI/T-30 (RfS) floated tender for procurement of power from Solar PV power Projects through competitive bidding.	06.05.2021
2	Letter of Award (LoA) was issued to ASHPL. ASHPL was selected as a Successful Bidder for the bidding capacity of 300MW out of 500MW capacity and the Project would locate at Bikaner, Rajasthan.	14.12.2021
3	ASHPL acknowledged the LoA issued by MSEDCL for setting up the Project.	20.12.2021
4	ASHPL has incorporated a SPV named ASSPL for the purpose of setting up the Project and signing of PPA with MSEDCL.	10.01.2022
5	ASSPL submitted the requisite documents to MSEDCL towards PPA compliance in line with Clause 3.11(2) of the RfS and the LoA	
6	The tariff of Rs.2.42/kWh for the said Project has been adopted by the Commission in the Case No. 10 of 2022.	11.03.2022
7	ASSPL submitted Performance Bank Guarantee No. 0717-BG0018-22 amounting to Rs. 24 Crores as per the RfS.	22.03.2022

3.3 The Commission vide its Order in Case No. 10 of 2022 (Tariff Adoption Order) dated 11 March 2022 held as follows:

- (i) The Commission approved the procurement of 500 MW power by MSEDCL and adopted the tariff of Rs. 2.42 per unit discovered through competitive bidding in respect of the Petitioners.
- (ii) Further, the Commission noted the delay by MSEDCL in filing the tariff adoption petition (delayed by over 5 months from conducting the e-reverse auction) and directed MSEDCL to sign the PPA within 15 days from the issuance of the Tariff Adoption Order i.e., by 27 March 2022.

3.4 On 04 April 2022, the authorized signatory of ASSPL signed and stamped the PPA at MSEDCL's Office. MSEDCL did not sign the PPA on the same day. It was expected that MSEDCL would provide the executed version of the PPA to ASSPL to enable ASSPL to initiate works towards completion of milestones.

3.5 On 04 May 2022, ASSPL requested MSEDCL to intimate the status of the signed PPA. On 06 May 2022, MSEDCL after a delay of more than one month shared the original copy of the PPA executed between ASSPL and MSEDCL.

3.6 The PPA provides for following:

- (i) Effective Date means the date of execution of the PPA by both parties i.e., ASSPL and MSEDCL.
- (ii) Obligations to be fulfilled by ASSPL including attaining Financial Closure, Scheduled Commissioning Date (SCOD), acquiring possession of 100% land for the Project etc. are all to be computed from the date of execution of the PPA (i.e., date of execution by both parties).
- (iii) Article 10.1 of the PPA provides that the PPA shall be effective from the date of execution and delivery of the parties.

3.7 Considering the above, for all practical purposes, the date of execution of the PPA or effective date of PPA ought to be reckoned as 06 May 2022 i.e., the date on which the PPA was executed and delivery of the PPA was made by MSEDCL to ASSPL. However, the date of signing mentioned on the PPA remained 04 April 2022 instead of 06 May 2022. MSEDCL had not signed the PPA on 04 April 2022 in the presence of ASSPL's authorised

representative. Despite repeated requests by ASSPL to revise the date of signing of the PPA to 6 May 2022 from 4 April 2022, ASSPL has not received any response from MSEDCL.

- 3.8 On 09 May 2022, ASSPL wrote to MSEDCL and stated that as the signed copy of the PPA was provided to ASSPL on 06 May 2022, ASSPL could initiate all the associated key / critical milestones such as approaching lenders, grant of LTA for the project etc., after the handing over of the Original PPA document, as such activities require a signed PPA copy. Accordingly, ASSPL requested MSEDCL to amend the effective date of the PPA as the date on which it was made available to ASSPL i.e., 6 May 2022.
- 3.9 For availing Long Term Access (LTA), it is essential for ASSPL to have a copy of the executed PPA since the same is a pre-requisite for applying for grant of LTA. ASSPL is required to submit documentary evidence of having secured grid connectivity within 12 months of the date of execution of the PPA. Evidently, this obligation will be impacted due to delay on behalf of MSEDCL in delivering the executed PPA to ASSPL
- 3.10 Infrastructure projects, such as the present Project, are set up with debt facilities availed from banks and financial institutions. It is pertinent to note that the financing plan based on which the lenders agree to provide debt is primarily built on the tariff offered to the project under the PPA executed with the off-taker. In this regard adoption of tariff and subsequent execution of the PPA becomes the underlying basis to avail financing facilities. In the absence of an executed PPA as proof of the initiation of Project works, lending institutions are reluctant to provide debt financing. Evidently, raising capital for project is linked to the execution of the PPA.
- 3.11 Despite reminders dated 09 May 2022 and 07 June 2022 by ASSPL for amending the PPA, MSEDCL failed to reply or acknowledge the issue of delayed execution and delivery of the PPA.
- 3.12 In any event, a conjoint reading of various provisions of the PPA (Article 1 – definition of Effective Date and SCOD read with Articles 3.1, 3.3, 4.1 and 10.1), conclusively establishes that ASSPL's obligations become effective only upon execution and delivery of the PPA by MSEDCL. Therefore, timeline for all obligations under the PPA ought to be considered from 06 May 2022. The Hon'ble Supreme Court in 'Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co. reported as (1966) 1 SCR 656', has held that a contract is formed when the communication of acceptance is done and is heard by the other party.
- 3.13 Delay in execution of the PPA by MSEDCL and its cascading effect on the Project, are not attributable to ASSPL.

3.14 In view of above, it is incumbent that the timeline for achieving the key / critical milestones i.e., Financial Closure and the SCOD of the Project are to be revised with the Effective Date of the PPA being considered as 06 May 2022.

**4. MSEDCL in its Submission dated 14 October 2022:**

4.1 The Commission vide its Order dated 11 March 2022 passed in Case No. 10 of 2022 directed the parties to complete the signing of the PPA within a period of 15 days from the date of the Order based upon the documents published during the bidding process.

4.2 ASSPL approached the MSEDCL for signing of PPA on the last day (i.e. on 4 April 2022) of deadline stipulated by the Commission.

4.3 MSEDCL processed the PPA execution, but PPA could only hand over the executed PPA to the Petitioner on 06 May 2022 due to administrative reasons. MSEDCL requested the Commission to condone the said delay.

5. During Hearing dated 18 October 2022, upon request of the Petitioners the Commission adjourned the proceedings and allowed Petitioner to file Rejoinder.

**6. The Petitioners in their Rejoinder dated 17 November 2022 stated as below:**

6.1 MSEDCL in its reply dated 14 October 2022 admitted that there was delay on the part of MSEDCL in executing and delivering the PPA to ASSPL. MSEDCL's case is that the said delay was inadvertent and may be condoned. Irrespective of whether the delay was inadvertent or not, the underlying fact is that there was delay by MSEDCL and the same has been acceded to. Therefore, based on MSEDCL's admission alone, the Effective Date ought to be extended.

6.2 If the present effective Date is not changed from 04 April 2022 to 06 May 2022, it would be tantamount to MSEDCL taking advantage of its own wrong inter alia including imposition of liquidated damaged and / or invocation of performance bank guarantee in the event there is delay in attaining the timelines provided under the PPA.

6.3 It is pertinent to note that even in its Reply, MSEDCL has failed to provide the date on which the PPA was executed by MSEDCL and has only acknowledged that the signed copy of PPA was made available to Petitioner on 06 May 2022. Further, MSEDCL has not intimated to the Petitioners the date on which the executed version of the PPA has been submitted to the Commission.

7. At the e-hearing through video conferencing held on 18 November 2022, advocates of the Petitioners and MSEDCL reiterated their submissions.

### **Commission's Analysis and Rulings**

8. The Commission notes that ASSPL and ASHPL have filed the present Petition seeking amendment of effective date of the Power Purchase Agreement signed with MSEDCL post competitive bidding process. As per Petitioners, its authorised signatories signed and stamped the PPA at MSEDCL's Office on 4 April 2022. But MSEDCL's officials did not sign the PPA on that day and after following up, MSEDCL handed over signed copy of PPA to ASHPL only on 6 May 2022. Hence, Petitioners have requested to consider effective date of PPA as 6 May 2022.
9. From the copy of the PPA, the Commission notes that date of execution of PPA by both parties i.e. Petitioners and MSEDCL is 4 April 2022. MSEDCL in its Reply admitted delay in handing over a PPA copy to the ASSPL on account of administrative delays. Nowhere in the submission, MSEDCL mentioned on which date it executed the PPA. MSEDCL further prayed to condone the delay.
10. The Commission notes that said PPA has defined the effective date as follows:  
“  
*“Effective date” shall mean the **date of execution of Power Purchase Agreement (PPA)** by both the parties.” (Emphasis added)*  
  
As existing PPA has been executed on 4 April 2022, the said date becomes effective date for this PPA.
11. From PPA provisions, it is evident that obligations under the PPA commence from the date of execution of the PPA by both parties (i.e., the Effective date), as under:
  - (a) Article 1 of the PPA: the SCOD means not exceeding 18 months from the date of execution of the PPA, for projects being set up outside the Solar park.
  - (b) Article 3.1(ii): The Project Developer is required to obtain the financial closure within 12 months from the date of execution of the PPA for projects being set up outside the Solar park.
  - (c) Article 3.3 (i) and Article 4.1.5: The Project is to be commissioned within a period of 18 months from the date of execution of the PPA, for projects being set up outside the Solar park.

MSEDCL's delay in delivering the signed copy of the PPA, has adversely impacted ASSPL's ability to commence performance of its obligations under the PPA.

12. In view of the above, the Commission is of the view that to maintain true spirit of the RfS/PPA conditions and to ensure that Petitioners get stipulated time period assured in RfS for completing various obligations, effective date of the PPA needs to be changed to date on which PPA was handed over to the Petitioners. Further, in the past, the Commission has come across various incidences when MSEDCL has extended period of obligations under the PPA on account of its delay in handing over of the signed copy of PPA. The Commission fails to understand as to what stopped MSEDCL from taking similar approach in the present matter as well. In fact, Commission expects MSEDCL to behave in a more equitable manner especially when the relation is long term and mutual. The Commission sees no justification for MSEDCL to take an adversarial position in this case. After careful consideration of the facts of this case, the Commission deems it fit to direct that effective date of the PPA in the present matter be considered as 6 May 2022 i.e. date of handing over of signed copy of PPA by MSEDCL to Petitioners. Due dates for meeting various obligations under the PPA shall stand revised accordingly.
13. Having ruled as above, the Commission notes that such delay of handing over of PPA has happened even after the Commission in its Order dated 11 March 2022 in Case No.10 of 2022 (Tariff adoption Order) has noted MSEDCL's delay in filing the tariff adoption petition (delayed by over 5 months from conducting the e-reverse auction) and directing MSEDCL to sign the PPA within 15 days from the issuance of the Tariff Adoption Order. It is expected that atleast after the Commission has pinpointed the delay in filing Petition, MSEDCL will take initiative to sign PPA on priority. On the contrary, MSEDCL has taken one month for handing over the signed copy of PPA and has made a strange request to condone the delay as administrative delay. The Commission cannot bless such lackadaisical approach of MSEDCL in the matter of power procurement, beside the fact that it amounts to non-compliance of Commission's direction. Due to MSEDCL's delay, effective date of PPA has been extended from 4 April to 6 May 2022. Such extension would lead to extension of SCOD by same period and hence availability of such cheaper power is delayed by that extent. Such delay would require MSEDCL to procure costly power for that period, which will not be allowed as passthrough in power purchase expenses. Incremental cost (Highest Variable cost – Rs. 2.24/kWh) of power procurement for the period of 32 days prior to actual commissioning of 300 MW project of the Petitioners shall be borne by MSEDCL and shall not be passed on to consumers. The details of the same shall be separately mentioned in the MTR filing.
14. Hence, the following Order.

**ORDER**

1. Case No. 128 of 2022 is allowed.
2. Effective Date under PPA stands revised to 6 May 2022.

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

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

Sd/-  
**(Sanjay Kumar)**  
Chairperson

