

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 1998 of 2021.**

**In the matter of:**

**Petition seeking extension of Scheduled Commercial Operation Date (SCOD) on (i) account of Force Majeure Events and (ii) delays solely attributable to Gujarat Energy Transmission Corporation and consequential reliefs under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of Power Purchase Agreement executed between Goodwatts WTE Jamnagar Pvt Limited and GUVNL.**

**And**

**IA No. 15 of 2021 in Petition No. 1998 of 2021.**

**In the matter of:**

**Application for seeking the interim reliefs.**

**And**

**IA No. 16 of 2021 in Petition No. 1998 of 2021.**

**In the matter of:**

**Application for seeking urgent listing of Petition No. 1998 of 2021.**

Petitioner/Applicant : Goodwatts WTE Jamnagar Pvt. Limited  
Represented by : Ld. Senior Counsel Shri Mihir Thakore alongwith  
Advocates Ms. Poonam Verma & Shri Saunat  
Rajguru and Shri Tarlik Damani, Shri Ashish Mehta

V/s.

Respondent No. 1 : Gujarat Urja Vikas Nigam Limited  
Represented by : Ld. Advocate Shri Anand Ganesan and Ms. Girija  
Dave

Respondent No. 2 : Jamnagar Municipal Corporation  
Represented by : Nobody was present.

Respondent No. 2 : Gujarat Energy Development Agency  
Represented by : Shri Jatin Desai

**CORAM:**

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

**Date: 16/09/2021**

**DAILY ORDER**

1. These matters were listed for hearing on 06.09.2021.
2. At the outset Ld. Advocate Shri Anand Ganesan appearing on behalf of Respondent No. 1 GUVNL submitted that the Commission may grant 15 days' time to the Respondent GUVNL to file its reply in the matter.
3. Heard Ld. Senior Advocate Shri Mihir Thakore for the Petitioner/Applicant. Referring prayer clauses, it is argued that the Petitioner has approached this Commission to hold and declare that events pleaded in the Petition qualify as Force Majeure events affecting completion of the WTE project for which Petitioner is entitled to extension of SCOD and is exempted from any financial liabilities not limited to (i) no levy of LD; (ii) restoration of BGs invoked by the Respondent and (iii) continuation of tariff as per original tariff control period and plea to file separate Petition for seeking compensation on account of time and cost overrun.
- 3.1. It is submitted that the Petitioner has setup Municipal Solid Waste (MSW) based Waste to Energy (WtE) Power Project of 7.5 MW under Gujarat Waste to Energy Policy, 2016 in the State of Gujarat for disposal of waste while generating energy therefrom. Although, the power plant is almost ready for commissioning, which can be achieved within next 15-20 days, but there is delay in achieving Scheduled Commercial Operation Date (SCOD) occasioned for multifarious reasons. Referring the definition of SCOD under the PPA executed between the Petitioner and the Respondent, it is submitted that SCOD means 30.06.2020 within control period of GERC Order No. 4 of 2016 dated 10.11.2016 as extended by the Commission upto 31.03.2021.

- 3.2. It is further argued that despite all efforts made by the Petitioner for commissioning the project within SCOD, the project got delayed and bank guarantee submitted by the Petitioner is already invoked by the Respondent. Moreover, the Petitioner has also filed an IA seeking interim reliefs against any coercive action or termination of PPA by GUVNL including (i) no levy of LD; (ii) restoration of BGs invoked by GUVNL on 02.01.2021 and (iii) continuation of tariff without any reduction. As per PPA, the project is awarded at tariff of Rs. 7.07 per unit and Respondent GUVNL to pay Rs. 6.31 per unit as decided by the Government vide GR No. REN/11/2015/1343/B1 dated 01.05.2018 and modalities for disbursement of differential amount of Rs. 0.76 per unit is as decided by State Government.
- 3.3. It is argued that there is an apprehension that the PPA may be terminated when the plant is ready for commissioning or having commissioned the project, if bill towards supply of energy is raised by the Petitioner, no amount will be paid by GUVNL since the tariff period has expired on 31.03.2021.
- 3.4. In response to query regarding applicability of tariff in Article 5.1 of the PPA, it is averred that the Petitioner is seeking relief with regard to force majeure events for extension of SCOD and no consequential reduction in tariff of Rs. 7.07 per unit. Hence, today the Petitioner is seeking that interim relief of status quo may be granted by the Commission in respect of IA filed while allowing the Respondent to file its reply within 10 days.
4. Ld. Advocate Shri Anand Ganesan, on behalf of the Respondent GUVNL submitted that let the matter be listed after 20 days while allowing the Respondent GUVNL to file reply in the matter within 10 days.
- 4.1. In so far as IA seeking interim reliefs filed by the Petitioner, it is contended that since the Respondent has already invoked the BG on 02.01.2021, the relief regarding restoration of same is opposed. As far as levy of liquidated damages is concerned, the Respondent GUVNL having already invoked the Bank Guarantee has as on date no means for recovery of same from the Petitioner. Moreover, with regard to termination of the PPA it is submitted that till 30.11.2021, there is no question of termination by the Respondent in terms of PPA and hence the question of termination till then does not arise. Therefore, the Respondent cannot have any objection to interim reliefs sought by the Petitioner regarding no coercive action or termination. Accordingly, the main Petition may be taken up for hearing after reply is filed by the Respondent by listing the matter on any date subject to convenience of the Commission.
- 4.2. It is further argued that the Respondent GUVNL has already granted extension of 5 months in SCOD towards COVID in terms of MNRE Notification was upto 30.11.2020 and therefore, the Respondent is entitled for liquidated damages for delay as per

provisions of the PPA in main matter alongwith force majeure, applicable tariff etc., which needs to be decided the Commission.

- 4.3. It is also pointed out that although certain events claimed as force majeure by the Petitioner pertain to GETCO and SLDC, they have not been impleaded in this matter by the Petitioner. Although, it is for the Petitioner to decide the Respondents in the matter based on the facts and circumstances of Petition but the Respondent is pointing out non-joinder of parties and consequences, if any, thereof.
5. Ld. Senior Advocate Shri Mihir Thakore, agreed that the Petitioner is not seeking reinstatement of the bank guarantee already invoked by GUVNL and his statement on behalf of Petitioner may be recorded. With regard to joining GETCO and SLDC, it is argued that since the relevant documents/correspondence is already filed the Petitioner in the main matter in support of reliefs sought and although there is no need to implead GETCO and SLDC as party Respondents in the present matter but since the Respondent has pointed out non-joinder of party, the Petitioner will implead GETCO and SLDC by filing an affidavit with amended Memo of the parties and serve copy of Petition to SLDC and GETCO, within 2 days.
- 5.1. It is also submitted that the Commission may direct the Respondents to file their respective reply on or before 24.09.2021, so that the Petitioner can file its rejoinder reply and thereby pleadings are completed prior to next date of hearing.
6. 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 Article 10.4 of Power Purchase Agreement executed between M/s Goodwatts WTE Jamnagar Pvt. Limited and GUVNL.
- 6.1. We note that in the present matter, the Petitioner M/s Goodwatts WTE Jamnagar Pvt. Limited is a developer of 7.5 MW Municipal Solid Waste (MSW) based Waste to Energy (WtE) Power Project and has entered in to Power Purchase Agreement (PPA) dated 30.05.2018 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 7.5 MW Power Project of the Petitioner in terms of PPA executed between the parties. Thus, 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 WTE 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.
- 6.2. We also note that the Petitioner has filed two IAs being IA No. 15 of 2021 and IA No. 16 of 2021 in the present Petition. The IA No. 16 of 2021 is filed for seeking urgent

listing of Petition No. 1998 of 2021 and IA No. 15/2021 filed for interim relief. Since, the Commission has taken up the main matter and IA No. 15 of 2021 for hearing, the prayer in I.A. No. 16 of 2021 filed for seeking urgent listing of Petition No. 1998 of 2021 alongwith IA for interim reliefs is satisfied. Accordingly, I.A. No. 16 of 2021 stands disposed of.

- 6.3. We note that the IA No. 15 of 2021 has been filed by the Petitioner seeking interim reliefs in the form of stay against any coercive action or termination of PPA by GUVNL including (i) no levy of LD; (ii) restoration of BGs invoked by GUVNL on 02.01.2021 and (iii) continuation of tariff and effectively no reduction in tariff. In so far as reinstatement of the bank guarantee sought by the Petitioner is concerned, we take on record the statement made by Ld. Senior Counsel for the Petitioner that the Petitioner is not seeking reinstatement of the bank guarantees already invoked by GUVNL. Therefore, based on above statement we note that the Petitioner is not seeking any relief regarding reinstatement of BG already invoked. With regard to interim reliefs sought by Applicant/Petitioner of non-levy of BG and termination of PPA, we note that Ld. Advocate for the Respondent submitted that after invoking the Bank Guarantee submitted by the Petitioner, the Respondent has no means for recovery of Liquidated damages from the Petitioner as on date and with regard to termination of the PPA, it is submitted by the Respondent that there is no question of termination till 30.11.2021. We also note that Respondent GUVNL has not raised any objection to granting of status quo as interim relief.
- 6.4. From the above, it appears that the Petitioner seems to have serious issues and arguable case and it is submitted that the Petitioner is in a position to commission the plant within fifteen days. The Respondent - GUVNL has not submitted its written reply and sought time for that but at the same time has not seriously objected to the interim relief being granted to the Petitioner. We also note that, as submitted by the Petitioner, the project was set up under the Gujarat Waste to Energy Policy, 2016 and addresses the problem of processing and disposal of solid wastes while generating clean energy in furtherance to national policies. It is also submitted that it being renewable energy plant requires to be nurtured, encouraged and facilitated as per the Electricity Act, 2003, National Electricity Policy and Tariff Policy. It is claimed in the Petition that the project has the potential to dispose of around 450 TPD out of the 12,000 TPD waste generated in the State of Gujarat alongside generating renewable energy which is also very important. In view of the fact that the Respondent has sought time for filing reply and considering the submission of both sides not disputing granting of interim relief regarding termination of PPA and other coercive action, we do not think it improper to allow the submissions. Hence, without going into the merits of the Petition, we dispose of IA No. 15/2021 by recording the statement of learned Advocates appearing on both sides that the Respondent shall neither terminate the PPA nor take any coercive action against the Petitioner till next hearing.

- 6.5. We note that Respondent GUVNL raised the issue that some of events for which force majeure is claimed by the Petitioner pertains to GETCO and SLDC who are not made party to the present matter and thereby non-joinder of parties arises in present matter. Ld. Senior Advocate for the Petitioner argued that the Petitioner has filed relevant documents and hence as such it is not required to join them as parties but since the Respondent has raised the issue of non-joinder of parties, the Petitioner agrees to join GETCO and SLDC as party Respondents in the present matter, within two days by filing affidavit with amended Memo of Parties. Let the same be filed by the Petitioner for joining GETCO and SLDC as party Respondents by amending Memo of the parties and serve a copy of entire set of such Petition to the newly joined Respondents. Newly joined GETCO and SLDC as Respondents, upon the receipt of the petition amended by the Petitioner are at liberty to file their reply, within 10 days with a copy to the Petitioner. Thereafter, the Petitioner is at liberty to file rejoinder reply, if any.
- 6.6. Ld. counsel for Respondent GUVNL has undertaken to file reply within 10 days. Therefore, GUVNL and newly impleaded Respondents are directed to file their respective reply, if any, with a copy to the Petitioner on or before 24.09.2021. Thereafter, the Petitioner is at liberty to file rejoinder reply, if any.
7. Considering the joint request of the parties, the matter is listed for hearing on 01.10.2021 at 11:30 A.M. for which staff of the Commission is directed to issue notice of hearing as per amended memo of parties as may be filed by the Petitioner.
8. We order accordingly.

**Sd/-**  
**[S. R. Pandey]**  
**Member**

**Sd/-**  
**[Mehul M. Gandhi]**  
**Member**

Place: Gandhinagar.  
Date: 16/09/2021.