

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.com
Website: www.mercindia.com

Case No. 88 of 2010

In the matter of

Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition for Approval of deviations taken in Request for Proposal and Power Purchase Agreement from Standard Bidding Documents issued by Ministry of Power for procurement of 600 MW ($\pm 10\%$) base load power on long term basis through tariff based Competitive Bidding Process (Case 1)

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

ORDER

Dated: July 20, 2011

MSEDCL submitted a Petition under affidavit on November 24, 2010, seeking approval of deviations taken in Request for Proposal and Power Purchase Agreement from Standard Bidding Documents issued by Ministry of Power for procurement of 600 MW ($\pm 10\%$) base load power on long term basis through tariff based Competitive Bidding Process (Case 1).

2. The prayers in the Petition are as follows:

“

- (a) *Examine the proposed Request for Proposal document for Long Term Power Procurement along with the Deviations proposed therein from Standard Bidding Document issued by Ministry of Power;*
- (b) *Examine the concerns expressed by the petitioner for a favourable dispensation as detailed in the petition;*

- (c) Grant expeditious approval on the Bidding Documents submitted for Bid Process along with the deviations submitted thereof;*
- (d) Condone any inadvertent omissions/errors/shortcomings and permit MSEDCL to add/change/modify/alter this filing and make further submissions as may be required at a future date;*
- (e) Pass such further and other orders, as the Honourable Commission may deem fit and proper keeping in view the facts and circumstances of the case.”*

3. MSEDCL in its Petition submitted as under:

- a) MSEDCL is a deemed licensee to distribute electricity in the Maharashtra region under Section 14 of the Electricity Act, 2003. Being the State Utility, MSEDCL has the mandate of serving the burgeoning demand for the State of Maharashtra and need to ensure long-term availability of power. MSEDCL has decided to undertake procurement of power under Competitive Bidding Guidelines, 2005 (Case 1) issued by Ministry of Power (MoP), Government of India.
- b) MoP has issued Competitive Bidding Guidelines, 2005 dated January 19, 2005 and as amended from time to time (CBG) to be followed by Distribution Licensees (Procurer) for its Long Term Power Procurement. Under the Guidelines issued by MoP, the Procurer can initiate the Bidding Process under two different mechanisms as follows;
 - (i) Case 1 Route: Where the location, technology, or fuel is not specified by the procurer;
 - (ii) Case 2 Route: Location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process.
- c) Based on above, the Petitioner wishes to undertake procurement of power under Case 1 bid process.
- d) The objective of this Bidding process is to procure 600 MW ($\pm 10\%$) base load power for long term, depending on coal based source of generation. The successful Bidders shall enter into a Power Purchase Agreement (PPA) with MSEDCL, the Procurer.

- e) In the process of procurement of power through CBG Route, if any deviations are undertaken from Standard Bidding documents, the approval for such deviations needs to be taken from State Electricity Regulatory Commission. The relevant clauses from the Guidelines issued by the MoP are as extracted below:

“2.3. Unless explicitly specified in these guidelines, the provisions of these guidelines shall be binding on the procurer. The process to be adopted in event of any deviation proposed from these guidelines is specified later in these guidelines under para 5.16.”

“Deviation from process defined in the guidelines

5.16 In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.”

- f) For the purpose of carrying out the Competitive Bidding Process by Procurer, MoP has issued Standard Bidding Documents (SBDs) for Case 1. The Petitioner has made certain modifications to the above mentioned SBDs primarily to meet specific requirements of the Procurer.
- g) Further the numbering of the paragraphs in the Request For Proposal (RFP) document may have changed from the SBD due to:
- (i) Re-arrangement of the paras;
 - (ii) Addition/deletion of Clauses which is permitted as per the standard RfP document;
 - (iii) Addition/deletion of Clauses which may be a deviation from the provisions of the Standard Request for Qualification (RFQ) document, as discussed in following point.
- h) Besides the Addition/deletion of Clauses for customisation of the document to suit to the requirement of procurer, which is permitted as per the standard RFP document; The following deviations/customisations have been taken from Standard RFP and PPA issued by MoP:

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
Deviations in respect of Request For Proposal (RFP)			
Bid Bond	<p>Within thirty (30) days of issue of Letter of Intent, the Successful Bidder(s) either on his/their own behalf or on behalf of the Seller, shall provide to the Procurer, the Contract Performance Guarantee calculated on the basis of Rs. 30 lakhs/MW of the total Contracted Capacity of the Successful Bidder and as prescribed in Format 5.7.</p>	<p>Within thirty (30) days of issue of Letter of Intent, the Successful Bidder(s) either on his/their own behalf or on behalf of the Seller, shall provide to the Procurer, the Contract Performance Guarantee calculated on the basis of Rs. 3 lakhs/MW of the total Contracted Capacity of the Successful Bidder and as prescribed in Format 5.7.</p>	<p>The increase is proposed to protect the interest of MSEDCL by discouraging non-serious players from bidding in the project. The present amount (Rs. 3 Lakhs/MW) is not a sufficient deterrent. On account of this, there have been some instances in other states where-in the successful bidder has walked out of his commitment to supply the contracted power to the state by forfeiting the Bid Bond amount and not entering into the PPA. Such instances have taken place in Haryana and Madhya Pradesh where-in the successful bidder has backed out from the Case 1 projects after being shortlisted as the preferred bidder. This has a huge implication on the state as significant time is spent by the state in conducting the bidding process and after conclusion of the same, if the bidder walks out of the project, it is a great loss of time for states which are already reeling under huge supply deficit. In view of the above, MSEDCL, in order to protect its interest and discourage non-serious players from participating in the process has</p>

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
			proposed the change in the amount of Bid Bond.
Fuel	<p>➤ Ministry of Coal has allotted Bhivkund coal block to Aurangabad Power Company Limited (APCL), a subsidiary of MSEDCL. This coal mine is situated in Wardha Valley, Dist. Chandrapur, Maharashtra. As per the preliminary estimations this coal block is having 100 MMT of 'E' grade geological reserve with 2.27 MT per annum of extractable capacity. The allotment of coal block was based on the condition that coal from such coal block will be utilized only for the tariff bid project. Coal allocation letter and other available documents related to coal block shall be made available to the prospective bidders 45 days prior to the bid deadline.</p> <p>➤ State Power Generation Company 'Mahagenco' has</p>	<p>➤ In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage. Such arrangement shall be for the quantity of fuel required to generate power from the power station at Normative Availability for the total installed capacity for the term of the PPA.</p> <p>➤ In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least fifty percent (50%) of the quantity of coal required to generate power from the power station at Normative Availability for the total installed capacity OR shall have fuel supply agreement</p>	<p>APCL, presently a subsidiary of MSEDCL had started development activities for the said project including land and water arrangements. Project site proposed by Mahagenco has not been found suitable by MoEF for thermal power project. If all such activities are started again then it will again take another 1-2 years, which includes time to be taken in selection of new project site. Presently there are several projects coming in the State of Maharashtra which are at an advance stage of development. Hence in view of ensuring timely procurement of power it is proposed that instead of re-initiating project development activities, coal from Bhivkund coal block can be utilized for power generation.</p>

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
	<p>already initiated process of development of coal block and has made applications for required clearances, appointed consultants for necessary reports. After completion of bidding process, MSEDCL in coordination with Mahagenco would transfer development rights of Bhivkund coal block. Successful Bidder shall have to reimburse all expenditures incurred by Mahagenco on the development of coal block. The exact amount to be reimbursed by the Successful Bidder shall be intimated 45 days prior to the bid deadline to all prospective bidders. Also, in case any bank guarantee is provided by MSEDCL/Mahagenco in lieu of the coal block to any state/central authority, same shall be given back to back by the Selected Bidder to MSEDCL/Mahagenco.</p>	<p>for at least fifty percent (50%) of the quantity of fuel required for a term of at least five (5) years or the term of the PPA (which ever is less) to generate power from the generation source for the total installed capacity for the term of the PPA.</p> <ul style="list-style-type: none"> ➤ In case of domestic gas, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA. ➤ In case of RLNG, the Bidder shall have made firm arrangements for fuel tie up by way of fuel supply agreement for at least fifty percent (50%) of the quantity 	

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
	<p>➤ The Selected Bidder shall have ultimate responsibility to develop the Bhivkund coal block in synchronization with its power project as per the conditions laid down in allocation letter and to obtain all clearances i.e. Environmental Clearance, Forest Clearance. Milestones for development of coal block will be determined in consultation with PFC & M/s MSEDCL. Entire Coal of Bhivkund coal block will be utilized for power generation equivalent to Contracted Capacity in the state of Maharashtra and no coal shall be sold, delivered, transferred or disposed off except for the stated captive mining purposes except with the previous approval of the Central Government. All taxes, royalties and duties before/after development of the coal block shall be borne by the Selected</p>	<p>of fuel required for a term of at least five (5) years or the term of the PPA (which ever is less) to generate power from the generation source for the total installed capacity for the term of the PPA.</p>	

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
	<p>Developer.</p> <p>➤ Successful Bidder shall be responsible to supply full Contracted Capacity (as offered in this bidding process) as per the terms of PPA. If actual power generation from utilization of coal from Bhivkund coal block is less than the Contracted Capacity, arrangement of coal for additional power generation upto Contracted Capacity shall be the responsibility of the developer. No exemption shall be given to the Successful Bidder with regard to the quantum of Contracted Capacity after signing of PPA due to availability of coal from Bhivkund coal block.</p>		
Qualification Requirements – Technical Qualifications	The Bidder should have coal based thermal power project/s under operation/execution with off take of at least of 500 MW under a long term PPA with any State Utility in the country.	➤ No Technical Qualifications are prescribed in SBD Case I issued by MoP dated 21 st July, 2010.	To encourage and ensure the serious bidders to participate in the bid process. In view of the above, MSEDCL, in order to protect its interest and discourage non-serious players from participating in the process has proposed the two additional technical qualifications Inspite of one

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
	<p>The bidder should have been selected through a transparent competitive bidding process by any State Govt. entity for development and operation of a coal block with minimum Geological Reserves of 100 Million tones and mine plan for the said block should have been duly approved by the ministry of Coal, Government of India.</p>		<p>financial qualification of Net worth as per Case I SBD issued by MoP dated 21st July, 2010.</p>
<p>Power Generation Source</p>	<p>➤ Bidders have to supply power from coal based Greenfield power generation plant. Location of the power plant must be in the State of Maharashtra only.</p>	<p>➤ Bidders are free to supply from any source of power generation including but not limited to hydel power. In case supply of power is proposed from a hydel source the hydrology risk shall be entirely borne by the Bidders. However, if the available capacity of the Seller from a generating station is in excess of the total Contracted Capacity of the Seller, then this excess capacity shall be at the</p>	<p>In accordance with the allocation letter given by Ministry of Coal, this coal block has been allotted for the development of Greenfield power project in the State of Maharashtra. Hence in order to fulfill the said condition it is proposed that bidder have to supply power from coal based Greenfield power generation plant to be located in Maharashtra.</p>

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
		disposal of the Seller.	
	➤ Existing projects are not allowed to participate in the bidding process	➤ Existing projects are also allowed to participate in the bidding process.	As explained in the above column coal block has been allotted for the development of a Greenfield project. Also all existing projects are assumed to have fuel requirement already tied up. Hence it is proposed that only new project should be allowed to participate in the bidding process.
Trading licensees	➤ Trading licensees are not allowed to bid	➤ In SBD for Case-1 bidding process trading licensees are also allowed to bid	In this process development of coal block is the responsibility of the bidder. However, trading companies/licensees are not allowed to participate in this bid process.
Customisations in respect of Request For Proposal (RFP)			
No. of bidders	Entire capacity shall be offered by single bidder only.	More than one bidder may offer power from their projects	
Technology	The Bidder is free to choose any coal based power generation technology, including but not limited to sub-critical / supercritical	The Bidder is free to choose any power generation technology, including but not limited to sub-critical / supercritical, open / combined cycle, etc	Since coal block is allocated by Ministry of Coal, hence bidder is free to choose any coal based power generation technology.

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
Evacuation related	<p>Delivery Point, Injection Point, & Interconnection Point means switchyard of power plant.</p> <p>Transmission losses & Charges not to be considered in bid evaluation.</p>		<p>As the procurer shall be responsible to arrange transmission access from the station switchyard of the generation source, transmission losses and charges are not applicable.</p> <p>As interconnection point mean the point where power from the power station switchyard bus of the seller is injected into the intrastate transmission system (including dedicated transmission lines) Injection point being the delivery point, & project is to be located in state of Maharashtra only, no transmission charges or losses will be considered for evaluation purposes.</p>
<p>Clause 2.4 Bidding Process sub clause no.2.4.1.1</p> <p>(B) Envelope II- Financial Bid point no. iv.</p>	<p>The Bidder has to quote for entire quantum of Requisitioned Capacity for the entire term of the PPA.</p>	<p>The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the entire term of the PPA, subject to the Minimum Bid Capacity</p>	<p>As Minimum bid capacity is not applicable. Bidder has to quote for the entire quantum of Requisitioned capacity i.e 600 MW ($\pm 10\%$)</p>

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
Clause 2.5 sub clause no. c)	The Procurer reserves the right to accept the offer of the Bidder for Requisitioned Capacity of power.	The Procurer/ Authorized Representative reserves the right to accept the offer of the Bidder for any quantum of power up to the quantum offered by it, subject to the Minimum Bid Capacity, and considering the balance Requisitioned Capacity (after considering the quantum of power offered by Successful Bidder(s) in Clause Error! Reference source not found.).	
Clause no. 3.4.4	As in present case scenario of captive coal mine is applicable, all other scenarios are not applicable	For actual payment of tariff All scenarios available in SBD i.e relevant factors shall be applied based on Captive coal mine, linkage based coal, Imported coal, Imported & Domestic Gas pipeline etc.	

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
Clause no. 3.5 Selection of Successful Bidder steps	<p>The Bidder with the lowest Levellised Tariff shall be declared as the Successful Bidder.</p> <p>Any increase / decrease in the Requisitioned Capacity can be made only with the approval of the Appropriate Commission</p>	<p>The Bidder with the lowest Levellised Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.</p> <p>The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.</p>	<p>Since bidder has to quote for the entire quantum of the Requisitioned capacity. Selection of successful bidder process stands completed once the Lowest quoted (L1) bidder is selected.</p>
Format 4.10 financial Bid	Region and State in which the Injection Point is located	Region and State in which the Injection Point is located	Since coal block allocated is in Maharashtra, and the successful bidder has to develop the coal

Clause	Proposed Clause in the Document	Clause as per Case 1 SBD issued by MoP	Reason for change
Format Western Region, Maharashtra (To be inserted by the Bidder)	block and utilize the entire coal as fuel in development of expanded or new unit of power plant.
Format 5.8 List of Banks	Scheduled private banks includes Yes Bank also.	SBD does not provide Yes Bank under Scheduled Private Banks list.	Yes Bank to be included in Private Scheduled Banks is agreed by the Procurer.
Format 5.10 & 5.11	Transmission Charges Matrix and Transmission Loss Matrix has been deleted as not applicable in our present case.	Provided formats by SBD towards Transmission Charges and loss matrix	As Delivery point, injection point is in Maharashtra only, any transmission charges or loss is not applicable in our present case.

i) The Petitioner submitted that the Revised Bidding Documents viz. Request for Proposal (RFP) and Power Purchase Agreement (PPA) may be considered for according approval to the deviations outlined in the RFP document and permit MSEDCL to file petition seeking approval from Commission in respect of further deviations on the documents, if any, based on the inputs during the bid process, at a later stage.

4. The Commission vide its Notice dated November 26, 2010 scheduled a hearing in the matter on December 15, 2010 at 11.00 hrs. in the presence of the authorised Consumer Representatives under Section 94 (3) of EA 2003

5. Indo Rama Synthetics (I) Ltd. submitted an Intervention Application on December 14, 2010 in the case, and submitted the two major deviations proposed by MSEDCL in the Standard Bid Documents have resulted in many bidders not qualifying to bid in this RFP. The two major deviations is increase in Bid Bond amount and the qualification requirement of the Bidder.

6. During the hearing on December 15, 2011, Shri. A.S. Chavan, CE (PP), MSEDCL and Shri. S.G. Metre, EE (PP), MSEDCL appeared on behalf of MSEDCL.

7. Shri. Chavan from MSEDCL made a presentation during the hearing, explaining details and need for undertaking the deviations taken in the Petition as Case 1. After the presentation, the Commission directed MSEDCL to submit the following information:

- (a) to ensure that it has obtained the letter regarding the Clearance from the Director, Ministry of Environment and Forest (MoEF) that the Bhivkund Coal block allocated to MSEDCL is not in NO GO area.
- (b) to ensure that the Bhivkund Coal Block allocated to MSEDCL is not near (i.e., within the radius of 25 Kms.) of the Tiger reserve located in Chandrapur and obtain letter from Chief Wildlife Warden of the State regarding the same.
- (c) MSEDCL should revisit the proposal and reply to queries raised as follows in order that the basic aim and objective of Competitive Bidding Guidelines for determination of Tariff is achieved:

- (i) The increase in Bid Bond and other Technical Qualifications may result in less number of participants/ bidders in the bidding process.
 - (ii) The Bidder has to quote for entire quantum of Requisitioned Capacity for the entire term of the PPA, etc., should be tested since it restricts participation of more number of participants/ bidders in the bidding process.
 - (iii) The proposed deviations such as Existing project developers are not allowed to participate in the bidding process should be examined as it may lead to high fixed cost thus leading further higher tariff.
 - (iv) MSEDCL should find out the reason for not enlisting the YES Bank from the list of the banks as approved by the Ministry of Power.
- (d) MSEDCL should submit the documents related to allotment of the Coal Block by Ministry of Coal under Case 2 Bidding process. As the captive mine is allotted for project under Case II bidding, whether the power plant may be set-up through the Case-I bidding process with the same captive mines?

8. The Commission vide its Notice dated December 15, 2010 scheduled a hearing in the matter on January 31, 2011, at 11.00 hrs. in the presence of authorised Consumer Representatives.

9. MSEDCL vide their letter dated January 18, 2011 submitted the response to the directions contained in the Record of Proceedings (RoP) issued on January 6, 2011.

Reference RoP point	Description	MSEDCL Response
1	MSEDCL to ensure that it has obtained the letter regarding the Clearance from the Director, Ministry of Environment and Forest that the Bhivkund Coal block allocated to MSEDCL is not in NO GO area.	Mahagenco has requested MoEF vide letter No.CGM/CEHSU/Bhivkund Coal Proj/40 dated 12.1.2011 to give comfort letter regarding the same. Response on the same is awaited. Remarks: The Commission will note that Dy. Conservator Forests has permitted drilling of sampling boreholes in the entire block (~25 sq. km area) excluding 7.31 hectare which has prima facie been identified as

Reference RoP point	Description	MSEDCL Response
		Zudpi Jungle. Thus, Bhivkund Coal Block will presumably fall min Go-Area.
2	MSEDCL to ensure that the Bhivkund Coal Block allocated to MSEDCL is not near (i.e., within the radius of 25 Kms.) of the Tiger reserve located in Chandrapur and obtain letter from Chief Wildlife Warden of the State regarding the same.	<p>Principal Chief Conservator Forests (PCCF), Vanbhavan, Nagpur has been requested by Mahagenco vide letter SE(c) /CCC/CHN/Tech/28 dated December 12, 2010 and letter SE(c) /CCC /CHN/ Tech/11 dated January 13, 2011. Personal visits have also been made by Mahagenco officials. A formal response on the same is awaited.</p> <p>MPCB has indicated to CPCB, vide letter no. MPCB/APAE/TB-!/B-137 dated December 12, 2010 that the coal block is 2 km away from Ballarpur City but not within the influence of Critically Polluted Area (CEPI) of Chandrapur. CBCB's response on the same is awaited.</p>
3 (a)	The increase in Bid Bond and other Technical Qualifications may result in less number of participants/bidders in the bidding process.	<p>High bid Bond amount has been provisioned to discourage non-serious players from participating in the bidding process.</p> <p>As both power plant and coal block development are part of the successful Bidder's scope of work, relevant experience in either have been kept as a technical qualification criteria.</p>
3 (b)	The Bidder has to quote for entire quantum of Requisitioned Capacity for the entire term of the PPA, etc., should be tested since it restricts	Entire coal from the block will be used in the proposed power plant. As the block development is included in Successful Bidder's scope of work,

Reference RoP point	Description	MSEDCL Response
	participation of more number of participants/ bidders in the bidding process.	having multiple bidders is not tenable. Therefore, bidder has to quote for full Requisitioned capacity.
3 (c)	The proposed deviations such as Existing project developers are not allowed to participate in the bidding process should be examined as it may lead to high fixed cost thus leading further higher tariff.	Coal block has been allotted by MoC for the development of a Greenfield project. Hence, this requirement is kept.
4	MSEDCL should submit the documents related to allotment of the Coal Block by Ministry of Coal under Case 2 Bidding process. As the captive mine is allotted for project under Case 2 bidding, whether the power plant may be set-up through the Case 1 bidding process with the same captive mines?	MoC allocation letter no. 13016/19/2007-CA dated July 17, 2008 has been submitted to the Commission. Previous site selected was rejected by MoEF on account of proximity to Yavatmal City. Arranging land, water and other clearance for new site will take more time. So, this Modified Case 1 bidding process has been adopted to ensure fast-track coal block development and capacity additional.

10. During the hearing held on January 31, 2011, Shri A.S. Chavan, CE (PP) and Shri S.G. Metre, EE (PP) appeared on behalf of MSEDCL and Shri. Alok Banerjee, M/s. Indo Rama Synthetics (I) Limited appeared as Intervener in the Case.

11. M/s. Indo Rama Synthetics (I) Limited has filed an Intervention Application, which the Commission accepted on record. The Commission directed M/s. Indo Rama Synthetics

(I) Limited to furnish the copy of the Intervention Application to the Petitioner and the authorised Consumer Representatives. Shri. Supriyo Saha, Feedback Ventures made presentation on behalf of the Petitioner consisting of background details, proposed deviations in RFP and PPA. The Presentation also consists of rationale for undertaking the deviations and responded to the issues raised in RoP by the Commission during the earlier hearing. The Commission observed that the Coal Blocks are allocated under Government dispensation.

12. During the said hearing, the Commission directed MSEDCL to submit the following documents:

- (a) A copy of the Memorandum and Articles of Association of the M/s. Aurangabad Power Company Limited (APCL) along with composition of Board of Directors/Promoter Directors.
- (b) A copy of Registration / Incorporation Certificate from Registrar of Companies
- (c) A copy of Certificate of Commencement of Operation/Business; if not then present stage of operation.

13. The Commission directed MSEDCL to obtain Terms of Reference (ToR) from the MoEF immediately. The Commission further advised MSEDCL to reconsider some of the deviations proposed by MSEDCL, which are as follows:

- (a) Bid Bond of Rs. 3 lakh/MW given in the Standard Bid Document may be retained as against the proposed deviation of Rs. 30 lakh/MW. This may result in less number of participants/bidders in the bidding process.
- (b) Generation Source may be anywhere in the Country but preferably in the State of Maharashtra as against the proposed deviation of location of the power plant must be in the State of Maharashtra.
- (c) The proposed deviation of Technical Qualification in the RFQ may be relaxed since this may result in less number of participants/bidders in the bidding process.
- (d) The deviation proposed in the SBD PPA related to the Article 9.3 (ii) (d) Non-Natural Force Majeure Events after detailed analysis of positive effects and negative effects of the above said deviation from SBD.

14. The Commission also directed MSEDCL

- (a) to enquire whether the said coal blocks will be transferred the development rights of coal blocks to successful bidder. (Point 5, of RFP under Fuel Notification)

(b) Obtain the Reports Prepared by the Maharashtra State Pollution Control Board on critically polluted area for mitigating the pollution levels.

(c) study the Ministry of Coal Guidelines for Coal Linkage and Coal Blocks Allocation

15. The Commission decided to hear the matter further on February 25, 2011, at 12.30 hrs. , which was further rescheduled on March 18, 2011 at 17.00 hrs.

16. During the hearing held on March 18, 2011, Shri. A.S. Chavan, CE (PP) and Shri. Supriyo Saha appeared on behalf of MSEDCL. After hearing the parties, the Commission opined that MSEDCL has not furnished the data/information as directed in the RoP of the earlier hearing in the matter held on January 31, 2011. The Commission directed MSEDCL to submit the required information.

17. MSEDCL submitted vide letter dated April 28, 2011 that the observations made by the Commission during the hearings and after due reconsideration by MSEDCL Board, the Petitioner has prepared, the revised bidding documents consisting of Request for Proposal and the draft Power Purchase Agreement (PPA) under Case 1 and as per Standard Bidding Documents with some deviations. The deviations that were considered to be restrictive by the Commission have been omitted and only necessary changes which are required to bring it in line with coal block allocation letter of Ministry of Coal are being changed. The Case 1 SBD has been followed strictly with necessary deviations is as follows:

(a) Fuel Source specified as Bhivkund coal block. SPV ownership will be transferred to successful bidder who will be responsible to develop coal block simultaneously with power project.

(b) Existing projects are not allowed to participate in bidding process (since the coal block allocation letter of Govt. of India specifies that coal will be used in a Greenfield project.).

(c) Trading Licensees are not allowed to bid.

(d) Force Majeure: Disallowance of Environmental; clearance by MoEF may be considered as natural Force Majeure. If the power plant is ready and coal block is not developed due to any unavoidable reason, bidder is allowed to use alternative coal with incremental cost pass through subject to approval of the Commission.

(e) Bidder has to quote for full requisitioned capacity of 500 to 660 MW (since coal for entire power project is to be sourced from Bhivkund Coal block).

Following deviations/customisations have been taken from Standard RFP and PPA issued by MoP:

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
Deviations in respect of Request for Proposal (RFP)			
	<p>➤ “Requisitioned Capacity” means the total aggregate power, subject to a minimum of 500 MW and maximum of 660 MW, proposed to be contracted by the Procurer with the Successful Bidder through this bidding process for supply at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;</p>	<p>➤ “Requisitioned Capacity” means the total aggregate power of ___ MW(+/-20%) proposed to be contracted by the Procurer with the Successful Bidder through this bidding process for supply at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;</p>	
Fuel, Notification Point (5)	<p>➤ Ministry of Coal has allotted Bhivkund coal block to Aurangabad Power Company Limited (APCL), a Special Purpose Vehicle (SPV) of MSEDCL. This coal mine is situated in Wardha Valley, Dist. Chandrapur, Maharashtra. As per the preliminary estimations this coal block is having 100 MMT of ‘E’ grade geological reserve with 2.27 MT per annum of extractable reserves. The allotment of coal block was based on the condition that coal from such coal block will be utilized only for setting up a Greenfield power project</p>	<p>➤ In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage. Such arrangement shall be for the quantity of fuel required to generate power from the power station at Normative Availability for the total installed capacity for the term of the PPA.</p> <p>➤ In case of imported coal,</p>	<p>APCL, presently a subsidiary of MSEDCL had started development activities for the said project including land and water arrangements. Project site proposed by Mahagenco has not been found suitable by MoEF for thermal power project. If all such activities are started again then it will again take another 1-2 years, which includes time to be taken in selection of new project site. Presently there are several projects</p>

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
	<p>under the tariff based competitive bidding route. Coal allocation letter and other available documents related to coal block shall be made available to the prospective bidders 45 days prior to the bid deadline.</p> <p>➤ State Power Generation Company 'Mahagenco' has already initiated process of development of coal block and has made applications for required clearances, appointed consultants for necessary reports. After completion of bidding process, MSEDCL would transfer entire Special Purpose Vehicle (SPV) i.e. Aurangabad Power Company Ltd (APCL) including all rights available to MSEDCL pertaining to Bhivkund Coal Block to the Successful Bidder. After that MSEDCL will not be liable for any acts or omissions of Successful Bidder. Successful Bidder shall have to reimburse all expenditures incurred by Mahagenco on the development of coal block. The exact amount to be reimbursed by the Successful Bidder shall be intimated 10 days prior to the bid deadline to all prospective bidders.</p>	<p>the Bidder shall have either acquired mines having proven reserves for at least fifty percent (50%) of the quantity of coal required to generate power from the power station at Normative Availability for the total installed capacity OR shall have fuel supply agreement for at least fifty percent (50%) of the quantity of fuel required for a term of at least five (5) years or the term of the PPA (which ever is less) to generate power from the generation source for the total installed capacity for the term of the PPA.</p> <p>➤ In case of domestic gas, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for the quantity of fuel required to generate power from the generation source for the total installed capacity for</p>	<p>coming in the State of Maharashtra which are at an advance stage of development. Hence in view of ensuring timely procurement of power it is proposed that instead of re-initiating project development activities, coal from Bhivkund coal block can be utilized for power generation.</p>

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
	<ul style="list-style-type: none"> ➤ As per allocation letter given by Ministry of Coal, Successful Bidder has to submit a bank guarantee to MoC within three months of completion of bidding process. Also, in case any bank guarantee is provided by MSEDCL/Mahagenco in lieu of the coal block to any state/central authority, same shall be given back to back by the Selected Bidder to MSEDCL/Mahagenco. ➤ At the time of Transfer to the successful bidder, SPV will be free from any form of encumbrances / liabilities. MSEDCL represents that there are no creditors (secured or unsecured), liabilities, obligations, loans etc. in the balance sheet of the SPV. MSEDCL also represents that there are no pending, potential or threatened claims / litigations (statutory or non - statutory) against the SPV as on the date of this RFP. MSEDCL agrees to indemnify and hold harmless and defend the Successful Bidder against any and all costs, expenses, losses, damages etc. (including direct, indirect and consequential) arising 	<p>the term of the PPA.</p> <ul style="list-style-type: none"> ➤ In case of RLNG, the Bidder shall have made firm arrangements for fuel tie up by way of fuel supply agreement for at least fifty percent (50%) of the quantity of fuel required for a term of at least five (5) years or the term of the PPA (which ever is less) to generate power from the generation source for the total installed capacity for the term of the PPA. 	

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
	<p>out of any breach, inaccuracy or incompleteness of any of its declaration, representation or warranty in relation to the transfer of the SPV.</p> <ul style="list-style-type: none"> ➤ The Successful Bidder shall have ultimate responsibility to develop the Bhivkund coal block in synchronization with the power project as per the conditions laid down in allocation letter and to obtain all clearances i.e. Environmental Clearance, Forest Clearance. Milestones for development of coal block will be determined in consultation with PFC & M/s MSEDCL. ➤ Entire Coal of Bhivkund coal block will be utilized for power generation equivalent to Contracted Capacity which shall be for the exclusive consumption of MSEDCL and no coal shall be sold, delivered, transferred or disposed off except for the stated captive mining purposes except with the previous approval of the Central Government. All taxes, royalties and duties before/after development of the coal block shall be borne by the Selected 		

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
	<p>Developer. Successful Bidder shall be responsible to supply full Contracted Capacity as per the terms of PPA. If actual power generation from utilization of coal from Bhivkund coal block is less than the Contracted Capacity, arrangement of coal for additional power generation upto Contracted Capacity shall be the responsibility of the Successful Bidder. No exemption shall be given to the Successful Bidder with regard to the quantum of Contracted Capacity after signing of PPA due to shortage of coal from Bhivkund coal block. Further, the Successful Bidder shall be responsible for developing the coal block as per stipulated timelines; and reporting the monthly progress on mine development activities to MSEDCL. In the event of any delays in development of coal block, MSEDCL shall be the deciding authority.</p>		
Power Generation Source, Notification Point (6)	<p>➤ Bidders have to supply power from a coal based Greenfield power project. Existing Projects are not allowed to participate in the bidding process.</p>	<p>➤ Bidders are free to supply from any source of power generation including but not limited to hydel power. In case supply of power is proposed</p>	<p>In accordance with the allocation letter given by Ministry of Coal, this coal block has been allotted for the development of Greenfield power project. Hence in order to</p>

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
		from a hydel source the hydrology risk shall be entirely borne by the Bidders. However, if the available capacity of the Seller from a generating station is in excess of the total Contracted Capacity of the Seller, then this excess capacity shall be at the disposal of the Seller.	fulfil the said condition it is proposed that bidder have to supply power from coal based Greenfield power generation plant.
Existing Projects (Omission)	➤ Existing projects are not allowed to participate in the bidding process	➤ Existing projects are also allowed to participate in the bidding process.	As explained in the above column coal block has been allotted for the development of a Greenfield project. Also all existing projects are assumed to have fuel requirement already tied up. Hence it is proposed that only new project should be allowed to participate in the bidding process.
Trading licensees (Omission)	➤ Trading licensees are not allowed to bid	➤ In SBD for Case-1 bidding process trading licensees are also allowed to bid	In this bidding process, synchronized development of coal block and power project is the responsibility of the bidder. If the power project developer is different from the bidder, the

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
			power plant developer will not directly responsible against the bidding process through the terms of this PPA which may result in delay in project. Further the allotment conditions requires this block to be used for a Greenfield power project. Traders by their very nature offer for sale what already exists.
Customisations in respect of Request for Proposal (RFP)			
No. of bidders	Entire capacity shall be offered by single bidder only.	More than one bidder may offer power from their projects	
Technology, Notification point (4)	The Bidder is free to choose any coal based power generation technology, including but not limited to sub-critical / supercritical	The Bidder is free to choose any power generation technology, including but not limited to sub-critical / supercritical, open / combined cycle, etc	Since coal block is being provided bidder is to choose any coal based power generation technology.
Clause 2.4 Bidding Process sub clause no.2.4.1.1	The Bidder has to quote for a quantum of power within the Requisitioned Capacity range for the entire term of the PPA.	The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the entire term of the PPA, subject	Bidder has to quote for the entire quantum of Requisitioned capacity, minimum 500 MW and maximum 660 MW.

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
(B) Envelope II- Financial Bid point no. iv.		to the Minimum Bid Capacity	
Clause 2.5 sub clause no. c)	The Procurer reserves the right to accept the offer of the Bidder for Requisitioned Capacity of power.	The Procurer/ Authorized Representative reserves the right to accept the offer of the Bidder for any quantum of power up to the quantum offered by it, subject to the Minimum Bid Capacity, and considering the balance Requisitioned Capacity (after considering the quantum of power offered by Successful Bidder(s) in Clause Error! Reference source not found.).	
Annual Escalation Rate, Clause no. 3.4.4	For actual payment of tariff relevant factors based on Captive coal mine are specified.	For actual payment of tariff All scenarios available in SBD i.e relevant factors shall be applied based on Captive coal mine, linkage based coal, Imported coal, Imported & Domestic Gas	As in present case scenario of captive coal mine is applicable , all other scenarios are not applicable

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
		pipeline etc.	
Clause no. 3.5 Selection of Successful Bidder steps	<p>The Bidder with the lowest Levellised Tariff shall be declared as the Successful Bidder.</p> <p>Any increase / decrease in the Requisitioned Capacity can be made only with the approval of the Appropriate Commission</p>	<p>The Bidder with the lowest Levellised Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.</p> <p>The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.</p>	Selection of successful bidder process stands completed once the Lowest quoted (L1) bidder is selected.
Deviations in respect of Power Purchase Agreement (PPA)			
Article 9.3 (ii) (d) Non-Natural Force Majeure	Since coal block is being provided by MSEDCL, disallowance or denial of Environment Clearance by competent authority may be considered as force	No such provision	if coal block is not developed in synchronization due to unavoidable circumstances, this condition will allow the successful bidder to use

Clause No.	Proposed Clause in the Document	Clause as per Case I SBD issued by MoP	Reason for change
Events	<p>majeure.</p> <p>However in case if Power plant is ready, but coal block is not developed due to any unavoidable reasons and in such a case if bidder uses alternative source of fuel the relevant cost will be pass through subject to approval by Appropriate Commission and written consent of MSEDCL.</p>		alternative source of coal and ensure timely supply of power to MSEDCL.
ARTICLE 11.1.1. (i)(b): Events of Default & Termination	<p>Seller Event of Default:</p> <p>If Seller.... (b) fails to develop Bhivkund coal block as per the Milestones determined in consultation with PFC and MSEDCL...</p>	No such provision	This is to ensure timely development of coal block by Successful Bidder

18. MSEDCL vide their letter dated May 9, 2011 submitted the response to the Record of Proceedings (RoP) issued on January 18, 2011.

S no	Description	MSEDCL Response
1.	<p>The Commission enquired that the coal blocks are allocated under Government dispensation or otherwise.</p> <p>Accordingly, MSEDCL to study the Ministry of Coal Guidelines for Coal Linkage and Coal Blocks Allocation and outline whether the proposed manner of developing Bhivkund coal block was at any conflict with the extant guidelines surrounding coal block allocation.</p>	<p>Regarding the issue of classification, as per the allocation letter dated 17.06.2008 (copy enclosed), coal from the block would be utilized in a '<i>Greenfield project to be set up by M/s. Aurangabad Power Company Ltd</i>'. However, it is not so mentioned that the block is allocated under Govt. dispensation or otherwise. Further, it is observed that as per the MoC website, Bhivkund coal block allocated to M/s APCL is described as an Ultra Mega Power Project (UMPP) block.</p> <p>Accordingly, vide letter no CE/PP/MSEDCL/600MW/ 9069 dated 19.3.2011 MSEDCL has requested MSPGCL to take up the matter with MoC for confirmation that coal block is allotted under Govt. dispensation, UMPP or otherwise. Mahagenco vide letter MD/Greenfield/Bhivkund/1798 dtd 07.04.2011 has requested MoC for clarification.</p>
2.	<p>The following documents pertaining to corporate information about M/s APCL to be furnished to MERC.</p> <ul style="list-style-type: none"> • A copy of the Memorandum and Articles of Association of M/s. APCL along with composition of Board of Directors/ Promoter Directors. • A copy of Registration Certificate from Registrar of Companies and a copy of Certificate of Commencement of Operation/Business 	<p>MSEDCL submitted the copies of the following documents:</p> <ul style="list-style-type: none"> • Memorandum of Association dated 16.04.2007 • List of Directors of M/s APCL at the time of incorporation and as on date • List of shareholders of M/s APCL at the time of incorporation and as on date • Registrar of Companies (RoC) Certificate of Incorporation dated 20.06.2007 • RoC Certificate of Commencement of Business dated 27.11.2007 • Articles of Association of APCL
3.	<p>MSEDCL to obtain Terms of Reference (ToR) from the MoEF immediately</p>	<p>Application for ToR has been submitted by MSPGCL to MoEF on June 21, 2010. ToR has not yet been received from MoEF.</p>

S no	Description	MSEDCL Response
4.	a. Whether the development rights of coal blocks will be transferred to successful bidder. (Point 5, of RFP under Fuel Notification)	<p>This issue has been re-discussed by MSEDCL management and decided that the SPV, M/s APCL will be transferred to successful bidder to ensure expeditious development of coal block & power project. Transfer of 100% shareholding of SPV is as per Case 2 SBD guidelines. As per clause 2.1.3.2 in RfP for Case 2 SBD: <i>'Within sixty (60) days of the issue of the Letter of Intent, the Selected Bidder shall:</i></p> <ul style="list-style-type: none"> <i>i. ...</i> <i>ii. execute the Share Purchase Agreement;</i> <i>iii. after fulfilling the conditions specified in sub-clauses (i) and (ii) above, purchase from [name of the seller of shares of the SPV] and its nominees on the Closing Date, who shall sell to the Selected Bidder, 100% of the equity shareholding of the [name of the SPV]</i> <p><i>... Provided further that, after the date of acquisition of 100% of the equity shareholding of [name of the SPV] by the Selected Bidder, (a) the authority of the Authorised Representative in respect of the bid process shall forthwith cease and any actions to be taken thereafter will be undertaken by the Procurer themselves or through any other authorised representatives of the Procurer, (b) ..., (c) all other rights and obligations of [name of the SPV] shall be of the Seller and (d) any decisions taken by [name of the SPV] as the Authorised Representative prior to the Effective Date, shall continue to be binding on Procurer.'</i></p> <p>Successful Bidder shall have to reimburse all expenditure incurred by MSPGCL/MSEDCL for development of coal block. Exact amount to be reimbursed shall be intimated 10 days (against 45 days mentioned in the RfP submitted for approval of. Commission) prior to bid deadline, to all bidders. Also, Successful Bidder has to submit a Bank Guarantee to</p>

S no	Description	MSEDCL Response
		MoC within three months of completion of bidding process. In case any bank guarantee is provided by MSEDCL/Mahagenco in lieu of the coal block to any state/central authority, same shall be given back to back by the Successful Bidder to MSEDCL/Mahagenco.
	b. Obtain Reports prepared by MPCB on critically polluted area for mitigating the pollution levels	As informed in our response dated 18.1.2011, MPCB has indicated to CPCB, vide letter no MPCB/APAE/TB-1/B-137 dated 6.12.2010 that the coal block is 2 km away from Ballarpur city but not within the influence of Critically Polluted area (CEPI) of Chandrapur. Further, CPCB vide letter B-29016/ESS/2010/3713 dated 2.2.2011 has forwarded the said letter of MPCB for further action to MoEF.
	c. MSEDCL to study the MoC guidelines for coal linkage and coal block allocation	As discussed in point (1) above
5.	MSEDCL to ensure that it has obtained letter from Director, MoEF that Bhivkund coal block is not in 'No-Go Area'.	As informed in our response dated 18.1.2011, Mahagenco has requested MoEF vide letter no CGM/CEHSU/Bhivkund Coal Proj/40 dated 12.1.2011 to give comfort letter regarding the same. Formal response on the same is awaited. It is submitted to Honourable Commission that Dy Conservator Forests has permitted drilling of sampling boreholes in the entire block (~25 km ² area) excluding 7.31 ha area which has prima facie been identified as zudpi jungle. As informed by MSPGCL, 56 boreholes have been drilled by Maheshwari Mining and the draft Geological Report for the block is received on dtd 19.04.2011. Thus, Bhivkund block will presumably be in Go-Area.
6.	MSEDCL to ensure that Bhivkund coal block is not near (within 25 km radius) of Tiger Reserve in Chandrapur (Andheri-Tadoba Tiger Reserve) and obtain letter from Chief Wildlife Warden regarding the same	Principal Chief Conservator Forests (PCCF), Vanbhavan, Nagpur has been requested by Mahagenco vide letter SE(C)/CCC/CHN/Tech/28 dt. 8.12.2010 and letter SE(C)/CCC/CHN/Tech/11 dt. 13.1.2011. Personal visits have also been made by Mahagenco officials. A formal

S no	Description	MSEDCL Response
		response from PCCF on the same is awaited.
7.	As block is allocated for project under Case 2 bidding, whether power plant may be setup through Case 1 bidding process with the same captive mines?	Land, water and other clearances for the power plant are not available with MSEDCL. This hybrid bidding process (modified Case 1) has been adopted to ensure fast-track coal block development and capacity addition. MSEDCL vide letter dated 3.3.2011 has requested MSPGCL to take up the matter with MoC and MoP. MSPGCL vide letter MD/ Greenfield/Bhivkund/349 dtd 25.03.2011 intimated MoC and MoP about modified Case 1 bid process.

19. The Commission vide its Notice dated May 12, 2011 scheduled a hearing in the matter on May 31, 2011 at 11.00 hrs. in the presence of authorised Consumer Representatives.

20. During the hearing held on May 31, 2011, Shri. A.S. Chavan, CE (PP) and Shri. Supriyo Saha, Consultant, Feedback Venture appeared on behalf of MSEDCL, and Ms. Deepali Wandkhede appeared on behalf of Indo Rama Synthetics (I) Ltd. Shri. Supriyo Saha made the presentation explaining details of the deviations made to keep the bid documents in line with the allocation of Bhivkund Coal Block in the Standard Bid Document to make bid documents suitable for Case 1 Bidding.

21. MSEDCL confirmed that there are no other deviations in the Standard Bidding Document for Case 1 bidding other than those made to bring it in line with the allotment of Bhivkund Coal Block by Ministry of Coal.

22. The Commission directed MSEDCL to give proper explanation along with the definition of “*Existing project*” in the Bid Documents for clarity to the Bidders. It was clarified that the Bhivkund Coal can be used only in a ‘Greenfield Project’ and not for expansion of an existing project.

DECISION WITH ANALYSIS

23. Having heard MSEDCL and Indo Rama Synthetics (I) Ltd. and after considering the material placed on record, the Commission is of the view as under:

24. In accordance with the provisions of the CBG, the Commission has to approve the deviations in the Standard Bidding Documents before they are finally issued to the prospective bidders. Initially, the Petitioner had submitted a number of deviations from the Standard Bidding Documents of the MoP, however, later on April 28, 2011, the Petitioner has submitted revised bidding documents consisting of Request for Proposal and the draft Power Purchase Agreement (PPA) under Case 1 and as per Standard Bidding Documents with some deviations with the caveat that the deviations that were considered to be restrictive by the Commission have been omitted and only necessary changes which are required to bring it in line with coal block allocation letter of Ministry of Coal were changed. Accordingly, the deviations finally proposed by MSEDCL and the findings of the Commission thereon are as follows –

25. (i) As regards deviations on Bid Bond, MSEDCL has reverted back to Case 1 SBD issued by MoP. The objections raised by Indo Rama Synthetics (I) Ltd. the Intervener, gets satisfied as now there is no increase in Bid Bond amount.

As regards the other issues raised by Indorama that the proposed deviation of Technical Qualification in the RFQ, the Commission had advised MSEDCL to reconsider the same since this may result in less number of participants/bidders in the bidding process. MSEDCL has confirmed to the SBD Documents and technical qualification criteria for the bidder has been removed from the Bidding Documents. \

(ii) As regards the proposed deviations on Fuel that after completion of bidding process, MSEDCL would transfer entire Special Purpose Vehicle (SPV) i.e. Aurangabad Power Company Ltd (APCL) including all rights available to MSEDCL pertaining to Bhivkund Coal Block to the Successful Bidder, the Commission agrees that in view of ensuring timely procurement of power instead of re-initiating project development activities, coal from Bhivkund coal block can be utilized for power generation.

(iii) As to whether '*Existing Projects*' are not to be allowed to participate in the bidding process, the coal block has been allotted for the development of a Greenfield project, and all existing projects are assumed to have fuel requirement already tied up. The Commission agrees with the said deviation that '*Existing Projects*' should not be allowed to participate in the bidding process. MSEDCL is directed to suitably modify the definition of "*Existing project*" in the Bid Documents for clarity to the Bidders.

(iv) As regards source of supply, the MoP SBD provides that “Bidders are free to supply from **any source of power** generation including but not limited to hydel power.” However, MSEDCL has proposed a deviation that “*Bidders have to supply power from a coal based Greenfield power project. Existing Projects are not allowed to participate in the bidding process.*” . The Commission agrees with said deviation of the MSEDCL as the coal block has been allotted for the development of a Greenfield project. Also all existing projects are assumed to have fuel requirement already tied up. Therefore, only new project should be allowed to participate in the bidding process and the power generation should be from the coal extracted from the Bhivkund Coal Block.

26. As regards the condition of the Trading Licensees not being allowed to bid for the said projects is concerned, the Commission agrees with the view of MSEDCL that synchronised development of coal block and power project is the responsibility of the bidder. If the power project developer is different from the bidder, the power plant developer will not be directly responsible against the bidding process through the terms of this PPA, which may result in delay in project. As the said project is hybrid Case 1 bidding and the procurer has the coal block allocation for generation of power from a Greenfield power project. The Bidder has to develop the coal block to supply coal as per the requirement of the power plant, it would be appropriate that the Trading Licensees are not allowed to bid for the projects.

27. The SBD stipulates that more than one bidder may offer power from their projects. However, MSEDCL proposed that the entire capacity shall be offered by single bidder only. The Commission agrees on the view of the MSEDCL as this project is based on the allocation of Bhivkund Coal block, therefore it would be appropriate that only single bidder develops the coal block and the coal from the block is utilised for the entire generation capacity.

28. As far as Article 9.3 (ii) (d) ‘Non-Natural Force Majeure’ Events is concerned Disallowance of Environmental; clearance by MoEF may be considered as natural Force Majeure. Since, the MoEF IA division (Coal Mining) vide letter dated August 21, 2010 has asked CGM, MSPGCL to seek clarifications in their Terms of Reference. The said Clarifications is as under:

“You are required to obtain clarification from National Tiger Reserve Authority whether the project falls in the buffer zone of Tadoba-Andheri Tiger Reserve?”

MSEDCL has approached Principal Chief Conservator of Forests (PCCF), Nagpur vide letters dated December 8, 2010 and January 13, 2011 and the said clarification is still awaited from the PCCF, Nagpur. The Commission approves the said deviation in the Standard Bidding Documents considering the present status of the clarification sought by MoEF. The Commission also directs MSEDCL to follow up the issue with PCCF, Nagpur.

29. As regards Clause 2.4 Bidding Process sub Clause no.2.4.1.1, the Bidder has to quote for a quantum of power within the Requisitioned Capacity range for the entire term of the PPA, The Commission agrees with the said deviation as Bidder has to quote for full requisitioned capacity of 500 to 660 MW, since coal for entire power project is to be sourced from Bhivkund Coal block.

30. SBD stipulates that "*For actual payment of tariff All scenarios available in SBD i.e relevant factors shall be applied based on Captive coal mine, linkage based coal, Imported coal, Imported & Domestic Gas pipeline etc.*" However, MSEDCL proposes that "*For actual payment of tariff relevant factors based on Captive coal mine are specified.*" The reasons given is that "*As in present case scenario of captive coal mine is applicable , all other scenarios are not applicable.*" The Commission agrees with MSEDCL that the project is developed for utilisation of entire coal from the Bhivkund Coal block and the actual payment of tariff will be on the relevant factors based on Captive coal mines.

31. The SBD stipulates that "*The Bidder is free to choose any power generation technology, including but not limited to sub-critical / supercritical, open / combined cycle, etc.*" However, MSEDCL proposes that the Bidder is free to choose any **coal based** power generation technology, including but not limited to sub-critical / supercritical. The Commission agrees with MSEDCL as the entire coal from the Bhivkund block will be used in the proposed power plant and hence the Bidder is free to choose any coal based power generation technology.

32. Since the deviations in respect of Request for Proposal (RFP), Customisations in respect of Request for Proposal (RFP) and Deviations in respect of Power Purchase Agreement (PPA) are either for customisation in accordance with the SBD of Case 1 and only necessary changes which are required to bring it in line with coal block allocation letter of Ministry of Coal are being changed, the Commission approves the RFP and PPA.

33. The Commission directs MSEDCL to issue the Bidding Documents to Bidders after incorporating the directions above, and submit the same to the Commission for record purposes.

With this Order, the Commission disposes of MSEDCL's Petition in Case No. 88 of 2011.
The IA filed by Indo Rama Synthetics (I) Ltd. also stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman