

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 56 of 2023**

**Petition of ACME Sikar Solar Pvt. Ltd. & Anr. under Section 86(1)(f) of the Electricity Act, 2003 and PPA dated 04 April 2022, seeking declaration that the PPA stands validly terminated and for return of Performance Bank Guarantee dated 22 March 2022 pursuant to the termination.**

ACME Sikar Solar Pvt Ltd (ASSPL)	}	...	Petitioners
ACME Solar Holdings Pvt. Ltd (ASHPL)			
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)		...	Respondent

**Case No. 92 of 2023**

**Petition of ReNew Dinakar Urja Pvt. Ltd. & Anr. seeking declaration that the PPA dated 4 April 2022 stands validly terminated and for return of Performance Bank Guarantee dated 22 March 2022 amounting to Rs. 16 Crores pursuant to the termination.**

ReNew Dinkar Urja Pvt. Ltd. (RDUPL)	}	:	Petitioners
ReNew Solar Power Pvt. Ltd. (ReNew)			
Maharashtra State Electricity Distribution Co. Ltd (MSEDCL)	}	:	Respondents
Maharashtra State Electricity Transmission Co. Ltd. (MSETCL)			
Central Transmission Utility of India Ltd. (CTU)			

**Coram**

**Sanjay Kumar, Chairperson  
Anand M. Limaye, Member  
Surendra J. Biyani, Member**

**Appearance:**

For the Petitioner: : Mr. Sanjay Sen (Adv.)  
Ms. Deepa Chavan (Adv.)  
Mr. Vishrov Mukerjee (Adv.)

For the Respondents: : Mr. Harinder Toor (Adv.)  
Mr. Rahul Sinha (Adv.)  
Mrs. Kavita Gharat (Rep.), MSEDCL  
Mr. Peeyush Sharma (Rep.) STU  
Mr. Siddharth Sharma (Rep.) CTU

**ORDER**

**Date: 27 December 2023**

1. ACME Sikar Solar Pvt Ltd (ASSPL) & ACME Solar Holdings Pvt. Ltd (ASHPL) filed the Petition on 03 April 2023 seeking declaration of termination of PPA on account of Force Majeure under Article 8.8.2 (a) of the PPA dated 4 April 2022. Subsequently, ReNew Dinkar Urja Pvt. Ltd. & Anr. (RDUPL) & ReNew Solar Power Pvt. Ltd. (ReNew) filed another Petition on 12 May 2023 seeking similar reliefs in terms of RDUPL's PPA with MSEDCL.
2. Initially matters were heard separately. Further, but during the hearing held on 11 August 2023 in Case No.92 of 2023, based on request made by RDUPL and with consent of parties, the matter is clubbed with matter in Case No. 56 of 2023. Further, Maharashtra State Electricity Transmission Co. Ltd (MSETCL) has been impleaded in these matter.
3. The Commission notes that the Petitioners herein are successful bidders in MSEDCL's long term solar power procurement tender (MSEDCL/RE/2021/500MW Solar/Ph-VI/T-30) . Capacity awarded to ASHPL and ReNew is 300 MW & 200 MW, respectively. Both these Petitioners have sought identical relief by relying on same provisions of the PPA. Therefore, for sake of brevity, wherever feasible submission is captured combinedly and accordingly reference is made in the Order.
4. **Prayers of mentioned in Petitions are as follows:**

**Case No.56 of 2023:**

“

- (A) *Hold and declare that the PPA dated 04 April 2022 stands terminated on account of Force Majeure under Article 8.8.2 (a) of PPA;*
- (B) *Direct MSEDCL to return the Performance Bank Guarantee dated 22 March 2022 submitted by ASHPL on account of the termination of the PPA which is in accordance with Article 8.8.2 (a) of the PPA dated 04 April 2022;*
- (C) *Injunct MSEDCL from encashing the PBG dated 22 March 2022 provided by the Petitioners under the PPA dated 04 April 2022 till final adjudication of the present Petition;*
- (D) *Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case.”*

**Case No.92 of 2023:**

“

- (a) *Hold and declare that the Power Purchase Agreement dated 04.04.2022 stands terminated on account of Force Majeure events, being, non-Availability of Transmission Capacity in the State grid resulting in non-grant of un-conditional NOC by MSETCL, under Article 8.8.2 (a) of PPA;*
- (b) *Direct MSEDCL to return the Performance Bank Guarantee dated 22.03.2022 submitted by RDUPPL on account of the termination of the PPA which is in accordance with Article 8.8.2 (a) of the PPA dated 04.04.2022;*
- (c) *In the interim, injunct MSEDCL from encashing the PBG dated 22.03.2022 provided by the Petitioners under the PPA dated 04.04.2022 till final adjudication of the present Petition;”*

5. Based on Interim Application (IA) No. 30 of 2023 filed by ACME and Case No. 92 of 2023 filed by ReNew 12 May 2023, the Commission vide Daily Order dated 8 May 2023 and 11 August 2023 respectively, restrain MSEDCL to take any coercive action against Petitioners till final disposal of these matters.

**6. Facts narrated in Petition in Case No. 56 of 2023:**

6.1. The present Petition is filed for seeking return of its Performance Bank Guarantee (PBG) dated 22 March 2022 for Rs. 24 Crores. Further, the Petitioners also seeks to declare that by way of termination notice dated 21 February 2023, the PPA stands terminated in terms of Article 8.8.2 (a) of the PPA on account of continuation of non-natural Force Majeure event for more than 180 days.

6.2. The Force Majeure event which impacted performance of obligations by the Petitioners is the

failure of MSETCL to grant unconditional No Objection Certificate (NOC) for evacuation of power from ASSPL's 300 MW Solar Power Project located at Tehsil and District Bikaner, Rajasthan to MSETCL's network. Since, power from the Project would flow to MSEDCL from MSETCL's network through CTU's Inter-State Transmission System (ISTS), grant of unconditional NOC is mandatory for granting unconditional Long-Term Access (LTA) by CTU for evacuation of power from ASSPL's Project in Rajasthan till MSETCL periphery and further transmission and supply of power from MSETCL periphery to MSEDCL.

6.3. Due to MSETCL's failure to grant NOC, ASSPL is faced with various issues which are beyond its reasonable control, including but not limited to the following:

- a) Evacuation of power from ASSPL's Project to MSEDCL remains uncertain since STU network/ Available Transmission Capacity (ATC) availability is not certain/ adequate yet.
- b) Supply of power from the Project is not possible in the absence of availability of corridor/ ATC to receive power from ASSPL's Project.
- c) CTU has indicated that ASSPL will be penalized for MSETCL's failure to issue NOC by levy of transmission charges on ASSPL till such time that the NOC from MSETCL becomes effective.
- d) Lenders will not finance ASSPL's Projects considering that the evacuation of power itself is uncertain. Therefore, ASSPL may not be able to achieve financial closure.
- e) ASSPL is unable to commence project development activities because of this uncertainty qua evacuation of power.

6.4. **Chronology of Events:**

Sr. No.	Date	Event
1	06.05.2021	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 power Projects through competitive bidding.
2	30.07.2021	ASHPL applied to CTU for Stage I Connectivity for its 300 MW Project in Bikaner, Rajasthan. Date from which Stage I connectivity is required is indicated as 23 January 2023.
3	10.09.2021	CTU granted Stage I connectivity to ASHPL at Bikaner II Pooling Station. It is mandatory to apply for Stage II connectivity within (24) months from grant of Stage I connectivity.
4	14.12.2021	LOA was issued to ASHPL for 300 MW at discovered rate Rs. 2.42/kWh.
5	10.01.2022	ASHPL informed MSEDCL that in terms of Clause 3.5 (3) and (4) of the RfS, ASHPL has incorporated a SPV, ASSPL, for the purpose of setting up the Project and signing of PPA with MSEDCL. ASSPL submitted the requisite documents to MSEDCL towards PPA

Sr. No.	Date	Event
		compliance in line with Clause 3.11(2) of the RfS and the LoA dated 14.12.2021.
6	01.02.2022	ASHPL applied to CTU for Stage II Connectivity for its 300 MW Project in Bikaner, Rajasthan. Date from which Stage II connectivity is required is indicated as 20 September 2023.
7	11.03.2022	The Commission vide its Order dated 11 March 2022 in Case No. 10 of 2022 adopted tariff of Rs. 2.42/unit. Due to delay in filing the tariff adoption Petition over (5) Month, the Commission directed MSEDCL to sign the PPA within (15) days from the issuance of the Order.
8	21.03.2022	ASHPL requested MSETCL to issue NOC in respect of its 300 MW Project to enable ASHPL to seek grant of LTA from CTU.
9	22.03.2022	ASSPL submitted PBG amounting to Rs. 24 Crores as per the RfS and the same is valid as on date.
10	28.03.2022	ASHPL applied to CTU for LTA for its 300 MW project in Bikaner, Rajasthan. Period of LTA is from 30 September 2023 up to 30 September 2048.
11	28.04.2022 (MoM issued on 26.05.2022)	6 <sup>th</sup> Consultation Meeting for Evolving Transmission Schemes in Northern Region was held and the proposal for grant of LTA of 300 MW to ASHPL was considered. CTU noted the start date of LTA as 30.09.2023 and NOC from STU (MSETCL) has not been furnished. If NOC of concerned STU is not available or the NoC is not effective as on Start Date of LTA, the billing for payment of transmission charges shall be undertaken on the LTA grantee as per CERC Regulations, till such time NOC is made available and becomes effective.
12	04.04.2022	PPA was signed between ASSPL and MSEDCL.
13	06.05.2022	MSEDCL after a delay of more than one month shared the original copy of PPA.
14	10.05.2022	CTU granted Stage II Connectivity to ASHPL from CTUIL's Bikaner 2 S/stn. The start date of connectivity was 30 September 2023.
15	26.05.2022	Transmission Agreement for connectivity was executed between CTU and ASHPL.
16	27.05.2022	ASHPL sent reminder to MSETCL to grant NOC for LTA application.
17		ASHPL has approached to Bank of Baroda seeking funds for the Project. The estimated cost of the Project would be about Rs. 1500 Crores out of which debt of about Rs. 1125 Crores would be required. The balance, Rs. 375 Crores would be Sponsor contribution.
18	15.06.2022	CTU granted LTA to ASHPL for the Project subject to the condition that if NOC is not effective as on Start Date of LTA (i.e., 31.03.2024), the billing for payment of transmission charges shall be undertaken on the LTA grantee (ASHPL) till such time NOC is made available and becomes effective.
19	27.06.2022	Long Term Access Agreement (LTA Agreement) was executed between CTU and ASHPL.
20	04.07.2022	ASHPL wrote to MSETCL and submitted additional documents

Sr. No.	Date	Event
		pertaining to NOC for firming up of LTA application in CTU for its 300 MW Project. Pursuant to execution of PPA, ASHPL submitted Indemnity Cum Declaration Undertaking for compliance for issuance of NOC.
21	12.07.2022	MSETCL has granted conditional NOC subject to completion of schemes and availability of spare capacity as the Available Transmission Capability (ATC) is not available.
22	12.07.2022	CTU issued amendment to the Stage II connectivity dated 10 May 2022.
23	18.07.2022	ASHPL requested MSETCL that to take up work for strengthening of transmission network to ensure evacuation of power by ASHPL by COD since ASHPL will not be in a position to supply power in the absence of adequate transmission network till beneficiary (MSEDCL) end.
24	02.08.2022	MSETCL reiterated that that un-conditional NOC cannot be issued by MSETCL since certain STU-CTU projects are under-execution and the same would be issued after strengthening of projects on first- come-first-serve basis.
25	10.08.2022	ASSPL issued Force Majeure Notice under Article 8 of the PPA dated 04 April 2022 to MSEDCL because of MSETCL has issued conditional NOC due to the non-confirmation of transmission system availability at MSETCL's end has created ambiguity over timely evacuation of power from ASHPL's Project and is beyond the control of ASHPL. Lenders and financial institutions, are unwilling to fund ASHPL's Project due to uncertainty of evacuation/ delivery of power to MSEDCL.
26	12.08.2022	MSETCL wrote to ASPL stating that for enhancing ATC, certain CTU-STU network strengthening projects are underway and regular follow up of CTU-STU network strengthening projects is being taken by MSETCL. MSETCL reiterated that unconditional NOC cannot be issued as there is no ATC available at present.
27	29.08. 2022	ASHPL sent reminder to MSETCL and requested that MSETCL may intimate a tentative timeline for system strengthening and availability of ATC so that ASHPL may align its project activities in line with availability of ATC.
28	31.08.2022	CTU wrote to ASHPL and issued amendment of Stage II connectivity dated 10 May 2022 whereby date from which connectivity is granted is revised to 25 November 2023.
29	04.10. 2022	ASSPL wrote to MSEDCL seeking support in getting unconditional NOC from MSETCL due to continuous Force Majeure event.
30	07.10.2022	MSEDCL sought some information/ documents in support of ASSPL's claim viz. LTA application and LTA approval status along with proposed substation and expected date of connectivity. ASSPL submitted the same on 17 October 2022

Sr. No.	Date	Event
31	26.12.2022	CTU issued amendment to the LTA dated 15 June 2022 granted to ASHPL. By way of the amendment, the start date of the LTA was changed to 15 May 2024
32	28.12.2022	ASSPL wrote to MSEDCL and issued a follow-up letter to the Force Majeure Notice dated 10 August 2022
33	02.01.2023	As per the Commission Order dated 2 January 2023 in Case No. 128 of 2022 the Effective Date under the PPA was revised from 04 April 2022 to 06 May 2022.
34	20.01.2023	ASSPL issued a reminder to MSETCL for grant of NOC for evacuation of power from the Project.
35	21.02.2023	Since, the period of 180 days from the date of Force Majeure Notice dated 10 August 2022 (w.e.f. 02 August 2022) lapsed on 29 January 2023, ASSPL issued Termination Notice in terms of Article 8.8.2 (a) of the PPA, terminating the PPA and requesting to return the PBG dated 22 March 2022 deposited by ASSPL within a period of 7 days of receipt of the notice.
36	07.03.2023	ASSPL issued a follow-up letter to the Termination Notice dated 21 February 2023, requesting MSEDCL to acknowledge the termination of PPA return the PBG of Rs. 24 crores since the PPA stands terminated.

6.5. The PPA has been validly terminated by the Petitioners under Article 8.8.2 (a) of the PPA. Article 8.8.2 (a) grants the Petitioners the absolute/ unfettered right to terminate the PPA if a Force Majeure event subsists for a period beyond 180 days. Since, the PPA stands validly terminated, the Petitioners are also entitled to return of the Performance Bank Guarantee.

6.6. **MSETCL's failure to grant un-conditional NOC to the Petitioners is a Force Majeure event:**

6.6.1. Power cannot be evacuated from the Project without a grant of unconditional NOC by MSETCL. The Petitioners made all efforts for obtaining all evacuation approvals in a timely manner. In addition, CTU will penalize ASSPL for MSETCL's failure, since ASSPL is liable to pay transmission charges till the time the NOC becomes effective.

6.6.2. 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 under the PPA executed with the off-taker. Performance of obligations including supply of power by the Petitioners and receiving the tariff for such power supply is contingent on available transmission corridor for evacuation of power. In the absence of assured off-take by the Procurer (MSEDCL) lending institutions have expressed reluctance in providing debt financing.



6.6.3. In the absence of the required consent for evacuation of power and uncertainty in respect of timelines for availability of sufficient transmission capacity to off-take the energy supplied from the Project, ASHPL's Project faces following additional risks and uncertainties:

- (a) Delay in commissioning of the Project as per the RfS and PPA;
- (b) Increase in Project costs and indefinite delay in achieving financial closure;
- (c) Lenders' inability to sanction loan to ASSPL's project; and
- (d) Stranding of the Project for the period of delay and wastage of renewable energy.

6.6.4. In addition to the aforesaid, the Petitioners would also be subjected to levy of transmission charged in terms of Regulation 13(3) of the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020, when otherwise, being a solar power developer, ASHPL would be exempted from payment of transmission charges in terms of Regulation 13(1) of the CERC Sharing Regulations 2020.

6.6.5. Procurement of power by MSEDCL under the RfS ought to have been conducted after due assessment by MSEDCL in conjunction with MSETCL as to the sufficiency and timely availability of the evacuation infrastructure. The bidding was predicated on the availability of sufficient transmission infrastructure within the state to deliver the energy to MSEDCL from the Delivery Point. In case of an extraordinary delay in such readiness, the setting up of the projects would be adversely impacted. Despite requesting MSETCL multiple times for issuance of unconditional NOC, ASHPL has not been provided the same. This situation is completely beyond ASHPL's reasonable control and squarely falls under Article 8 of the PPA (Force Majeure).

6.6.6. Article 8.9 of the PPA provides that a party is not in breach of its obligations under the PPA if the performance of the said obligations was inter alia 'hindered' due to a force majeure event. Hon'ble Supreme Court in *Energy Watchdog & Ors. vs. CERC & Ors.: (2017) 14 SCC 80* held that a party can be said to have been hindered if there is something which prevents the performance of the obligation under the PPA.

6.6.7. It is settled law that once a party is prevented from performing due to Force Majeure Event, it is excused from performance of its obligations to the extent the inability to perform is on account of the said Force Majeure Events. Hon'ble Supreme Court in *Dhanrajamal Gobindram v. Shamji Kalidas & Co.: (1961) 3 SCR 1020*, held that force majeure includes any event or circumstance beyond the reasonable control of the parties and is to have a wide meaning and to mean anything that is beyond the control of the parties.

6.6.8. The Petitioners referred to Judgements of Hon'ble APTEL, wherein APTEL has held that delay of transmission licensee/ distribution licensee in grant of approvals for evacuation of power are



beyond the control of the generating company and constitute a force majeure event.

6.6.9. In the present case, the Force Majeure event commenced on 02 August 2022, i.e., when MSETCL reiterated its inability/ refused to grant unconditional NOC to ASSPL for evacuation of power from the Project. Thereafter, within a reasonable timeframe i.e., on 10 August 2022, MSEDCL was duly intimated about the occurrence of Force Majeure vide Force Majeure Notice dated 10 August 2022 (w.e.f. 02 August 2022) issued in terms of Article 8.4 of the PPA.

**6.7. Petitioners have right to terminate the PPA:**

6.7.1. In terms of Article 8.8.2 (a) of the PPA, the Petitioners (ASSPL) have a right to terminate the PPA, if Force Majeure event continues for 180 days from the date of Force Majeure Notice.

6.7.2. The period of 180 days lapsed on 29 January 2023. Accordingly, the right to terminate the PPA has accrued to ASSPL. Since there was no foresight on when the Force Majeure event would cease, ASSPL was constrained to terminate the PPA on 21 February 2023.

6.7.3. Hon'ble Supreme Court in *H.H. Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel: (2001) 5 SCC 101* has held that any clause giving absolute power to one party to terminate does not invalidate or interfere with the integrity of the contract. Therefore, the Petitioners have chosen to exercise the unfettered or absolute right to terminate the PPA which is available to them upon fulfilment of conditions stipulated under Article 8.8.2 (a) of the PPA.

**6.8. The Petitioners are entitled to return of Performance Bank Guarantee:**

6.8.1. The PBG provided by the Petitioners ought to be returned as the PPA stands validly terminated in terms of Article 8.8.2 (a) of the PPA and no further liability of the Petitioners survives towards MSEDCL.

6.8.2. The performance of the Petitioner's obligations has been impacted due to Force Majeure event beyond the reasonable control of the Petitioners and for reasons not attributable to the Petitioners. Therefore, MSEDCL ought not to invoke the PBG. Instead, MSEDCL is obligated to return the PBG.

6.8.3. Once it is established that performance of obligations of the Affected Party (Petitioners herein) is impacted / prevent due to a force majeure event, the Affected Party is entitled for relief in terms of Article 8.5 read with Article 8.9 of the PPA.

6.8.4. Invocation of PBG for failure to perform an act impacted by force majeure is untenable in law. Invocation of Performance Bank Guarantee when a Force Majeure Event is subsisting is

violative of Article 8.6 and Article 8.9.3 of the PPA.

6.8.5. PBG is meant to secure the performance of the Petitioners obligations under the PPA, i.e., timely commissioning of the Project. In the present case, the contract/ PPA has been validly terminated by the Petitioners. Therefore, the intended purpose of the PBG stands vitiated since the PPA has been validly terminated. To suffice the arguments, the Petitioners referred to Hon'ble Supreme Court Judgement in *Union of India v. Millenium Delhi Broadcast LLP : (2022) 7 SCC 67*.

#### 7. Facts narrated in Petition in Case No.92 of 2023:

7.1. The present Petition is filed for seeking return of its PBG dated 22 March 2022 for Rs. 16 Crores. By way of Termination Notice dated 8 May 2023, the PPA stands terminated in terms of Article 8.8.2 (a) of the PPA on account of continuation of non-natural Force Majeure event for more than 180 days.

7.2. The objective of the PBG is to ensure timely commissioning of the Project. Article 4.2.4 of the PPA provides that the PBG shall be returned after successful commissioning of the Project. Since the PPA stands validly terminated, the PBG ought to be returned to RDUPL.

7.3. The Project was premised on availability of long-term evacuation arrangement. MSEDCL was obligated to off-take power as per the terms of the PPA. However, due to deficiencies in the STU's network on account of non-Availability of Transmission Corridor, there is uncertainty in power evacuation.

#### 7.4. Chronology of Events:

Timeline for bidding exercise carried out by MSEDCL are same as depicted in table in Para (6.4) above.

Sr. No.	Date	Event
1	19.05.2023	After publication of Tender, ReNew wrote to MSEDCL seeking clarifications/suggestions on updated list of MSETCL sub-stations with available capacity, in case bidder look to choose STU project. Further requested to consider any delays in project commissioning due to delay in connectivity/transmission at chosen CTU or STU should be considered for extension of SCOD. However, MSEDCL did not respond to the above clarifications.
2	01.06.2021	ReNew formed SPV company, ReNew Dinkar Urja Private Limited (RDUPL) as per the provisions of the RfS for development of the 200 MW solar power Project.

Sr. No.	Date	Event
3	07.07.2021	ReNew participated in the e-reverse auction conducted by MSEDCL.
4	31.07.2021	ReNew applied to CTUIL for Stage I Connectivity for its 200 MW Project in Bikaner, Rajasthan.
5	10.09.2021	CTU granted Stage I & II connectivity to RDUPL at Bikaner II Pooling Station.
6	28.09.2021	RDUPL and CTUIL executed the Transmission Agreement for Connectivity for the 200 MW solar power Project.
7	14.12.2021	LOA was issued to RDUPL for 200 MW at discovered rate Rs. 2.43/kWh for 25 years.
8	16.12.2021	ReNew acknowledged the LoA dated 14 December 2021 issued by MSEDCL.
9	17.12.2021	MSEDCL requested ReNew to extend the validity of its Earnest Money Deposit as the Tariff Adoption Petition filed before the Commission would take some time for adjudication. On 17 December 2021, ReNew informed MSEDCL that it has extended the validity of the EMD by three months (till 31 March 2022) and the same was shared with MSEDCL on 27 December 2021.
10	20.12.2021	MSEDCL filed a Petition before the Commission seeking adoption of tariff discovered through competitive bidding.
11	12.01.2022, 14.03.2022, 15.03.2022 and 16.03.2022	ReNew submitted the requisite documents to MSEDCL towards PPA compliance in line with Clause 3.11(2) of the RfS and the LoA dated 14.12.2021.
12	16.02.2023 and 09.03.2022	ReNew wrote to MSEDCL intimating the change in location of the Project from Khambaliya, Jamnagar, Gujarat to Kolayat, Bikaner, Rajasthan in terms of Clause 3.3 of the RfS.
13	11.03.2022	The Commission vide its Order dated 11 March 2022 in Case No. 10 of 2022 adopted tariff of Rs. 2.43/unit. Due to delay in filing the tariff adoption Petition over (5) Month, Commission had directed MSEDCL to sign the PPA within (15) days from the issuance of the Order.
14	22.03.2022	RDUPL has submitted PBG amounting to Rs. 16 Crores as per the RfS and the same is valid as on date.
15	22.03.2022, 14.04.2022 and 06.05.2022	ReNew requested MSEDCL to release the Bank Guarantee submitted as Earnest Money Deposit.
16	04.04.2022	RDUPL signed the PPA at MSEDCL's office. However, MSEDCL did not provide the copy of the executed and signed PPA to RDUPL on 04

Sr. No.	Date	Event
		April 2022.
17	08.04.2022, 19.04.2022 and 29.04.2022	RDUPL wrote to the STU i.e., MSETCL seeking No-Objection Certificate for the Project.
18	06.05.2022 and 07.05.2022	ReNew wrote to MSEDCL requesting intimation of PPA signing by MSEDCL. ReNew also requested MSEDCL to accept date of receipt of executed PPA by ReNew as PPA effective date and start of timeline of 18 months for project construction to be considered from such date.
19	07.05.2022	MSEDCL after a delay of more than one month from the date on which the PPA was signed by RDUPL (i.e., 04 April 2022) shared the original copy of the PPA executed between RDUPL and MSEDCL
20	09.05.2022	ReNew informed MSEDCL that it received the signed copy of PPA after delay of more than one month. Hence, ReNew has not been able to start the project activities including Financial Closure till date.
21	13.05.2022	ReNew reiterated its requests dated 08 April 2022, 19 April 2022 and 29 April 2022 for grant of unconditional NOC from MSETCL.
22	20.05.2022	ReNew applied for grant of Long-Term Access (LTA) from CTUIL, to enable injection of power into the ISTS Grid and eventually, delivery at the Delivery point in terms of the PPA.
23	30.05.2022	RDUPL sent reminder to MSETCL to grant NOC for LTA application.
24	01.06.2022	ReNew reiterated its request dated 07 May 2022 and 09 May 2022 seeking amendment to the Effective Date of the PPA as the receipt date of PPA by ReNew i.e., 07 May 2022 from MSEDCL.
25	29.06.2022	MSETCL wrote to ReNew that it was unable to give the required consent for STU NOC to ReNew as there was no ATC in the state grid.
26	04.07.2022	ReNew wrote to MSEDCL qua the difficulties faced on account of non-Availability of adequate Transmission Capacity in STU's grid and consequently non-grant of un-conditional NOC by MSETCL.
27	06.07.2022	ReNew reiterated its request dated 04.07.2022 to MSEDCL intimating that it would not be responsible for any liability in terms of ISTS charges or under PPA provisions on account of delay/constraint in Maharashtra STU/MSETCL network and would be able to supply power to MSEDCL under the PPA only after completion of required elements of Maharashtra STU/MSETCL network.
28	15.07.2022	ReNew reiterated its request dated 06.07.2022 seeking MSEDCL's

Sr. No.	Date	Event
		assistance in arranging NOC from MSETCL.
29	29.07.2022	MSETCL wrote to ReNew reiterating that there is no ATC in the CTU-STU network and certain schemes in order to enhance the ATC of Maharashtra are under planning stage/ approval. Therefore, MSETCL would be unable to issue un-conditional NOC to ReNew.
30	18.08.2022	CTUIL granted LTA to ReNew for 200 MW from its proposed Project.
31	06.09.2022	CTUIL and RDUPL executed the Agreement for Long Term Access.
32	12.09.2022 and 13.09.2022	RDUPL issued Force Majeure Notice under Article 8 of the PPA dated 04 April 2022 to MSEDCL and MSETCL on account of inability of MSETCL to commit to a timeline as to when system augmentation would be completed, thereby, non-receipt of un-conditional STU NOC.
33	14.09.2022	ReNew wrote to MSEDCL and MSETCL seeking a suitable date and time for meeting and discussing the actual timelines for availability of STU network and STU NOC.
34	28.09.2022	ReNew wrote to MSETCL seeking proposed/ scheduled timelines of transmission elements required for power off-take at MSETCL periphery and issuance of un-conditional STU NOC against the PPA for 200 MW Project.
35	06.10. 2022	ReNew wrote to CTUIL requesting firming up of beneficiary for 200 MW LTA granted to ReNew vide letter dated 18.08.2022.
36	07.10.2022	MSEDCL in response to ReNew's representation dated 12.09.2022, sought documentary and communications of respective authorities qua LTA Application, LTA approval Status and proposed Sub-station connectivity and expected date of commissioning. The aforesaid information was submitted by ReNew to MSEDCL on 10.10.2022.
37	30.11.2022	CTUIL wrote to ReNew firming up the beneficiary for 200 MW LTA granted to RDUPL for transfer of power from the Project.
38	12.12.2022	CTUIL wrote to MSETCL requesting it to provide NOC.
39	15.12.2022	CTUIL and RDUPL executed a Supplementary LTA Agreement. Date from which LTA was granted was changed to 15 May 2024 from 31 March 2024.
40	23.12.2022	ReNew issued Force Majeure Notice on MSEDCL and MSETCL in continuance of its prior intimation of Force Majeure event vide e-mails / letters dated 06.07.2022, 15.07.2022, 12.09.2022, 13.09.2022, 14.09.2022 and 27.10.2022.

Sr. No.	Date	Event
41	26.12.2022	CTUIL amended its earlier letter dated 18 August 2022 granting LTA. The start date of LTA was revised from 31 March 2024 to 15 May 2024.
42	19.01.2023	One of the Project Lender(s), NIIF Infrastructure Finance Ltd. wrote to ReNew expressing its unwillingness to provide further financial support for development of Project, on account of uncertainty.
43	14.03.2023	ReNew issued another Force Majeure Notice to MSEDCL under Article 8 of the PPA.
44	04.04.2023	ReNew wrote to MSEDCL seeking extension in Financial Closure and SCOD of the Project on account of the persisting Force Majeure events.
45	04.05.2023	MSEDCL responded to RDUPL's Force Majeure Notice dated 04.04.2023 stating that the responsibility of getting the grid connectivity with STU / MSETCL or CTUIL was entirely of RDUPL.
46	08.05.2023	Since, MSEDCL has rejected Petitioners' Force Majeure Notices nor is there any clarity as to when adequate ATC in STU's grid would be available, RDUPL issued Termination Notice in terms of Article 8.8.2 (a) of the PPA, terminating the PPA and requesting to return the PBG dated 22 March 2022 of Rs. 16 Crores deposited by RDUPL.

**7.5. Effective Date of the PPA ought to be considered as 07 May 2022:**

7.5.1. RDUPL signed the PPA on 04 April 2022 at MSEDCL's office. However, the signed copy of the PPA was sent by MSEDCL to RDUPL on 07 May 2022. Accordingly, the date of execution of the PPA ought to be reckoned as 07 May 2022 i.e., the date of execution and delivery of the signed PPA by MSEDCL.

7.5.2. The Commission vide Order dated 02 January 2023 in Case No. 128 of 2022 titled *ACME Sikar Solar Pvt. Ltd. & Anr. v. MSEDCL*, while adjudicating a similar issue with respect to the same RfS, acknowledged the delay on behalf of MSEDCL to execute and deliver the executed copy of the PPA to the Petitioner ACME Sikar Solar Pvt. Ltd. In said Order the Commission extended the effective date from 4 April to 6 May 2022.

**7.6. RDUPL and ReNew made similar submission and referred to same case Laws that made in Case No.56 of 2023 on following aspects:**

- (a) MSETCL's failure to grant un-conditional NOC to the Petitioners is a Force Majeure event and demonstrated that it has complied with the Notice requirement under the PPA.
- (b) The Petitioners referred to Judgements of Hon'ble APTEL, wherein APTEL has held that

delay of transmission licensee/ distribution licensee in grant of approvals for evacuation of power are beyond the control of the generating company and constitute a Force Majeure event.

- (c) Petitioners have the right to terminate the PPA.
- (d) The Petitioners are entitled to return of PBG.

**8. MSEDCL Reply dated 04 May 2023 in Case No.56 of 2023 stated as below:**

- 8.1. MSEDCL in its Reply reiterated the chronological events in bidding process. MSEDCL stated that in Clause 3.7 of RfS provides for the responsibility of the Petitioner in terms of getting the grid connectivity from the STU/CTU.
- 8.2. The Clause 3.7 (6) of RfS clearly provided that the successful bidder shall chose the location of the project considering the grid connectivity availability up to financial closure. Thus, it was the responsibility of the Petitioners; being a successful bidder; to choose the place of project very carefully ensuring that grid connectivity from the said location is available till the point of delivery i.e. to MSEDCL. Hence, the Petitioners at this juncture cannot try and take a shield of non-availability of grid connectivity from its project location, as the choice of project location was entirely under the control and ambit of the Petitioners.
- 8.3. The bare perusal of the Article 8.1 (b) makes it very clear that force majeure clause would only be applicable if and only to the extent that such event or circumstances are not within the reasonable control, directly or indirectly, of the affected party and could not have been avoided if the Affected Party had taken reasonable care or complied with prudent utility practices.
- 8.4. Pertinently, in the present case as well the Petitioners were/are fully responsible for the selection of project site taking into consideration the availability of grid connectivity. However, it is apparent from the pleading in the Petition that the Petitioners were completely negligent about the availability of grid connectivity from its project site and rather took no mitigating steps to avoid the same. Petitioners in its entire pleading has failed to point out if it ever tried to shift the location of its project site to any other convenient location from where the required grid connectivity was available.
- 8.5. Stage-I and Stage –II connectivity at Bikaner-II Pooling Sub-station is granted by CTU vide letter dated 10 September 2021 and 10 May 2022 respectively which is subjected to the condition that for effecting the connectivity ISTS element should be required such as establishment of 400/220 KV Bikaner-II Pooling Sub-Station, 220 kV bay at Bikaner-II Pooling Sub-Station, and 400 KV Bikaner-II Pooling Sub-Station-Khetri D/c line or 400 kV Bikaner-II Pooling Sub-Station –Bikaner D/c line(Quad) transmission line. It is also mentioned that interim date of granting of connectivity was 30 September 2023 subsequently which is extended till 31



March 2024 and 15 May 2024 (interim date). Further, in LTA granted by CTU vide letter dated 15 June 2022 it is also mentioned that final date of commencement of LTA shall be confirmed within 30 days after award of work under ISTS related to transmission system at Bikaner-II S/s, Common Transmission system (Part of Transmission system associated with SEZ in Rajasthan under 8.1 GW Phase-II scheme) and additional Scheme to relieve overloading of 400 KV Bhinmal-Zerda line (Twin Moose). Thus, the CTU LTA permission though granted would only be available from May-2024 and not anytime earlier. Therefore, the Force majeure clause as relied upon by the Petitioners would not come to the aid of the Petitioners and thus, the present Petition deserves to be dismissed on this ground alone.

- 8.6. To supplement the arguments, MSEDCL referred to the Commission's Order dated 8 December 2022 in Case No.120 of 2021 in the matter of *M/s Inox Wind Limited vs. MSEDCL and Ors.* wherein the issue of frustration of contract for the delay in acquiring land for the project in Gujrat has been dealt with.
- 8.7. In terms of Article 1 of the PPA, the Petitioners ought to have followed 'prudent utility practices', which ostensibly include a thorough due diligence by the Petitioners before selecting the project site. The term Prudent Utility Practice was defined in the Subject PPA, and was enshrined to ensure that parties are made aware to adopt all such practices as are generally acceptable, to ensure maximization realization of value from the PPA. This included liberty and discretion given to the Petitioners to decide the site place for the project and also as to how they would like to procure required permissions from the CTU and STU in order to comply with the Subject PPA.
- 8.8. The Hon'ble APTEL in its Judgment dated 7 April 2016 in *Uttar Haryana Bijli Vitran Nigam Limited and Ors v. Central Electricity Regulatory Commission and Ors* has laid down the test for determining Force Majeure cases. As per APTEL dispensation an affected party can successfully take a plea of Force Majeure event if the affected party is seen to be vigilant and careful, who could not avoid the occurrence of the said event despite taking reasonable care and complying with prudent utility practices.
- 8.9. The aforesaid principle espoused by the Hon'ble APTEL have been echoed in several Judgments passed by the Hon'ble APTEL, including *Adani Transmission (India) Ltd. v. CERC and Ors* [Judgment dated 8 November 2017, Appeal No. 226 of 2016] and *SEI Diamond Pvt. Ltd. and Ors v. KERC and Ors* [Judgment dated 14 July 2021, Appeal No. 374 of 2019, IA Nos. 1938 of 2019, 391 and 675 of 2020].
- 8.10. The Petitioners ought to first show compliance with prudent utility practices before making any claims thereof. However, the Petitioners has remained entirely silent as to the steps taken to go for an alternative site for the project.

8.11. The Hon'ble Supreme Court of India in Judgment dated 11 April 2017 in Civil Appeal Nos. 5399-5400 of 2016 *Energy Watchdog v. Central Electricity Regulatory Commission* ruled that even a Force Majeure event is not ground enough to frustrate a contract.

8.12. The Petitioners in its another project which is also having a PPA with MSEDCL of 300 MW (the project situated at Village Badisid, Tehsil-Bap, Jodhpur, Rajasthan) has been supplying power to MSEDCL under Short Term Open Access (STOA) since last 1- year. Therefore, in present case also the Petitioners can opt for the same option and supply electricity to MSEDCL under STOA from the scheduled date of commissioning of the project. Thus, the case of the Petitioners that there is Force Majeure event is absolutely unjustified and false as alternate options are available to the Petitioners herein. Hence, the provisions related to Financial Closure and Scheduled Commercial Operation Date (SCOD) timelines of the PPA shall be applicable.

9. **The Commission notes that MSEDCL has made a similar submission in Case No.92 of 2023 on 9 August 2023. MSEDCL has pleaded on following new aspects:**

9.1. MSEDCL highlighted that M/s. Adani Hybrid Jaisalmer Four Ltd. Having project capacity of 700 MW located in the State of Rajasthan is selling power to Adani Distribution Company (in Maharashtra) through STOA granted on conditional NOC issued by STU.

9.2. Further, M/s. ACME Chittorgarh Solar Pvt. Ltd (250 MW) and M/s. Adani Renewable (RJ) Pvt. Ltd (200 MW) had supplied power through Medium Term Open Access (MTOA)/ Short Term Open Access (STOA) till the operationalization of LTA even though STU had issued unconditional NOC. Therefore, in present case also the Petitioners can opt for the same method and supply electricity to MSEDCL under STOA from the schedule date of commissioning of the project.

10. **M/s ASSPL in its Rejoinder dated 21 June 2023 to MSEDCL's Reply stated as follows:**

10.1. Non-grant of unconditional NOC by MSETCL falls within the purview of Force Majeure under the PPA. Further, The Petitioners were ready and committed towards the Project and have duly complied with Prudent Utility Practices. The Petitioners re-iterated the timelines of securing Stage-I and Stage-II grid connectivity.

10.2. ASHPL's obligation was to get 'grid connectivity' and it successfully fulfilled its obligation by obtaining timely Stage I and Stage II connectivity and subsequently, LTA from CTU. MSETCL has refused to grant NOC for receiving power from the CTU's network on account of system constraints and ATC not being present in its STU network. It is the responsibility of MSEDCL and MSETCL to ensure adequate transmission capacity for power tied-up under long term.

10.3. MSETCL vide its letter dated 23 May 2022 had informed MSEDCL that intra-state network is not available for power flow from outside the Maharashtra. Therefore, MSEDCL floated the RfS for procurement of solar power from projects to be set up within Maharashtra only. Pertinently, MSEDCL has accepted that no margin is available in the CTU-STU grid in Maharashtra. This has also been recognised by the Commission in its Orders dated 31 March 2023 in Case No. 242 of 2022, Order dated 15 March 2023 in Case No. 240 of 2022 and Order dated 01 November 2022 in Case No. 32 of 2022. It is pertinent to note that MSEDCL ought to have carried out due diligence prior to floating the bid or signing the PPA. MSEDCL signed PPA with Petitioners with SCOD of November-2023 even though power cannot flow from outside the Maharashtra due to un-availability of STU network of MSETCL and the same was raised in multiple forums and Orders of the Commission.

10.4. MSEDCL in its Reply dated 06 May 2023 contended that the Petitioners were negligent about availability of grid connectivity from its Project and took no mitigating steps to avoid the same since it never tried to shift the location of the Project to any other site where required grid connectivity was available. In this regard, the Petitioners averred that there is no nexus between the location of project site and unavailability of adequate evacuation infrastructure for the Project. It is absurd for MSEDCL to contend that the location should have been chosen basis availability of grid connectivity.

10.5. With regards to supply of power under STOA, the Petitioners averred following:

- The scheduling under STOA/ MTOA is uncertain and there is no certainty as to whether entire quantum available for generation would be scheduled.
- In the event adequate STOA is not available, CTUIL will not allow the Petitioners to inject power that time. No revision of schedules under STOA is permitted under Regulation 14(1) of the CERC Open Access Regulations. However, solar power being infirm in nature is allowed 16 revisions in a day under LTOA as per CERC DSM Regulations. A STOA applicant cannot revise its schedule and has to pay deviation charges for the deviation from the schedule. This otherwise would not have been applicable to evacuation through LTOA.
- In terms of Rule 7 of the LPS Rules, 2022, if a Procurer of power does not make timely payment to a generating company, then the Procurer's short term open access is regulated first. By way of an example, if MSEDCL does not make timely payment to a generating company supplying power under LTA, then the said generating company can have the power supply to MSEDCL regulated. As per Rule 7(1) of the LPS Rules, STOA would be regulated first, thus, generators supplying power under STOA would be most affected as their supply gets regulated.

- 10.6. In terms of Article 8.8.2 (a) of the PPA, the Petitioners (ASSPL) have a right to terminate the PPA if Force Majeure event continues for 180 days from the date of Force Majeure Notice. The period of 180 days lapsed on 29 January 2023. Accordingly, the right to terminate the PPA has accrued to ASSPL. Since, there was no foresight on when the Force Majeure event would cease, ASSPL was constrained to terminate the PPA on 21 February 2023.
- 10.7. MSEDCL has misconstrued ASHPL's submissions since ASHPL is not pleading frustration or impossibility of performance. Therefore, MSEDCL's reliance on the Commission's Order in *M/s Inox Wind Limited v. MSEDCL & Ors.: Case No. 120 of 2021* to contend that claim for frustration of contract/ PPA for delay in acquiring land for the project in question is untenable.
- 11. STU in its Reply dated 27 June 2023 and 24 July 2023 submitted as below:**
- 11.1. ASHPL and ReNew submitted an application to STU/MSETCL for issuance of NOC for 300 MW and 200 MW for grant of LTA from CTU on 21 March 2022 and 29 April 2022.
- 11.2. Due to non-availability of ATC margin in CTU-STU network of Maharashtra, STU has issued conditional NOC to the Petitioners subject to completion of strengthening projects of CTU-STU network & availability of ATC margin with obligation to Indemnity Bond on 12 July 2022 and 29 July 2022. STU also indicated the present status of (8) schemes, which are under implementation. After roll-out of the said schemes there will be tentative increase of 3622 MW import capability.
- 11.3. It is pertinent to note that CTU has granted conditional LTA to ASHPL on 15 June 2022 prior to the issuance of conditional NOC from STU. As ReNew has not submitted the required Indemnity bond to MSETCL for issuance of conditional NOC till date. Hence, MSETCL(STU) could not issue the conditional NOC to ReNew for want of Indemnity bond.
- 11.4. The Petitioners and MSEDCL have not ascertained the availability of ATC margin in CTU-STU network of Maharashtra prior to signing of the PPA.
- 11.5. The Distribution Licensees and other entities do not inform STU about their future power procurement plan from RE Power projects located outside the State. To avoid such situation of non-availability of ATC margin after the finalization of Power procurement plan, it is necessary to submit the future requirement of such power to STU/MSETCL well in advance by Distribution Licensees before signing the PPAs. Such information enables STU/MSETCL for necessary planning in advance for strengthening of CTU-STU network as the planning, tendering, execution, and commissioning of transmission projects takes considerable time.

11.6. As per the discussion in 62nd Meeting of Western Region Constituents dated 27 August 2021 regarding LTA and connectivity applications in Western Region, WRLDC informed that the present ATC of Maharashtra is 9760 MW.

(In MW)

TTC	TRM	ATC
10060	300	9760

11.7. From 23 November 2022, WRPC has revised the Central Sector Power allocation for Maharashtra to 6274.54 MW. The NOC proposals received at STU for grant of LTA to CTU network as on 30 April 2023 and details of ATC Margin details are as below:

Present ATC of Maharashtra (X)	9760 MW
Total LTA operationalized (As on 01.07.2022) (Y)	9840.41 MW
Available ATC Margin (A) = (X-Y)	0 MW (-80.41 MW)
LTA Granted but not operationalized (B)	700 MW
NOC issued but LTA not granted (C)	1736 MW (Conditional NOCs)
NOC applications under process (D)	563 MW (Proposed NOCs of subject applicants)
ATC Requirement by strengthening CTU-STU lines(B+C+D-A)	3079.41 MW

**Total LTA Operationalized:**

Central Share allocation to Maharashtra (Firm+infir) and Central Generator Contracted:	7877.41 MW
LTA granted to Discoms by CTU (Old):	258 MW
NOCs issued by STU and LTA granted by CTU and operationalized for R.E. Power	1705 MW
Total LTA operationalized	9840.41 MW

**Conditional NOC issued by STU but LTA yet to be granted by CTU:**

From	To	Quantum (MW)
Adani Renewable energy Park Rajasthan Ltd (RSEPL Hybrid Power one Ld)	AEML-D	700
Tata Power Renewable energy Ltd (TPREL)	TPC-D	225
BEST (SECI)	BEST	400
M/s. Rewa Ultra Mega Solar Ltd. (RUMSL)	Central Railway	61

M/s ACME Solar Holding Ltd.	MSEDCL	300
M/s Green infra Energy Ltd.	Central Railway	50
<b>(C): Total</b>		1736

**NOC applications received and under process by STU:**

From	To	Quantum (MW)
National Hydroelectric Power Corporation (NHPC)	MSEDCL	183
M/s. ReNew Solar power Pvt. Ltd.	MSEDCL	200
M/s IRCON Renewable Power Ltd.	Central Railway	180
<b>(D): Total</b>		563

11.8. Presently, there is no ATC margin available in the CTU-STU network. A meeting was held amongst CEA, CTU, POSOCO and MSETCL in October-2022 to discuss the constraints in Maharashtra in the ATC requirement from ISTS and reconcile the ATC requirement vis-a-vis ATC enhancement envisaged in Maharashtra with various transmission schemes under construction/plan. In the said meeting, the year-wise peak demand of Maharashtra up to FY 2026-27 was also reviewed in coordination with MSETCL to align it with more realistic draft 20th EPS load data. Subsequently, system studies were carried out in present as well as future timeframes to evaluate tentative enhancement of ATC of Maharashtra from ISTS with various under implementation/planned schemes. The summary of results is as below:

Year	Anticipated peak demand	ATC Requirement (MW)		ATC availability (MW) (with under implementation/planned Transmission schemes)		Surplus ATC (MW)
		Addl. Requirement (A)	Cumulative	Addl. Requirement (A)	Cumulative	
Present	28800	-	9905		9905*	0
2022-23	29500	893	10798	1038	10798	0
2023-24	31600	461	11259	702	11500	241
2024-25	33000	1408	12667	5500	17000	4333
2025-26	34500	1500	14167	4500	21500	7333
2026-27	36000	1500	15667	1000	22500	6833

*\*Including 145MW being accommodated under Reliability Margin*

11.9. STU in its reply provides the status of (18) schemes which are anticipated up to 2026-27 timeframe, which are directly impacting ATC enhancement of Maharashtra from ISTS.

**12. M/s ASSPL in its Rejoinder dated 23 August 2023 to MSETCL's (STU) Reply stated as follows:**

- 12.1. ASSPL's claim for Force Majeure (non-grant of unconditional NOC) based on non-availability of ATC in the CTU-STU interconnection of Maharashtra has been admitted/ confirmed by MSETCL.
- 12.2. There is no clarity/ certainty on transmission infrastructure required for drawl of power from the Petitioner's Project in the foreseeable future. This is because MSETCL has intimated the status of various transmission projects under execution for 'tentative' increase in transmission capacity and some of the elements are not even started as the required approvals are pending.
- 12.3. MSETCL has till date not committed to a specific timeline as to when adequate ATC would be available in the line through which ASSPL power can be transmitted from ISTS network to MSEDCL.
- 12.4. MSETCL has admitted that it was not informed about MSEDCL's plan for procurement of renewable power from outside Maharashtra.
- 12.5. RfS was issued by MSEDCL on 06 May 2021 for procurement of solar power through competitive bidding. Considering that MSEDCL had sought to procure this power itself, MSEDCL ought to have ascertained the availability of adequate transmission infrastructure at the very outset. Further, the representations made by MSEDCL in the RfS and bid documents were premised on the fact that MSEDCL is capable of off-take of power, in fact MSEDCL is contractually obligated to off-take the power from ASSPL in terms of Article 3.2(i) of the PPA.
- 12.6. ASSPL successfully fulfilled its obligation by obtaining timely Stage I and Stage II connectivity and received conditional LTA from CTU subject to MSETCL providing the un-conditional NOC. MSETCL refused to grant NOC for receiving power from the CTU's network on account of system constraints and ATC not being present in its STU network. It is the responsibility of MSEDCL (in consultation with MSETCL) to ensure adequate transmission capacity for power tied up under long term.
- 12.7. The RfS specifically allowed ASSPL to set up the Project anywhere in India. MSEDCL ought to have carried out due diligence prior to floating the bid or signing the PPA. MSEDCL signed PPA with Petitioners with SCOD of November 2023 even though power cannot flow from outside the Maharashtra due to un-availability of STU network of MSETCL.
- 12.8. MSETCL's contention that non-availability of ATC margin does not qualify as a Force Majeure event, is incorrect and denied. MSETCL has no locus to question ASSPL's claim qua Force



Majeure since MSETCL is not a party to the PPA and there is no privity of contract between ASSPL and MSETCL. Moreover, no relief has been sought against MSETCL.

**13. M/s RDUPL in its Rejoinder dated 13 September 2023 to MSEDCL's Reply stated as follows:**

The submission of RDUPL is on similar lines to that made in Rejoinders filed in Case No.56 of 2023. Following new aspects have been pleaded:

- 13.1. MSETCL by way of its Reply has conceded that there is no Available Transmission Capacity in MSETCL's network. MSETCL remains non-committal on any timelines as to when system augmentation would be completed.
- 13.2. RDUPL was prevented from performing its obligations due to constraints in the Maharashtra state/ MSETCL's network.
- 13.3. RDUPL's obligation was to get 'grid connectivity' and not obtain an NOC from MSETCL for the use of its network. RDUPL successfully fulfilled its obligation by obtaining timely Stage I and Stage II connectivity and subsequently, LTA from CTUIL. MSETCL has refused to grant NOC for receiving power from the CTUIL's network on account of system constraints and ATC not being present in its STU network.
- 13.4. In the present case, RfS was issued by MSEDCL on 06 May 2021 for procurement of solar power through competitive bidding. Pursuant to issuance of RfS by MSEDCL and prior to submission of bids, RDUPL vide Letter dated 19 May 2021, sought clarifications / suggestions on the RfS on following: -
  - i. The list of MAHATRANSCO Sub-stations with available capacity, in case bidders look to choose STU sub-stations for the Project and
  - ii. Any delay in commissioning of the Project due to delay in Connectivity / Transmission at the chosen CTUIL or STU (under construction or working) due to reasons beyond the control of the developer should be considered for grant of extension of SCOD.

The response to pre-bid queries was uploaded by MSEDCL on 01 June 2021. However, MSEDCL did not provide any clarification/response to the queries raised by ReNew.

- 13.5. Irretrievable Injury would be caused to RDUPL if PBG is invoked since performance was impacted by Force Majeure. Invocation would be tantamount to penalizing RDUPL for events beyond its control, i.e., Force Majeure event and its consequential effect, which has been recognized by the Hon'ble Tribunal and the Commission. In fact, the PPA has been validly

terminated by RDUPL in accordance with Article 8.8.2(a) of the PPA (i.e., force majeure event having been continued for more than 180 days). Therefore, invocation of PBG will seek to punish RDUPL for exercising contractual rights. This cannot be permitted by the Commission.

**14. M/s RDUPL in its Rejoinder dated 13 September 2023 to MSETCL's (STU) Reply stated as follows:**

- 14.1. MSETCL in its reply has stated that, as of 30 April 2023, the ATC is -80.41 MW (i.e., Present ATC in Maharashtra is 9760 MW out of which LTAs for 9840.41 MW have been operationalized). This implies there is already a queue for allocation of ATC for new Projects. Further, 768 MW of NOC applications are under process i.e. all will be granted conditional NOC and may be asked to supply/evacuate power under STOA. Thereafter NOCs would be issued on a 'First-Cum-First-Serve' basis as MSETCL's admitted position. This is likely to further delay even after ATC is available.
- 14.2. As regards evacuating power from RDUPL's Project under STOA, it is highly unlikely that MSEDCL / MSETCL would be able to schedule power from STOA since as per the data provided in MSETCL's Reply, MSETCL has LTAs for 3284 MW capacity to be operationalized. Since these LTA Applicants are similarly placed as RDUPL, MSETCL would have to provide STOA for the entire quantum of 3284 MW since MSETCL, being the STU, cannot discriminate between similarly placed power producers. Therefore, it seems highly improbable for MSEDCL to schedule power under STOA also.
- 14.3. Even as per by the data submitted by MSETCL, it would be in a position to commission required transmission capacity earliest by June 2024, that to with a disclaimer of 'on best effort basis' and then power could be transferred on long term basis. It is highlighted that June 2024 itself is well beyond project commissioning timelines under the PPA wherein SCOD was specified as October 2023 (more than 8 months). Given the uncertainty with respect of ATC and power evacuation, RDUPL, as a prudent utility, is precluded from going ahead with the Project.
- 14.4. MSETCL has erroneously contended that it was not able to grant conditional NOC since RDUPL did not submit the Indemnity Bond. Providing un-conditional NOC is the statutory obligation of the STU to facilitate transmission of electricity (a function recognized under Section 39(2)(a) of the Electricity Act).
- 14.5. In the present case, MSETCL is insisting for the Indemnity Bond to provide the conditional NOC, when in fact, power evacuation will not be possible even with the conditional NOC. Therefore, MSETCL is trying to benefit from its own wrong of not having provided the unconditional NOC and seeking that RDUPL indemnify MSETCL for any claims or losses faced by RDUPL on account of non-availability of the transmission corridor. Therefore, by seeking indemnification

from RDUPL, MSETCL / STU is foisting all liability on RDUPL. This is an additional risk which was not existing when the project was envisaged. Further, seeking such an Indemnity Bond adds additional risk on the Applicant (Petitioners herein) which would not have existed, if ATC in the MSETCL's network was adequate and unconditional NOC could be granted by MSETCL.

15. CTU in its Reply dated 15 September 2023 submitted that there are no averments or reliefs claimed against it which would require them to be party to the present Petition. Hence, CTU requested to delete its name as party to the present Petition.
16. During the hearing held on 20 October 2023, Advocates appearing on behalf of the Petitioners and Respondents pleaded on conditionalities for ascertainment of Force Majeure situation and issues in scheduling the power under STOA. Advocate of MSEDCL mainly relied on stipulations in RfS and responsibilities of bidders in choosing right location for the project.
17. ASSPL on 17 November 2023 and RDUPL on 16 November 2023 circulated the written submission based on arguments made during the hearing held on 20 October 2023. The said written submission is re-iteration of arguments pleaded in Petition and Rejoinders. Hence not repeated for sake of brevity.

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

18. The Commission notes that in response to the RfS document issued by MSEDCL for procurement of 500 MW Solar project, offered from following parties have been accepted as successful bids:

<b>Sr.No.</b>	<b>Name of Bidder</b>	<b>Project Capacity</b>	<b>Tariff (Rs/kWh)</b>
1	ACME Solar Holdings Ltd.	300 MW	2.42
2	ReNew Solar Power Pvt. Ltd.	200 MW	2.43

19. After adoption of competitively discovered Tariff by this Commission vide Order dated 11 March 2022 in Case No. 10 of 2022, MSEDCL on 4 April 2022 signed PPAs with ASSPL (100% SPV of ASHL) and RDUPL (100% SPV of ReNew). Subsequently, on 22 March 2022, ASSPL and RDUPL submitted the Bank Guarantee of Rs. 24 Crore and Rs.16 crores, respectively.
20. The PPAs has stipulated timelines for various milestones such as Financial Closure, Schedule Commercial Operation Date (SCOD) etc. Securing Grid connectivity is one of the components of Financial Closure exercise. Provisions of both the PPAs are identical.
21. The Commission notes that in both the matters the Petitioners seeking for following:

- (a) Declaration that the PPA dated 04 April 2022 (in both individual cases) stands validly terminated by ASSPL and RDUPL.
  - (b) Return of individual PBG dated 22 March 2022 provided by ASSPL and RDUPL, on account of PPA termination.
22. The Petitioners terminated the PPAs by way of Termination Notice dated 21 February 2023 and 8 May 2023 in terms of Article 8.8.2 (a) of the PPA which provides that if a non-natural Force Majeure event continued for more than (180) days, the Affected Party has the right to terminate the PPA.
23. Petitioners contended that the Force Majeure event that has impacted their performance of obligations is the sustained failure of MSETCL to grant unconditional NOC for evacuation of power from projects to be setup by ASSPL and RDUPL to MSETCL's network. MSETCL's failure to grant un-conditional NOC is on account of non-availability of adequate transmission corridor (ATC) in STU's network. Since, power from the Projects would flow to MSEDCL from MSETCL's network through CTU's ISTS, grant of un-conditional NOC is mandatory for evacuation of power from the Projects.
24. In view of submissions made by parties, the Commission frames following issues which need to be decided for addressing dispute in present Petitions:
- (A) Whether ASSPL and RDUPL are affected by Force Majeure event?
  - (B) Whether PPA can be considered as terminated on account of sustained Force Majeure condition? if yes, whether PBG be returned to ASSPL and RDUPL?

The above issues are interrelated and hence are being addressed together in subsequent paragraphs.

25. ASSPL and RDUPL contended that MSETCL's failure to grant un-conditional NOC is a Force Majeure event. Power cannot be evacuated from the project without grant of unconditional NOC by MSETCL. Due to MSETCL's failure to ensure sufficient ATC beyond delivery point and consequently grant an un-conditional NOC, they have been prevented from fulfilling the following obligations:
- Article 3.1 (xiv): The Petitioners are required to submit all approvals related to grid connectivity at the time of financial closure (i.e. within 12 months from effective date).
  - Article 3.3 (ii): The Petitioners shall obtain financial closure within 12 months from effective

date.

- Article 3.3 (i): Project to be commissioned within (18) months from effective date.

26. In both the cases, Petitioners have stated that their lenders are concerned with uncertainty in evacuation arrangement and are backing off from financing of project. Further, CTU has indicated that the Petitioners will be penalised for MSETCL's failure to issue NOC by levy of transmission charges till such time that the NOC from MSETCL becomes effective.
27. The Commission notes that the Petitioners have been diligently following up with MSETCL for issuance of un-conditional NOC. ReNew in fact sought details of capacity available in MSETCL substations and raised evacuation related issues at pre-bidding stage itself, which were unanswered.
28. MSEDCL in its reply submitted that the Petitioners ought to showcase the compliance with Prudent utility practices before making any claims qua Force Majeure. MSETCL in its Reply submitted that due to non-availability of ATC margin in CTU-STU network of Maharashtra, STU has issued conditional NOC to ASSPL subject to completion of strengthening projects of CTU-STU network.
29. The Commission notes that while issuing the conditional NOCs, STU has insisted upon Indemnity Bond. In present cases, ASSPL furnished the Indemnity Bond, but the RDUPL has not provided the same. Hence, STU has granted conditional NOC to ASSPL and no NOC is granted to RDUPL.
30. Before going into merits of claims, the Commission notes that PPA dated 04 April 2022 has following provisions related to Force Majeure Events:

“

**Article 8: FORCE MAJEURE**

**8.1 Force Majeure Events:**

*a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:*

*b) Definition of Force Majeure: A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the*

*performance by the Party [(Power Producer / Power Procurer) (Affected Party)] of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.*

## **8.2 Categorisation of Force Majeure Events:**

....

### **8.2.2 Non-Natural Force Majeure Event :**

*a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;*

*b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;*

*c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Generator or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Generator or the Generator related parties;*

*d) action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 9 of this PPA; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Generator or any of the clearance, licence, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the Generator's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.*

....

## **8.4 Notification of Force Majeure Event:**

*8.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure.*



*If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.*

*8.4.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.*

*8.4.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under the PPA, as soon as practicable after becoming aware of each of these cessations.*

**8.5 Performance Excused:**

***8.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.***

*8.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.*

***8.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.***

*8.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.*

**8.6 No Liability for Other Losses:**

*Save as otherwise provided in these Guidelines, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event.....*

....

**8.8 Termination Due to Force Majeure Event:**

....



**8.8.2 Termination due to Non-Natural Force Majeure Event:**

*a) Upon occurrence of a Non-Natural Force Majeure Event, the Generator shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.*

*b) Notwithstanding anything in Article 8.6, on termination of the PPA pursuant to Article 8.8.2(a):*

*i. the Procurer shall pay to the Generator, 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in the Article 10.3.4 of this PPA and takeover the Project assets.*

*ii. the Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.*

**8.9 Available Relief for a Force Majeure Event:**

*8.9.1 No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event.*

*8.9.2 For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.*

*8.9.3 Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events."*

31. The Commission notes that MSETCL/STU being Authority under the Electricity Act,2003 is covered under 'Government Authority' in Force Majeure clause. Further, failure to grant any of the clearance or any permits is categorized as Force Majeure event. PPA provides that any event which is beyond the reasonable control of affected party can be considered as Force Majeure event. Grant of unconditional NoC by MSETCL is clearly beyond the Control of the Petitioners.
32. However, it is also important to note that Force Majeure events must have adverse impact on the project developer and its ability to perform the obligations under the PPA. In present case, Petitioners have contended that on account of non-grant of unconditional NoC, they are not able to fulfill following obligations under the PPA:

***"3.1. Obligations of the Power Producer:***

*i) The Power Producer shall obtain all statutory approvals, clearances and permits necessary*

*for the Project at his cost in addition to those Approvals as listed in Schedule 3.*

*ii) The Power Producer shall obtain financial closure within 9 (nine) months from the date of execution of the Power Purchase Agreement, for projects being set up in Solar park, and within 12 (twelve) months from the date of execution of the Power Purchase Agreement, for projects being set up outside Solar park.*

.....  
*xiv) In order to timely commissioning of project, the Power producer to submit the final/revised activity wise schedule such as Grid connectivity, Material procurement, date/month of procurement of Solar modules/panels, country of import, if not domestically imported, Completion of construction activities etc. at the time of financial closure.”*

As per above provisions of the PPA, Petitioners have to achieve financial closure within 12 months from date of the PPA and at the time of Financial Closure needs to submit various documents to MSEDCL including final/revised Grid Connectivity. Further, the project is to be commissioned within 18 months from date of PPA. Petitioners contended that on account of non-issuances of unconditional NoC by MSETCL, their lenders are backing off from financing the projects. ACME in its Force Majeure Notice dated 10 August 2022 have mentioned the same as reproduced below:

*“The above situation i.e. non confirmation of system availability at MSETCL end, has created ambiguity over timely evacuation of power generated from our solar project. As you are aware that all RE projects are funded by lenders and financial institutions. In absence of unconditional NOC from MSETCL and other contents of the letter issued by MSETCL as mentioned in references herein above, the lenders are not inclined to fund this project owing to the uncertainty of delivery of power to the beneficiary and therefore the same is obstructing us from performing our obligations under the PPA. This situation is completely beyond our reasonable control and squarely falls under article 8 of the PPA i.e. Force Majeure.*

*We also request you to support us in getting unconditional NOC from MSETCL and take up the issue of strengthening of transmission network at appropriate levels so as to ensure certainty and timely evacuation of power.”*

RDUPL in its Force Majeure Notice dated 14 March 2023 has also mentioned similar ground.

33. The Commission notes that backing off by financial institution would impacts Petitioners obligation to achieve financial closure and project completion within 12 and 18 months, respectively from date of PPA. Even it assumes that non-availability of un-conditional NoC from MSETCL does not impacts setting of projects as it is situated outside Maharashtra and Petitioners have already obtain conditional Grid Connectivity (Stage-I and II) from CTU, but once project is commissioned, evacuation of power will be dependent upon transmission capacity available at CTU-STU interconnections. PPAs under consideration do not provide any

immediate monetary compensation for non-evacuation of power on account of non-availability of Grid. Relevant clauses of PPA are reproduced below:

***“3.4 Generation compensation due to evacuation issues at the time of SCOD:***

- i) Upon the occurrence of an Emergency in CTU/STU's/DISCOM evacuation system for safe operation of its Grid, CTU/STU/DISCOM reserves the right to shut down the line and has no obligation to evacuate the power.*
- ii) If plant is ready before Schedule Commercial Operation Date, but the off take is constrained because of incomplete power evacuation infrastructure, no compensation shall be payable.*

***5.6 Generation Compensation in off take constraint due to transmission:***

*During the operation of the plant, due to temporary transmission unavailability (during 8 am to 6 pm), if the power is not evacuated, for reasons not attributable to the solar power generator, then the generation loss shall be procured by MSEDCL at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.”*

Thus, PPA clearly states that there is no obligation on MSEDCL to evacuate the power if there is issue in Grid at the time of SCoD. Further in the post CoD period, if power is not evacuated on account of Grid related issues, then there is no immediate monetary compensation is provided. Only relief available in this case is to generate power more than the declared CUF in next three year and sale it at PPA tariff to MSEDCL. But this is possible only if there is no transmission constraints.

- 34. By highlighting examples of other commissioned RE projects situated outside Maharashtra, MSEDCL has contended that Petitioners have option of scheduling its RE power by using Short-Term Open Access. Petitioners have opposed such suggestions on the ground that CTU have clarified that evacuation of power under Short-Term Open Access would be with additional charges and there is always risk of curtailment under Short-Term Open Access. In this regard, the Commission notes that other projects which are using Short Term Open Access route for bringing power into Maharashtra are already commissioned projects, whereas Petitioners projects are yet to be setup and their lenders are baking off due to uncertainty of power evacuation. For any project to be set up, it must have surety of evacuation of power and in case of non-evacuation due to Grid issues, the contract must provide for a compensation mechanism. Without such assurance, the financial institute would be hesitant to support the project.
- 35. The Commission also notes that MSETCL in its submission has stated that at present there is no

ATC available (-84 MW) on CTU-STU tie lines and hence un-conditional NoC cannot be issued. Further as per applications received with STU/MSETCL, ATC of CTU-STU tie-lines needs to be increased by 3079.41 MW. MSETCL in coordination with CTU have planned transmission schemes for enhancing CTU-STU tie line capacities. However, until commissioning of such transmission schemes, un-conditional NoC cannot be issued.

36. MSEDCL has also contended that as a prudent utility, if Petitioners could have assessed the issue of transmission constraint before selecting their project location, the present issue of force majeure could have been avoided. In this regard, the Commission notes that bid floated by MSEDCL was not location specific and project can be located at any place in the country. Although, delivery point has and hence been identified as Maharashtra STU periphery and responsibility to seek all permissions to supply power at delivery point is cast on the project developer, it is industry practice that generation project setup required evacuation infrastructure to connect nearest CTU/STU network. If there is any bottleneck in the upwards network of CTU or STU, that respective agency has to upgrade the same. RE project developer cannot be asked to access and strengthen the same.
37. In view of above, the Commission notes that MSETCL's inability to issue unconditional NOC to Petitioners have created uncertainty of power evacuation from Petitioner's proposed Solar project. Such uncertainty would impact the cashflow of the project and hence lenders are backing off. Due to which, Petitioners are not able to achieve financial closure. MSETCL is not able to issue unconditional NOC because there is no capacity available in CTU-STU tie-lines. This is completely beyond the control of the Petitioners. Hence, this is covered by Force Majeure under the PPA. Further such Force Majeure is continuing till date. As per Clause 8.8.2 (a) of the PPA reproduced in earlier part of Order, in case of continuation of non-natural force majeure event beyond 180 days, project developers can terminate the PPA. Petitioners vide their notices dated 21 February 2023 (ASSPL) and 8 May 2023 (RDUPL) have accordingly terminated their respective PPA. As said Termination of PPA is in accordance with provisions of PPA, the Commission cannot nullify it. Accordingly, the Commission rules that PPAs under present Petitions have been terminated validly by the Petitioners.
38. Once the PPA has been terminated under Force Majeure conditions by the project developer (Petitioners), procurer (MSEDCL) has the option under clause 8.8.2(b) to take over the project by paying for outstanding debt and equity in the project. But in present case such option cannot be exercised as projects have not completed financial closure itself.
39. Bank Guarantee under the PPA is given for ensuring timely completion of the project. Once the PPA itself has been terminated, there is no purpose for retaining Bank. Hence, the Commission directs MSEDCL to return the respective Bank Guarantee to the Petitioners within 15 days of the date of this Order.

40. Having ruled as above, the Commission notes that it is very unfortunate that Solar PPA of 500 MW with tariff as low as Rs. 2.42 to 2.43 per unit is terminated on account of non-availability of transmission capacity to bring power into Maharashtra. MSETCL/STU shall coordinate with all agencies to expedite the implementation of transmission schemes to increase CTU-STU tie-line capacities.
41. Hence, the following Order.

**ORDER**

1. **Petitions in Case No. 56 of 2023 and 92 of 2023 are allowed.**
2. **MSEDCL is directed to release PBGs of ACME Sikar Solar Pvt Ltd and ReNew Dinkar Urja Pvt. Ltd within (15) days from date of this Order.**

Sd/-  
**(Surendra J. Biyani)**  
Member

Sd/-  
**(Anand M. Limaye)**  
Member

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

  
**(Dr. Rajendra G. Ambekar)**  
Secretary

