

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1948 of 2021.

In the matter of:

Petition under Section 86 (1) (e) & (f) of the Electricity Act, 2003 for quashing of Order and setting aside the specific unilateral conditions pertaining to installation of Solar PV Modules and 'Base CUF' imposed by the Respondent/GUVNL vide its communication dated 10.12.2020, which is in the contravention of the provisions of the PPA dated 09.12.2010 and also seeking extension of first part of the total duration of the PPA for 12 years under Article 5.2 of the PPA, till the requisite replacement of Solar PV Modules is completed.

Petitioner : Jai Hind Projects Limited

Represented by : Ld. Senior Advocate Shri Saurabh Soparkar with Ld. Advocate Shri Ashish Jha and Shri O. T. Gulati

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented by : Learned Senior Advocate Shri M.G. Ramachandran with Ld. Advocates Ms. Ranjitha Ramachandran and Shri Shubham Arya alongwith Ms. Sailaja Vachhrajani and Shri R. P. Soni

CORAM:

**Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 06/07/2021.

Daily Order

1. The present matter was listed for hearing on 29.06.2021 through virtual hearing by Video Conferencing on account of prevailing COVID 19 pandemic.
2. Heard Ld. Senior Advocate Shri Saurabh Soparkar. He argued that the present Petition is filed under Section 86 (1) (e) & (f) of the Electricity Act, 2003 seeking reliefs as prayed therein including interim Order in terms of prayer (c). He argued that the controversy involved in the present matter pertains to certain replacement of damaged Solar panels / repair works required to be undertaken by the Petitioner. However, in this regard since a dispute has arisen between the parties under PPA dated 09.12.2010, the present Petition is filed. He clarified that the present management of the Petitioner company is pursuant to approval/Order under NCLT proceedings.
- 2.1. In response to query from the Commission that rejoinder reply is not yet filed by the Petitioner, the Ld. Senior Advocate submitted that the Petitioner has not received any reply from the Respondent GUVNL and therefore, no rejoinder is filed. He argued that today he is seeking only interim relief as prayed at para 29(c) and therefore, he has no objection with regard to rejoinder-reply pending at Petitioner's end.
3. Ld. Senior Advocate Shri M. G. Ramachandran submitted that as such the Respondent has filed reply vide affidavit dated 06.04.2021, copy of which is served to the Petitioner. However, he needs to check the same and in any case will provide copy of reply filed to the Petitioner. Objecting to interim relief sought by the Petitioner, he contended that, the same cannot be allowed simpliciter since there are various issues which need to be considered by the Commission prior to allowing the same. He submitted that the Petitioner had entered into a PPA dated 09.12.2010 for sale of power from 5 MW Solar power project with the Respondent and the tariff is as determined and decided by the Commission vide its Order dated 29.01.2010 in Order No. 2 of 2010. The said tariff was decided by the Commission at relevant time with consideration of capital cost, CUF of 20%, commissioning of project during its control period and other financial & technical parameters and the same is

much higher compared to recent trend of tariff being around Rs. 2.50 per unit. Further, the contracted capacity under the PPA and energy generation with technology / Solar panels at relevant time is relevant and the Petitioner cannot be allowed to claim higher CUF and tariff by replacement of Solar panels, repairs etc. when the prevailing costs have reduced. The Petitioner cannot be allowed to undertake replacement / repair activity which may result in enhanced contracted capacity or higher generation through an interim Order. It is contended that there are issues with regard to installed capacity, number of Solar panels, CUF of plant, energy generation from the plant etc. and therefore, the Respondent cannot accede to grant of interim relief unless and until 'Protocol' with regard to replacement of damages Solar Panel / repair is agreed by the Petitioner because there are major concerns in respect of the same. It is submitted that the 'Protocol' required to be adhered by the Petitioner which is already provided at para-10 of reply filed by the Respondent, which needs to be acted upon and agreed by the Petitioner. It is further contended that unless the Petitioner agree with the terms of said 'Protocol' mentioned in GUVNL's reply, any replacement of Solar panels or repairs which is done or may be undertaken by the Petitioner will be at their sole risk and cost.

- 3.1. It is also mentioned in the reply filed by the Respondent that the Petitioner shall have to ensure that the installed capacity of Solar Power Project shall not be beyond contracted capacity under the PPA as well as future energy generation after replacement of modules, repair work from the said project shall not be more than average annual CUF actually achieved during the period from date of commissioning to till date etc. and in case of any excess generation beyond such average annual CUF, the Petitioner will not be entitled for payment of tariff for such excess CUF and energy generated from the Respondent. It is also submitted that so long the 'Protocol' is adhered to by the Petitioner which includes seeking prior approval, visit & inspection by team comprising of GUVNL, GETCO, representative from subsidiary distribution licensee and GEDA, submission of report, installed capacity not to exceed contracted capacity, CUF etc., Ld. Advocate Shri Ramachandran has no objection to allowing the interim relief as sought by the Petitioner which shall be subject to the final decision by the Commission. It is also submitted that his aforesaid consent be considered as 'in-principle' only and in no

case the same be construed that Respondent has agreed for replacement of 9510 Solar PV panels or otherwise. It is submitted that as such he is not arguing the matter but pointing out restriction of contracted capacity and with that actual generation through any replacement / repairs by the Petitioner should not exceed average annual generation during past period when on one hand cost of modules has reduced with technological advancement whereas tariff is higher compared to prevailing tariff during recent past. Moreover, no equity and rights can thereby be vested in the Petitioner and in case any interim relief is to be granted by the Commission, he can file short submission interalia incorporating above aspects and conditions to be adhered with copy to the Petitioner. Thereafter, the Petitioner may if so desire either agree in totality to said submission or prefer to file any objection and based on same the Commission may decide granting any interim relief.

4. In response to filing joint statement by both parties, Ld. Senior Advocate for the Petitioner submitted that there is no need of any such submission proposed by counsel of the Respondent or filing any joint statement, since the Commission may record his statement that the Petitioner is agreeable to whatever conditions required to be adhered including 'Protocol', installed capacity, average CUF available from plant etc. as required by the Respondent. He submitted that the problem presently faced by the Petitioner is that solar modules and other material already ordered is lying idle at the Solar Power Project site, installation of which may be permitted in consideration of the statement made. Moreover, the interim relief, if any, granted by the Commission keeping rights and contentions of both the parties open will in any case be subject to the final decision in the matter by the Commission.
5. We have considered the submissions made by both the parties. We note that present Petition is filed under Section 86(1)(e) and (f) of the Electricity Act, 2003, pertains to dispute between the Petitioner which is a generating company and the Respondent is a licensee under PPA dated 09.12.2010 executed between them. Since the dispute is between a Generating Company and Licensee, hence the Commission has jurisdiction to decide the dispute between the Petitioner and the

Respondent licensee under Section 86(1)(f) of the Electricity Act, 2003. Hence, we decide to admit the Petition.

5.1. We note that Ld. Senior counsel for the Petitioner has submitted that the Commission may grant interim Order with regard to prayer at para 29 (c) of the Petition, whereas; Ld. Senior counsel for the Respondent objected to grant the same and contended that simpliciter the same cannot be granted since there are various issues which need to be considered by the Commission. He has briefly pointed out the 'Protocol' mentioned at para 10 of reply dated 06.04.2021 filed by the Respondent including aspects of contracted capacity, permissible CUF etc. It is contended by the Respondent that prior to granting any replacement/repairs, the Petitioner requires to agree & adhere with the 'Protocol' and other conditions of the Respondent as there are various other issues associated with tariff affecting the Respondent. Ld. Senior counsel for the Respondent further submitted that the Petitioner needs to agree that the installed capacity of Solar Power Project shall not be beyond contracted capacity under the PPA as well as energy generation from the said project will not be more than average annual CUF actually achieved during the period from date of commissioning to till date etc. and in case of any excess generation beyond such annual average CUF, the Petitioner will not be entitled for payment of tariff for such excess generation from the Respondent. To this, the Ld. Senior counsel for the Respondent has agreed 'in-principle' for allowing the interim relief provided said 'Protocol' and other aspects of installed capacity not exceeding contracted capacity, energy generation etc. by Solar project to be within achieved CUF etc. is adhered by the Petitioner and any replacement of Solar panels or other equipment's or repairs undertaken by the Petitioner not adhering to same will be at sole risk and cost of the Petitioner.

5.2. We note that in response to above, Ld. Senior Advocate for the Petitioner submitted that the Commission may record his statement that the Petitioner is agreeable to conditions put forth by the Respondent and further submitted that the Petitioner is facing problem on account of solar modules and other material lying idle at the Solar Power Project site. Hence, installation of same may be permitted considering the statement made by counsel for the Petitioner, with consideration that rights and

equity of both parties are to be open and the dispute is to be decided on merits by the Commission.

- 5.3. We note that of actual generation and injection from the 5 MW Solar PV project of the Petitioner from the date of commissioning is not available on record of the present matter. Accordingly, the Petitioner and Respondent are directed to submit the aforesaid details of generation & injection from the date of commissioning of the project to till date. The Petitioner and Respondent are also directed to submit the relevant correspondence, documents, evidences which are necessary to adjudicate and decide the disputes before the Commission alongwith aforesaid details within three weeks' time while providing copy to other side.
- 5.4. We also note that the Respondent has submitted reply dated 06.04.2021 which is not received by the Petitioner, which is refuted by the Respondent. However, the Respondent agreed to provide copy of its reply dated 06.04.2021 to the Petitioner. The Petitioner is at liberty to file its rejoinder-reply, if any, in response to the reply filed by the Respondent. Hence, the Petitioner and the Respondent are directed to comply the same.
- 5.5. Thus, as stated above, the Petitioner, at present, prays only for the immediate relief in terms of para 29 (c) of the petition, which is reproduced as under:

“(c) Pending final disposal of the petition, pass an interim order permitting the petitioner to install 9510 Solar PV Modules and carry out other necessary repair works in the Solar Power Plant so as to enable the petitioner to operate the Solar Power Plant at installed capacity of 5 MW in terms of the PPA between the parties.”

- 5.6. The Respondent has strongly objected to the above relief being granted to the Petitioner on the ground that, without following the 'Protocol' specified in para 10 of reply filed by the Respondent, it cannot be done and, by the alleged replacement/repair, capacity or generation cannot be increased more than 5 MW contracted capacity under the PPA as well as energy generation from the said

project will not be more than average annual CUF actually achieved during the period from the date of commissioning to till date.

- 5.7. We have noted that there is a big difference between the demand of the Petitioner (for replacing/repairing of 9510 Solar PV Modules) and the stand of the Respondent which is only for 645 Solar PV Panels. There are other serious issues which can be determined only after full-fledged hearing of the matter.
- 5.8. Learned Senior Advocate Shri Saurabh Soparkar has stated that he has not received copy of the written reply/submission of the Respondent. During the hearing, Shri Soparkar has made a statement before the Commission that the Petitioner wants only replacing/repairing of Solar PV Panels lying at the site and that the Petitioner is always ready to abide by the protocols and conditions as stipulated by the Respondent-GUVNL and all these would be without touching the rights and contentions of the parties and would be subject to final decision in the matter. Moreover, capacity / generation will not be more than 5 MW contracted capacity under the PPA as well as energy generation from the said project will not be more than average annual CUF actually achieved during the period from date of commissioning to till date
6. In view of above, after taking the statements of both learned Senior Advocates for the Petitioner and the Respondent on record, we pass the following order:

ORDER

- (i) The Petitioner is at liberty to carry out replacing/repairing work of Solar PV Panels at their own cost and risk, after fulfilling the conditions and protocol as laid down in para 10 of the written submission of the Respondent, and shall see to it that thereby there is no addition in capacity beyond the contracted capacity of 5 MW under the PPA as well as generation will not increase from the said project beyond the average annual CUF actually achieved during the period from date of commissioning to till date. It is further clarified at the cost of repetition that this order shall not be construed

as the final decision of the Commission of allowing the Petitioner's claim for repairing/replacing of 9510 Solar PV Panels, as the matter is pending for final decision.

- (ii) The Respondent is directed to supply a copy of its written reply/ submission to the Petitioner within a period of one week and the Petitioner shall file its rejoinder, if any, within a period of three weeks thereafter. Both the Petitioner and the Respondent shall also furnish necessary data/details as directed above.

7. The next date of hearing will be intimated separately.

8. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 06/07/2021.