

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2282 of 2023.

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 read with Guidelines for tariff based Competitive Bidding Process for procurement of power from grid connected Solar PV Power Projects dated 03.08.2017 issued thereunder interalia seeking adoption of tariff of Rs. 2.78 quoted by the Petitioner in the competitive bidding process conducted by the Respondent by way of RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 for development of Solar PV Projects of 700 MW capacity of Dholera Solar Park and consequential direction to the Respondent to enter into PPA with the Petitioner for 100 MW Solar Project awarded to the Petitioner by way of unequivocal Letter of Award dated 09.10.2020.

Petitioner : Veena Energy Renewables Urja Pvt. Limited
Represented by : Ld. Sr. Adv. Mr. Mihir Thakore alongwith Advocates Ms. Akanksha Tanvi, Mr. Siddhartha Mohapatra and Mr. Prithu Chawla
Vs.
Respondent : Gujarat Urja Vikas Nigam Limited
Represented by : Ld. Adv. Ms. Ranjitha Ramachandran along with Mr. H.N. Shah and Mr. A.H. Chavda

And

Petition No. 2283 of 2023.

In the matter of:

Petition under Section 63 read with Section 86 (1) (b) of the Electricity Act, 2003 in regard to competitive bidding process conducted vide RfS dated 18.03.2020 (Phase IX) issued by GUVNL.

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)
Represented by : Ld. Adv. Ms. Ranjitha Ramachandran along with Mr. H.N. Shah and Mr. A.H. Chavda

Vs.

Respondent No. 1 : TEQ Green Power Pvt. Limited (TGPPL)
Represented by : Nobody was present.

Respondent No. 2 : Veena Energy Renewables Urja Pvt. Limited (VERUPL)
Represented by : Ld. Sr. Adv. Mr. Mihir Thakore alongwith Advocates Ms. Akanksha Tanvi, Mr. Siddhartha Mohapatra and Mr. Prithu Chawla

Respondent No. 3 : Tata Power Company Limited (TPCL)
Represented by : Ld. Advocates Mr. Anand Srivastava and Mr. Shivam Sinha

Respondent No. 4 : Gujarat Power Corporation Limited (GPCL)
Represented by : Ld. Adv. Mr. Vaibhav Goswamy

CORAM:

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

Date: 28/05/2024.

DAILY ORDER

1. The matter was kept for hearing on 02.03.2024.
2. At the outset, Ld. Adv. Ms. Ranjitha Ramachandran, appearing on behalf of the GUVNL submitted that GUVNL has initiated Competitive Bidding Process for procurement of power vide RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 for selecting developers to develop Solar PV Projects of 700 MW capacity in the Dholera Solar Park wherein after discovering of tariff under the Competitive Bidding Process, the Petitioner GUVNL has filed Petition No. 1902 of 2020 seeking adoption of discovered tariff under the said Competitive Bidding Process and the Commission had passed Order dated 29.01.2021, which were challenged by five bidders, viz, (i) TEQ Green Power Pvt. Limited, (ii) Vena Energy Renewables Urja Pvt. Limited, (iii) TATA Power Company Limited, (iv) SJVNL and

(v) ReNew Solar Power Pvt. Limited by filing the appeals before the Hon'ble APTEL. During the pendency of the aforesaid appeals, SJVNL and ReNew Solar Power Pvt. Limited withdrew their appeals from the Hon'ble APTEL as recorded in Orders dated 07.10.2022 and 17.07.2023.

- 2.1. It is submitted that pursuant to judgement dated 07.08.2023 of the Hon'ble APTEL, GUVNL has filed the present Petition No. 2283 of 2023 before the Commission under Sections 63 and 86 (1) (b) of the Electricity Act, 2003 with regard to Competitive Bidding Process conducted vide RfS dated 18.03.2020 (Phase IX) issued by GUVNL for Procurement of 700 MW Solar Power to be set up in the Dholera Solar Park, Gujarat and Vena Energy has filed Petition No. 2282 of 2023 seeking adoption of tariff of Rs. 2.78 quoted by the Petitioner in the Competitive Bidding Process conducted by the Respondent under RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and consequential direction to the Respondent to enter into PPA for 100 MW Solar Project awarded to Vena Energy by way of unequivocal Letter of Award dated 09.10.2020.
- 2.2. It is submitted that Section 63 states that the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government and Section 86 (1) (b) empowers the Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. Therefore, there is two approval required under the Act, i.e., (i) adoption of tariff and (ii) approval of PPA to be executed with generating companies/licensees. The requirements of adoption of tariff in Section 63 and approval to be given to the PPA including the price under Section 86(1)(b) of the Electricity Act, 2003 cannot be made redundant and meaningless exercise or an empty formality having no bearing. There is a definite purpose for Section 63 having provided for the adoption of the tariff by following the procedures for adoption of tariff with considerations of terms and conditions of Bidding Guidelines by the Appropriate Commission.

- 2.3. It is submitted that GUVNL has received a letter from Tata Power wherein TATA has not unconditionally accepted offer of GUVNL stating that they have agreed to terms of GUVNL that the TATA Power has accepted all Change in Law pertaining to BCD, GST and other taxes upto the date of signing of the PPA or 31.03.2024 whichever is earlier.
- 2.4. Referring to Section 49 of the Electricity Act, 2003, it is submitted that unlike purchase of power by consumers directly from generating company which is covered under Section 49 and for which the Commission has no role for determination of tariff of such purchase of power and the same is to be bilaterally agreed, the purchase by the distribution licensee from the generating company requires specific approval of the Commission because the distribution licensee procures power for supply to consumers at large and the cost of such power purchase is passed on to the consumers.
- 2.5. It is submitted that the Commission has to examine various aspects such as verification as to whether the competitive bid process was in accordance with the Competitive Bidding Guidelines issued under Section 63 of the Electricity Act, 2003 followed or not and whether the provisions of RfS and RfP followed or not and the price discovered is conducive and aligned to market trends and the bidding is done in a transparent manner consistent with the directions, clarifications etc. issued by Ministry of Power, Govt. of India. Therefore, merely initiation of competitive bidding process by procurer and adopting the discovered tariff is not correct. The statutory step needs to be followed for an enforceable contract to come into existence.
- 2.6. It cannot be said that the Commission is required to approve the bid/adopt tariff even if the Commission considers the tariff discovered is substantially higher than the prevalent market price because the same is contrary to the specific provisions of Competitive Bidding Guidelines and Tariff Policy issued under the provisions of the Electricity Act, 2003 for competitive bidding leading to reduction in prices and contrary to consumers' interest which is recognized objective under Section 61(d) read with Section 63 of the Electricity Act, 2003 as well as in the Guidelines and

above all the regulatory power of the Commission to safeguard the consumers' interest.

- 2.7. It is submitted that any agreement for procurement of power by or on behalf of the distribution licensee is not effective till the approval is granted by the Appropriate Commission. It is submitted that Section 86(1)(b) is equally applicable in cases of Section 63 and there is a requirement of approval of the State Commission for the price at which the power procurement is being proposed. The Hon'ble Supreme Court has rejected the contention that Section 63 of the Electricity Act, 2003 is a standalone provision and the general regulatory power of the Commission under Section 86(1)(b) is also states about the power for determination and adoption of tariff.
- 2.8. Ld. Counsel for GUVNL has drawn the attention of the Commission to the judgement dated 08.01.2024 of the Hon'ble Supreme Court in Civil Appeal No. 6503 of 2022 in the case between Jaipur Vidyut Vitran Nigam Limited and Others v. MB Power (Madhya Pradesh) Limited and Others, (2024) INSC 23 and submitted that the Hon'ble Court while considering the case before it, has noted the Sections 63, 79 and Section 86 (1) (b) of the Electricity Act, 2003 and referred the objectives of the bidding guidelines notified by the Central Government. It also referred the para 41,42 & 43 of the said Judgement and submitted that the clauses of the RFP quoted by the procurer therein, are almost similar to the clauses of RfS issued by GUVNL. It is submitted that the said appeals were filed against the judgement passed by the Division Bench of High Court of Rajasthan and not against the Judgement of Hon'ble APTEL.
- 2.9. She has referred the following the para of the said the judgement dated 08.01.2024 of the Hon'ble Supreme Court in Civil Appeal No. 6503 of 2022 which is reproduced as under:

".....

53. It was contended before the State Commission by SKS Power that the State Commission was bound to adopt tariff as quoted by it. However, per contra, it was contended by the RVPN and DISCOMS that since the tariff quoted by SKS Power was not market aligned, it could not be adopted. In view of the counter

submission, the State Commission vide its order dated 16th October 2018, gave an opportunity to the RVPN to file an amended application or seek direction on the issue from this Court.

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56. In accordance with the directions issued by this Court, the State Commission considered the rival submissions of the parties and came to a conclusion that the tariff quoted by SKS Power was not market aligned. The State Commission also found that, adoption of such high rate would be against the consumer interest. The State Commission, therefore, vide order dated 26th February 2019, decided not to adopt the tariff quoted by L-4 and L-5 bidders.

57. The said order dated 26th February 2019 of the State Commission was challenged before the learned APTEL by SKS Power by way of Appeal No.224 of 2019. The learned APTEL framed the following three issues in the said appeal:

“ISSUE NO.1: Whether the Respondent Commission could reject the tariff/bid of the Appellant, in terms of Section 63 of the Electricity Act, 2003 and the directions issued by the Hon’ble Supreme Court?

ISSUE NO.2: Whether there was a sufficient proof to show that the bid of the Appellant was market aligned?

ISSUE NO.3: Whether the argument of Consumer interest be advanced by the Rajasthan Discoms in the facts of the present Appeal?”

.....

65. We, therefore, find that, before deciding the correctness or otherwise of the impugned judgment, it will be necessary for us to examine the correctness of the judgment and order dated 3rd February 2020, passed by the learned APTEL in the case of SKS Power.

66. We have already reproduced Section 63 of the Electricity Act. The provisions of Section 63 of the Electricity Act fell for consideration before this Court in the case of Energy Watchdog (*supra*). It will be apposite to refer to paragraphs 19 and 20 of the said judgment, which are as under:

“19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62.

Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. Thirdly, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to “regulate” tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In

either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used.”

[emphasis supplied]

.....

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.

.....

73. Clause 5.15 of the Bidding Guidelines is an important clause. It provides that, the bidder who has quoted lowest levelized tariff as per evaluation procedure, shall be considered for the award. It also provides that the evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

.....

77. *If the contention of the respondent No.1-MB Power that the procurer is bound to accept all the bids emerged in a competitive bidding process once the bidding process was found to be transparent and in compliance with the Bidding Guidelines is to be accepted, in our view, it will do complete violence to clause 5.15 of the Bidding Guidelines itself. If that view is accepted, the DISCOMS will be compelled to purchase electricity at a much higher rate as compared with other suppliers. The said higher rate will be passed on to the consumers. As such, accepting the contention of the respondent No.1 would result in adversely affecting the interests of the consumers and, in turn, would be against the larger public interest. For example, if in a bidding process for 1000 MW power, 10 persons emerged as "qualified bidders". L-1 bidder quotes Rs.2 per unit for 100 MW power and L-2 bidder quotes Rs.2.25 per unit for another 100 MW power and from L-3 bidder onwards, they start quoting Rs.10 per unit and above for balance 800 MW power, could the public interest be subserved by compelling the procurer to buy balance 800 MW power at Rs.10 per unit and above when the prices quoted are totally not aligned to market prices.*

.....

83. *We further find that it cannot be read from the orders of this Court that the State Commission was bound to accept the bids as quoted by the bidders till the bucket was filled. Firstly, no such direction can be issued by this Court de hors the provisions of Section 63 and 86(1)(b) of the Electricity Act and the Bidding Guidelines. In any event, vide order dated 19th November 2018, this Court had specifically directed the State Commission to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. As such, the State Commission was bound to take into consideration the Bidding Guidelines and specifically clause 5.15 thereof."*

From the above, it is submitted that the Hon'ble Supreme has set aside the mandate to adopt the tariff at high rates on the basis that the same is contrary to the larger consumers' interest and consequential public interest and if the power/electricity is to be procured by the procurers at the rates quoted by the Bidder therein. It submitted that the consumers' interest was an important consideration for the decision arrived at by the Hon'ble Supreme Court. The Hon'ble Supreme Court rejected the contention that bids quoted by the bidders are to be accepted without going into the question of price and that under Section 63, only Bidding Guidelines has to be considered and the State Commission has no power to reject the tariff quoted by the bidder. The Hon'ble Court recognized that the earlier orders of the

Court specifically clarified that the State Commission was to decide the tariff under Section 63 having regard to the law laid down statutorily and by the Court. Therefore, the price is an important consideration for approval by the Commission and the Hon'ble Courts have rejected the bids on the basis of the price not being considered appropriate.

2.10. It is further submitted that the Respondents have sought to distinguish the said judgment wrongly on the basis that the same was based on Clause 5.15 of the Guidelines which allows rejection of price bids on the basis that the same is not market aligned and claimed that the same is not included in the present Guidelines. It is submitted that even if there is no such specific provision in the present case, this Judgment is also applicable to the present case because the Hon'ble Supreme Court has not only considered Clauses 2.15, 3.5 and 5.15 of the Guidelines but also Section 63, 79(1)(b), 86(1)(b) of the Electricity Act, 2003, Objectives of Guidelines, and definition of Successful Bidders of RFP also. Moreover, the Hon'ble Court also noted that if all bids are bound to be accepted, DISCOMs would be compelled to purchase electricity at a much higher rate as compared to the other suppliers and the higher rate would be passed on to the consumers which would result in adversely affecting the consumers' interests which would be against the larger public interest.

2.11. She also pointed that the Solar Guidelines provides that promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act, 2003 and power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce the overall cost of procurement of power and facilitate development of power markets. The objective of the said policy is to promote competitive procurement of electricity from solar PV power plants by distribution licensees and protect consumers' interests and to facilitate transparency and fairness in procurement processes and provide framework for an Intermediary Procurer as an Aggregator/Trader for the Inter-State/Intra-State sale and purchase of long-term power.

2.12. It is also submitted that National Tariff Policy, 2016 is having specific guidance on purchase of power generated from renewable energy sources. Clause 6.4 (2)

provides that States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from Solar PV Power Projects above the notified capacity shall be done through competitive bidding process, from the date to be notified by the Central Government. However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003.

- 2.13. It also referred the Clauses 8.9 and 10.2 of the Solar Guidelines which is reprocedured as under:

“....

8.9. The detail procedure for evaluation of the bid and selection of the bidder shall be provided for in the RfS.

.....

10.2 After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.

.....”

- 2.14. It is submitted that the decision of the Evaluation Committee is not binding on the State Commission. Further in the present case, when the Guidelines have left the procedure/mechanism for evaluation open, this would be a situation not covered by the Guidelines. In such a case, the State Commission’s power to regulate including the price cannot be restricted as held in the Energy Watchdog Case. Further, Clause 10.4 of Guidelines provides that the distribution licensee or the procurer, shall approach the Commission for adoption of tariff by the Commission in terms of Section 63 of the Electricity Act, 2003. Even otherwise, the provisions of RfS also provides the right to GUVNL to reject any or all bids and to annul the bidding process. Therefore, the PPAs cannot be signed without the approval and adoption of discovered tariff by the Commission.

2.15. Referring the Clause 4.4.5 of Guidelines, it is submitted that there can be a right to short close on the basis of prices. It is submitted that GUVNL has provided the details of comparison of tariff which show that the prices in the present bid are in fact abruptly high. The Commission has to look into the discovered price/tariff in competitive bidding process conducted by the procurer while adopting the tariff and approval of PPA to be executed between the parties.

2.16. She referred the para 34 of the Petition wherein tariff is quoted by the bidders whose tariff adoption is subject matter in the proceedings before the Commission are stated as under:

Sr. No.	Name of Bidder	Rs. / Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
01.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
02.	Tata Power Company Limited	2.78	100	100
03.	TEQ Green Power Pvt. Limited	2.81	500	200

2.17. While referring to the prices discovered in other competitive bidding processes, it is submitted that the Government of India vide its OM dated 09.03.2021 has imposed 40% custom duty on solar modules with effect from 01.04.2022 and therefore, estimated impact of BCD is minimum 40-50 paise per unit at different levels of project cost. Accordingly, considering the said BCD for Phase X-R where the last date of bid submission was 26.04.2021, the tariff of Rs. 2.64 per unit has been discovered. In case of tariff discovered under Competitive Bidding process for Solar PV Projects to be set up Dholera Solar Park in Gujarat through RFS dated 18.03.2020 (Phase IX), considering the last date of bid submission as 31.07.2020, the tariff of Rs. 2.78 -2.81 per unit has been discovered. Moreover, in the bids opened thereafter, in GSECL's Khavda Solar Park Stage – I for 600 MW with Greenshoe option of additional 600 MW and considering the last date of bid submission as 24.04.2023, the tariff of Rs. 2.73 per unit to Rs. 2.89 per unit has been discovered. It is also submitted that the bid tariff discovered in the bids initiated by SECI for Tranche-IV for 1785 MW and considering the last bid date of 01.07.2021, the tariff of Rs. 2.17-2.18 per unit has been discovered. Similarly, during the bid for ISTS (XI) of SECI, considering the last bid date of 28.06.2023, the tariff of Rs. 2.60-2.61 per unit has been discovered.

2.18. It is submitted that the Commission has power to consider as to whether to adopt or not the tariff which was discovered in the competitive bidding process in the year 2020 in the interest of the consumers. It is submitted the tariff is an important consideration for approval by the State Commission and the Hon'ble Courts have rejected the bids on the basis of the price not being considered appropriate.

2.19. It is submitted that the completion of bidding process is covered under Clause 2.4 of the Guidelines dated 03.01.2019 which is reproduced below:

“.....

2.4. The Annexure – I:

“Annexure I – Time- Table for Bid Process

Sl. No.	Event	Elapsed Time from Zero date
1.	<i>Date of issue of RfS Project specific draft Power Purchase Agreements and other draft Project Agreements, and the PSA, if applicable.</i>	<i>Zero date</i>
2.	<i>Bid clarification, conferences, opening of online Data Room to share all Project specific details including site, if specified by Procurer etc. & revision of RfS</i>	<i>**</i>
3.	<i>RfS Bid submission</i>	<i>30 days</i>
4.	<i>Evaluation of bids and issue of LOI</i>	<i>120 days</i>
5.	<i>Signing of PPA and the PSA (if applicable)</i>	<i>150 days</i>

*** In case of any change in RfS document, the Procurer shall provide the bidders additional time in accordance with Clause 6.5 of these Guidelines.*

.....”

From the above it can be seen that the bidding process includes the steps from the date of issuance of the RFP and ends with signing of RfP Documents, which includes PPA and in between is the process of issuance of LOI to the successful bidder.

2.20. It is also submitted that mere issuance of the Letter of Award (LOA) does not create any vested right in the Respondents. In supports of this, Ld. Counsel for GUVNL while relying upon the judgement dated 18.07.2018 of the Hon'ble APTEL in Appeal No. 22 of 2016 in case of SunE Solar B.V. vs. DERC & Ors., also submitted that the Hon'ble APTEL has recorded the brief facts of the appeal in para 5 and arguments and submissions of the parties in para 7, 8 & 10 and has framed questions of law as stated in para 6, which is reproduced as under:

“.....6. Questions of Law:

(a) The Appellant has raised the following questions of law in the present Appeal which are as follows: a) Whether the Impugned Order, based on extraneous considerations and without following the principle of natural justice (i.e. without representation of the aggrieved persons including the Appellant) and in clear violation of the Act could have been passed by the State Commission?

(b) Whether the action of Respondent Nos. 2 & 3 of withdrawal of the Petition was right in light of the fact that the Respondent Nos. 2 & 3 had filed the Petition for approval of the Tariff after completion of Case 1 Competitive Bid Process and issuance of LOI to successful bidders including the Appellant?

(C) Whether the State Commission has any discretion in allowing withdrawal of a petition for approval of tariff filed under Section 63 of the Act?.....”

2.21. She also pointed out and referred the observations of the Hon'ble APTEL in the above stated judgement, which is reproduced as under:

“.....

11. We have heard the learned senior counsel appearing for the Appellant and the learned counsel appearing for the Respondents at considerable length of time on various issues raised in the present Appeal for our considerations are as follows: -

a) The Appellant in the present Appeal is mainly aggrieved by the decision of the State Commission to allow the Respondent Nos. 2 & 3 to withdraw the Petition and approval to carry out reverse bidding process for procurement of power from RE sources thereby resulting in cancellation of the LOI issued to it.

b) On Question No. 6. b) i.e. Whether the action of Respondent Nos. 2 & 3 of withdrawal of the Petition was right in light of the fact that the Respondent Nos. 2 & 3 had filed the Petition for approval of the Tariff after completion of Case 1 Competitive Bid Process and issuance of LOI to successful bidders including the Appellant?, we observe as below:

- i. *The Appellant has contended that the Respondent Nos. 2 & 3 once submitted the Petition before the State Commission for adoption of tariff under Section 63 of the Act cannot be allowed to withdraw the same as the LOI has already been issued and accepted by the Appellant and this forms a binding contract between the parties and the Appellant has the right to supply the power to the Respondent Nos. 2 & 3.*
- ii. *The Respondent Nos. 2 & 3 had contended that in terms of the RFP the bidding process was subject to approval of the State Commission and it reserves the right to cancel or modify the process without assigning any reason and without any liability. Further, the amended LOI issued and accepted by the Appellant was also subject to the approval of the State Commission. The State Commission has also reiterated that the LOI was subject to the approval of the State Commission and once the Respondent Nos. 2 & 3 have applied for withdrawal of the Petition, the State Commission cannot be forced for determination/ adoption of tariff specifically when the initial hearing yet to be started and it was only the IA which was taken up for disposal.*
- iii. *From the Impugned Order and perusal of the communication dated 6.11.2015 for withdrawal of the Petition it can be seen that the Respondent Nos. 2 & 3 have contended that there has been significant reduction in the cost of solar power, which will enable the cost of renewable power that is procured by the Respondent Nos. 2 & 3 to come down significantly in line with the emerging market trends and favourably impacting consumer tariff.*
- iv. *At this juncture, it is important to analyse the various provisions of the RFP. The Serial No. 5 of the 'Disclaimer' reads as follows:*

"5. The bidding process is subject to approval of Delhi Electricity Regulatory Commission ("DERC"). BRPL reserves the right to cancel or modify the process without assigning any reason and without any liability."

From the above it can be seen that the bidding process was subject to the approval of the State Commission and BRPL has the right to modify or cancel the process without assigning any reason and without any liability.

.....

viii. Now let us analyse the conditions of the amended LOI which was duly accepted by the Appellant. The relevant extract is reproduced below:

“.....May please note that, this LOI shall be to effect subject to following conditions:

- i. Grant of approval and adoption of Tariff by Hon’ble Delhi Electricity Regulatory Commission and additional conditions, if any, imposed by DERC.*
- ii. Adherence to and fulfilment of the terms and conditions specified in RfP and PPA documents by the bidder.*
- iii. Receipt of unconditional acceptance of LOI from the Successful Bidder within 7 days of the issuance of the RFP.”*

From the above it can be seen that the LOI was to be effective only after grant of approval and adoption of tariff by the State Commission and adherence to the terms and conditions by the bidder specified in RFP & PPA documents.

ix. The Appellant has also contended that by issuance of LOI and other provisions of the RFP, it has right to supply electricity to the Respondent Nos. 2 & 3. From the definitions of LOI and PPA as reproduced above it can be seen that the right to supply power accrues to the Appellant only when the PPA is signed. PPA uses the term “shall supply power pursuant to signing of the PPA as per the terms of the PPA” and LOI issued only intents for supply of power to the procurer and in present case LOI is even subject to certain terms and conditions.

x. From perusal of the provisions of the RFP as discussed above it becomes clear that the bidding process cannot be said to be completed merely on issuance of the LOI. LOI is not the process in itself. It is a one of the

milestones towards completion of the bidding process. The bidding process is said to be completed only after the signing of the RFP Documents which includes the PPA and the same was before the State Commission for approval in the Petition. As per the RFP, the Respondent No. 2 has the right to modify or cancel the bidding process which was subject to the approval of the State Commission without assigning any reason and without any liability. Thus, the whole bidding process was hedged by the Respondent No. 2 in the form of this 'Disclaimer', which is legally sustainable. Further, as per the amended LOI dated 1.7.2015 issued by the Respondent No. 2, the LOI can come into effect only after the approval and adoption of the tariff by the State Commission.

xi. On the issue of the LOI being a binding contract between the parties the judgement of Hon'ble Supreme Court in case of Rishi Kiran Logistic Private Limited v. Board of Trustees of Kandla Port Trust and Ors. (2015) 13 SCC 233 has been relied by the learned counsel for the Respondents. The relevant para from the said judgement is reproduced below:

"34. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of the 'Rules and Procedure for Allotment of Plots' in question issued by Kandla Port Trust. As per clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with, specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised 'at any time without assigning any reasons thereto'. Clause 13 relates to 'approvals from statutory authorities', with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/ Competent Authority. In view of this material on record and factual position noted in earlier paras we are of the opinion that observations in the case of Dresser Rand S. A. v. M/s. Bindal Agro Chem. Ltd. & Anr.; AIR 2006 SC 871, would be squarely available in the present case, wherein the court held that a letter of intent merely indicates a parties intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance

of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. When the LOI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.”

From the above what is emerged that, a hedged LOI with a condition depicts intention to enter into a contract at a later stage.

In the present case also the Appellant has accepted the amended LOI where there is a condition that LOI would be effective only after grant of approval and adoption of tariff by the State Commission. Hence, in line with the said judgement of the Hon’ble Supreme Court the LOI in present case cannot be termed as a concluded contract.....”

- 2.22. Referring the above judgement, it is submitted that the Hon’ble Tribunal has referred to the provisions of RfS, the time schedule for completion of the bidding process provided in the RfS and also contents of the LOI and also cited the decision of Hon’ble Supreme Court in Rishi Kiran Logistic Pvt. Limited Vs. Board of Trustees of Kandla Port Trust & Ors, wherein the Hon’ble Court considered the status of LOI. It is also submitted that the Hon’ble APTEL has upheld the decision of the State Commission which was based on consideration of “significant reduction in the cost of solar power pursuant to this bidding process making it competitive with power from conventional sources and eventually benefitting the interest of the consumers of the State.” Thus, the Hon’ble Tribunal had upheld the consideration of reduction in cost and comparison of other tariff. The Hon’ble Tribunal in the said case upheld the withdrawal and annulment of the process. Therefore, the LoA, in

the present case is also conditional as in the case of LoI in the SunE Solar B.V. Case as stated above. Even the nature of the conditions in both the cases are similar, the principal condition being the approval and adoption of tariff by the Appropriate Commission. In fact, in the present case, the LOA has been made subject to signing of the PPA. The letter of award can also fructify into a concluded and an enforceable contract only when the PPA is finally executed after the adoption of tariff by the Commission.

- 2.23. It is submitted that there is an additional consideration of the letter dated 05.03.2020 from the Ministry of Power, Government of India in respect of 'Bidding Mechanism for Procurement of Solar & Wind Power' which states that 'cap' or upper ceiling tariff will not be prescribed in future bids SECI, NTPC and State Discoms and all other implementing agencies will procure RE power either through single RE source or various combinations of RE sources with or without storage as per their procurement policies.
- 2.24. Based on the above submissions, it is submitted that the Commission after duly consideration of all aspects, may approve or adopt the tariff discovered under present Competitive Bidding Process for the Respondents under the Section 63 read with Section 86 (1) (b) of the Electricity Act, 2003.
3. Ld. Adv. Mr. Mihir Thakore appearing for the Vena Energy Renewables Urja Pvt. Limited (VERUPL), while vehemently opposed the prayers of the Petitioner GUVNL in Petition No. 2283 of 2023 wherein GUVNL has prayed to the Commission for non-adoption of tariff on various grounds, has started detailed submissions traversing through Petition, reply/submissions and argued the matter at length while referring to various provisions of the Electricity Act, 2003, Guidelines, factual aspects, relevant judgments in the present matter.
 - 3.1. He argued that Vena Energy also filed Petition No. 2282 of 2023 in response to present Petition, inter-alia seeking adoption of tariff discovered by GUVNL in response to RfS and direction to GUVNL to sign PPA with Vena Energy. He argued that the Petition No. 2283 of 2023 has been filed by GUVNL effectively seeking non-adoption of tariff discovered pursuant to the competitive bidding process

conducted by GUVNL and GUVNL not want to procure power from Solar Projects to be set up by the successful bidders in Dholera Solar Park pursuant to LoI dated 09.10.2020. He further argued that non-procurement of power is permissible only in case of non-compliance of Bidding Guidelines or not follows the provisions of Competitive Bidding documents i.e., RfS or RfP by the bidders and the same is not considered for Bidding Process.

- 3.2. He further argued that role of the Commission is limited to the case where the tariff adoption under competitive bidding process was conducted under Section 63 of the Electricity Act, 2003 and Solar Bidding guidelines. He referred Sections 61, 63 and 86 (1) (b) of the Electricity Act, 2003 which is reproduced as under:

“.....
Section 61. (Tariff regulations):
.....
Section 62. (Determination of tariff):
.....
Section 63. (Determination of tariff by bidding process): Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.
.....
Section 86. (Functions of State Commission): - (1) The State Commission shall discharge the following functions, namely:

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

.....”

- 3.3. Referring to the above provisions of the Electricity Act, 2003, he argued that the Section 63 begins with a non-obstante clause and the Commission has power to regulate the power procurement process of distribution licensees under Section

86 (1) (b) of the Electricity Act, 2003. As such, while regulating power procurement in case of competitive bidding process, the Commission is required to exercise its power in strict accordance with Section 63 of the Electricity Act, 2003 alone. While emphasizing the phrase 'shall adopt' as stated under Section 63 of the Electricity Act, 2003, it is submitted that the scope of role and power of the Commission while adopting tariff under Section 63 is no more res integra. Once the after completion of competitive bidding process, if the Appropriate Commission finds the process is transparent then in compliance to the provisions of the Competitive Bidding Guidelines, the Commission's jurisdiction is limited to either to adopt the tariff or to reject the tariff which has been discovered under competitive bidding process conducted by the procurer. The Commission reject the procurement of power through competitive bidding process only when there is violation of provisions of the Competitive Bidding Guidelines or when the bids were not in accordance with the criteria specified in the Bid Documents by the bidders.

- 3.4. Referring to the provisions of the competitive bidding guidelines for Solar Projects, it is submitted that the law as on today provides that upon the fulfillment of following two conditions, the Commission is duty bound to adopt the tariff discovered under the competitive bidding process:
- (i) Such competitive bidding process must have been transparent manner.
 - (ii) The competitive bidding process must be in accordance with provisions of the competitive bidding guideline and no deviations from it.
- 3.5. He argued that competitive bidding process initiated by GUVNL was in transparent manner and in accordance with provisions of the competitive bidding guidelines. GUVNL has prepared the bidding documents, i.e. RfS and PPA as per guidelines and published the 'Notice Inviting Tender' in the newspaper and hosted the same on its website also and obtained all requisite approval. Therefore, the tariff discovered in the present competitive bidding process conducted by GUVNL shall be adopted by the Commission as the aforesaid bidding process was conducted in transparent manner and in accordance with the competitive bidding guidelines.

- 3.6. He referred the provisions of the Guidelines for tariff based competitive bidding process for procurement of power from Grid connected Solar PV Power Project dated 03.08.2017 which is reproduced as under:

“.....

1.1.2. Section 61 & 62 of the Act provide for tariff regulation and determination of tariff of generation, transmission, wheeling and retail sale of electricity by the Appropriate Commission. As per proviso of Section 61 read with Section 178(2) of the Electricity Act, 2003, the Terms and Conditions for Tariff determination from Renewable Energy Sources Regulations, 2012 were framed by the Central Electricity Regulatory Commission (CERC) in February 2012. Further, Section 63 of the Act states that –

“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

.....

1.2. Objectives

1.2.1. The specific objectives of these Guidelines are as follows: a) To promote competitive procurement of electricity from solar PV power plants, by distribution licensees, to protect consumer interests; b) To facilitate transparency and fairness in procurement processes / and to provide for a framework for an Intermediary Procurer as an Aggregator/Trader for the inter-state/intra-state sale-purchase of long-term power.

2. SCOPE OF THE GUIDELINES

2.1. Applicability of Guidelines:

2.1.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the “Procurers”, from grid-connected Solar PV Power Projects (“Projects”), having size of 5 MW and above, through competitive bidding.

.....

2.1.2. *Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer/ Intermediary Procurer/ End Procurer and the Authorised Representative of the Procurer. The process to be adopted in event of any deviation proposed from these Guidelines is specified in Clause 18 of these Guidelines.*

.....

18. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days.

.....”

Referring the above provisions of the Guidelines, it is submitted that GUVNL or any of the bidders have never approach the Commission for approval of the deviations from the above bidding guidelines.

3.7. Ld. Counsel for Vena Energy also referred the Clause 3 of the Guidelines dated 03.08.2017 which is reproduced as under:

“.....

3. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

3.1. Conditions to be met by Procurer

The Procurer shall meet the following conditions:

3.1.1. Bid Documentation:

a) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below.

b) Inform the Appropriate Commission about the initiation of the bidding process.

c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/or SBDs, in accordance with the process described in Clause 18 of these Guidelines.

i. However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

ii. Further, in case of an ongoing bidding process, if the bids have already been submitted by bidders prior to the notification of these Guidelines and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail.

.....

8.8. Bid evaluation methodology to be adopted by the Procurer for evaluating the bids:

8.8.1. The bid evaluation mechanism shall be as follows, depending upon the tariff structure which has been adopted by the Procurers in terms of these Guidelines: a) In the case of Bidding involving Tariff as the parameter, the comparison of bids shall be on the basis of the bidding criteria as specified in the RfS, i.e. the fixed tariff or the first year tariff. Ranking of the bidders will start from the bidder quoting the "lowest tariff (L1)".

.....

10. CONTRACT AWARD AND CONCLUSION

.....

10.2 After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process

and the evaluation has been conducted in conformity to the provisions of the RfS.

.....”

- 3.8. Referring the above provisions, it is submitted that GUVNL has issued RfS dated 16.09.2019 for selection of Solar Power developers for setting up Solar PV Projects of 1000 MW capacity in Dholera Solar Park for sale of power to GUVNL wherein a ceiling tariff was Rs. 2.75 per unit and the aforesaid tender was under-subscribed upto 300 MW against 1000 MW capacity.
- 3.9. It is contended that GUVNL issued another Request for Selection dated 24.06.2019 for selection of solar power developers for setting up solar PV projects of 750 MW in Dholera Solar Park with a ceiling tariff of Rs. 2.75 per unit for sale of solar power to GUVNL, which was also under-subscribed and despite extending the bid deadline thrice, GUVNL received only one bid from Tata Power offering the capacity of 50 MW only.
- 3.10. It is submitted that in both the aforesaid bidding processes, Tata Power was selected as the successful bidder for capacity of 300 MW of solar power at the tariff of Rs. 2.75 per unit, which was the ceiling tariff under the bidding documents. The tariff quoted by Tata Power in both the aforesaid bidding processes was duly adopted by this Commission vide its Order dated 23.10.2019 in Petition No. 1818 of 2019.
- 3.11. It is submitted that the interest shown by the bidders to set up solar projects in Dholera Solar Park in earlier rounds of bidding processes conducted by GUVNL was abysmal on account of peculiar as well as difficult geographical and geotechnical conditions of the Dholera Solar Park. However, since the Government of India was desirous of developing Dholera as a Special Investment Region, it was decided between the stakeholders to issue another tender for setting up of Solar PV projects in Dholera Solar Park for the remaining capacity of 700 MW.
- 3.12. It is submitted that in order to gain interests of the bidders to participate in the bidding process, prior to issuance of the Request for Selection for the third round

of bidding, a meeting was held between the representatives of SECI, Department of Industrial Policy & Promotion, GPCL, and GUVNL to identify the reasons for less interest shown by bidders and the measures to be adopted to overcome the same.

3.13. It is also contended that during the aforesaid meeting, it emerged that due to the following peculiar as well as difficult geographical and geotechnical conditions of the Dholera Solar Park, there has been lower participation by developers in the bidding processes:

(a) the site of Dholera Solar Park is basically waste land, which is silty with clay, and has high swelling due to which it is difficult to construct sustainable foundations without additional measures for structures and modules, resulting in higher capital cost;

(b) the site of Dholera Solar Park often gets flooded due to being situated on a low-lying land surrounded by rivers and coastal area near the Gulf of Cambay, this would result in increase in the capital cost and also reduced Capacity Utilization Factor of the projects to be developed at Dholera Solar Park; and

(c) the Ground Water depth is about 1.5 - 2.5 meters, containing high chlorides and sulphates and surrounding environment in coastal area entails high corrosion effects, which adds further costs and risks requiring superior quality of design, materials and processes. Further, due to the high corrosive effects, various components of the solar project to be set up at Dholera Solar Park would require regular replacements.

3.14. It is submitted that all the aforesaid difficulties add further risks and as a result, costs to developing, operating, and maintaining a solar power project at Dholera Solar Park requiring superior quality of design, materials and processes particularly in view of the peculiar attributes with respect to land, water logging, ground water and climate conditions, which also leads to requirement of higher capital cost for setting up of solar projects at Dholera Solar Park, as compared to the requirement for solar projects to be set up at any other regular places without the aforesaid peculiar challenges. Further, due to the aforesaid challenges, there is a requirement for regular replacement of components and the reduced Capacity

Utilization Factor, leading to higher operation and maintenance cost for solar projects at Dholera Solar Park, as compared to the requirement for solar projects to be set up at any other regular places.

- 3.15. It is submitted that during the aforesaid meeting, SECI estimated that the ceiling tariff of Rs. 2.75 per unit is quite low, due to which there would be impediments in receiving responses from bidders and therefore, based on its own calculations and workings, SECI proposed to increase the ceiling tariff from Rs. 2.75 per unit to Rs. 3.06 per unit. Thereafter, GUVNL undertook its own calculations and came to the conclusion that the ceiling tariff of Rs. 2.92 per unit is reasonable. Accordingly, for better participation and competition in the tender, it was decided that another tender would be issued by GUVNL for setting up of 700 MW Solar PV Projects at Dholera Solar Park with a higher ceiling tariff of Rs. 2.92 per unit. The higher ceiling tariff was particularly prescribed for evincing interest from the bidders in the third round of bidding as in the earlier rounds, it became apparent that with the ceiling tariff of Rs. 2.75 per unit, developers have not been showing interest to participate.
- 3.16. He further argued that GUVNL has issued the RfS on 18.03.2020 along with the draft PPA to be entered into with the successful bidder, with an advance intimation to this Commission vide its letter dated 17.03.2020.
- 3.17. He also referred the Clause 1.2.3 of RfS dated 18.03.2020 which is reproduced as under:

“.....

1.2.3 GUVNL shall enter into PPA with successful bidders for a period of 25 years from the scheduled commercial operation date of the project. The maximum tariff payable to selected bidder and that a bidder can quote at any stage during the bidding process shall be Rs 2.92 per unit. The financial bids of bidders quoting more than the ceiling tariff of Rs 2.92 per unit will be considered Non Responsive under Section 3.17 of the RfS. The successful bidders shall also enter into “Implementation & Support Agreement” (ISA) and “Lease Agreement” (LA) with SPPD. Draft ISA and LA prepared by GPCL are

separately appended and shall be treated as part of Bid Documents along with Draft PPA and this RfS. The bidders shall consider the provisions of each bid document while preparing their bids. Various other technical and geo-technical details such as Schematic Diagram, Page 9 of 87 Electrical Drawings, Meteorological Data, Hydrological Study Report, Contour (Topography) Survey etc and all other information / technical reports shall be separately uploaded by GPCL on their website and/or the weblink created by them.....”

3.18. The exception available to GUVNL is Clause 4.4.5 of RfS wherein GUVNL has at discretion to short close the capacity lower than 700 MW if it is found that prices are abruptly high and this option can only be exercised prior to issuance of LoA. GUVNL has also factored that a bidder can quote at any stage during the bidding process shall be Rs 2.92 per unit and the financial bids of bidders quoting more than the ceiling tariff of Rs 2.92 per unit will be considered non-Responsive under Section 3.17 of the said RfS.

3.19. The definition of ‘LOA’, ‘PPA’, ‘Selected Bidder’ incorporated in RfS as referred, is reproduced as under:

“.....

‘Letter of Award’ or ‘LOA’ shall mean the letter to be issued by Gujarat Urja Vikas Nigam Limited (GUVNL) to the Selected Bidder for award of the Project.

.....

‘PPA’ shall mean the Power Purchase Agreement signed between the successful bidder and GUVNL according to the terms and conditions of the standard PPA enclosed with this RfS.

.....

‘Selected Bidder or Successful Bidder’ shall mean the Bidder selected pursuant to this RfS to set up the Project and supply electrical output as per the terms of PPA.

.....”

3.20. He also referred Clause 3.9 with regard to Power Purchase Agreement, Clause 4.4 in respect of selection of successful bidders, is reproduced as under:

“

3.9 Power Purchase Agreement

3.9.1 A copy of Standard Power Purchase Agreement, to be executed between GUVNL and the Successful Bidder or its subsidiary Special Purpose Vehicle (SPV), as defined under section 3.4 of this RfS, is provided by GUVNL along with this RfS. The PPA shall be signed within 30 days from the date of issue of Letter of Award (LoA). PPA will be executed between GUVNL and Selected Bidders which shall be valid for a period of 25 years from the date of SCOD as per the provisions of PPA.

3.9.2 Before signing of PPA between GUVNL and the Selected Bidders, GUVNL will verify the documents furnished by the Bidders at the time of submission of response to RfS including the shareholding of the Project Company along with a copy of complete documentary evidence supported with the original documents. Bidders will also be required to furnish the documentary evidence for meeting the RfS Qualification Requirements as per Section 3.4.

.....

4.4 Selection of Successful Bidders

4.4.1 The bidders shall be selected in the ascending order with lowest quoted tariff (being L1) till the capacity is exhausted.

.....

4.4.5 At the end of selection process, Letter of Award (LOA) will be issued to all the Successful Bidders. In case of Consortium being selected as Successful Bidder, the LOA shall be issued to the Lead Member of the Consortium.

In all cases, GUVNL's decision regarding selection of bidder through Reverse Auction or otherwise based on tariff or annulment of tender process shall be final and binding on all participating bidders.

Also, GUVNL shall reserve the right to short close the capacity lower than 700 MW at its discretion, if the prices are abruptly high.

.....”

- 3.21. Referring the above Clauses of RfS, he argued that after completion of selection process of successful bidders as per provisions of RfS, issuance of Letter of Award (LoA) is on final stage and the GUVNL has to issue LOA to all the successful bidders as GUVNL has accepted the bids of the Vena Energy for sale of 100 MW solar power at the rate of Rs. 2.78 per unit for the project setting up at Dholera Solar Park. It is submitted that as per terms of LoA, the Vena Energy was required to sign the PPA with GUVNL within 90 days from the date of issuance of LoA by GUVNL. It is further submitted that as per above provisions, GUVNL has only reject bid in case where the prices being abruptly high and not 'market alignment of prices. It is submitted that the prices within the ceiling tariff of Rs. 2.92 per unit cannot be said to 'abruptly high' when such ceiling itself was prescribed after considering the peculiar difficulties and hardship associated with development of solar project in the Dholera Solar Park. It is submitted that as per Clause 4.4.5 of RfS, if the prices are abruptly high then GUVNL has at discretion to short close the capacity lower than 700 MW once the tender accepted by the bidders.
- 3.22. Referring to Clause 3.22 of RfS, he argued that the right provided to GUVNL under this Clause can only be exercised during the bidding stage, particularly after issuance of LoA because Clause 4.4.5 of the RfS concludes the selection process and post issuance of LoA, there is no question of tender process continuing and PPA is to be formulated in terms of Contract Act, 1872.
- 3.23. He argued that as per Section 63 of the Electricity Act, 2003, if the tariff has been determined in transparent Competitive Bidding Process and in accordance with Solar Competitive Bidding Guidelines and following the procedures as per Competitive Bidding Documents which are in compliance with the bid documents, then the Appropriate Commission has mandated to adopt the same.
- 3.24. He further argued that GUVNL has published 'Notice Inviting Tender' for the RfS dated 18.03.2020 alongwith draft PPA to be enter into with the successful bidder with an advance intimation to the Commission and as per RfS, last date of submissions was 31.07.2020. Referring to Covering letter dated 30.07.2020, it is submitted that the Vena Energy had submitted its bid alongwith various disclosures, undertakings required, unconditional acceptance of terms of the RfS, and digitally signed copy of PPA on 30.07.2020 for 100 MW solar capacity at the

rate of Rs. 2.78 per unit. Referring to report of Technical Bid Evaluation Committee, he argued that the technical bids of the bidders were opened by GUVNL on 04.08.2020 in the presence of Bid Evaluation Committee and financial bids of the technically qualified bidders were opened on 13.08.2020 on e-bidding portal and after completion of e-reverse auction conducted by GUVNL under the present RfS dated 18.03.2020, the price was discovered for the Vena Energy was Rs. 2.78 per unit for 100 MW quoted capacity.

- 3.25. Pursuant to the above, GUVNL has issued a Letter of Award (LoA) to the Vena Energy on 09.10.2020. Referring to LoA dated 09.10.2020, he argued that GUVNL has unconditionally accepted the Vena Energy's bid for sale of 100 MW solar power at the rate of Rs. 2.78 per unit. As per terms and conditions of LoA, the Vena Energy was required to furnish Performance Bank Guarantee and to sign the PPA with GUVNL within 90 days from date of issuance of LoA. The aforesaid LoA also states that this LoA is subject to compliance of all terms and conditions of RfS documents and final PPA to be signed between GUVNL and authorized bidder and it is requested to acknowledge the receipt of LoA by sending the signed and stamped copy of LoA to GUVNL. Accordingly, the Vena Energy has countersigned the LoA and sent the same on 10.10.2020 to GUVNL. It is submitted that upon the issuance of LoA by GUVNL the contract between the parties got concluded since the LoA was issued with an intention to bind the parties to ultimately enter into the PPA and not merely record intention to enter into the PPA and once the LoA issued, the Vena Energy has right to supply the power from its Solar Project to be set up in Dholera Solar Park at the tariff of Rs. 2.78 per unit.
- 3.26. Post issuance of LoA, the Vena Energy has made investment and undertook works towards development of solar project. Even GUVNL has acted upon the LoA and intimated to GPCL for allocation of certain plots in Dholera Park based on which GPCL has issued invoices to Vena Energy for the payment of upfront development charges of Rs. 4.12 Crores for setting up the Solar project.
- 3.27. On 03.11.2020, GUVNL has filed Petition being Petition No. 1906 of 2020 under Section 63 read with Section 86 (1) (b) of the Electricity Act, 2003 seeking adoption of tariff discovered under the competitive bidding process vide RfS dated 18.03.2020 for procurement of power from 700 MW Solar PV Projects to be set up

in 1000 MW Dholera Solar Park. It is also submitted that at the end of e-reverse auction, GUVNL has specified the discovered prices of all bidders against the ceiling tariff of Rs. 2.92 per unit for their respective quoted capacities.

3.28. It is contended that on 10.12.2020 the Vena Energy has informed GUVNL that it is required to sign the PPA within 90 days from the date of issuance of LoA and requested for date for signing of PPA, but GUVNL has neither replied nor provided any date for signing of the PPA. Therefore, despite being readiness and willingness of the Vena Energy to execute the PPA, the PPA has not been signed on account of reasons attributable to the Petitioner GUVNL.

3.29. Referring to Para 2 of Order dated 29.01.2021 passed by the Commission in Petition No. 1906 of 2020, it is submitted that GUVNL has not impleaded any bidders as party to Petition No. 1906 of 2020. It is submitted that the Commission has also in para 3.11 of the aforesaid Order recorded the submissions of GUVNL that *“the site of Dholera Solar Park is silty, with clay and having high swelling, making it difficult to construct sustainable foundations without additional measures for structures and modules. Further, the site gets flooded often due to low lying land surrounded by rivers and coastal area near the Gulf of Cambay. The Ground Water depth is about 1.5 - 2.5 meters, containing high chlorides and sulphates and surrounding environment in the coastal area entails high corrosion effects which adds further costs and risks requiring superior quality of design, materials and processes. Accordingly, in view of special and challenging geographical conditions of Dholera Solar Park and for better participation and competition in the tender, a ceiling tariff of Rs. 2.92 per unit was specified in the tender by the Petitioner pursuant to approval of its Board of Directors.”*

3.30. He further referred the following para of said Order dated 29.01.2021 and submitted that the Commission while disposing of the said Petition, also allowed GUVNL to initiate the process of re-tendering for remaining 700 MW capacity of the solar park with a liberty to approach the Commission for adoption of tariff after conclusion of the re-tendering process. The relevant para of the said is reproduced as under:

“.....

10. We have also considered that while filing this latest affidavit dated 27.01.2021, the Petitioner has also consulted the State Government and after thorough deliberations and with due consent of the State Government for re-tendering, which clearly appears to be for public good and common good. This shows bonafide intention on the part of the Petitioner. The ultimate beneficiary is the public at large, if lowest tariffs are found.

11. This Petition has been filed by the Petitioner under Section 63 read with Section 86 (1) (b) of the Electricity Act, 2003, which are reproduced as under:

“.....

Section 63. (Determination of tariff by bidding process): Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

.....

Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a) xxxx xxxx xxx

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

12. Thus, under the above provisions, the Commission is required to regulate the power procurement contract. Here in this case, the Petitioner has filed an affidavit dated 27.01.2021 stating that since lower rates of Rs. 1.99 per unit have been discovered under another bidding conducted by the Petitioner recently and on account of significant financial implication on the licensee as well as consumers at large with the tariff under the present bid it has requested the Commission for directing to undertake re-tendering afresh separately. In this connection it would be profitable to refer to Clause 1.1.1 of

the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' issued by the Ministry of Power, which reads as under:

".....

1.1 Background

1.1.1 Promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act, 2003. Power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce the overall cost of procurement power and facilitate development of power markets. Internationally, competition in wholesale electricity markets has led to reduction in prices of electricity and in significant benefits for consumers.

....."

13. In view of the affidavit dated 27.01.2021, the Petitioner does not want this Commission to approve adoption of tariff as prayed for in the Petition and has requested to give necessary direction for re-tendering.

14. In view of the above, considering the facts and circumstances we decide that as the Petitioner has not pressed the original prayer filed in the present Petition and desires the relief as per affidavit dated 27.01.2021 and accordingly, without further entering into merits of the present matter we pass the following order:

ORDER

The Petition stands disposed of. The Petitioner is at liberty to approach the Commission for adoption of tariff afresh after taking appropriate actions regarding bidding in accordance with law.

....."

3.31. He argued that the Vena Energy has preferred the appeal being Appeal No. 89 of 2021 against the Commission's Order dated 29.01.2021 before the Hon'ble APTEL

as the Commission has permitted GUVNL to initiate separate re-tendering process for procurement of 700 MW power from Solar PV projects to be set up in Dholera Solar Park and thereby negating the LoA issued by GUVNL to the Vena Energy.

“.....

Whatever be the nature of the appellants' rights, (irrespective of whether it had crystalized before the 2nd Respondent had filed the Petition before the Commission or it remained inchoate even thereafter), it is evident that the observations made, in both the orders of the Commission dated 01.01.2021 and 29.01.2021 has resulted in adverse civil consequences for the appellants, as the 2nd Respondent has, consequent thereto, decided to invite bids afresh even though a Letter of Award had been issued in their favour after completion of the bid process in terms of the Request For Selection dated 18.03.2020.

As the Appellants ought to have been put on notice, and should have been given a reasonable opportunity of being heard, before queries were raised, and the afore-said observations were made by the Commission in the two orders dated 01.01.2021 and 29.01.2021, we are satisfied that the impugned orders of the Commission stand vitiated for violation of principles of natural justice. The said orders are, accordingly, set aside. It is made clear that, in case the jurisdiction of the Commission is invoked by any of the parties to these three Appeals, the said petition shall be considered by the Commission on its merits without being influenced by the observations made, or the queries raised, in the aforesaid two orders dated 01.01.2021 and 29.01.2021.

.....”

- 3.32. Referring to the above Order, he argued that the aforesaid appeals were decided by the Hon'ble APTEL and the Hon'ble Tribunal vide Order dated 07.08.2023 set aside the Commission's Orders as being violative of the Principles of natural justice and directed the Commission to decide the matter without being influenced by observations in Orders dated 01.01.2021 & 29.01.2021 in case the Commission's jurisdiction is invoked by any of the parties to three appeals filed by successful bidders. In terms of the aforesaid directions of the Hon'ble APTEL, Vena Energy

Renewables Urja Pvt. Limited and GUVNL have filed the Petitions No. 2282 of 2023 and 2283 of 2022 respectively before this Commission.

3.33. He referred the relevant para of case of Tata Power Co. Limited Transmission Vs. MERC & Ors., (2022) SCC OnLine SC 1615, which is reproduced as under:

“.....

94. Section 63 provides that notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff determined through bidding:

“63. Determination of tariff by bidding process –

Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

95. Section 63 has five significant features: (i) Section 63 begins with a non-obstante clause. The non-obstante provision overrides Section 62 alone and not all the provisions of the Act; (ii) as opposed to Section 62 where the Commission is granted the power to determine the tariff, under the Section 63 route, the bidding process determines the tariff; (iii) the Commission is mandated to adopt such tariff that is determined by the bidding process; (iv) the Commission has the discretion to not adopt the tariff determined through the bidding process only if the twin conditions as mentioned in the provision are not fulfilled; and (v) the twin conditions are that (a) the bidding process must have been transparent; (b) the bidding process must have complied with the guidelines issued by the Central Government.

96. Section 63 indicates that the provision would be invoked after the tariff has been determined by the bidding process. There is nothing in Sections 62 or 63 that could lead us to interpret that Section 63 is the dominant route for determination of tariff. Both the provisions provide alternative modalities through which tariff can be determined. The non-obstante clause in Section 63 must be read in the context of Sections 61 and 62. Section 62 bestows the Commission with wide discretion to determine tariff. Section 63 seeks to curtail this discretion where a bidding process for tariff determination has already been conducted. Section 63 contemplates that in such situations where the tariff has been determined through the bidding process, the Commission cannot by falling back on the discretion provided under Section 62 negate the tariff determined through bidding. This interpretation of Section 63 is fortified by the use of the phrase ‘such’ in Section 63 - the Commission is bound to ‘adopt’ ‘such’ tariff determined through bidding.

97. The Commission under Section 61 of the Act must frame guidelines for deciding the modality to determine tariff. This is evidenced from a reading of Section 61(a) which provides that the Appropriate Commission while specifying the terms and conditions for the determination of tariff shall be guided by the principles and ‘methodologies’ specified by the Central Commission for the determination of tariff applicable to transmission licensees.

98. In this backdrop, it is necessary to advert to the judgment of this Court in *Energy Watchdog (supra)*. A two-Judge Bench of this Court analysed the provisions of Section 63 and its interplay with Section 62. The relevant observations are extracted below.

“19.... It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. Thirdly, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.” (emphasis supplied)

99. The observations of this Court in *Energy Watchdog (supra)* are summarised below:

(i) The Appropriate Commission while ‘adopting’ the tariff determined through bidding is not a mere ‘post office’; and

(ii) The Commission is mandated by Section 63 to adopt the tariff determined through bidding only if the bidding process was transparent, and such a process has been held in accordance with the guidelines issued by the Central Government under Section 63. If the bidding process does not satisfy the two checks, then the Commission shall determine the tariff through the RTM route under Section 62.

100. Thus, the Appropriate Commission is not mandated to adopt the tariff determined through the bidding process irrespective of the fulfilment of the statutory requirements. The Commission can reject the tariff determined through the bid if the tariff process is not (i) transparent; and (ii) in accordance with the guidelines issued by the Central Government. Thus, if the Commission does not adopt the tariff determined through bidding, and if the decision is challenged, the bidding process can be reviewed substantively (on the ground of transparency) and procedurally (on the ground of compliance with Central Government guidelines) to determine if the Commission could have exercised its discretion to determine the tariff under Section

62 while rejecting the tariff determined under Section 63. Therefore, Section 63 can only be invoked after the tariff has been determined through bidding. The terms and conditions notified by the Appropriate Commission under Section 61 will have to be referred for the purpose of choosing the modality of tariff determination that the Commission should undertake. In view of the above discussion, the argument of the appellant that a reading of Section 61, 62 and 63 indicates that the TBCB route is the dominant route of tariff determination does not hold merit.

.....”

3.34. Referring to the above, he argued that the Hon’ble Supreme Court after considering the decision of Energy Watchdog’ Case, has deliberated the scope of Section 63 of Electricity Act, 2003 and held that the Commission while exercising the jurisdiction under Section 63, does not act as a mere post office or function de hors its regulatory functions prescribed under Section 86 (1) (b) of the Electricity Act, which is akin to Section 79 of the Electricity Act, 2003. However, this cannot in any manner be construed to enlarge the scope of the jurisdiction of the State Commission under Section 63 of the Electricity Act, 2003 which circumscribes in the present case. As per the decision of the Hon’ble Supreme Court, the Commission is mandated by Section 63 to adopt the tariff determined through bidding only when the bidding process was transparent and such a process has in accordance with the guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003 and as per the provisions of the Bidding Documents.

3.35. He referred another judgement dated 08.01.2024 of the Hon’ble Supreme Court in Civil Appeal No. 6503 of 2022 in case of Jaipur Vidyut Vitran Nigam Limited & Others Vs. MB Power (Madhya Pradesh) Limited and Others & Ors., 2024 SCC OnLine SC 26. The relevant portion of said judgement as referred, is reproduced as under:

“.....

82. For considering the rival submissions, it will be necessary to refer to some of the provisions of the Electricity Act, which are as under:

“63. Determination of tariff by bidding process. - Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

79. Functions of Central Commission.-

(1) The Central Commission shall discharge the following functions, namely:-

(a)

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

XXX XXX XXX

“86. Functions of State Commission.-

(1) The State Commission shall discharge the following functions, namely: -

(a)

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;”

XXX XXX XXX

88. The learned APTEL in the said appeals, vide judgment and order dated 2nd February 2018, set aside the order of the State Commission dated 22nd July, 2015, and passed the following directions:

“ORDER

Hence, the Appeal Nos. 235 of 2015 and 191 of 2015 are allowed and the State Commission’s order dated 22.07.2015 is set aside. The State Commission is directed to pass consequential order in accordance with the law keeping in view our observations made above as well as the judgments of this Tribunal rendered earlier on the aspects of the scope of Section 63 of the Act as expeditiously as possible, preferably, within 2 months from today. No order as to costs.”

89. After the learned APTEL passed the aforesaid order, M/s D.B. Power Ltd. (L-2 bidder) filed an Interlocutory Application before the State Commission, praying for passing forthwith consequential orders in terms of the judgment of the

learned APTEL. It also sought a direction to DISCOMS to start procuring power from it to the extent of 410 MW as per the PPA dated 1st November 2013.

90. When the matter was heard by the State Commission on 8th March 2018, it was noticed that appeals against the order of the learned APTEL were pending before this Court.

91. This Court disposed of the said appeals vide judgment and order dated 25th April 2018, and issued the following directions:

"We are in agreement with the earlier conclusion of the APTEL. We are of the view that the direction of reduction of capacity from 1000 mw to 500 mw by the State Commission was correctly set aside. Since L1 to L-5 were represented before this Court, we direct that they shall be entitled to supply of power in terms of the originally offered amount, mentioned above, in accordance with para 3.5 of the Request for Proposal. The power supply will now be reduced to a total of 906 mw. The State Commission may now go into the issue of approval for adoption of tariff with regard to L-4 and L-5. All Letters of Intent (LOIs) shall stand modified in terms of the above. All the appeals shall stand disposed of in terms of the above order."

92. Consequent to the orders passed by this Court, the State Commission vide its order dated 29th May 2018, directed RVPN/DISCOMS to file an appropriate application/petition in relation to L-3, L-4 and L-5 bidders.

xxx xxx xxx

100. The said order dated 26th February 2019 of the State Commission was challenged before the learned APTEL by SKS Power by way of Appeal No.224 of 2019. The learned APTEL framed the following three issues in the said appeal:

"ISSUE NO.1: Whether the Respondent Commission could reject the tariff/bid of the Appellant, in terms of Section 63 of the Electricity Act, 2003 and the directions issued by the Hon'ble Supreme Court?

ISSUE NO.2: Whether there was a sufficient proof to show that the bid of the Appellant was market aligned?

ISSUE NO.3: Whether the argument of Consumer interest be advanced by the Rajasthan Discoms in the facts of the present Appeal?"

101. The learned APTEL while answering the first issue, came to the conclusion that the State Commission, while adopting tariff 49 under Section 63, has to only

consider that the Bidding Guidelines issued by the Central Government providing for tariff structure were complied with or not. The learned APTEL also held that the State Commission cannot exercise its powers de hors such guidelines. It further held that the State Commission has no power to reject the tariff of a bidder.

102. Insofar as the second issue is concerned, the learned APTEL came to a finding that, since the bid of SKS Power was already evaluated, and the subsequent certificates were issued by the BEC confirming the transparency of the bid, it was not open for the State Commission to go into the question, as to whether the tariff quoted by SKS Power was market aligned or not. It further held that, after the order dated 25th April 2018 was passed by this Court, it was not open for the State Commission to re-evaluate the bid.

103. Insofar as the third issue with regard to consumers' interest is concerned, the learned APTEL held that the said issue cannot be raised again at that stage when the same had been dealt with in detail by the learned APTEL vide order dated 2nd February 2018 and also considered by this Court before passing the order dated 25th April, 2018.

104. Accordingly, the appeal was allowed by the learned APTEL vide order dated 3rd February 2020 and the order dated 26th February 2019 of the State Commission was set aside. The learned APTEL directed that the tariff of SKS Power, as offered in its bid, shall be adopted. The parties were directed to revive and implement the PPA dated 4th February 2019. This order dated 3rd February 2020, passed by the learned APTEL has been challenged by the DISCOMS and RVPN before this Court by way of Civil Appeal No.1937 of 2020 and Civil Appeal No. 2721 of 2020 respectively.....”

- 3.36. Referring to the above, it is submitted that the Hon'ble Supreme Court has considered the question of whether the Appropriate Commission can consider the market alignment of prices whilst exercising the jurisdiction under Section 63 of Electricity Act, 2003. The Hon'ble Supreme Court has held that in case of procurement of thermal power from conventional projects under Competitive Bidding Guidelines, issued for Thermal Power Projects, the Commission has power to consider the issue of market price while adopting the tariff under Section 63 of the Electricity Act, 2003. It is also submitted that the Hon'ble Supreme Court also referred and relied upon the Clause 5.15 of the Thermal Competitive Bidding Guidelines which provides that the bidder who has quoted the lowest levelized tariff as per the evaluation procedure shall be considered for award. It also

provides that the Bid Evaluation Committee shall have the right to reject all bid price if the rates quoted are not aligned to prevailing market prices. It is also submitted that such similar clause does not exist in Solar Competitive Bidding Guidelines.

- 3.37. Ld. Sr. Counsel for Vena Energy submitted that he needs some more time to make further remaining arguments and submissions in the matter and accordingly, requested the Commission to grant the same and to keep the matter on any date for further hearing, subject to convenience of the Commission.
4. Ld. Adv. Mr. Anand Srivastava, appearing on behalf of Tata Power Company Limited submitted that he adopts the arguments and submissions as advanced by Ld. Sr. Counsel Mr. Thakore for Vena Energy in the present matter. He further requested the Commission to give two weeks' time to file submissions in the matter and thereafter post the matter for hearing on any date subject to the convenience of the Commission.
5. Ld. Adv. Mr. Vaibhav Goswamy appearing proxy for Advocate Mr. Anuj K. Trivedi for has Gujarat Power Corporation Limited (GPCL) requested and sought two weeks' time to file the response in the present matter.
6. Heard the parties. We note that present Petitions have been filed under Section 63 and 86 (1) (b) of the Electricity Act, 2003 read with Guidelines for tariff based Competitive Bidding Process for Procurement of Power from Grid connected Solar PV Power Projects dated 03.08.2017, issued thereunder *inter-alia* seeking adoption of discovered tariff in the Competitive Bidding Process conducted by GUVNL by way of RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 for development of Solar PV Projects of 700 MW capacity of Dholera Solar Park. We also note that the Vena Energy also prayed the Commission to issue direction to GUVNL to enter into PPA with them for 100 MW Solar Project awarded by way of unequivocal Letter of Award dated 09.10.2020.
- 6.1. We also note that the counsels appearing for GUVNL and Vena Energy have made some arguments and made their respective submissions in the present matter but

the same could not been completed as the counsels have sought time and accordingly, requested for providing further time to make their arguments and submissions in the present matter. We also note that Ld. Adv. Mr. Anand Srivastava for Tata Power Company Limited adopts the arguments and submissions of Ld. Sr. Counsel Mr. Thakore for Vena Energy in the present matter and further requested the Commission to give two weeks' time to file reply in the matter and thereafter post the matter for hearing on any date subject to the convenience of the Commission. Also, proxy counsel for GPCL also sought two weeks' time to file reply in the matter. Accordingly, Tata Power and GPCL are directed to file their respective submissions, if any, within two weeks from the date of hearing with a copy to GUVNL.

7. Next date of the hearing will be intimated hereinafter.
8. Order accordingly.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 28/05/2024.