

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1520 of 2015.

In the Matter of:

**Petition under Section 86, 129 read with Section 146 of the Electricity
Act, 2003.**

Petitioner : M/s Aatash Power Private Limited
213, Devarc Commercial Complex
Near Iscon Circle, S. G. Highway
Ahmedabad – 380 059.

Represented by : Nobody was present.

V/s.

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

Represented By : Ld. Adv. Mr. Aneesh Bajaj along with Mr.
K.T. Shah and Mr. Ravi Gohil

CORAM:

**Pankaj Joshi, Chairman
Hiren Shah, Member**

Date: 07/02/2026.

ORDER

1. This Petition has been filed under Sections 86, 129 read with Section 146 of the Electricity Act, 2003 by the Petitioner M/s Aatash Power Pvt. Limited seeking *interalia* seeking following prayers:

a) *To allow the present petition.*

b) *To command the Respondent to make payment @ Rs. 11.25 per kWh*

for the period of 12 years from the date of commencement of project and further be pleased to command the Respondent to make payment of difference of amount paid and amount outstanding as reflected in the statement with interest as stipulated in Clause 6.3 of the PPA.

c) To execute the Letter of Credit (LoC), as envisaged under Clause 6.5 of the PPA, interalia executed on 09.12.2010 .

d) To hold the agent or servant Respondent responsible for the deliberate and willful disobedience of the Order passed/directions imparted by the Commission and reprimand.

2. When the matter was called out today, i.e., on 04.02.2026, nobody appeared on behalf of the Petitioner, despite of the hearing notice issued to the Petitioner.
3. Ld. Adv. Mr. Aneesh Bajaj appearing on behalf of Respondent GUVNL submitted that during the earlier hearings in the present matter also, the Petitioner was not present before the Commission. He also submitted that the present case of the Petitioner is squarely covered by EMCO' judgement dated 02.02.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 1220/2015 in case of GUVNL Vs. EMCO Limited & Ors. He requested that the Commission may dismiss the present Petition on the ground of non-prosecution by the Petitioner as well as Petition becoming infructuous by virtue of the Judgement of the Hon'ble Supreme Court in EMCO' matter.
4. We have considered the submissions made by the Respondent. We note that the present Petition has been filed by the Petitioner under Sections 86 and 129 read with Section 146 of the Electricity Act, 2003.

The record reveals that the matter was listed by the Commission from time to time, however, there is repeated non-prosecution on the part of the Petitioner. When the matter was listed on 07.11.2015, an adjournment was sought by the Petitioner on the ground of personal difficulty of the arguing counsel and the Commission, adjourned the matter vide Daily Order dated 16.11.2015 in the interest of justice and to afford opportunity of hearing. Thereafter, when the matter was listed for hearing on 05.04.2016, none appeared for the Petitioner and, therefore, the Commission vide Daily Order dated 06.04.2016 adjourned the matter again to grant an opportunity to the Petitioner before taking any view in the absence of the Petitioner and despite of the submission of GUVNL that the Petition have become infructuous in view of the judgment of the Hon'ble Supreme Court dated 02.02.2016 in Civil Appeal No. 1220 of 2015. Thereafter, even on 07.05.2016, the Petitioner sought further adjournment which was not objected to by the Respondent and was accordingly granted. Subsequently, when the matter was listed for hearing on 25.11.2016, the Petitioner again remained absent and, upon considering the Respondent's submissions, the Commission directed the parties to intimate the outcome of the review petition, if any, filed before the Hon'ble Supreme Court along with a copy of the Order/Judgment deciding the Review Petition by the Hon'ble Supreme Court in the EMCO' matter.

- 4.1. It is also noted that during the last hearing on 08.01.2026 also, the Petitioner was not present and the Commission passed the Daily Order dated 17.01.2026 wherein while recording the non-appearance of the Petitioner, has also recorded the request of the Respondent GUVNL that last opportunity of the hearing to be provided to the Petitioner to

clear its stand in pursuant to the Hon'ble Supreme Court's Judgement dated 02.02.2016 in the present matter. Considering the same, the Commission has granted last opportunity of hearing to the Petitioner prior to deciding the matter and accordingly, adjourned the matter on account of non-appearance of the Petitioner with a direction to the Petitioner to remain present during the next date of hearing and also made clear that if the Petitioner does not remain present during the next date of hearing, the Commission will decide the matter based on the records of the present Petition and no further adjournment would be granted in the present matter. Despite of this, even on 04.02.2026, when the matter was listed for providing a last opportunity to the Petitioner for making their submissions in the matter, the Petitioner chose not to appear, thereby again demonstrating persistent failure to prosecute the matter.

- 4.2. As noted above, when the matter was called out on 04.02.2026, nobody was present on behalf of the Petitioner although the hearing notice was issued to them. We also note that the Petitioner neither remained present during proceedings on 04.02.2026 nor made any written communication about their inability to remain present, despite being served the hearing notice to them. We also note that during earlier hearings in the present matter, the Petitioner has chosen not to remain present before the Commission and that the counsel appearing for the Respondent GUVNL submitted that the present case of the Petitioner is squarely covered by EMCO' judgement of the Hon'ble Supreme Court and accordingly, requested that the Commission may dismiss the present Petition on the ground of non-prosecution by the Petitioner and the Petition being infructuous in light of EMCO' judgement of the

Hon'ble Supreme Court. In this regard, it is to note that the Commission passed Order dated 08.08.2013 in Petition No. 1270 of 2012 filed by EMCO Limited, which was also upheld by the Hon'ble APTEL vide its Judgement dated 20.11.2014 in Appeal No. 252 of 2013 filed by GUVNL. The said Judgement dated 20.11.2014 of the Hon'ble APTEL was challenged by the Respondent GUVNL before the Hon'ble Supreme Court by filing Civil Appeal No. 1220 of 2015. The Hon'ble Supreme Court vide its judgement dated 02.02.2016 had set aside the Commission's Order dated 08.08.2013 in Petition No. 1270 of 2012 and the Hon'ble APTEL' Judgement dated 20.11.2014 in Appeal No. 252 of 2013. We also note the submissions of the parties that the present matter is squarely covered by the EMCO's Judgement of the Hon'ble Supreme Court and by virtue of the Hon'ble Supreme Court' judgement in the EMCO matter, the present Petition becomes infructuous.

- 4.3. In the given facts and circumstances, we deem it appropriate to go through the record of the Petition. The contents of the Memo of the Petition suggests that the grounds of the present Petition is based on the Order dated 08.08.2013 passed by the Commission in Petition No. 1270 of 2012 which was upheld by the Hon'ble APTEL vide its Judgement dated 20.11.2014 in the Appeal No. 252 of 2013 deciding the issue relating to the tariff applicable to a Solar Power Project under the PPA with GUVNL, for not availing the benefits of accelerated depreciation. The relevant paras of the Petition read as under:

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14. *It would be pertinent to mention at this juncture that similar treatment was meted out by the respondent to EMCO Limited. Said company had preferred petition before this Hon'ble*

Commission with a prayer to command the respondent to pay amount so fixed by this Hon'ble Commission for the generators which are not availing the benefits of accelerated depreciation. The petition of EMCO Ltd. came to be allowed by this Hon'ble Commission vide order dated 8.8.2013. Against the said order, the respondent preferred an appeal being Appeal No. 252 of 2013 before the Hon'be Appellate Tribunal for Electricity at New Delhi. However, the said appeal also came to be dismissed by the Hon'ble Tribunal and thereby directed the respondent to pay tariff which was fixed by this Hon'ble Commission. It would be pertinent to mention at this juncture that the Hon'ble Appellate Tribunal was pleased to observe that this Hon'ble Commission had correctly decided to make order, impugned, in rem, applicable to all similar cases, as the order dealt with the interpretation of its order dated 27.1.2012. Despite this specific observation, the petitioner is constrained to file present petition with a similar relief. Hence, the conduct of the respondent is required to be viewed seriously by this Hon'ble Commission. The petitioner craves liberty this Hon'ble Commission to refer to and rely upon the orders, as mentioned herein above, at the time of hearing of the present petition.

- 15. A conjoint appreciation of the conduct of the respondent and totality of the circumstances tends to suggest that the respondent has committed a deliberate and willful disobedience of the verdicts of this Hon'ble Commission which entails consequences of punishment for non-compliance of order or direction as envisaged under section 146 of the Act, 2003.*
- 16. As mentioned herein above, the respondent has deliberately and willfully committed disobedience of the order of this Hon'ble Commission so also the terms of the PPA, the petitioner invokes Jurisdiction this Hon'ble Commission as stipulated u/s. 129 of the Act, 2003 to enforce the order passed by this Hon'ble Commission.*

.....”

4.4. We note the submission of the Respondent GUVNL that the Hon'ble Supreme Court vide its judgment dated 02.02.2016 in the Civil Appeal No. 1220 of 2015 filed by GUVNL, has set aside the Order dated 08.08.2013 of the Commission and the judgement dated 20.11.2014 passed by the Hon'ble APTEL in Appeal No. 252 of 2013. Therefore, by virtue of the aforesaid Judgment dated 02.02.2016 of Hon'ble Supreme Court, the present Petition becomes infructuous.

4.5. With consideration of these aspects that the present Petition became infructuous by virtue of the judgement dated 02.02.2016 of the Hon'ble Supreme in EMCO's case and also on the grounds of non-prosecution by the Petitioner, the present Petition is deserved to be dismissed and accordingly, stand dismissed and disposed of.

5. Order accordingly.

Sd/-
[Hiren Shah]
Member

Sd/-
[Pankaj Joshi]
Chairman

Place: Gandhinagar.

Date: 07/02/2026.