

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**I.A. No. 223 of 2012 in
Appeal No. 130 Of 2012**

Dated : 31st August , 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**Solar Semiconductor Power Company
(India) Private Limited,**

Having its Registered Office at:
Plot No. 443/A-28,
Road No. 86, Jubilee Hills,
Hyderabad-500 033.

....Applicant

Vs.

1. **Gujarat Electricity Regulatory Commission,**
1st Floor, Neptune Tower,
Opposite Nehru Bridge, Ashram Road,
Ahmedabad-380 009
2. **Gujarat Urja Vikas Nigam Limited,**
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara-390 007
3. **Gujarat Energy Development Agency,**
4th Floor, Block No. 11 & 12, Udyog Bhavan,
Sector-11, Gandhinagar-382017
4. **Energy and Petrochemicals Department,**
Block No. 5, 5th Floor,
Sachvalaya,
Govt. of Gujarat,
Gandhinagar-382 010

... Respondents

Counsel for the Applicant : Mr. Vikas Singh, Sr. Adv.
Mr. Venkatesh
Ms. Ambica Garg

Counsel for the Respondent (s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan &
Ms. Swapna Seshadri for R-2

ORDER

I.A. no. 223 of 2012 has been filed by Solar Semiconductor Power Company (India) Pvt. Ltd., the Appellant for stay against any coercive action being taken by Gujarat Urja Vikas Nigam Ltd. (“GUVNL”) under the Power Purchase Agreement dated 30.4.2010 entered into between them for sale of power from Solar Power Project of the Appellant during the pendency of the Appeal.

2. The Appellant is a Solar Power Project developer. The State Commission is the first Respondent. GUVNL, the procurer of power, is the Respondent no. 2.

3. The facts of the case are as under:

3.1 The State Commission by its order dated 29.1.2010 decided the tariff for procurement of power from Solar Power Projects by the distribution licensees

in Gujarat. The control period decided for the tariff was two years i.e. upto 28.01.2012.

3.2 The Appellant entered into a PPA dated 30.4.2010 with the Respondent no. 2 for sale of power from its 20 MW Photovoltaic Solar Power Project being set up in Kutch region of Gujarat at the tariff determined by the State Commission. According to the PPA, the Appellant had to commission its project by the Scheduled Commercial Operation Date. The PPA also had a provision for liquidated damages to be paid by the Appellant in case of delay in commissioning of the project.

3.3 The Solar Project of the Appellant was delayed due to delay in land acquisition, time lost due to heavy rains and other reasons which the Appellant

claims are akin to Force Majeure events and not attributable to the Appellant.

3.4 The Appellant filed a petition before the State Commission requesting for extension of control period decided in its tariff order dated 29.1.2010. However, the State Commission by order dated 22.2.2012 rejected the petition in terms of its earlier order dated 27.1.2012. Aggrieved by the impugned order of the State Commission, the Appellant has filed this Appeal.

3.5 The Appellant has already paid liquidated damages, under protest, to the tune of about Rs. 5.33 crores but the Respondent no. 2 has claimed balance amount of about Rs. 2.29 crores as liquidated damages (“LD”).

3.6 The Appellant has now prayed that the recovery of the balance amount of Rs. 2.29 crores should be stayed pending the final disposal of the Appeal.

4. According to the learned Sr. Counsel for the Appellant, there was delay by GETCO, the State Transmission Company in construction of the sub-station at Chitrod where the Appellant had to terminate its dedicated 66kV transmission line. The transmission line was made ready by the Appellant by 28.1.2012, but GETCO could make some temporary arrangement for power evacuation only on 30.4.2012. Further the LD was to be utilized for creation of a fund to be utilized for purchase of Renewable certificates by the distribution licensee in case of shortfall in meeting its Renewable Purchase Obligation (RPO). Since the distribution licensee has already met its RPO, there was no need for creation of the fund.

5. It is further stated by the learned Sr. counsel for the Appellant that the LD should not be used for enrichment of the Respondent no. 2.

6. According to learned Counsel for the Respondent no. 2, in terms of Supplemental PPA dated 10.5.2011 which was signed pursuant to change in location of the project by the Appellant, the Appellant had agreed that non-availability of transmission system shall not a ground for non-levy of LDs. In view of delay in commercial operation of the Project, the Appellant can now claim tariff decided by the State Commission by its order dated 27.1.2012. The Appellant has also not raised the bills for energy supplied for the period from May to July 2012. As and when the bills are raised by the Appellant, the Respondent no. 2 will pay the amount at the tariff applicable as per the State Commission's order dated 27.1.2012 after adjusting the balance amount of LD.

7. We have examined the impugned order and other materials available on record and find that we are not in a position to pass any interim order in the matter in view of absence of claim being made by the Appellant under the specific provisions of the PPA or tariff order of the State Commission or Regulations. The Appellant has also not been able to establish a *prima facie* case in its favour.

8. In view of above we reject the I.A.

9. I.A. No. 223 of 2012 is disposed of accordingly.

10. Pronounced in the open court on this

31st day of August, 2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

√

REPORTABLE/~~NON-REPORTABLE~~

vs