

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

OP No : 15/2021

Present: Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)

Date of Hearing: 08.04.2021

In the matter of : Approval of allowing 15% of price preference and 50% purchase preference for MSME's in KSEBL tender for empanelling contractors for implementing Grid Connected Rooftop Solar PV Plants of various capacities aggregating to 200 MWp under Soura Subsidy Scheme In Domestic Sector, Kerala.

Petitioner : C M Varughese (Secretary)
KREEPA, Renewable Energy Centre.

Petitioner represented by : Sri. K Iyer, President
Sri. C M Varughese, Secretary
Sri Jose Kallookkaran, Executive Member

Respondent : Kerala State Electricity Board Limited (KSEB Ltd)
KSEB Ltd represented by : Sri Premkumar P K, Dy. Chief Engineer, TRAC
Sri Nasarudeen A, Deputy Chief Engineer, REES

Order dated 03.05.2021

1. Kerala Renewable Energy Entrepreneurs and Promoters Association (hereinafter referred to as the petitioner or KREEPA) filed a petition on 05-03-2021, before the Commission with the following prayers:
 - (1) Issue necessary directions to M/s KSEB Ltd to finalise the tender No. 5/SOURA- Subsidy- Domestic/2020-21 dated 15.02.2021, only after considering G.O. (Rt) No 5382 / 2020/ Fin dated 18.09.2020.
 - (2) As KSEB Ltd may finalise the tender without considering the G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020 and shall loose opportunities for the MSMEs of Kerala who are struggling for survival in Covid-19 period, the petitioner request before the Commission to post the hearing at the earliest.
2. The summary of petition filed by KREEPA is given below:
 - (1) Kerala Renewable Energy Entrepreneurs & Promoters Association (KREEPA) was established in the year 2005, with objective of accelerating the RE penetration on state level.

- (2) KSEB Ltd, vide Tender No.5/SOURA-Subsidy-Domestic/2020-21 dated 15.02.202, invited tender for empanelment of Contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala in line with the Phase II subsidy programme of the MNRE.
- (3) The State Government vide the order G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020, issued the following orders for extending the benefit of public procurement policy for self reliance- announced by the GoI- to the MSMEs and PSUs in the State.

The relevant portion of the G.O is extracted below.

"Considering the new guidelines of the Govt. of India and the incentives announced for local manufacturers in other States, it is essential that a new preferential policy for procurement from local MSMEs and State PSUs is implemented for reviving them in the current difficult economic situation arising from the Covid-19 pandemic."

The order further states that *"all State PSUs and Local MSMEs in the State shall get a **Price Preference up to 15%** in all procurement of State Government Departments, Organisations, Local Self Government institutions and Public Undertakings. This means that wherever State PSUs/ local MSMEs quote a rate within a 15% price range of the L1 bidder, the State PSU/local MSMEs either singly or jointly as the case may be, would be entitled to get up to 50% of the order quantity at the lowest rate quoted among them. If there are multiple State PSU/ local MSME vendors in this category, they will be given equal proportions of this 50% order."*

With reference to the purchase preference, the said order stated as follows.

*"in any tender, if no local participating State PSUs and local MSMEs quotes within the price band of L1+15%, they shall still be entitled to an opportunity to **supply up to 50%**, of the total order by bringing down their price to L 1 Price. In such a scenario, the State PSU and local MSME, accepting such an invite, either singly or jointly, as the case may be, shall be allowed to supply up to 50% of the order quantity if there is only one such bidder; or in equal proportions out of the 50%, if there are multiple bidders in this category.*

- (4) The tender of M/s KSEB Ltd dated 15.02.2021, has not taken into consideration the Government Orders for giving price and purchase preference to the MSMEs in Kerala. The State MSMEs are desirous of participating in the 200MW tender bid, the largest of its kind in Kerala. During the current pandemic situation, getting a share of this tender at affordable and just rate will be a great relief to these MSMEs struggling to survive during the Covid -19. It is to be noted that Roof Top Solar installations needs long term local servicing which shall be possible only by Local MSMEs.

- (5) KREEPA, representing MSMEs undertaking Solar EPCs in Kerala, represented to State Nodal Officer, Soura Project, KSEB Ltd vide letter No. KREEPA/KSEB/1732/21 dated 23rd February 2021 requesting to consider the Govt. of Kerala Order to allow price and purchase preference as per the GO dated 18.09.2020. But, during the Pre-Bid meeting on 26th February 2021, KSEB Ltd informed that the request of the petitioner cannot be considered.

The Commission vide Order dated 30.12.2020 in OP No. 46/2020, directed that KSEB Ltd shall implement the GO (Rt) No. 5382/2020/Fin dated 18.09.2020 strictly complying the provisions of price preference and purchase preference mentioned therein.

Hence, to enable MSMEs take part actively in the tender and become part of this prestigious tender, the preference as per above GO shall be given on both price and purchase.

3. The Commission admitted the petition as OP 15/2021 and hearing was conducted on 08.04.2021 at 11 AM through video conference. Sri. C.M. Varghese, Secretary, KREEPA presented the matter on behalf of the petitioner. Sri. Premkumar, Dy.CE, TRAC and Sri. Nasarudeen A, Dy.CE, Nodal Officer, SOURA project submitted the comments on behalf of the respondent KSEB Ltd. The summary of deliberations is given below.

- (i) KREEPA submitted that, the State Government vide the order G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020, issued orders for extending the benefit of public procurement policy for self reliance- announced by the Govt- to the MSMEs and PSUs in the State. However, in the tender invited by KSEB Ltd on 15.02.2021, for empanelment of Contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector, the provisions in the said GO is not included. The petitioner took up the issue with KSEB Ltd during the pre-bid meeting held on 25.02.2021, but KSEB Ltd informed that the request of the petitioner cannot be considered.

In a similar case, the Commission vide the Order dated 30.12.2020 in OP No.46/2020 directed KSEB Ltd to implement the GO(Rt) No. 5382/2020/Fin dated 18.09.2020, strictly complying the provisions of price preference and purchase preference mentioned therein.

- (ii) KSEB Ltd submitted that, the petitioner has not cited any provisions in the Regulations or Electricity Act, 2003 under which the petitioner had filed the instant petition. The matter involved in the petition relates to dispute in the tender conditions of the tender invited by KSEB Ltd as per the MNRE guidelines for empanelment of contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala. Such a dispute on the tender documents of a licensee

are not coming under the purview of Regulatory Jurisdiction. Since the project is partly funded through subsidy from MNRE and the tender conditions are based on MNRE guidelines, dispute on the tender conditions are to be referred to MNRE.

The prayer of the petitioner to consider the GO dated 18.09.2020 regarding the purchase and price preference is contrary to the guidelines issued by the MNRE. The above GO refers to the price and purchase preference related to the procurement of goods/ materials by Central/ State Government and PSUs, whereas the tender of KSEB Ltd is for empanelment of solar developers. The actual procurement of solar systems is made by the domestic consumers from among the empanelled contractors. As per the MNRE guidelines the obligation of KSEB Ltd is limited to publish the empanelled list ensuring quality and post installation service at a uniform price.

MNRE vide the guidelines dated 30.01.2020 clarified that, all the bidders within the price bracket L1+25%, shall be empanelled, provided they agree to match with L1 price. MNRE guidelines do not provide any type of preference among the bidders.

As per the MNRE, the allotted quantum of 200MW capacity have to be implemented by February 2022 to get the subsidy benefit for the consumers and the subsidy expected to be about Rs 400 crore as CFA. If the project is not completed within the time limit, it will lead to deprival of benefits to the consumers of Kerala.

MNRE is regularly monitoring the activities and progress of the programme and any deviation from the guidelines will results in adverse action including non-release of subsidy. Hence, KSEB Ltd is not in a position to modify any provisions in the bid and if the petitioner is aggrieved by any provisions in the guidelines, it would be appropriate to approach MNRE.

KSEB Ltd further submitted that, some members of the petitioner KREEPA filed a Writ Petition WP (C) No. 5886/2021 before the Hon'ble High Court of Kerala to stay the bidding process initiated by KSEB Ltd dated 15.02.2021. The Hon'ble High Court, after hearing the parties, vide the judgment dated 09.03.2021 ordered as follows.

“Technical qualifications which the petitioner challenges is stated to have been provided on the basis of the requirements of the KSEB. After hearing both sides, I don't find that any provisions has been incorporated so as to exclude the petitioner. The learned senior counsel submits that the demand of the petitioner in their representation were considered and the reply was published in the website on 15.02.2021 and orders were passed on 15.02.2021. The said order has not been produced by the petitioner in the Writ Petition. I don't find any reason to interdict the proceedings”.

- (iii) The petitioner further submitted that, as per the Order of the Ministry of Commerce and Industry, GoI dated 4th June 2020 in File No. P-

45021/2/2017-PP (BE-II), a purchase preference of 50% shall be given to local suppliers whose goods, services or works offered for procurement, has local content equal to or more than 50% as defined in the said Order. The local content defined in the said Order as “ ‘Local content’ means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all custom duties) as a proportion of the total value, in percentage.

However, KSEB Ltd in their bid dated 15.02.2021, is not intending to implement the Order of the Gol dated 04.06.2020, on the pretext of MNRE guidelines.

4. Based on the deliberations on the subject matter, the Commission vide the daily order dated 12.04.2021, issued the following directions to the petitioner KREEPA and respondent KSEB Ltd for compliance.
 - (1) KSEB Ltd shall take up the issue with MNRE as to, whether the Order of the Ministry of Commerce and Industry, Gol dated 04.06.2020 regarding the purchase preference be implemented in the tender dated 15.02.2021 ‘for empanelling contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala in line with the Phase II subsidy programme of the MNRE. KSEB Ltd shall pursue to get the clarification immediately from MNRE.
 - (2) Till KSEB Ltd gets clarification on the above from MNRE, KSEB Ltd shall not finalise the tender.

5. The respondent KSEB Ltd vide the counter affidavit dated 08.04.2021 submitted the following.
 - (1) The matter involved in the petition relates to the dispute in the tender conditions of the tender invited by KSEB Ltd as per MNRE guidelines for implementation of phase-II of the Grid Connected Rooftop Solar Programme vide Notification No. 318/331/2017-Grid Connected Rooftop dated 20th August 2019. Such disputes on the tender documents of a licensee are not coming under the purview of Regulatory Jurisdiction. Since the project is funded by subsidy from MNRE (40%) and the tender conditions are based on MNRE guidelines disputes on the conditions are to be referred to MNRE.
 - (2) The prayer of the petitioner to consider the GO dated 18.09.2020 in the empanelment tender is inappropriate, unfit and also contravene the guidelines issued by MNRE. As per the above GO, price preference and purchase preference is related to the procurement of goods and materials by Central/ State Governments and PSU, where as the present tender is floated for empanelment of developers. The actual procurement of solar systems are made by individual domestic consumers, based on their free will, among the empanelled venders. The

obligation of KSEB Ltd is limited to publish the list of empanelled list of vendors, ensuring quality and post installation services, at a uniform price applicable for all empanelled vendors.

- (3) The prayer of the petitioner is against the provisions of MNRE guidelines on the following matters.
 - **L1 matching.** As per MNRE guidelines all bidders who fall in the range of L1+25% should match with L1 to become eligible for empanelment. However, the petitioner seeking price preference by allowing 15% price over L1.
 - **50% purchase preference.** MNRE guidelines give freedom to the consumers to select his developer among the empanelled vendor. However, the petitioners seeks to restrict this freedom and wants 50% of the consumers requirements shall be met from him.
 - (4) As per the MNRE guidelines, the phase-II Roof Top Solar (RTP) is implementing through DISCOM through its local offices. The implementing agency DISCOMS are authorised to invite Expression of Interest for empanelment of agencies for supply, installation, testing and commissioning of roof top systems. To ensure quality and post installation services, the manufacturers of solar panels and system integrators fulfilling pre-determined technical and financial criteria would be allowed to participate in the bidding process. The selected bidders shall follow the quality control orders and standards issued by MNRE from time to time. The bidders within the price bracket of (L1+X% of L1) will be eligible for provided they agree to match with the price L1. The digit X may be decided by the implementing agency, and the 'X' shall not be more than 25.
 - (5) The Commission in its Order dated 11.03.2020 had emphasised on L1 matching, maintaining quality of the plant, ensuring after sale service, avoiding inordinate delay from the developers whose financial and technical criteria not matching with the tender condition.
 - (6) MNRE allocated 200MW Roof Top Solar plants to KSEB Ltd under subsidy scheme and the capacity shall be completed by February 2022. If the schemes can complete within the time frame, MNRE will grant benefits amounting to Rs 400.00 crore for the consumers as CFA, however if the project is not completed within the time frame, it will lead to deprivation of the benefits for the consumers of Kerala.
 - (7) MNRE is regularly monitoring the activities and programmes and its progress. Any deviation from the notified guidelines will result in adverse action including non-release of subsidy. Accordingly, KSEB Ltd is not in a position to modify any provisions in the bid and if the petitioner is aggrieved by any provisions in the guidelines, it would be appropriate for the petitioner to approach MNRE.
6. Subsequently, KSEB Ltd vide the letter dated 13.04.2021 submitted the following.

- (1) KSEB Ltd submitted the copies of the Writ Petition WP No. 5886/2021 and Order dated 09.03.2021 of the Hon'ble High Court of Kerala.
- (2) KSEB Ltd further submitted that, before going into the merit of the petition, the subject matter now under disputes in the present petition is the same subject matter which is pending before the Hon'ble High Court of Kerala in WP© 5886/2021 and hence this Commission lack jurisdiction to entertain the present petition in view of Section 10 of the Code of Civil Procedure, 1908. The Section 10 of the Code of Civil Procedure, 1908 prevents the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel suits in respects of the same cause of action, subject matter and also for the same relief.
- (3) Hon'ble High Court in the Order dated 09.03.2021 has examined the matter in detail and found that, technical and financial qualifications which the petitioner challenges have been provided on the basis of requirement of KSEB Ltd and also found that no provisions has been incorporated in the tender conditions so as to exclude the petitioner from the tender proceedings. Thus, the Hon'ble Court found no reason to interdict in the tender proceedings.
- (4) In view of the facts and legal provisions as above, and in view of the pendency of the matter before the Hon'ble High Court of Kerala, KSEB Ltd request that the State Commission may dispose the petition as attracted by the provisions of Stay of suit as stipulated in Section 10 of the Code of Civil Procedure, 1908.

Analysis and Decision of the Commission

7. The Commission has examined in detail the petition filed by KREEPA, the arguments and submissions by the petitioner and KSEB Ltd during the hearing, written comments of the respondent KSEB Ltd, and other materials and records placed before the Commission during the deliberations of the subject matter, and decided as follows.
8. The prayer of the petitioner Kerala Renewable Energy Entrepreneurs and Promoters Association (KREEPA) is to issue directions to KSEB Ltd to finalize the tender No. 5/SOURA- Subsidy- Domestic/2020-21 dated 15.02.2021, only after considering G.O. (Rt) No 5382 / 2020/ Fin dated 18.09.2020.
9. The State Government vide the Order G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020, issued the following orders for extending the benefit of public procurement policy for self reliance- announced by the Gol- to the MSMEs and PSUs in the State. The relevant portion of the G.O is extracted below.

"(a) Price preference. All State PSUs and local MSMEs in the State shall get a Price Preference up to 15% in all procurement of State Government Departments, Organisations, Local Self Government institutions and Public Undertakings. This means that wherever State PSUs/ local MSMEs quote a

rate within a 15% price range of the L1 bidder, the State PSU/local MSMEs either singly or jointly as the case may be, would be entitled to get up to 50% of the order quantity at the lowest rate quoted among them. If there are multiple State PSU/ local MSME vendors in this category, they will be given equal proportions of this 50% order."

*"(b) Purchase preference: In any tender, if no local participating State PSUs and local MSMEs quotes within the price band of L1+15%, they shall still be entitled to an opportunity to **supply up to 50%**, of the total order by bringing down their price to L 1 Price. In such a scenario, the State PSU and local MSME, accepting such an invite, either singly or jointly, as the case may be, shall be allowed to supply up to 50% of the order quantity if there is only one such bidder; or in equal proportions out of the 50%, if there are multiple bidders in this category.*

Regarding the compliance of the above GO dated 18.09.2020, the Commission vide the Order dated 30.12.2020 in Petition OP No. 46/2020, issued the following directions to KSEB Ltd.

"KSEB Ltd. shall implement the Government of Kerala Order no. G.O (Rt) No.5382/2020/Fin dated 18.09.2020 strictly complying with the provisions of Price Preference and Purchase Preference mentioned therein."

10. The Commission examined in detail whether the State Government Order G.O (Rt) No.5382/2020/Fin dated 18.09.2020 can be implemented in the KSEB Ltd's tender dated 15.02.2021, and noted the following.

(1) The Ministry of New and Renewable Energy (MNRE), Government of India vide the Office Memorandum No. 318/313/2017 dated 20.08.2019– notified the 'operational Guidelines on implementation of Phase – II of Grid Connected Rooftop Solar Programme for achieving 40 GW capacity from Rooftop Solar by the year 2022'. The scheme covering the following components.

- (i) Component A: Setting up of 4000 MW of grid connected rooftop solar projects in residential sector with Central Financial Assistance (CFA).
- (ii) Component B: Incentives to Discoms based on achievement for installing additional grid connected rooftop capacity in all sectors over and above the base level, with the incentive being limited to the first additional 18000MW of rooftop capacity added in the country. Achievement above this level will not be eligible for any incentive.

As per the MNRE guidelines dated 20.08.2019, the Phase-II Grid connected solar program, is being implemented through the DISCOMs and its local offices as nodal points for implementation. DISCOMs will play a key role in expansion of RTS as they having a direct contact with

end user and they provide approval for installation, manage the distribution network and also have billing interface with rooftop owner.

- (2) As per the MNRE guidelines, the Central Financial Assistance under the component A, for setting up of 4000 MW of grid connected rooftop solar projects in residential sector is as follows.

| | |
|--|--|
| Type of residential sector | CFA (as percentage of benchmark cost or cost discovered through competitive process whichever is lower) |
| Residential sector (maximum up to 3 kW capacity) | 40 % of benchmark cost |
| Residential sector (above 3 kW capacity and up to 10 kW capacity) | 40 % up to 3 KW Plus 20% for RTS system above 3 kW and up to 10 kW |
| Group Housing Societies/Residential Welfare Associations (GHS/RWA) etc. for common facilities up to 500 kWp (@10 kWp per house), with the upper limit being inclusive of individual rooftop plants already installed by individual residents in that GHS/RWA at the time of installation of RTS for common activity. | 20 % |

- The implementing agency will get service charges @ 3% of eligible CFA for implementing the programme.
- The participating Government owned DISCOMs will be eligible to avail advance CFA up to 30% of the total CFA amount for the project.
- The DISCOM is authorised to disburse the CFA amount to bidders upon satisfactory completion of the project.

Further as per the MNRE guidelines, the implementing agency DISCOMS shall invite Expression of Interest for empanelment of agencies for supply, installation, testing & commissioning of the RTS system in residential premises. The beneficiary will have the option of installing the RTS system through any of the empanelled vendors. The vendor has to claim the CFA from the implementing agency DISCOM. The Government owned DISCOM will be eligible to avail advance CFA upto 30% of the total CFA amount for the project. The implementing agency will get 3% of the CFA as service charge. CFA is available only to the residential sector.

- (3) The paragraph 5.1.6 of the guidelines prescribes the procedure for empanelment of agencies by DISCOMS for implementing the project, which is extracted below for ready reference.

“5.1.6 The implementing agency i.e. Discoms or its authorised agency shall invite Expression of Interest for empanelment of agencies for supply, installation, testing & commissioning of RTS system in residential premises. To ensure quality and post installation services only manufacturers of solar panels and system integrators fulfilling pre-determined technical and financial criteria would be allowed to participate in the bidding process. The selected bidders shall follow the quality control orders and standards for all components of RTS system and its installation procedure, if any, issued by MNRE from time to time. All the bidders within the price bracket of (L1 + X% of L1) shall be empanelled. The digit “X” may be decided by the

agency and should be clearly indicated while inviting Expression of Interest. The digit "X" shall not be more than 25. Further, if total no. of empanelled agencies are found to be less than 5 in the acceptable band, then the DISCOM may also include those agencies who fall in $L1+(X+5)\%$ of L1, provided they agree to match L1."

- (4) Further MNRE vide the letter No. 318/331/2017_GCRT clarified as follows regarding the empanelment of agencies for implementing the scheme, which is extracted below.

"3. In this regard it is clarified that the all the bidders within the price bracket of $(L1+X\%$ of L1) or $L1+(X+5)\%$ of L1, as the case may be, shall be empanelled, provided they agree to match L1. That means, all empanelled bidders will match L1 as explained in para 5.1.6 of the guidelines. All the empanelled bidders should provide the services to the consumers at L1 rate which they have agreed."

- (5) MNRE vide the letter No. 318/63/2019-Grid Connected Rooftop dated 24.11.2020, allocated 200MW capacity to the State of Kerala, under Phase-II of Grid Connected Roof Top Solar Programme in the FY 2020-21. KSEB Ltd is the implementing agency. As per the para-5 of the allocation letter, "DISCOM are required to implement the programme through transparent bidding process within the time line prescribed under the guidelines (i.e., 15 months from the date of the allocation letter)." Accordingly, KSEB Ltd has to implement the scheme by February 2022.

11. KSEB Ltd, during the deliberations of the subject petition submitted that, the tender No. 5/SOURA- Subsidy- Domestic/2020-21 dated 15.02.2021, is invited for empanelment of Contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala, as per the Guidelines notified by the MNRE dated 20.08.2019 for the implementation of Phase-II of Grid Connected Rooftop Solar programme.

KSEB Ltd further submitted that, the matter involved in the petition relates to the dispute in the tender conditions specified as per MNRE guidelines for implementation of phase-II of the Grid Connected Rooftop Solar Programme vide Notification No. 318/331/2017-Grid Connected Rooftop dated 20th August 2019. Since the project is funded by subsidy from MNRE (40%) and the tender conditions are based on MNRE guidelines, KSEB Ltd suggested that disputes on the tender conditions may be referred to MNRE.

KSEB Ltd also submitted that, the prayer of the petitioner is to consider the GO dated 18.09.2020 in the empanelment tender contravene the guidelines issued by MNRE. As per the above GO dated 18.09.2020, the price preference and purchase preference is related to the procurement of goods and materials by Central/ State Governments and PSU, whereas the present tender is floated for empanelment of agencies for implementing the Rooftop Solar PV systems. The actual procurement of solar systems are made by individual domestic consumers, based on their free will, among the empanelled vendors. The obligation of KSEB Ltd is limited to publish the list of empanelled list of vendors,

ensuring quality and post installation services, at a uniform price applicable for all empanelled vendors.

According to the KSEB Ltd, the prayer of the petitioner is against the provisions of MNRE guidelines on the following matters.

- **L1 matching.** As per MNRE guidelines all bidders who fall in the range of L1+25% should match with L1 to become eligible for empanelment. However, the petitioner seeking price preference by allowing 15% price over L1.
- **50% purchase preference.** MNRE guidelines give freedom to the consumers to select his developer among the empanelled vendor. However, the petitioners seeks to restrict this freedom and wants 50% of the consumers requirements shall be met from him.

KSEB Ltd further submitted that, MNRE allocated 200MW Roof Top Solar plants to KSEB Ltd under subsidy scheme and the capacity shall be completed by February 2022. If the schemes can complete within the time frame, MNRE will grant benefits amounting to Rs 400.00 crore for the consumers as CFA, however if the project is not completed within the time frame, it will lead to deprival of the benefits for the consumers of Kerala. MNRE is regularly monitoring the activities and programmes and its progress. Any deviation from the notified guidelines will result in adverse action including non-release of subsidy. Accordingly, KSEB Ltd is not in a position to modify any provisions in the bid and if the petitioner is aggrieved by any provisions in the guidelines, it would be appropriate for the petitioner to approach MNRE.

Commission examined the prayer of the petitioner and also the submission of the KSEB Ltd on the subject matter. The present tender dated 15.02.2021 was invited by KSEB Ltd for the empanelment of contractors for implementing the 200MW Grid connected Roof Top Solar PV plants in Domestic Sector, as per the MNRE guidelines dated 20.08.2019 on 'implementation of Phase – II of Grid Connected Rooftop Solar Programme for achieving 40 GW capacity from Rooftop Solar by the year 2022'.

The said guidelines prescribe the criteria for selecting the agencies for empanelment. The Commission noted that, as per the present guidelines of the MNRE, dated 20.08.2019, there is no provision for incorporating the price preference and purchase preference offered to the MSME in the State of Kerala as per the Kerala Government Order dated 18.09.2020. The Commission also examined whether the Govt of Kerala's GO dated 18.09.2020 is applicable to this tender. In this context, it is important to note that since nearly 40 % of the installation cost is being borne by the Government of India, the orders issued by Government of Kerala is not directly applicable in this tender. Had the tender been one for RTS installations using either KSEB Ltd or public money only, then definitely the GO dated 18.09.2020 is attracted. However, in this case, the case is otherwise.

The Commission also examined KSEB Ltd's arguments that the tender is not for procurement of goods or services but only for empanelment of contractors

for implementing the scheme. Here the Commission notes that KSEB Ltd's argument is technically right.

Since the scheme is being implemented as per the MNRE guidelines dated 20.08.2019 for the benefit of the domestic consumers of the State and if there is any delay in implementing the scheme, there is chances of the subsidy benefits amounting to Rs 400 crore lapsing. Hence the Commission is of the considered view that the scheme has to be implemented within the time limit as per the guidelines prescribed by the MNRE under the Central Government.

12. KSEB Ltd, also submitted during the hearing that, the Confederation of Renewable Energy, had filed a Writ Petition WP (c) No. 5886/2021 before the Hon'ble High Court of Kerala, wherein the petitioner therein raised the issue of not implementing the Kerala Government Order dated 18.09.2020 regarding the purchase preference and price preference prescribed therein by KSEB Ltd in its tender dated 15.02.2021, and to quash the tender invitation. The Commission also noted that the petitioner had further prayed before the Hon'ble High Court to grant an interim order or direction staying the tender notice dated 15.02.2021, of KSEB Ltd, till the pending disposal of the case. However, Hon'ble High Court vide the interim Order dated 09.03.2021 refused to intervene in the tender process initiated by KSEB Ltd. The relevant portion of the order is extracted below.

"Technical qualifications which the petitioner challenges is stated to have been provided on the basis of the requirements of the KSEB. After hearing both sides, I don't find that any provisions has been incorporated so as to exclude the petitioner. The learned senior counsel submits that the demand of the petitioner in their representation were considered and the reply was published in the website on 15.02.2021 and orders were passed on 15.02.2021. The said order has not been produced by the petitioner in the Writ Petition. I don't find any reason to interdict the proceedings".

The Commission also noted that the detailed hearing and disposal of the matter is now pending before the Hon'ble High Court of Kerala. The Commission also carefully considered Section 10 of the Code of Civil Procedure, 1908 which prescribes that,

"10. Stay of suit. — No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

It is a fact that the Confederation of Renewable Energy (CoRE) has, vide WP (C) No 5886/2021 (1) challenged this tender proceedings before the Hon'ble High Court of Kerala and their plea for an interim order or direction staying the Notice inviting e-Tender for Soura subsidy has not been agreed to by the Hon'ble High Court vide Order dated 09.03.2021. Since the Hon'ble High Court of Kerala is also hearing the matter and in view of Section 10 of Code of Civil

Procedure, 1908, the Commission notes that there is limited scope for intervention by the Commission at this stage.

13. Considering all these aspects in detail, this Commission is of the considered view that, it is not appropriate to intervene in the tender notice of KSEB Ltd, No. 5/SOURA- Subsidy-Domestic/ 2020-21 dated 15.02.2021 for 'Empanelment of Contractors for the design, supply, installation, testing and commissioning of Grid connected Rooftop Solar PV power plants aggregating to 200 MW in domestic sector.

Orders of the Commission

14. The Commission, after detailed examination of the petition filed by KREEPA, the comments of the respondent KSEB Ltd, and other materials and records placed before the Commission during the deliberations of the subject matter, hereby orders the following.
- (1) Considering the reasons explained in the preceding paragraphs of this Order, the Commission hereby rejects the petition dated 05.03.2021 filed by M/s Kerala Renewable Energy Entrepreneurs and Promoters Association (KREEPA).
 - (2) KSEB Ltd shall finalise the tender No. 5/SOURA- Subsidy-Domestic/ 2020-21 dated 15.02.2021, as per the time frame stipulated therein and avail the CFA offered by MNRE for implementing the scheme in the domestic sector of Kerala.
 - (3) The directions issued by the Commission vide the Daily Order dated 12.04.2021 as detailed under paragraph 4 of this order stands vacated.
 - (4) The Commission hereby further clarifies that in view of the aforesaid reasons, this Order shall apply only to this Tender and KSEB Ltd shall not treat this Order as a general direction exempting it from implementing the Government of Kerala Order dated 18.09.2020. Instead, KSEB Ltd shall strictly comply with the Commission's direction in OP 46/2020 dated 30.12.2020.

The petition disposed off.

**Sd/-
Adv. A.J. Wilson
Member (Law)**

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue

C R Satheeshchandran
Secretary(i/c)