

is not before the Commission on any other issues/reasons that were part of the earlier proceedings before the Commission but is seeking further extension of 24 months, since the bank(s)/lenders, whom the Petitioner approached requires a duly signed PPA having further extension of 24 months in achieving the SCOD.

- 5.27. It is submitted that the interpretation of the condition not to approach the Commission in future as contained in the PPA is complete bar on the Petitioner to approach the Commission and would in effect deprive the Petitioner of its statutory rights to approach the Commission. It would also be an impediment on the statutory powers of the Commission to adjudicate on the disputes arising between a generator and licensee. It is submitted that such interpretation would be akin to creating a bar on statute on the basis of a contract and the same would render the Petitioner remedy-less even in the face of serious Force Majeure conditions i.e., Covid-19 pandemic and such construction would be unreasonable and unfair. The circumstances, grounds and cause of action based on which the present Petition has been filed are completely different from the earlier Petitions and the Petitioner is seeking support of the Commission considering the unprecedented conditions that have arisen. It is stated that disputes pertaining to requirement of land have been decided by the Commission in previous rounds of litigations and are not subject matter of the present Petition.
- 5.28. It is stated that the conditions preventing the Petitioner from achieving financial closure and therefore, achieving SCOD are completely not within the Petitioner's control. Clause 8.1 of the PPA provides an inclusive definition of Force Majeure events which are beyond the reasonable control of the Petitioner. It further provides for the requirement of action or omission to act pursuant to any Judgement or Order of any Court. It is stated that though the Commission's indulgence in extending SCOD by 12 months, the Petitioner was precluded from achieving financial closure as no Financial Institution is willing to provide credit facilities on the timelines prescribed by the Commission.
- 5.29. It is further stated that the act of Respondent delaying the signing of Supplemental PPA is also covered in sub-clause (v) of Clause 8.1 prescribing inability despite complying with all legal requirements to obtain, renew or maintain required

licenses or legal approvals. In respect of the query of the Commission as to why the Petitioner signed the Supplemental PPA with the conditions, it is submitted that the Petitioner by way of Petition No. 1608 of 2016 had sought extension of SCOD by 18 months based on the time frame considered in CSE Expert Group's recommendation letter dated 05.05.2016. Further, the Commission in its Order No. 02 of 2010 dated 29.01.2010 has observed that gestation period recognized for Solar Thermal Project was about 18-24 months. However, the Commission has extended the date of SCOD only upto 31.12.2019 by way of Order dated 07.12.2018 in Petition No. 1608 of 2016 i.e., around 12 months from the date of Order.

5.30. It is also stated that despite the Petitioner's best efforts, the Supplemental PPA was only signed by the Respondent on 26.02.2019. It is submitted that as recorded in Para 3.2 of Order dated 22.06.2020, the Respondent has submitted that the time period for signing of Supplemental PPA has no significance since there was no specific direction of the Commission in the Order dated 07.12.2018 to sign the Supplemental PPA within a particular time. It is submitted that such submissions clearly highlighted the non-cooperation of the Respondent in signing the Supplemental PPA without which no financial institution would even examine the Petitioner's application for financing the project.

5.31. It is submitted that the Supplementary PPA was only signed on 26.02.2019 i.e., 3 months after the date of the Commission's Order dated 07.12.2019 in Petition No. 1608 of 2016 and the Petitioner was left with 9 months only to achieve SCOD which was completely insufficient. Thereafter, the Petitioner approached State Bank of India seeking sanction of credit facility for the project. In response SBI informed the Petitioner that on advice of its Independent Engineer, minimum timeline for completion of project was approximately 18 months and 6 months further time would be required to revalidate or seek fresh sanctions of credit facilities from various banks. Hence, the period of 7 months left at the time of issuance of letter was not sufficient for completion of project and the Petitioner vide letter dated 07.05.2019 informed the same to the Commission and the Respondent. It is submitted that the present Petition is arising out of different cause of action, facts and grounds and conditions in the Supplemental PPA cannot be said to barring the Petitioner's remedy to approach the Commission under the Electricity Act, 2003.

5.32. Therefore, in light of the aforesaid facts and submissions, the Commission may take these additional submissions on record and to grant ad-interim relief as prayed in the present Petition filed by the Petitioner.

6. As noted above, the Petitioner has also filed an IA being IA No. 14 of 2019 in the Petition No. 1822 of 2019 seeking ad interim order restraining the Respondent from invoking the Bank Guarantee during the pendency of the aforesaid Petition, inter alia seeking prayers as already stated supra.

FACTS OF IA NO. 14 of 2019 FILED IN THE PETITION:

6.1. Above IA is filed stating that the Petitioner had previously approached this Commission by filing Petition No. 1608 of 2016 *inter-alia* seeking to extend the date of Construction Default and SCOD from 30.06.2017 to 31.12.2018 due to Force Majeure event which was extended by the Commission vide Order dated 07.12.2018 upto 31.12.2019. Pursuant to the Order dated 07.12.2018 a Supplemental PPA was signed between the parties on 26.02.2019 and the Petitioner has been keeping the Respondent and the Commission apprised about the progress of the project at regular intervals. However, due to the short time to achieve COD from the date of signing of Supplemental PPA i.e. 10 months, the Petitioner has no remedy but to approach the Commission seeking a further extension of period upto 31.12.2021 to enable the Petitioner to commission its Project under the PPA dated 30.04.2010 read with Supplemental PPAs dated 02.07.2014, 21.09.2015 & 26.02.2019.

6.2. It is also stated that as per provisions of the PPA, Bank Guarantee dated 27.04.2010 of Rs. 12.50 Lakhs was submitted by the Petitioner to the Respondent. Moreover, in furtherance of the Order dated 07.12.2018, the said Bank Guarantee was amended on 22.02.2019 wherein expiry date was extended till 31.12.2019 and claim period was extended to 31.03.2020. It is further stated that in terms of the PPA the said Bank Guarantee can only be forfeited if the Petitioner fails to achieve SCOD and the said Bank Guarantee amount shall be adjusted towards liquidated damages payable by power producer as per the PPA. Therefore, it is apparent that the said Bank Guarantee was submitted to secure the payment of liquidated damages in case the Petitioner fails to achieve SCOD.

- 6.3. It is stated that during the pendency of the present Petition, the Respondent is likely to invoke the said Bank Guarantee. The invocation of Bank Guarantee is a direct consequence of the dispute between the parties, and it is imperative that the Commission may restrain the Respondent GUVNL from proceeding with the same till the time the dispute is pending. Invocation of Bank Guarantee during the course of present proceedings shall render the present proceedings infructuous to that extent.
- 6.4. It is further stated that in case the present Petition is decided after 31.12.2019 i.e. the date of expiry of the Bank Guarantee, the Respondent GUVNL may invoke the Bank Guarantee causing irretrievable harm and injustice to the Petitioner. The Petitioner shall have no recourse/remedy to recover the same. It is stated that in case the Petitioner achieves SCOD after extended date until 31.12.2019, the Bank Guarantee of Rs. 12.50 Crores will be forfeited by the Respondent, leading to irretrievable harm and injustice. Further, any dispute qua this disproportionate recovery of liquidated damages by way of Bank Guarantee shall be adjudicated by the Commission, thereby leading to multiplicity of litigation. It is also stated that adjudication of quantum of liquidated damages and the event of achieving SCOD is a question of fact and law and the same has to be adjudicated by this Commission before the Respondent invoke the said Bank Guarantee when the instant Petition is pending before the Commission. It is stated that the Hon'ble Supreme Court has held that invocation of bank guarantee is not justified merely because the party invoking the bank guarantee has some claim against the party who furnished the Bank Guarantee. It is stated that if the prayer of the Petitioner is not granted then the Petitioner will not only be financially prejudiced but also will be forced to abandon its project in which the Petitioner has already made a substantial investment.
- 6.5. It is stated that as per the provisions of the PPA read with Section 94 of the Electricity Act, all the disputes between the parties are to be referred to the Commission for adjudication and the Commission has power to issue interim directions. Therefore, the Commission has jurisdiction to adjudicate the said Application for interim relief. It is further stated that, if the said Application is allowed, it will not cause any prejudice to the Respondent as the Respondent's rights

remain secured whereas grave and irretrievable injury will be caused to the Petitioner, if the IA is not allowed by the Commission.

- 6.6. It is also agreed by the Applicant to extend validity of the Bank Guarantee from 31.12.2019 for a further period of 2 years up to 31.12.2021 so that the interest of the Respondent GUVNL is secured / protected.

FACTS OF IA NO. 03 OF 2021 FILED IN THE PETITION:

7. As already noted above, the Petitioner also filed an IA in Petition No. 1822 of 2022 seeking amendment of Petition during the pendency of the present Petition, interalia seeking the following prayers:

- (i) To allow his application for amendment of the Petition in terms of paras 6 of this application, and/or,*
- (ii) Pass such other or further orders as may deem fit and proper*

- 7.1. It is stated that the Petitioner filed main Petition seeking adjudication of dispute arising out of the Power Purchase Agreement dated 30.04.2010 seeking extension of the time limit for Scheduled Commercial Operation Date (SCOD) and allowing to amend the Petition in terms of para 6 of the aforesaid IA will not cause any prejudice to the Respondent GUVNL. The Applicant has proposed that prayer clauses (i) to (vi) of original Petition be allowed to be amended, which are already noted in preceding para.

REPLY OF THE RESPONDENT GUVNL TO THE PETITION:

8. The Respondent GUVNL has filed its reply vide affidavit dated 23.07.2020 responding not only to the Petition but to the letters dated 10.02.2020 & 06.06.2020 as well as additional submission dated 08.07.2020 filed by the Petitioner. It is submitted that the Petitioner has filed the present Petition seeking further extension of time for completing the construction and for achieving commercial operation of its Solar Power Project for which the Petitioner had initially agreed to establish and commission the same by 31.12.2011 under the PPA executed between the parties on 30.04.2010. It is contended that earlier the Petitioner has been granted several extensions in SCOD as under:

- (a) Initially, for the period of 19 months up to 31.07.2013 vide Order dated 07.04.2012 in Petition No. 1125 of 2011;
- (b) Thereafter, further extension in SCOD was granted upto 31.12.2015 vide Order dated 05.05.2015 in Petition No. 1333 of 2013;
- (c) Also, another extension up to 30.06.2017 was granted vide Order dated 31.07.2015 in Petition No 1513 of 2015; and
- (d) Further extension up to 31.12.2019 was allowed vide Order dated 07.12.2018 in the Petition No. 1608 of 2016.

- 8.1. It is contended that thus the SCOD has been extended by 8 years instead of originally agreed SCOD of 31.12.2011 and it has been more than 10 years since the PPA was executed but the project has still not achieved any progress at the ground level or is ready for commissioning. Therefore, there is no cause or justification, whatsoever for grant of any further extension, when the Petitioner is not serious and cannot establish the project even after lapse of 10 years period. This is more particularly when the tariff agreed under the PPA with the Petitioner is Rs. 11 per KWh for first twelve years and Rs. 4 per KWh for thirteen years thereafter, whereas; tariff for Solar power is less than Rs. 3 per KWh as on date and the RPO can be met by the Respondent effectively with the purchase of Solar power at considerably less price, which is in the interest of consumers.
- 8.2. It is contended that in Petition No. 1608 of 2016, the Petitioner had initially sought an extension upto 31.12.2018 and had thereafter sought further extension as per para 15.36 of Order dated 07.12.2018. The Commission having noted various factors and issues raised by the Petitioner as well as the request of the Petitioner and after considering the inordinate delay in achieving COD and the failure of the Petitioner in regard to land related approval issues decided that extension for more than one year would not be appropriate and it was as a last opportunity that the Commission extended SCOD upto 31.12.2019.
- 8.3. It is also contended that the said Order dated 07.12.2018 in Petition No. 1608 of 2016 has not been challenged by the Petitioner but had accepted the Order including the timelines of extension being until 31.12.2019 by signing Supplemental PPA. There was no claim by the Petitioner at that stage while executing the Supplemental

PPA on 26.02.2019 of the alleged insufficiency of time for completion of project. In fact, the Petitioner has willingly and without any objections or protests, voluntarily executed the Supplementary PPA with the Respondent GUVNL dated 26.02.2019.

- 8.4. It is contended that the submissions made by the Petitioner that the Respondent has delayed the execution of Supplementary PPA is incorrect. At the outset, there was no direction to execute the Supplemental PPA as the Commission had already passed the Order granting the extension until 31.12.2019. Therefore, the alleged delay in execution of Supplemental PPA is not relevant. The allegation of delay in the signing of the Supplemental PPA was not even raised during the signing of the same by the Petitioner but the same is being raised as an afterthought only.
- 8.5. It is denied that Supplementary PPA was necessary for the examination of financing and in any case, the issues of financing are not relevant.
- 8.6. It is contended that in any case, the alleged delay was not caused by the Respondent GUVNL and the Petitioner has failed to place complete facts on record of the matter but has sought to portray as if the delay was due to the Respondent GUVNL to veil its own failure to take steps on time for achieving commissioning / commercial operation. The Petitioner approached the Respondent GUVNL on 10.12.2018 and 27.12.2018 for execution of Supplemental Agreement which was duly sent to the Petitioner on 17.01.2019. However, the Petitioner took more than one month after the receipt of the draft Supplemental Agreement to decide to sign the said Supplemental agreement. It is significant that it took the Respondent GUVNL less time to draft the Supplementary Agreement than it took for Petitioner to agree to the draft even though it was the Petitioner who was allegedly in a hurry for the Supplemental PPA.
- 8.7. It is submitted that the Petitioner had agreed to the terms of the Supplemental PPA including incorporating the terms & conditions that the SCOD shall be 31.12.2019 and that no further extension would be sought by the Petitioner. The Petitioner had willingly executed the Supplemental PPA without raising any issue on the alleged delay in execution of the Supplemental PPA. Therefore, the Petitioner cannot now claim that there was any delay and seek extension on said ground. It is also contended that the Petitioner had not raised any issue on the terms of the

Supplemental Agreement and had only stated that there was a delay in signing of the agreement, which is not correct. The Petitioner has not raised any claim in the Petition for setting aside the terms of the Supplemental Agreement and after having agreed to the Supplemental Agreement, it is now not open to the Petitioner to act contrary to the said terms & conditions by asking for further extension of SCOD of the project. It is well settled principle that the terms of the contract are binding and the parties cannot go beyond the terms of the Contract. In support of this, the Respondent GUVNL has relied upon the following citations:

- (a) Karnal Distillery & Co V/s. Union of India, [AIR 1977 SC 509];*
- (b) Gujarat Urja Vikas Nigam Limited V/s. EMCO Limited and Another [(2016) 11 SCC 182];*
- (c) Gujarat Urja Vikas Nigam Limited V/s. ACME Solar Technologies (Gujarat) Pvt. Limited and Ors [(2017) 16 SCC 498].*

- 8.8. It is contended that the Petitioner has not provided any response in its additional submissions to the specific queries of the Commission on the Supplemental PPA but has merely reiterated the alleged delay without any response to the issues raised by the Respondent.
- 8.9. It is also stated that there was no subsequent force majeure event which would justify any further extensions. The Petitioner has clearly stated in the Petition that it is not asking for extension in regard to land and land related approvals or any grounds raised in previous proceedings and the same was also stated in its Affidavit dated 23.08.2018 during the earlier proceedings.
- 8.10. It is stated that the claim of the Petitioner on the grounds of inaction/delay by State Government is incorrect, since there has been no allegation of delay by State Government in the Petition and in fact the Petitioner had specifically clarified that it is not claiming any reason which was claimed in earlier Petitions. The claim of the Petitioner is on the alleged reluctance of the banks/financial institutions and the EPC contractor(s) that they believe that more time is required for SCOD. It is submitted that once the Commission has allowed some extension of SCOD as against more time period sought by the Petitioner and the same has attained finality since the same is not challenged by the Petitioner, the Petitioner cannot now claim for any

further extension of time period and contend that the said timeline was not sufficient. It is submitted that the Commission vide its Order dated 07.12.2018 has also upheld the applicability of Principles of Res Judicata in regard to the earlier Orders passed by the Commission, which is not challenged by either party. The same Principle of Res Judicata will apply to the Petitioner also in relation to issue already decided in the Order dated 07.12.2017 since the said Order is not challenged by the Petitioner.

8.11. It is contended that it is for the Petitioner to deal with the financial institutions and its different contractors for the Solar project. The PPA is between the Petitioner and the Respondent GUVNL and it is the Petitioner's responsibility and obligation to set up the project as per the terms of PPA and Supplemental PPA and the Respondent GUVNL has no obligation to deal with the financial institutions and contractors of the Petitioner. Such matters are entirely the responsibility of the Petitioner and the same cannot affect the Petitioner's obligation to implement terms and conditions of the original PPA readwith Supplemental PPA. If the Petitioner had felt that the timeline provided in the Commission's Order dated 07.12.2018 was insufficient, it should have challenged the Order. The Commission had not accepted the request for extension of 18 months from date of disposal of Petition but had decided and granted extension of timeline upto 31.12.2019 and this issue has attained its finality. Now the Petitioner cannot ask for more time. The Petitioner after having accepted the timeline upto 31.12.2019 cannot now claim that the lenders or contractors are asking for more time, which cannot be sustained. It cannot be that a party agrees to a timeline in an agreement and thereafter asks for extension on the basis that its contractor need more time or that its lenders think the project will take more time.

8.12. It is further contended that the issues with financing of project or its contractors and sub-contractors and late deliveries or unavailability of equipment, material etc. are excluded from Force Majeure event under the PPA. It is further contended that the Commission in its Order dated 07.12.2018 had already held that issues of financing do not fall under Force Majeure event. The Petitioner had in earlier proceedings already raised issues of lenders, but the Commission had rejected the same. Thus, the same issue cannot be raised or challenged again & again by the Petitioner. Therefore, the Petitioner cannot now claim such issues of lenders/financing etc.

- 8.13. It is also contended that the issues of financing cannot be considered as Force Majeure events and no extension can be considered on the said basis which is also consistent with the decision of the Hon'ble Tribunal in the case of *Taxus Infrastructure & Power Project Limited V/s. Gujarat Urja Vikas Nigam Limited & Ors.* in Appeal No. 131 of 2015 dated 04.07.2018. The lenders cannot dictate timelines of the project or what the Order of the Commission should be or what the Respondent GUVNL should agree thereto. It is upto the Petitioner to arrange for finances for setting up the Solar project and it cannot claim any extension on such grounds. The Respondent GUVNL is only concerned with the Petitioner and terms of PPAs. It is submitted that the Petitioner is still applying for credit as late as in year 2020 by approaching banks / financial institutions for the project which was scheduled to be commissioned by 31.12.2019 in terms of the Commission's Order dated 07.12.2018 in previous Petition.
- 8.14. It is contended that the Petitioner has claimed total project cost of Rs. 896.73 Crores for 25 MW project, which translates to about Rs. 36 crores per MW, which is much higher than the capital cost of Rs. 13 Crores per MW considered by the Commission in its Tariff Order No. 2 of 2010 dated 29.01.2010 and based on such tariff, the parties had entered into the PPA. The Commission has already decided in its Order dated 07.12.2018 that the tariff remains unchanged and Petitioner has not raised any dispute/claim on the tariff. However, the Petitioner should not thereafter claim unviability or otherwise any reluctance to proceed with regard to the cost or tariff. The Petitioner is estopped from raising any such claim even in future.
- 8.15. It is contended that though the Petitioner has claimed that it is not seeking any extension on account of land, the claim of Petitioner is now that it has sufficient land for going ahead with the project as the land required is only 175 acres though the Petitioner has not provided the details of the land available with it. The Petitioner is required to provide details of the land like when it received the permissions and whether such permissions are still valid. Without such details, the claim of the Petitioner that it can complete the project is meaningless and it will only result in repeated requests for extensions which has already been seen from past experience.
- 8.16. It is contended that in all its various Petitions for extension of time, the Petitioner

has repeatedly claimed that it requires 477 acres of land, which was not available with the Petitioner and all these submissions are also recorded in the Order dated 07.12.2018 passed by the Commission. With regard to the claim that the required land is only 175 acres, the said quantum of land was already available with the Petitioner in the year 2012 and in May 2016. It is stated that as recorded in the Order dated 07.12.2018, the Petitioner had permissions for 156.43 acres and 8 acres of land in the year 2012 and thereafter the Government land of 67 acres was available on 03.05.2016. The 67 acres of Government land being available on 03.05.2016 is also stated in the Petition filed by Petitioner. If more than 200 acres of land was available as in the year 2016, the Petitioner could have easily proceeded with and completed the project within the time of 31.12.2019.

- 8.17. It is also contended that the Petitioner in the Petition has even claimed that it has undertaken all development work possible on the land for which it has received the permission under Section 89 A of the Bombay Tenancy and Agriculture Land (Vidarbha Region and Kutch area) Act, 1958. In light of the stand taken by the Petitioner that 175 acre land is sufficient for first phase, it is clear that the Petitioner had not done the possible activities.
- 8.18. It is contended that the Commission had given last opportunity to the Petitioner to complete the project by 31.12.2019 and during this extended period, the Petitioner was required to procure all land related permissions/approvals, achieve financial closure, construct the project and achieve commercial operation for the project. Also, the Commission had directed the Petitioner to submit progress report to the Respondent on monthly basis.
- 8.19. It is contended that as per communications from the Petitioner and even as per the Petition, it transpires that the Petitioner has not made any progress during the period after Order dated 07.12.2018 passed by the Commission. The only progress the Petitioner has made during this period is to approach various Financial Institutions which they are doing since signing of PPA on 30.04.2010.
- 8.20. It is further contended that in all previous proceedings, the stand of the Petitioner was that they have already appointed EPC contractor, placed purchase orders for major plants and machineries for the project, many items had already reached at

project site etc. Now, Petitioner has stated that they are approaching different EPC contractors for appointment and sourcing of material for the project. As per the earlier submissions of the Petitioner, if major long lead equipment were ordered and if the EPC contractor was already appointed, they could have just commenced the construction work of the project and there is no requirement to approach new EPC contractor or to source the project equipment from China as per the claim now made in the Petition filed. Therefore, the Petitioner and its contractors were in a position to complete the project during the extended period. However, the Petitioner has not made any substantial progress after Order dated 07.12.2018 except allegedly approaching financial institution and EPC Contractors which shows that the Petitioner is not serious about the project.

- 8.21. It is contended that the Petitioner is not entitled for any extension and the claim of Petitioner for requirement of 24 months further extension on the basis that lenders need 24 months and contractor needs 22 months cannot be accepted. The gestation period as recognized in Orders even as per the Petitioner is 18 months, which is also recorded in the Order dated 07.12.2018. Further, the Petitioner itself had in earlier proceedings sought only 18 months as per its Affidavit dated 23.08.2018 which is also recorded in the Order dated 07.12.2018 and the same was objected by the Respondent and not granted by the Commission and therefore, the Petitioner cannot now seek for longer time.
- 8.22. It is also contended that the PPA was entered into in the year 2010 between the parties and the SCOD was in December 2011. This period would have included the period for acquiring land, permissions as well as arranging finance, ordering & procuring equipment etc. and undertake the construction work. The Petitioner has claimed that the Petitioner has expended Rs. 211 Crores during earlier proceedings and Rs. 221 Crores in the present Petition. It is also stated that the Petitioner has procured land and received 89A permissions, placed work orders and received plants/goods etc. and allegedly carried out various activities site. However, despite the above, the Petitioner is still asking for another 24 months extension and there are no explanations or reasons given by the Petitioner as to why the additional time period of 24 months is required specifically when as per the claim made by the Petitioner, it has mobilized everything and kept ready since long back.

- 8.23. Disputing the alleged data mentioned in Additional Submission and time claimed by the Petitioner it is contended by GUVNL that the reliance by the Petitioner on such data is not admissible. It is reiterated that the Petitioner had entered into an agreement and agreed to certain timelines. Further, the issue of timelines was already decided in the Order dated 07.12.2018 passed by the Commission and therefore, the Petitioner cannot ask further extension on the basis or grounds that the same was not sufficient.
- 8.24. It is contended that the COVID 19 condition was subsequent to the Scheduled Commercial Operation Date of 31.12.2019 decided by the Commission and therefore any issues on account of COVID 19 cannot be claimed as reason for delay. There is no question of COVID 19 being treated as Force Majeure condition specifically when Covid-19 related issues have arisen only after expiry of extended time period of 31.12.2019 and the Petitioner has failed to commission the project within the said extended period i.e. prior to 31.12.2019.
- 8.25. It is contended that the Petitioner is not entitled to any extension of time limit beyond 31.12.2019 as the same is contrary to the Order dated 07.12.2018 passed in Petition No. 1608 of 2016 by the Commission which has not been challenged and has since attained its finality. The Petitioner has already been granted extension of 8 years in total which has been more than 10 years since the PPA was executed. It cannot be that there are unlimited extensions that can be granted to a project. The Order dated 07.12.2018 had provided a last opportunity to the Petitioner and having failed to utilize the said last opportunity, the Petitioner cannot seek further extension. Further, the Petitioner had also executed the Supplemental PPA and agreed that it would not seek any further extensions. The Petitioner cannot now claim contrary to terms of the said agreement. The investment claimed to have been made is not admitted.
- 8.26. It is denied that there is any delay by Government of Gujarat or there is any action or inaction causing delay to project. The Petitioner itself has clarified that it is not seeking any extension on account of land and further this has already been undertaken by way of affidavit dated 23.08.2018 in the previous Petition No. 1608 of 2016 which is also recorded in Order dated 07.12.2018. Also, with regard to

problems with achieving financial closure and disbursement of loan/debt, the Commission has already rejected such claim in Order dated 07.12.2018 and the said finding has attained finality.

- 8.27. It is contended that the claim for 24 months being sought by contractors and financial institutions is incorrect and unsubstantiated. The Petitioner itself had sought for 18 months from date of disposal of Petition No. 1608 of 2016 and the Commission has considered it appropriate to grant time upto 31.12.2019 which was not challenged by the Petitioner. The Petitioner cannot now claim that time is not sufficient. Further, now the Petitioner is asking for extension for 24 more months from 31.12.2019 which would be in total more than 36 months from 07.12.2018 which is even more than the 18 months sought by the Petitioner itself. The Petitioner cannot now ask for more time than its own prayer in the Petition No. 1608 of 2016.
- 8.28. With regard to Supplementary PPA, it is contended that the Petitioner itself had sought 18 months from date of disposal of Petition No. 1608 of 2016 and there was no direction for Supplemental PPA as such and the execution of Supplementary PPA had no relevance to the execution of the project. Further, there was no delay by the Respondent GUVNL and in fact it was the Petitioner who had delayed execution of the PPA. In any case, the Petitioner had executed the Supplemental PPA willingly and agreed that it would not seek any further extensions. The Petitioner cannot now claim contrary to the Agreement.
- 8.29. It is denied that the Petitioner has any claim or merit in seeking further extension. It is stated that the request for extension is contrary to the Order dated 07.12.2018 as the timeline granted by the Commission was specific and upto 31.12.2019 and not subject to the signing of the Supplemental PPA. There was no such direction to sign the Supplemental PPA within any time period in the Order. In any case, even the Petitioner itself had sought time from date of disposal of Petition No. 1608 of 2016 and not from date of Supplemental PPA. Therefore, it is not open for the Petitioner to now claim the same as the Petitioner itself had delayed the execution of the PPA. Further in the Supplemental PPA itself, the Petitioner had agreed to the SCOD of 31.12.2019 and further agreed that it would not seek any further extension.
- 8.30. It is submitted that there is no progress by the Petitioner with regard to the project

and the Petitioner is once again merely seeking extension without any intention to complete the project. The Petitioner has repeatedly sought extensions and it is more than 10 years from the signing of the PPA and the project has been inordinately and unreasonably delayed and there can be no longer any further extension.

8.31. It is contended that the alleged assertions regarding banks/financial institutions or contractors are not admitted and are irrelevant. The Commission had granted extension until 31.12.2019 which was accepted by the Petitioner. The Petitioner did not challenge the said Order on basis that the said time was not sufficient or that it needed more time than granted by the Commission. The Petitioner having agreed to timeline of 31.12.2019 and signed the Supplemental PPA on that basis, it is not open for it to now claim that the time was not sufficient. The PPA specifically excludes the issues with banks/financial institutions or contractor from Force Majeure Events and the Commission has already rejected the claim of Petitioner of issue in financial closure in previous proceeding. It is submitted that an attempt to seek 24 or 22 months is contrary to Petitioner's own request for 18 months from date of disposal of Petition. No. 1608 of 2016. The Commission had not even accepted the request for 18 months, but only granted time upto 31.12.2019. Further, the gestation period as per the Order of the Commission itself is only 18 months. Further, the Petitioner has claimed to incur an amount of Rs. 211 Crores towards procuring land, obtaining permissions, placing work orders and procuring equipment etc. If all these were done, there was no reason for further 24 months. The Commission while keeping all this in mind, had granted only one year which was not challenged by the Petitioner.

8.32. It is also contended that the Petitioner cannot seek unlimited extensions or excuse inordinate delays of more than 8 years, which would be 10 years if the request of Petitioner for 31.12.2021 is considered. During this entire period, the Petitioner has only claimed delays due to land issues whereas alleged vendor development and finalization of EPC / supplier was never an issue and therefore, contentions of the Petitioner are denied. In fact, the Petitioner had claimed that it had already placed many work orders and procured equipment which had already been received. Therefore, it is not clear how there is an issue of vendor development or their finalization or to procure the equipment for Solar project afresh. The Commission after considering all issues raised had granted time upto 31.12.2019 and the