

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2024 of 2021.

In the Matter of:

Petition under Section 86 (1)(f) of the Electricity Act, 2003 readwith Article 10.4 of Power Purchase Agreement dated 02.03.2019 seeking extension of Scheduled Commercial Operation Date in view of Force Majeure events and consequential reliefs in respect of 14.9 MW Municipal Solid Waste based Power Project set up at Village Nakarawadi, District Rajkot, Gujarat.

And

IA No. 30 of 2021 in Petition No. 2024 of 2021.

In the Matter of:

Application for seeking urgent listing of Petition No. 2024 of 2021.

And

IA No. 31 of 2021 in Petition No. 2024 of 2021.

In the Matter of:

Interlocutory Application in Petition seeking extension of Scheduled Commercial Operation Date (SCOD) on account of force majeure events and consequential reliefs under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of the Power Purchase Agreement executed between the Parties and also to grant interim stay on any form of coercive action by GUVNL including but not limited to (i) no levy of LD (ii) restoration of BGs invoked by GUVNL on 01.10.2021 or (iii) no termination of PPA, (iv) continuation of tariff of Rs. 7.01/kwh and effectively no reduction in tariff.

Petitioner/Applicant : Goodwatts WTE Rajkot Pvt. Limited
10th Floor, Sangeeta Complex, Near Parimal Crossing,
Ellisbridge, Ahmedabad – 380006.

Represented By : Ld. Advocates Ms. Poonam Verma, Ms. Gayatri Aryan,
Mr. Tabish Samdani

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara-390007.

Represented By : Ld. Adv. Ms. Harini S. alongwith Ms. Shailja
Vachhrajani, Ms. Girija Dave and Mr. Kandarp Mistry

CORAM:

Anil Mukim, Chairman

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 05/04/2022.

DAILY ORDER

1. The matter was heard on 16.03.2022.
2. Heard Ld. Adv. Ms. Poonam Verma, appearing on behalf of the Petitioner. It is submitted that the present Petition is coming up for admission hearing, wherein the Petitioner is setting up 14.9 MW Municipal Solid Waste (MSW) based Power Project being set up at Village Nakarawadi, District Rajkot, Gujarat. It will not only enable disposal of MSW but also generation of electricity qualifying as renewable energy project. It is submitted that after 2003 onwards, several initiatives have been taken both at National level as well as State level by way of various Policies for promotion of Renewable Energy (RE). Even, the Central Government in National Electricity Policy, Tariff Policy etc. has emphasized for promotion of RE based generation of electricity. In order to facilitate and promote utilization of MSW based generation as RE and to ensure disposal of MSW in an environment friendly manner & to improve efficiency of collection and disposal of MSW and reducing requirement of land for disposal of MSW,

Government of Gujarat has framed Gujarat Waste to Energy Policy, 2016 with operative period of 5 years.

- 2.1. It is submitted that in furtherance of the aforesaid Policy, 2016, this Commission has also issued Generic Tariff Order dated 10.11.2016 and determined the tariff and other terms and conditions for procurement of power by distribution licensee from MSW Projects in the State of Gujarat with control period upto 31.03.2019. In reference to this, several Concession Agreements came to be executed including the Petitioner whereby Rajkot Municipal Corporation has awarded Waste to Energy (WtE) project to be set-up by the Petitioner as above. Moreover, the Petitioner has also executed a PPA with the Respondent GUVNL on 02.03.2019. It is submitted that WtE project being set-up by the Petitioner is one amongst its kind in the State of Gujarat based on international technology and during last two years, several issues were faced by the Petitioner apart from experiencing difficulty on account of COVID-19. The technology involved is not only new for all stakeholder involved and achieving financial closure took considerable time. COVID pandemic and nation-wide lock down also considerably impacted the project implementation and construction activities due to lack of full manpower, travel restrictions, delay in civil works, delay due to disruption in supply of equipment's from Europe as well as within the country.
- 2.2. It is submitted that Scheduled Commercial Operation Date specified in the PPA is 31.03.2021 but due to delay in achieving financial closure, issues on account of outbreak of COVID-19, supply chain disruption including delay in pre-processing equipment from Europe, hindrances in construction work & other issues have resulted in delay of achieving commissioning of the MSW project. It is submitted that these events qualify as Force Majeure events in terms of the PPA and the Petitioner is entitled for extension of SCOD without any financial implications. Hence, the Petitioner has approached this Commission seeking extension of SCOD on account of Force Majeure Events and consequential reliefs under Section 86(1)(f) of the Electricity Act, 2003 readwith Article 10.4 of Power

Purchase Agreement dated 02.03.2019 executed between the parties and also filed an IA for interim stay on any form of coercive action by the Respondent GUVNL including termination of the PPA.

- 2.3. It is submitted that in light of COVID-19 pandemic, MNRE has also granted blanket extension to scheduled commissioning date for all renewable energy projects by 5 months and took further initiatives in this regard. Subsequently, vide another notification by MNRE, project proponents were granted liberty to approach the State Implementing Agency for seeking additional extension of time in SCOD due to Covid-19 pandemic. Accordingly, while implementing MNRE circular dated 13.08.2020, the Respondent GUVNL has granted extension of 5 months in achieving SCOD till 31.03.2021. However, GUVNL has not agreed to further extension beyond 5 months despite several requests demonstrating reasons which necessitates such extension.
- 2.4. Referring to letter dated 13.05.2021 of the Respondent GUVNL addressed to the Petitioner, it is submitted that for extension in SCOD beyond 5 months it is stated by GUVNL that as per MNRE notification it can be granted in exceptional cases after due diligence and careful consideration and not in routine manner. Also, GUVNL stated that extension cannot be granted while clarifying that the Petitioner shall be liable for consequences of delay as per the provisions of the PPA including tariff. Moreover, the Respondent GUVNL has already encashed the Bank Guarantee of the Petitioner.
- 2.5. It is also submitted that the Petitioner has filed IA No. 31 of 2021 in Petition No. 2024 of 2021 wherein it is prayed to grant interim stay on any form of coercive action by the Respondent GUVNL including but not limited to (i) no levy of LD (ii) restoration of BGs invoked by GUVNL on 01.10.2021 or (iii) no termination of PPA, (iv) continuation of tariff of Rs. 7.01/kwh and effectively no reduction in tariff. It is requested that the Commission may direct the Respondent GUVNL to restrain from any coercive action against the Petitioner.

- 2.6. It is submitted that the Petitioner has already invested equity higher than normative 30% of the project cost (around 59%) in the project because the lenders have stopped disbursement of loan/debt and the Petitioner is facing issues with lenders because the lenders are skeptical regarding the viability of the project. Since, the lenders are not disbursing loan amount in absence of any clarity regarding the project and hence, the Petitioner has to continue with project by way of infusing its own equity. Therefore, to provide some level of comfort to lenders, the Petitioner is requesting that the Commission may in the interim protect the Petitioner.
- 2.7. It is submitted that the issues involved in the present Petition are identical to issues involved in Petition No. 1998 of 2021 being heard by this Commission wherein vide its Daily Orders the Commission has granted stay while directing that no coercive action by Respondent GUVNL till next hearing. It is also submitted that IA No. 31 of 2021 filed by the Petitioner is also for seeking interim stay against any coercive action of GUVNL in respect to levy of LD or restoration of BGs or termination of PPA or reduction in tariff for the project being similar and hence, the Commission may also grant an identical interim stay by deciding and directing that no coercive action by the Respondent GUVNL till next hearing in the present matter also. Moreover, the Petitioner is relying on MERC Order wherein constraints/disruptions in supply to the generator is considered and allowed. The Petitioner also faced difficulties in construction activity on account of third wave of COVID-19 and it is necessary to consider realities faced by the Petitioner.
- 2.8. It is also submitted that the Petitioner wants to file its rejoinder reply to the reply filed by the Respondent GUVNL. Therefore, it is requested to grant some time for filing its rejoinder reply in the matter.
- 2.9. Based on the above submissions, it is requested that the Commission to admit the matter and grant interim protection to the Petitioner by way of 'No coercive

action till next hearing' on any other date subject to convenience of the Commission.

3. Ld. Adv. Ms. Harini S., appearing on behalf of the Respondent GUVNL, submitted that the Respondent has no objection to admission of the Petition. It is submitted that the SCOD as per the PPA was 31.03.2021 and the Respondent GUVNL has already granted blanket extension of 5 months to the Petitioner in view of Notification of MNRE and accordingly, the SCOD of the project was revised till 31.08.2021. However, the Petitioner has not commissioned the project till date but is seeking further open ended extension by way of this Petition, which is not only being opposed by the Respondent but the Respondent also entitled to liquidated damages beyond SCOD and initiate appropriate steps as per the provisions of the PPA. Accordingly, the Respondent has already encashed the Bank Guarantee of the Petitioner on 01.10.2021. It is submitted that no further commitment can be given by the Respondent regarding restoration of BG as it is already invoked and encashed by the Respondent. It is also submitted that the Respondent is also entitled to the liquidated damages from the Petitioner from the SCOD to the actual date of commissioning per the provisions of the PPA. It is further submitted that the Respondent is opposing the extension of SCOD sought by the Petitioner.

3.1. It is further submitted that it is premature on part of the Petitioner to seek any interim reliefs as prayed in IA No. 31 of 2021 because other than encashing Bank Guarantee no coercive actions have been taken by the Respondent GUVNL. Moreover, the BG is encashed on 01.10.2021 because the project was not commissioned even after extended SCOD of 31.08.2021. As such the issues related to Force Majeure etc. has to be examined by the Commission and the matter is coming up for first time hearing as fresh matter. Moreover, as per provisions of the PPA, the issue of termination will arise after one year from SCOD on non-completion of project by developer and till such time taking any precipitative action is not contemplated by the Petitioner. Hence, question of any interim relief does not arise although the open ended extension in SCOD, non-

levy of LD as sought by the Petitioner alongwith prayers in IA are being opposed by the Respondent because not only GUVNL is entitled for liquidated damages for delay as per provisions of the PPA but issues of force majeure, applicable tariff etc., need to be decided by the Commission as per provisions of the PPA.

4. In response to the above contentions of the Respondent GUVNL, Ld. Adv. Ms. Poonam Verma, submitted that the Petitioner as on date is only seeking interim protection from the Commission in the present matter just like protection granted by the Commission in the Jamnagar WTE's case. It is submitted that the Petitioner has not only invested equity but has invested more than that since the Petitioner company is facing difficulty in disbursement of debt by the lenders because now the lenders are also seeking clarity for the project from the Petitioner. The decision of 'No coercive' action will enable disbursement of debt by the lenders.
5. We have considered the submissions made by the parties. We note that the present Petition is filed under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of Power Purchase Agreement executed between M/s Goodwatts WTE Rajkot Pvt. Limited and GUVNL.
- 5.1. We note that in the present matter, the Petitioner M/s Goodwatts WTE Rajkot Pvt. Limited is a developer for setting up 14.9 MW Municipal Solid Waste (MSW) based Waste to Energy (WtE) Power Project at Village Nakarawadi, District Rajkot, Gujarat and has entered in to Power Purchase Agreement (PPA) dated 02.03.2019 with the Respondent GUVNL. Accordingly, the Petitioner is a generating company under Section 2 (28) of the Electricity Act, 2003. We also note that the Respondent GUVNL is a licensee which is to procure power from the aforesaid 14.9 MW Power Project of the Petitioner in terms of PPA executed between the parties. Thus, the issue involved in the present matter between the Petitioner and the Respondent pertains to the terms & conditions of the PPA executed between them regarding delay in completion of the WTE project on account of Force Majeure events and seeking extension of SCOD alongwith other

reliefs. Thus, as it is a dispute between a Generating Company and licensee, this Commission has jurisdiction to decide the dispute between the parties under Section 86(1)(f) of the Electricity Act, 2003. Hence, we decide to admit the Petition.

- 5.2. We also note that the Petitioner has filed two IAs being IA No. 30 of 2021 and IA No. 31 of 2021 in the present Petition. The IA No. 30 of 2021 is filed for seeking urgent listing of Petition No. 2024 of 2021 and IA No. 31 of 2021 is filed for interim relief. Since, the Commission has taken up the main matter and IA No. 31 of 2021 for hearing, the prayer in I.A. No. 30 of 2021 filed for seeking urgent listing of Petition No. 2024 of 2021 alongwith IA for interim reliefs is satisfied. Accordingly, I.A. No. 30 of 2021 stands disposed of.
- 5.3. We note that request is made by UUWA vide emails dated 16.03.2022 to implead Utility Users' Welfare Association (UUWA) and other consumers group like Laghu Udyog Bharati - Gujarat (LUB) to represent the interest of the consumers in this matter which is not objected by the parties. Hence, we are of the view that let UUWA and LUB also be impleaded in this matter so as to enable them to file their submissions, if any and hear them in interest of the consumers in this matter. Accordingly, we decide to implead UUWA and LUB in this matter to be arrayed as 'Objectors' in memo of parties. Accordingly, the Petitioner is directed to provide copy of this Petition and IA No. 31 of 2021 alongwith all relevant documents to UUWA and LUB within 10 days from date of this Daily Order. Upon receipt of the same, both UUWA and LUB are at liberty to file their submissions, if any, with copy to other parties. Also, Respondent GUVNL is directed to provide a copy of its reply/submissions in the present matter to UUWA and LUB. Copy of this Daily Order to be provided by the staff of the Commission to UUWA and LUB.
- 5.4. It is submitted by the Ld. counsel for the Respondent GUVNL that apart from encashing BG no other coercive actions have been taken by the Respondent against the Petitioner. Hence, it is prematured to grant any interim relief at

admission stage as prayed by the Petitioner. It is also submitted that although GUVNL is opposing open ended extension in SCOD and other reliefs but as per provisions of the PPA, question of PPA termination arises only after a year from SCOD and till such time there is no intension on part of GUVNL to precipitate the issue as per provisions of the PPA.

- 5.5. Therefore, we are not inclined to grant any relief on the aforesaid issue at admission stage of present Petition and no further directives/decision is required on the issue of no coercive actions by the Respondent and accordingly the request of the Petitioner is rejected. Thus, in view of the submissions of Ld. counsel of the Respondent GUVNL, for the present at this juncture there does not appear any imminent damage to the Petitioner. Hence, no order / protection against coercive action is necessary to be passed at this point of time.
- 5.6. We also note that the Petitioner has signed Concession Agreement with Rajkot Municipal Corporation (RMC) wherein land, municipal waste etc. is to be provided by RMC to the Petitioner. Moreover, the Petitioner in its Petition has made submissions that after various rounds of negotiations with the lead lender, the Substitution Agreement was signed between the Petitioner, the lead lender and Rajkot Municipal Corporation providing for assignment, transfer and substitution of right, title and interest in Concession Agreement to the 'nominated company' selected by the lenders in case of a financial default by the Petitioner. We note that in similar matter of MSW project at Jamnagar being Petition No. 1998 of 2021 filed by Goodwatts WTE Jamnagar Pvt. Ltd., the Petitioner has arrayed Jamnagar Municipal Corporation (JMC) as party Respondent in that matter. However, in present matter, the Petitioner has not made Rajkot Municipal Corporation as party Respondent just like Jamnagar Municipal Corporation (JMC) in another Petition No. 1998 of 2021. We therefore direct the parties to file their submissions on as to whether Rajkot Municipal Corporation is a proper and necessary party to the present Petition or not?

- 5.7. We note that the Petitioner has been served a copy of reply one day prior to date of hearing by the Respondent and the Petitioner wants to file rejoinder-in-reply in the matter. Therefore, considering the request of the Petitioner to enable them to file its rejoinder-reply in response to reply filed by the Respondent GUVNL in the present matter and the Respondent having no objection to the same, we decide to adjourn the matter.
6. Next date of hearing will be intimated separately.
7. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 05/04/2022.

