

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

**Date: 11 March 2022**

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

**Case No. 7 of 2022**

**Petition under Section 86(1) (e), (f) and (k) of the Electricity Act, 2003, read with Article 8 of the Power Purchase Agreement dated 21 August 2019 executed between ACME Heergarh Powertech Private Limited and MSEDCL for supply of 300 MW solar power from its solar PV power plant at village – Badisid, Tehsil: Bap, District: Jodhpur, State: Rajasthan seeking inter alia, extension of the scheduled commercial operation date from 28 December 2021 to 14 September 2022, on account of certain Force Majeure events including second surge of covid-19 in India and disruption in import of modules from China impacting the development of the project.**

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**Interlocutory Application Diary No. 40 of 2022**

**Application under Section 94 (2) of the Electricity Act, 2003, inter alia seeking appropriate direction(s) to the Respondent including to not to invoke / encash the Bank Guarantee No. 1945IGFIN005119 dated 19 August 2019 and / or take any coercive/precipitative actions against the Applicant.**

M/s. ACME Heergarh Powertech Private Limited (AHPPL) : Petitioner

M/s Maharashtra State Electricity Distribution Co. Ltd (MSEDCL) : Respondent

**Appearance:**

For the Petitioner : Mr. Sanjay Sen (Adv.)

For the Respondent : Mr. Ravi Prakash (Adv)

**Daily Order**

Heard the advocates of the Petitioner and Respondent.

Advocate of Petitioner submitted that AHPPL is having PPA with MSEDCL and accordingly developing a 300 MW solar PV based power project located in Rajasthan. AHPPL has filed the present Petition in Case No.7 of 2022 seeking extension of the Scheduled Commercial Operation

Date (SCOD) on account second surge of novel Corona Virus (Covid-19) and disruption in supply of solar modules and other solar equipment from China. Subsequent to filing of present Petition, MSEDCL has extended the timeline for commissioning of 300 MW Project till 14 March 2022. AHPPL assured that it is commissioning 100 MW capacity (out of total of 300 MW) within the month of March 2022 and committed to commission the rest of the capacity in phases as early as possible within outer limit of 6 months. As extended SCOD is expiring on 14 March 2022, out of abundant caution, AHPPL has approached this Commission by way of Interlocutory Application (Dairy No.40 of 2022) with request to restrain MSEDCL from taking any coercive action such as forfeiting PBG of AHPPL as such action reflects adversely on its credit score in financial market. As far as invocation or encashment of the Bank Guarantee is concerned, MSEDCL has failed to reflect any financial injury or damages being suffered by it. Thereafter, AHPPL stated that MSEDCL filed its reply in main matter belatedly on 9 March 2022 and it required time for filing its rejoinder.

Advocate of MSEDCL submitted that as far as the contention in respect of force majeure is concerned, AHPPL has completely failed to substantiate its case within the parameters of the force majeure as enumerated under Article 8 of the PPA. It is settled position of law that an unconditional bank guarantee is an independent and distinct contract and if the terms thereof are unconditional then the courts would not grant any injunction except in a case of egregious fraud or a case based on special equities of irretrievable injury.

On reply to the enquiry from the Commission, it is informed that PBG is valid till sometime in August 2022. MSEDCL can encash it as per applicable law till it is valid. Therefore, the Commission is of the opinion that interests of MSEDCL are not adversely affected if the Commission ordered no coercive action in this matter and till the main matter is disposed off, which will be much earlier to expiry of PBG.

The Commission at this stage is not expressing any views on the merits of the main matter.

Therefore, the Commission directs MSEDCL not to take any precipitative coercive action in this matter till final disposal of the main matter.

Further, as requested, the Commission allows AHPPL to submit rejoinder to MSEDCL's Reply in this matter within two weeks.

**Subsequent to receipt of above submissions, next date of hearing will be intimated by the Secretariat of the Commission.**

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

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

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