

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Review Petition No. 18 of 2023 in Petition No. 1941 of 2021.

In the matter of:

Petition under Section 94 (1) (f) read with Order 47 Rule 1 of Code of Civil Procedure, 1908 and Regulation 72 (1) of the GERC (Conduct of Business) Regulations, 2004 seeking review of Order dated 12.10.2023 of the Commission in Petition No. 1941 of 2021.

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

Represented by : Ld. Adv. Ms. Ranjitha Ramchandran along with Adv.
Utkarsh Singh and Mr. Kamlesh Shah.

V/s

Respondent : Juniper Green Sigma Pvt. Limited
F-9, First Floor, Manish Plaza – 1
Plot No. 7 MLU, Sector 10 Dwarka,
New Delhi- 110075.

Represented by. : Ld. Adv. Girik Bhava

CORAM:

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

Date: 25.11.2024.

DAILY ORDER

1. The present matter was listed for hearing on 22.10.2024.
2. Ld. Adv. Ms. Ranjitha Ramchandran appearing on behalf of the Review Petitioner GUVNL submitted that Review Petition is filed in regard to the consideration of

the Interest/carrying cost. She further submitted that after allowing the Safeguard Duty as Change in Law, also considered the payment related to Safeguard Duty and interest both for the period up to COD and for period beyond COD and added to the project cost for computation of incremental tariff.

- 2.1. She further submitted that the Commission while allowing carrying cost/interest based on the Judgment of Hon. APTEL in the Appeal No. 256 of 2019 has not considered whether the Judgment in Appeal No. 210 of 2017 is applicable to the facts and circumstances of the present case.
- 2.2. She further submitted that the reliance is placed on the Judgment in Appeal No. 256 of 2019 and ignoring Appeal No. 210 of 2017 without examination of whether the terms of the present PPAs are similar to Appeal No. 256 of 2019, is an error apparent on the face of the record and there is sufficient cause. She further submitted that the allowance of carrying cost is contrary to the terms of the PPA as held by the Hon'ble Tribunal in Appeal No. 210 of 2017. There is a material difference in the PPAs and therefore the Judgment in Appeal No. 256 of 2019 is not applicable to the present case.
- 2.3. She further submitted that there is no dispute that PPA is a mutual contract executed between parties, and relief to be granted as per the terms of PPA. She submitted that interest granted beyond the COD is not permissible as per the formula stipulated in the contract for the incremental tariff. Therefore, there cannot be any additional benefit granted to the Respondent as it is not permissible to any relief contrary to the terms of the contract.
- 2.4. She further submitted that there PPA has no provision for restitution principles or restoration to the same economic position. There is no provision for carrying cost under the PPA executed between the Parties. The PPA

provides for a specific formula and relief/compensation is provided within the said formula only.

2.5. She submitted that the Commission has considered and provided the interest/carrying cost based on the Judgment of the Hon'ble APTEL in Parampujya Solar Pvt. Ltd and another Vs. Central Electricity Regulatory Commission and others Order dated 15.09.2022 in Appeal No. 256 of 2019. Further, the Commission has considered the carrying cost as part of Project cost to be considered in formula under Article 9.2.2 of the PPA which is not provided in the Judgment of the Hon'ble APTEL. The said Judgement is not applicable in the present case.

2.6. She submitted that even if the interest/ carrying cost is to be considered in principle, there are other aspect like the Commission has not taken the full facts in to the consideration and has not given effect to the interim decision of the Hon'ble Supreme Court of India in regard to the decision in Appeal No. 256 of 2019 as implemented by CERC. The stay has been considered not only in the said case but also other cases by both Central Commission as well as APTEL as under:

A) Decision dated 19.01.2023 by Hon. APTEL in Appeal no. 432 of 2022 in the matter of Adani Solar Energy Jodhpur three Private ltd v. Central Electricity Regulatory commission and Others

B) Order of the CERC dated 20.01.2023 in Petition No. 722/MP/2020 and batch.

2.7. She further submitted about the non consideration of the said Judgements of superior court is an error apparent on face of record, which is also a ground for the review of the Order of the Commission.

2.8. She further submitted that GUVNL is relying up on the decision of the Hon'ble APTEL in Appeal No. 210 of 2017 in Adani Power Ltd. v. CERC & Ors. in the said decision, the Hon'ble APTEL had allowed carrying cost when there was a provision for restoration to same economic position and had not allowed the carrying cost when there was no such provision. She further submitted that in case of Appeal No. 256 of 2019 had distinguished the PPA in the said case from the PPA Clause in case of Adani Power in Appeal No. 210 of 2017 and had after examination of the PPA in question in Appeal No. 256 of 2019 had allowed the carrying cost and had not set aside the judgement of Hon'ble APTEL. Hence, the principle of whether carrying cost is to be allowed in a particular case has to be based on the specific terms of the PPA in said case. The Commission has not examined the said aspect in the Order while deciding the issue.

2.9. She further submitted that the Change in Law Clause in the present PPA is differently worded in the PPA which was under consideration in Appeal No. 256 of 2019. The PPA therein provides as under as extracted from the said Judgement:

“.....

12.2.1. The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law

12.2.2 The decisions of the Central commission to acknowledge a Change in law and the date from which it will become effective., provide relief for the same shall be final and governing on both parties....”

2.10. She relied on the Judgement dated 27.05.2024 passed by Hon'ble APTEL in Review Petition No.08 of 2018 between GUVNL Vs. Taxus Infrastructure & Power Projects Ltd. and Ors. on part of review and its scope, when can review be sought and failure to notice a binding precedent. Ld. Adv. further relied on the following Judgements/Orders on part of ground for review and its scope for present review Petition.

- a) Moran Mar Basselios Catholics and Another v. Most Rev Mar Poulouse Athanasius & Others AIR 1954 CS 526,
- b) Rajendra Singh v. Lt Governor, Andaman and Nicobar Islands and others (2005) 13 SC 289
- c) Amarjit Kaur (2003) 10 SCC 228
- d) Lily Thomas (2000) 6 SCC 224
- e) Collector, Cuttack & Ors 2014 SC online Ori 478

2.11. She further submitted that Hon. APTEL in its Judgement dated 15.09.2022 in Appeal No. 256 of 2019 has distinguished the said Judgement in Appeal No. 210 of 2017 on the basis that the PPA is different. The Change in Law clause as referred to in Appeal No. 256 of 2019 is different from the Clause 9.2 of the PPA of the present case. There is no open ended provision for relief as relied on by the APTEL. Further, there is no reference to any provision of relief under Article 9.2, 9.2.1 is similar to Article 13 in consideration in Appeal No. 210 of 2017. The Article 9.2.2 is increase / decrease in tariff of 1 paise per unit for every increase / decrease of Rs. 2 lacs per MW in project cost which shall be allowed upon submission of the proof of payment made by the Power Project Developer towards Safeguard Duty/Anti-Dumping Duty and / or Customs Duty to the concerned authority and with the approval from the Commission, which is a more specific provision than the provision in PPA in consideration under Appeal No. 210 of 2017. She further submitted that Article 9.1.1 (b)

which relates to the construction period, there is a specific formula under Article 9.2.2 which includes all aspects including the any aspect of interest. Further, the said formula was part of bid terms and on which competitive bidding was held and the Respondent was selected who also agreed on the same mechanism. Therefore, the PPA does not provide for any additional for any other compensation. The Respondent is to be compensated by way of increase in tariff in terms of formula specified under Article 9.2.2 and not in any other manner. She submitted that the Judgement dated 15.09.2022 in Appeal No. 256 of 2019 is not applicable in the present case.

3. Ld. Adv. appearing on behalf of the Respondent submitted that the Respondent has raised the invoices as per the Order dated. 12.10.2023 passed by the Commission. The Review Petitioner GUVNL had paid the part payment for the generation only from the SCOD and not from the commissioning of the Power Plants. Further, the Petitioner had deducted the interest component without Review Petition being allowed on this ground.
4. Ld. Adv. of the Review Petitioner submitted that the Review Petitioner has paid the principle amount from date of commissioning without considering the interest component/carrying cost. She further submitted that the Commission has allowed the interest component on the basis of Judgment in Appeal No. 256 of 2019 in which the Hon'ble Supreme Court has directed non enforcement of such Order and Hon. APTEL has also proceeded on the said basis in other cases, the same principle has been followed by the Petitioner GUVNL.

5. Heard the parties. We note that the Review Petitioner has argued in detail with regard to error apparent on the face of the record and for that the review is sought of Order dated 12.10.2023 passed by the Commission in Petition No. 1941 of 2021. The parties are at liberty to file their further submissions within one weeks' time, if any, with a copy to other side.

6. The next date of hearing is kept on 28.11.2024 at 11.30 AM.

7. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 25.11.2024.

