

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2055 of 2022.

In the matter of:

Petition under Section 86 (1) (e), (f) and (k) of the Electricity Act, 2003 read with Articles 8 & 11 of PPA dated 08.07.2020 for supply of 190 MW capacity of Solar power from its Solar PV Power Plant located in the State of Gujarat seeking extension of the Scheduled Commercial Operation Date as prescribed under the PPA on various uncontrollable & justifiable grounds including that of Force Majeure and consequently protecting the Petitioner against any financial /commercial prejudice that may ensue under the said PPA.

And

IA No. 06 of 2022 in Petition No. 2055 of 2022.

In the matter of:

Application under Section 94 (2) of the Electricity Act, 2003 filed by the Petitioner/Applicant seeking urgent listing of the Petition.

And

IA No. 07 of 2022 in Petition No. 2055 of 2022.

In the matter of:

Application for seeking the Interim reliefs.

Petitioner/Applicant : M/s Juniper Green Three Pvt. Limited
Represented by : Ld. Advocates Mr. Hemant Sahai, Mr. Nitish
Gupta & Ms. Molshree Bhatnagar alongwith
Mr. Dyutimoy Mukherjee & Mr. Vikash Aggarwal

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited
Represented by : Ld. Adv. Ms. Harini S. alongwith Ms. Sailaja

Vachhrajani, Ms. Girija Dave and Mr. Kandarp
Mistry

CORAM:

Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 25/03/2022

DAILY ORDER

1. The matter was heard on 16.03.2022.
2. Ld. Adv. Mr. Hemant Sahai, appearing on behalf of the Petitioner submitted that the present Petition is filed under Section 86 read with Section 94 of the Electricity Act, 2003 invoking the jurisdiction of this Commission because despite being contractually and legally entitle to receive extension of time in respect of prescribed timelines under the PPA dated 08.07.2020 with the Respondent GUVNL, the Respondent has proceeded contrary by not allowing the desirable extension to the Petitioner.
 - 2.1. It is submitted that the Govt. of Gujarat has notified the Gujarat Solar Policy 2015 and under this Policy, Obligated entities including the Respondent are entitled to procure solar power in order to fulfil their Renewable Purchase Obligation wherein the tariff may be as determined through competitive bidding process. It is also submitted that Ministry of Power, Government of India vide GR No. 23/27/2017- R&R dated 03.08.2017 has notified the "*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*".
 - 2.2. It is submitted that in accordance with Solar Policy 2015 and MoP Guidelines, the Respondent GUVNL had issued RfS for procurement of Solar power upto capacity of 500 MW (Phase VIII) on 07.02.2020 wherein maximum tariff payable to the selected bidder was specified to be Rs. 2.65 per unit. Further, as per Clause 3.9 of said RfS, the PPA to be signed between the Respondent and the successful bidder(s) within 30

days from the date of issue of Letter of Award, which is to be valid for a period of 25 years from the date of SCOD of the project.

- 2.3. It is submitted that the Petitioner was identified as one of the successful bidders in above bidding process and accordingly, Letter of Award (LOA) was issued by the Respondent GUVNL vide letter dated 11.06.2020 in favour of the Petitioner for establishing a capacity of 190 MW at the tariff of Rs. 2.63 per unit. The Petitioner also submitted the Bank Guarantee dated 03.07.2020 of Rs. 17,93,60,000/-, which will expire on 30.07.2022 and the same is amended vide letter dated 18.08.2021 upto 14.10.2022. The Petitioner and the Respondent have executed PPA on 08.07.2020 for supply of 190 MW of power generated through the Project at tariff of Rs. 2.63 per unit. It is submitted that the Respondent had also approached the Commission for the adoption of tariff discovered under Section 63 of the Electricity Act and the Commission vide Order dated 20.07.2020 in Petition No. 1874 of 2020 has adopted the tariff discovered under said bidding process conducted by the Respondent GUVNL.
- 2.4. It is submitted that after the execution of the PPA, there was outbreak of Covid -19 in India and lockdown was imposed by Central Government throughout the Country. MNRE vide its Office Memorandum dated 17.04.2020 directed that all RE implementing agencies of MNRE will treat lockdown due to Covid-19 as 'Force Majeure' and granted blanket extension of time for RE projects equivalent to the period of lockdown and additional 30 days without asking for any evidence for such extension due to lockdown. It is also submitted that MNRE has issued another Office Memorandum dated 30.06.2020 clarifying that the period of lockdown is to be treated from 25.03.2020 when the lockdown started to 31.05.2020 and additional period of 30 days was required to be granted towards normalisation after end of such lockdown and therefore, the blanket extension was allowed to all RE projects upto 30.06.2020.
- 2.5. It is submitted that the bidding documents were issued on 07.02.2020 and the Petitioner was issued the LOA on 11.06.2020. The Petitioner was required to undertake various steps under the LOA during the time of lockdown and PPA was executed on 08.07.2020 with original SCOD mentioned as 07.01.2022. It is further submitted that MNRE vide Office Memorandum dated 13.08.2020 has further

clarified and granted that the projects which were to commence during the period of lockdown, shall also receive an extension of time till 24.08.2020. Therefore, the Covid -19 has to be considered as a “Force Majeure Event” and consequently the Petitioner is entitled to receive extension of time from date of execution of the PPA i.e., from 08.07.2020 to 24.08.2020. It is also submitted that the Petitioner vide letter dated 06.01.2021 informed the Respondent GUVNL of the existence of various complications and hindrances being caused in the implementation of the Project on account of First wave of Covid -19 and also sought extension of time for various project related timelines including SCOD which was granted by the Respondent by 48 days. It is also submitted that MNRE vide Office Memorandum dated 30.03.2021 granted an extension of an additional one month to RE developers if they continued to be affected by the Frist Wave of Covid -19.

- 2.6. It is further submitted that after recognising the difficulties being faced by the Petitioner on account of Second Wave of Covid-19, the Respondent GUVNL vide email dated 21.01.2022 has accorded extension of SCOD upto 24.03.2022. Therefore, the SCOD as on date stands revised from 07.01.2022 to 24.03.2022 and this being undisputed, facts and documents relating to Second wave are not placed on record as of now with liberty to place them subsequently, in case it is deemed necessary.
- 2.7. It is submitted that the implementation & progress of the Project was severely affected by the Third Wave of Covid – 19 also. It is submitted that cases with new variant of Covid -19 had started gradually increasing and affecting the project related timelines during late December 2021. It is submitted that occurrence of the outbreak of new variant and onset of Third Wave of Covid-19 has been recognised as a Force Majeure Event under the PPA. Accordingly, the Petitioner cannot be made liable for any delay that may be caused due to occurrence of such event. Since occurrence of such an event is beyond the reasonable control of the Petitioner, the Petitioner is entitled to receive extension of time/SCOD to that extent. It is also submitted that the Petitioner vide letter dated 10.01.2022 informed the Respondent GUVNL about the difficulty in discharging obligations under the PPA. Accordingly, in view of outbreak of new variant of Covid-19 and onset of Third Wave of Covid-19, the Petitioner is entitled for extension of time/SCOD from 29.12.2021 to 31.01.2021.

- 2.8. It is also submitted that the Petitioner has executed Module Supply Agreement on 06.08.2021 and has opened Letter of Credit on 13.09.2021. It is submitted that the date of despatch of Solar modules from China was 19.10.2021 and usually cargo despatched from China is received within 3-4 weeks in India and generally not received as part of one cargo but in multiple tranches. Therefore, the Petitioner expected the delivery of solar modules by end of November 2021 but due to the power shortage / blackout issues faced in China, the Solar Module Supplier issued Force Majeure notice to the Petitioner under the Module Supply Agreement on 20.10.2021 and informed that an Event of Force Majeure has been triggered due to Chinese Government's Policy of "Dual Control System of total Energy Consumption and Energy Intensity" 2021. It is also submitted that considering the said Force Majeure event faced by Solar Module Supplier in China, the Petitioner has issued Force Majeure notice to the Respondent GUVNL on 28.10.2021 under the provisions of PPA. It is also submitted that the Petitioner is entitled to receive an extension of SCOD by 50 days on account of disruption of logistics and supply chain on account of Force Majeure events.
- 2.9. It is also submitted that as per Article 3.3 read with Article 4.1.9 of the PPA, the Petitioner was required to commission the entire capacity of 190 MW by 07.01.2022, which has been extended by the Respondent GUVNL upto 24.03.2022.
- 2.10. It is also submitted that despite repeated intimations, notices and recognition of events faced by the Petitioner while implementing the project as Force Majeure Event under the PPA but the Respondent GUVNL has maintained silence on the said issue and as a matter of abundant caution that Respondent may have some issue regarding extension of SCOD under the PPA, the present Petition has been preferred before the Commission by the Petitioner alongwith IA No. 07 of 2022 seeking interim relief. Moreover, considering urgency on account of the fact that SCOD of 24.03.2022 is near and validity of Bank Guarantee, the Petitioner/Applicant while requesting to admit the Petition is seeking interim directions against the Respondent – GUVNL to not take any coercive or precipitative against the Petitioner. It is also submitted that the Petitioner is relying on an Order of MERC while being aware to the fact to be only persuasive in nature for this Commission wherein relief is granted on account of supply disruptions.

3. Ld. Adv. Ms. Harini S., appearing on behalf of the Respondent GUVNL, submitted that the Commission may give some time to the Respondent to file its detailed reply in the matter. It is argued that the Respondent has not taken any coercive actions as on date including invoking the Bank Guarantee submitted by the Petitioner. Hence, no cause of action in this regard has arisen for seeking interim protection and particularly with consideration of SCOD on 24.03.2022. It is submitted that although liquidated damages are leviable for delay in commissioning the project beyond SCOD and pending filing of reply by GUVNL in the main matter as well as IA seeking interim reliefs, it is premature to grant any direction regarding no coercive action. It is further submitted that even otherwise as per provisions of the PPA, there are timelines for invoking Bank Guarantee and termination of the PPA. It is submitted that accordingly, question of termination of the PPA by the Respondent does not arise till in terms of PPA. Accordingly, the Respondent may be granted time to file its replies in main Petition and IA No. 07 of 2022 and thereafter, may be taken up for hearing by listing the matter on any date subject to convenience of the Commission.
4. We have considered the submissions made by the parties. We note that the present Petition is filed under Section 86(1)(f) of the Electricity Act, 2003 read with Articles 8 & 11 of Power Purchase Agreement executed between the Petitioner M/s Juniper Green Three Pvt. Limited and the Respondent GUVNL.
5. We note that in the present matter, the Petitioner M/s Juniper Green Three Pvt. Limited is a developer of 190 MW capacity of Solar Power Project and has entered into Power Purchase Agreement (PPA) dated 08.07.2020 and is a generating company under Section 2 (28) of the Electricity Act, 2003. We also note that Respondent GUVNL is a licensee which is to procure power from the aforesaid 190 MW Solar Power Project of the Petitioner in terms of PPA executed between the parties. The Petitioner has submitted that the Petitioner is at fag end of the commissioning of the projects and it may take about 40 to 45 days beyond SCOD of 24.03.2022. The aforesaid delay is due to various reasons like Covid pandemic and extension granted by MoP, supply restriction imposed by China and other issues etc. The aforesaid grounds for delay in commissioning of the project is beyond the control of the Petitioner. Based on it, the Petitioner submitted that the issue involved in the present matter between the Petitioner and the Respondent pertains to the terms & conditions

of the PPA executed between them regarding delay in completion of the Solar project on account of Force Majeure events and seeking extension of SCOD alongwith other reliefs. Thus, as it is a dispute between a Generating Company and licensee, this Commission has jurisdiction to decide the dispute between the parties under Section 86(1)(f) of the Electricity Act, 2003. Hence, we decide to admit the Petition.

- 5.1. We also note that the Petitioner has filed two IAs being IA No. 06 of 2022 and IA No. 07 of 2022 in the present Petition wherein IA No. 06 of 2022 is filed for seeking urgent listing of Petition No. 2055 of 2022 and IA No. 07 of 2022 is filed for interim relief. Since, the Commission has taken up the main matter and IA No. 07 of 2022 for hearing, the prayer in IA No. 06 of 2022 filed for seeking urgent listing of Petition No. 2055 of 2022 alongwith IA for interim reliefs is satisfied. Accordingly, IA No. 06 of 2022 stands disposed of.
- 5.2. We note that IA No. 07 of 2022 has been filed by the Petitioner seeking interim reliefs in terms of restricting the Respondent GUVNL to not take any coercive action of encashment of Bank guarantee and/or termination of PPA. The Respondent GUVNL fairly admitted that the SCOD is 24.03.2022. Hence, it is premature to decide about coercive action. Further, the Petitioner itself has stated that the plant may be commissioned within short time after SCOD. We note that the Respondent GUVNL has not submitted its reply in these matters and undertaken to file its reply within 10 days. Therefore, GUVNL is directed to file their reply, if any, within 10 days from the date of this Order with a copy to the Petitioner. Thereafter, the Petitioner is at liberty to file rejoinder reply, if any, within 10 days after receipt of the reply from the Respondent GUVNL.
- 5.3. We note that request is made by UUWA vide emails dated 16.03.2022 to implead Utility Users' Welfare Association (UUWA) and other consumers group like Laghu Udyog Bharati - Gujarat (LUB) to represent the interest of the consumers in this matter which is not objected by the parties. Hence, we are of the view that let UUWA and LUB be impleaded in this matter so as to enable them to file their submissions, if any and hear them in interest of the consumers in this matter. Accordingly, we decide to implead UUWA and LUB in this matter to be arrayed as 'Objector' in memo of parties. Accordingly, the Petitioner is directed to provide copy of this Petition and IA No. 07 of 2022 alongwith all relevant documents to UUWA and LUB within 10 days

from date of this Daily Order. On receipt of the same both UUWA and LUB are at liberty to file their submissions, if any, with copy to other parties. Also, Respondent GUVNL to also provide a copy of its reply in these matters to UUWA and LUB. Copy of this Daily Order to be provided by the staff of the Commission to UUWA and LUB.

6. Next date of hearing will be decided after filing of the reply/submissions by both the parties.
7. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 25/03/2022.

