

**BEFORE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

Petition No. 1887 of 2020

In the Matter of:

In the matter of Petition under Section 86 of the Electricity Act, 2003 for recovery of Termination Compensation under the Power Purchase Agreement (PPA) dated 12.02.2008.

Petitioner : Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara – 390 007.

Represented By : Advocate Ms. Ranjitha Ramachandran along
with Advocate Anushree Bardan, Advocate
Shrishti Kindaria, Smt. Shailaja Vachrajani, Ms.
Girija Dave and Shri Kandarp Mistry.

V/s.

Respondent : M/s. Octal Suppliers Private Limited,
“Everest House”, 46C, Chowringee Road,
Room No. 15B,
Kolkatta – 700 071.

Represented By : Advocate Shri Shivam Takiar

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 28/06/2021.

DAILY ORDER

1. The matter was listed for virtual hearing on 22.06.2021 through video conferencing, on account of prevailing COVID 19 pandemic.

2. Heard Ld. Advocate Ms. Ranjitha Ramachandran appearing on behalf of the Petitioner submitted the present Petition is filed under Section 86 of the Electricity Act, 2003 for recovery of termination compensation payment from Respondent M/s. Octal Suppliers Private Limited, under the Power Purchase Agreement dated 12.02.2008, since there was no generation from August 2016 onwards from 10.2 MW Wind Energy Project of the Respondent. She further submitted that in light of zero generation for more than 90 days leading to O&M default on part of the Respondent, the Petitioner issued 'Default Notice' dated 01.03.2017 in terms of Article 9.2.1 read with Article 9.3.1 of the PPA calling upon the Respondent to remedy the defect within 30 days, failing which the Petitioner shall terminate the PPA. Since, no response was received within the period of 30 days from the Respondent against the said 'Default Notice' and the Respondent having failed to remedy the default and recommence generation, the Petitioner proceeded to terminate the PPA for breach on part of Respondent by issuing final 'Termination Notice' dated 14.09.2018 and seeking termination compensation as per Article 9.3.1 of the PPA for Rs. 20.78 Crores. She further submitted that pursuant to the aforesaid 'Termination Notice', the Petitioner received reply dated 26.10.2018 from Advocate of the Respondent raising various issues, which were responded by the Petitioner vide its letter dated 15.02.2019. She further submitted that the Respondent has failed to pay the said termination compensation and hence, the Petitioner has approached this Commission for holding that the Respondent is laible to pay the aforesaid sum and seeking direction against the Respondent for making the payment of Rs. 20.78 Crores alongwith interest.
3. Ld. Advocate Shri Shivam Takiar, submitted that pursuant to receipt of notice for hearing by the Respondent, he has received instructions to appear in the matter only on 21.06.2021. He submitted that the Respondent has not received the copy of the Petition and hence are not aware about the subject matter of the present Petition. Accordingly, it is not possible to argue the matter and requested that copy of the Petition be provided by the Petitioner.
4. In response, Ld. Advocate Ranjitha Ramchandran submitted that the copy of the Petition is already served to the Respondent and will file affidavit of service, however she has no objection to provide scanned copy of the Petition to counsel of the Respondent at the email ID, which may be provided in the chat box or as may be provided by the staff of the Commission.

5. We have considered the submissions made by Ld. Counsels of the Petitioner and the Respondent. We note that when the matter was called out, Advocate Shivam Takiar remained present on behalf of the Respondent and submitted that pursuant to receipt of notice for hearing by the Respondent, he has received instructions to appear in the matter only on 21.06.2021 but the Respondent has not received the copy of the Petition. We note that Ld. Advocate Shivam Takiar has not filed Vakalatnama on behalf of the Respondent and entered appearance. Hence, we direct that Vakalatnama on behalf of the Respondent to be filed within weeks time from the date of this Order and appearance be entered.
- 5.1. We note that according to Ld. Advocate Ranjitha Ramchandran, a copy of the Petition is already served to the Respondent and necessary affidavit of service will be filed by the Petitioner. She also agreed to provide scanned copy of the Petition through email to counsel of the Respondent. Hence, we direct the Petitioner to provide scanned copy of the Petition to counsel of the Respondent through email. We also direct the staff of the Commission to provide the email ID of Ld. Advocate Shivam Takiar as available on record to the Petitioner.
- 5.2. As per the statement of Ld. Advocate of the Respondent, since copy of Petition is not received from the Petitioner, we decide to adjourn the matter. The Respondent is directed to file reply, if any, within two weeks' time after receipt of copy of Petition, with copy to the Petitioner. The Petitioner is at liberty to file its rejoinder reply, if any, with a copy to the Respondent after the receipt of the reply from the Respondent.
- 5.3. In the meantime, the Petitioner is directed to file the affidavit as stated above with copy to Respondent.
6. The next date of hearing would be intimated separately.
7. We order accordingly.

Sd/-
[S.R. Pandey]
MEMBER

Sd/-
[Mehul M. Gandhi]
MEMBER

Place: Gandhinagar.
Date: 28/06/2021.