

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 1868/2020.

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 recovery of compensation as liquidated damages for termination of the Power Purchase Agreement dated 26.10.2017 for default under PPA.

Petitioner : Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan, Race Course Circle,
Vadodara-390007, Gujarat.

Represented by : Learned Advocate Ms. Ranjitha Ramachandran and Ms.
Sailaja Vachhrajani

V/s.

Respondent : M/s Junagadh WTE Pvt. Limited,
A-3/303, LA Habitat Aiyana Complex,
100 FT Road, Thaltej Ahmedabad - 380054.

Represented By : Shri Arvind Patil

CORAM:

Shri Anand Kumar, Chairman

Shri P. J. Thakkar, Member

Date: 30/07/2020.

DAILY ORDER

- 1) The matter was listed on 28.07.2020 for virtual hearing through Video Conferencing, physical presence being not insisted on account of prevailing COVID 19 pandemic and containing its spread. The Petitioner and the Respondent were intimated regarding the said hearing through letter and email dated 06.07.2020.

- 2) When the matter was called out, Learned Advocate Ms. Ranjitha Ramachandran and Ms. Sailaja Vachhrajani on behalf of the Petitioner and Shri Arvind Patil on behalf of the Respondent were present.
- 3) Learned Advocate Ms. Ranjitha Ramachandran, on behalf of the Petitioner, submitted that the present petition has been filed by the Petitioner seeking directions of the Commission for liquidated damages from the Respondent M/s Junagadh WTE Pvt. Limited in terms of the Power Purchase Agreement executed with the Respondent on 26.10.2017 for procurement and supply of power from 4 MW Waste to Energy Project.
 - 3.1. She further submitted that the Respondent M/s Junagadh WTE Pvt. Limited was required to commission the power project by 31.12.2018 as per the terms & conditions of the PPA. Moreover, in order to ascertain the commencement of construction activity by the Respondent, GUVNL vide its letter dated 26.12.2018 addressed to Junagadh Municipal Corporation sought the information regarding whether M/s Junagadh WTE Pvt. Limited has commenced construction of the project or not. Pursuant to the aforesaid letter dated 26.12.2018, Junagadh Municipal Corporation vide its letter dated 02.01.2019 conveyed GUVNL that the Respondent had not commenced any activity at the project site. Since the Respondent failed to achieve commercial operation within 14 months as per the terms & conditions of the PPA, there was a construction default on the part of the Respondent in terms of Article 9.2.1 of the PPA and accordingly, GUVNL issued Default Notice on 05.01.2019 to the Respondent in terms of the PPA, failing which GUVNL shall terminate the PPA. She submitted that the Respondent not only failed to achieve commercial operation by the Scheduled Commercial Operation Date but has miserably failed in commencing the construction activity, which is not started even two months after SCOD and default notice issued by GUVNL.
 - 3.2. She submitted that GUVNL has terminated the PPA on 18.03.2019 due to breach on the part of the Respondent and sought compensation as per Article 9.3.1 of the PPA. She submitted that as per Article 9.3.1 of the PPA, the amount of compensation comes

to Rs. 49.75 Crores which is equivalent to three years billing based on tariff and normative PLF considered by the Commission for determination of tariff. She further submitted that the Respondent has not claimed force majeure and accordingly, the Respondent neither issued Force Majeure notice to the Petitioner nor there is any event which qualifies as force majeure. She submitted that since the validity of the Bank Guarantee submitted by the Respondent was not extended through renewal of the same by the Respondent, GUVNL encashed the Bank Guarantee of the Respondent of Rs. 20 Lakhs in terms of Article 2.2 of the PPA apart from the claim under Article 9 of the PPA.

- 3.3. She submitted that as per the PPA the Respondent was liable to pay compensation to GUVNL for event of default by the Respondent within 30 days from the termination notice. She submitted that the quantum of termination payment was agreed as liquidated damages between the parties and is a genuine pre-estimate of actual loss that would be suffered by GUVNL on account of default and delays of the Respondent.
- 3.4. In view of the above, she submitted that GUVNL has suffered legal injury and loss on account of the failure on the part of the Respondent in fulfilling the obligations under the PPA and therefore, the Petitioner GUVNL has preferred the present Petition seeking directions of the Commission for declaring that the Respondent M/s Junagadh WTE Pvt. Ltd. is liable to pay the liquidated damages alongwith the applicable interest to the Petitioner from 17.04.2019.
- 4) Shri Arvind Patil, appearing on behalf of the Respondent submitted that he is Director of the Respondent company. He submitted that the notice regarding today's hearing was received only yesterday evening. He submitted that earlier a communication was received from the Commission vide GERC/Legal/2020/0616 on 24.06.2020. The aforesaid communication was addressed to the Managing Director, GUVNL and the date of PPA signed by M/s Junagadh WTE Pvt. Limited was referred in the said letter as 06.05.2016. He submitted that since no PPA dated 06.05.2016 was signed by the Respondent with Petitioner, the Respondent has responded to the aforesaid

communication dated 24.06.2020 of the Commission through letter dated 25.06.2020 seeking clarification from the Commission on the same.

- 4.1. He further submitted that thereafter the Respondent has received the copy of Petition from GUVNL through email on 01.07.2020 and hard copy was received by post after around 10 days. He submitted that he is residing at Pune, which is one of the severely affected cities in India due to Covid-19 pandemic. He submitted that due to several lockdowns and the last lockdown being over only recently on 23.07.2020, the Respondent is not in a position to seek legal assistance / advice. He also submitted that the present Petition filed by the Petitioner GUVNL, *prime facie*, stands on very flimsy ground and it amounts to nothing else but extortion of money by the Petitioner GUVNL.
- 4.2. He submitted that the Respondent was informed about today's hearing only last night i.e. on 27.07.2020 and no notice for this hearing has been received by the Respondent Junagadh WTE Pvt Limited. He further referred Clause 41(1) of GERC (Conduct of Business) Regulation, 2004 which prescribes the manner and way the notices need to be served which reads as under:

“.....

41(1) Any notice or process to be issued by the Commission may be served by any one or more of the following modes as may be directed by the Commission:

(a) service by any of the parties to the proceedings as may be directed by the Commission;

(b) by hand delivery through a messenger;

(c) by registered post with acknowledgement due;

(d) by advertisement in newspaper in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices;

(e) in any other manner as considered appropriate by the Commission.

.....”

- 4.3. He also referred the Clause 46 of the GERC (Conduct of Business) Regulation, 2004 which is reproduced as under:

“.....

*46. In default of compliance with the requirement of the Regulations or directions of the Commission as regards the service of notices, summons or processes or the advertisement and publication thereof, the Commission may either order to dismiss the Petition or give such other or further directions as it thinks fit.
.....”*

- 4.4. Based on the above, he requested the Commission to quash and dismiss the present Petition of the Petitioner.
- 5) Learned Advocate Ms. Ranjitha Ramachandran, on behalf of the Petitioner GUVNL, while objecting to the statement of the Respondent about the dismissal of the present Petition submitted that the present Petition is kept for admission hearing and the Respondent has not even filed any preliminary reply in the matter. She submitted that as far as prevailing situation of COVID-19 is concerned; she has no objection if the Respondent needs some time to file reply. However, instead of preferring to file any reply in the present matter, if the Respondent is seeking dismissal then she has strong objection and she is prepared to argue the matter on merits to satisfy the Commission. She submitted that in absence of any reply filed by the Respondent or seeking time from the Commission for filing the same, the submissions by the Respondent about dismissal of the present Petition is not proper and valid. Therefore, the Commission may first ask the Respondent as to whether the Respondent wants to file any reply in the matter or not and thereafter the hearing in the present matter may be kept on merits. She has no objection to adjourning the matter and granting time to the Respondent to file reply.
- 6) In response to the above query of the Petitioner, Shri Arvind Patil, on behalf of the Respondent, submitted that the Respondent wants to file the reply in the matter and requested the Commission that due to COVID – 19 pandemic and lockdown prevailing across country, the Commission may grant two months' time to the Respondent to file the reply in the matter by adjourning the hearing.
- 7) We have considered the submissions of the Petitioner and the Respondent. The present Petition has been filed by the Petitioner GUVNL for recovery of liquidated

damages for termination of the Power Purchase Agreement dated 26.10.2017 on account of default on the part of the Respondent. We note that the matter was listed for admission hearing and the representatives of both the Petitioner GUVNL and Respondent Junagadh WTE Pvt Limited were present.

- 7.1. With regard to the contention of the Respondent that no hearing notice is received from the Commission either by letter or email and the hearing intimation was received only yesterday evening, we deem appropriate to put forth the factual status. We note that Office of the Commission sent letter No. GERC/Legal/2020/No. 0616 dated 20.06.2020 to the Petitioner with a copy to the Respondent informing regarding registration and numbering the present Petition. We also note that as per the tracking details available on the portal of India Post, Government of India, it transpires that the aforesaid letter was delivered to the Petitioner on 24.06.2020 and to the Respondent on 23.06.2020 by Speed Post. In response to the aforesaid letter dated 20.06.2020, the Respondent vide its letter No. 2020/06/1001 dated 24.06.2020 informed the Commission that the Respondent has not received any details of Petition from GUVNL. The relevant portion of the aforesaid letter is reproduced as under:

“.....

Date: 24/06/2020

Ref: 2020/06/1001

To

Gujarat Electricity Regulatory Commission

6th Floor. Gift One

Gandhinagar – 382355.

Sub: Reference to Petition no. 1868 of 2020

Respected Sir,

We are in receipt of a correspondence addressed to Gujarat Urja Vikas Nigam Limited, Vadodara. The correspondence is for petition 1868 of 2020. However, we are not in

receipt of any details of petition from GUVNL. Even the Subject of the letter is incorrect. The subject is

Your Petition dated 08.06.2020 in the matter of petition under section 86 of the Electricity Act, 2003 for recovery of liquidated damages for termination of Power Purchase agreement (PPA) dated 06/05/2016 for default under PPA.

*We would like to bring to kind attention to Commission that M/s Junagadh WTE Pvt. Ltd has not signed any PPA with GUVNL dated 06.05.2016. Hence, we would like to first ascertain if Junagadh WTE Pvt. Ltd is the correct respondent for this petition.
.....”*

Upon the receipt of the above referred letter, the Office of the Commission has forwarded the aforesaid letter of the Respondent to Petitioner GUVNL vide its letter No. GERC/Legal/2020/No. 0793 dated 24.07.2020 with a copy to the Respondent.

- 7.2. With regard to the contention of the Respondent that it has not received any hearing intimation letter from the office of the Commission, on perusal of the available records with the Commission, it is observed that office of the Commission sent a letter vide letter No. GERC/Legal/2020/No. 0691 dated 06.07.2020 to the Petitioner and the Respondent intimating that the hearing is scheduled on 28.07.2020. We also note that as per the tracking details available on the portal of India Post, Government of India, it transpires that the aforesaid hearing notice was delivered to the Petitioner on 13.07.2020 and to the Respondent on 09.07.2020 by Speed Post. Moreover, Office of the Commission also emailed the aforesaid letter dated 06.07.2020 to the officials of the Petitioner Company with a copy to the official of the Respondent i.e. to *bhaveshtech@gmail.com*, on 06.07.2020. Due to non-compliance of the Commission's directives as stated in the letter dated 06.07.2020 by the Respondent up to 27.07.2020, office of the Commission once again forwarded the aforesaid letter dated 06.07.2020 to the official of the Respondent through email dated 27.07.2020 on email IDs being *bhaveshtech@gmail.com*, *avpatil@hotmail.com* and *apatil@alcoagreentechnologies.com*. Further, office of the Commission also received the email from Shri Arvind Patil on 28.07.2020 wherein copy is also marked to *Shri Sam Chopra [admin@cpworldwideshipping.com]*, *Shri Bhavesh Patel [bhaveshtech@gmail.com]* and *Shri Makrand Deshpande*

[ml_deshpande@hotmail.com]. Therefore, it is incorrect and improper on the part of the Respondent to say that the Respondent has not received the hearing intimation notice issued by the Commission. Hence, we direct the Respondent to ensure factual situation before making any submissions in the matter.

- 7.3. We also record that the Petitioner GUVNL has fairly admitted that since the validity of the Bank Guarantee submitted by the Respondent was not extended through renewal of the same by the Respondent, the same has been encashed by GUVNL.
- 7.4. We also observed that the Respondent has not filed any reply in the matter till date despite being served notice to them. We also note the statement of the Respondent that the Respondent wants to file the reply in the matter and requested the Commission that due to COVID – 19 pandemic and lockdown prevailing across country, the Commission may grant two months' time to the Respondent to file the reply in the matter by adjourning today's hearing. We also note that the Petitioner has no objection to the adjournment sought by the Respondent. We, therefore, decide to adjourn the matter today. We further direct the Respondent to file its reply in the matter within six weeks, with a copy to the Petitioner from the date of this Order. The Petitioner GUVNL is at liberty to file its rejoinder reply, if any, with a copy to the Respondent within two weeks after the receipt of the reply from the Respondent.
- 7.5. The next date of hearing will be intimated separately.
- 7.6. We order accordingly.

Sd/-
[P. J. THAKKAR]
Member

Sd/-
[ANAND KUMAR]
Chairman

Place: Gandhinagar.

Date: 30/07/2020.