

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 248/MP/2023

Subject : Petition under Section 11 read with Section 79 of the Electricity Act, 2003, seeking directions to Gujarat Urja Vikas Nigam Limited (GUVNL) to pay the cost of imported coal used by GMR Warora Energy Limited, for generation and supply of power to GUVNL, pursuant to the Ministry of Power's statutory directions dated 26.5.2022 issued under Section 11 of the Electricity Act, 2003, and the Clarification dated 21.3.2023.

Petitioner : GMR Warora Energy Limited (GWEL).

Respondent : Gujarat Urja Vikas Nigam Limited (GUVNL).

Date of Hearing : **12.2.2026**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Shri Vishrov Mukerjee, Advocate, GWEL
Shri Yashaswi Kant, Advocate, GWEL
Ms. Garima Adalakha, Advocate, GWEL
Shri Ravi Shandilya, GWEL
Ms. Ranjitha Ramachadnran, Advocate, GUVNL
Shri Aneesh Bajaj, Advocate, GUVNL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, for the issuance of directions to Respondent, GUVNL to make payment for the cost of imported coal procured and used by the Petitioner for generation and supply of power to GUVNL, pursuant to the directions issued by the Ministry of Power ('MoP') on 26.5.2022 and Clarification dated 21.3.2023 under Section 11 of the Electricity Act, 2003 ('the Act'). Learned counsel referred to the Pleadings and mainly submitted as under:

- (a) The Petitioner, GWEL, is a generating company and owns and operates a 600 MW (2X300 MW) domestic coal-based Thermal Power Plant at Warora, Maharashtra. Pursuant to competitive bidding conducted by GUVNL under Section 63 of the Act, GWEL executed a Medium-Term Power Purchase Agreement with GUVNL on 8.9.2021 ('PPA') for the supply of 150 MW power for the period from 9.9.2021 till 31.7.2023.
- (b) On 26.5.2022, MoP issued directions under Section 11 of the Act to all the generating companies (including GWEL) having domestic coal-based power plants supplying electricity under Section 63 of the Act. In compliance with the



MoP Section 11 Directions, GWEL initiated a bidding process for the procurement of the imported coal and issued a Request for Qualification on 9.7.2022, inviting bids for the supply of imported coal of Indonesian or South African Origin. Pursuant to the competitive bidding, SAIL Resources Pte Ltd. ('SAIL'), a Singapore-based coal trading company, emerged as the successful bidder. Accordingly, on 19.7.2022, GWEL and SAIL executed the Coal Sale & Purchase Agreement ('Agreement dated 19.7.2022') for the supply of Indonesian steam coal (non-coking). Under the Agreement dated 19.7.2022, coal was to be supplied from PT Inti Bara Perdana mine ('IBP'), Benkulu Port, Indonesia, at a price of USD 153.50 per metric ton.

- (c) On 11.8.2022, the MoP, withdrew its Section 11 Directions dated 26.5.2022 with effect from 11.8.2022. It was further stated that imported coal purchased by generating companies up to 11.8.2022 in terms of Section 11 Directions dated 26.5.2022 shall be utilised in accordance with the methodology provided by the MoP in Section 11 Directions dated 26.5.2022.
- (d) Thereafter, SAIL novated the Agreement dated 19.7.2022 in favour of Equentia Natural Resources Pte Ltd, Singapore ('ENR') with the mutual understanding and it was agreed that ENR would offtake coal (same quantum as agreed under the Agreement dated 19.7.2022) from IBP mine by directly making payment to IBP. ENR will sell the imported coal cargo to Tradeserv Business Services LLP ('TBS') for import in India at Kakinada Port, and TBS will sell the imported coal cargo to GWEL at the discharge port. As per the understanding set out in the said agreement, ENR will arrange for TBS, an Indian Entity, the import of cargo at Kakinada Port. The aforesaid arrangement was communicated by SAIL and TBS to GWEL on 21.10.2022.
- (e) On 13.10.2022, pursuant to novation of the Agreement dated 19.7.2022, GWEL and TBS executed the Coal Sale & Purchase Agreement ('Agreement dated 13.10.2022') for the supply of Indonesian steam coal (non-coking). The Agreement dated 13.10.2022 executed with TBS is a follow-up of the Agreement dated 19.7.2022 and has been executed for the procurement of the same quantum of imported coal (i.e., 1 x 55,000 +/- 10% MT of Indonesian steam coal) from the same source (i.e., IBP Mine) as envisaged under the Agreement dated 19.7.2022 executed with SAIL.
- (f) Since December 2022, GWEL has been blending imported coal for the generation and supply of power from its Power Plant. Accordingly, in terms of Section 11 of the Act and Compensation Methodology prescribed by the MoP vide its statutory direction dated 26.5.2022 and Clarification dated 21.3.2023, GWEL issued the invoices dated 31.1.2023, 24.2.2023, 7.4.2023, and 27.5.2023, pertaining to periods from December, 2022 to March, 2023, to the Respondent, GUVNL, claiming compensation with respect to the cost of imported coal used by GWEL for generation and supply of power to GUVNL under the PPA.
- (g) However, Respondent, GUVNL vide its letter dated 28.2.2023, had refused to pay and returned the supplementary invoices by stating that (i) tender floated by GUVNL for Medium Term (ET/5) is based on lumpsum tariff and the responsibility to arrange the assured supply of fuel/coal is on the

supplier/bidder. Further, GWEL vide letter dated 20.8.2021 had assured that it would secure fuel for the supply of power in terms of the PPA dated 8.9.2021 and that GWEL would be solely liable for any implication arising out of non-availability/shortage/non-compliance of fuel allocation. Moreover, GUVNL has not given its consent for the utilisation of costlier imported coal for the supply of power under the PPA.

- (h) The Respondents, GUVNL vide its letters dated 28.2.2023, 9.3.2023, and 6.6.2023 has refused to make payment of the invoices raised by the Petitioner pertaining to the cost of imported coal. Such refusal by GUVNL is in clear violation of its obligations under the Ministry of Power direction dated 26.5.2022 and Section 11 of the Act. In terms of paragraph 7(b) of MoP Section 11 Direction dated 26.5.2022, the mechanism for billing and payment of the cost of imported coal shall be as per the PPA. Under the PPA dated 8.9.2021, GUVNL is not entitled to unilaterally withhold payment for power supplied by GWEL and consumed by GUVNL.
- (i) However, since January 2023, GUVNL has been unilaterally withholding the amount claimed by GWEL under Invoices raised for the supply of power using imported coal in compliance with the MoP Section 11 Directions. Such action of GUVNL is in violation of Section 11 of the Act, MoP Section 11 Directions, and the PPA.

2. In response, the learned counsel for the Respondent, GUVNL, mainly submitted as under:

- (a) As per Article 23.4 of the PPA, the jurisdiction to adjudicate any dispute arising out of or in connection with the Agreement is conferred upon the Gujarat Electricity Regulatory Commission (GERC).
- (b) The Petitioner has claimed to have entered into a Coal Sale and Purchase Agreement (CSP) with SAIL on 19.7.2022. However, the Petitioner has not produced the bids received under the tender document dated 9.7.2022, the letter of award issued by the Petitioner to the successful bidder or any communication between the successful bidder and the Petitioner after signing of the Agreement dated 19.7.2022.
- (c) The Petitioner has claimed to produce the tender documents, which refer to 55000 MT quantum, whereas the public notice in the newspaper refers to 60,000 kT. This raises concerns about the authenticity of the tender process. Further, the tender document is not produced in full, and no further details are provided. The Petitioner has not followed a transparent process in signing the alleged Agreement dated 19.7.2022 with SAIL. The alleged Agreement dated 19.7.2022 is not admitted by GUVNL, and the Petitioner is put to strict proof thereof. Even in the Rejoinder, the Petitioner has failed to address the above queries fully as raised by GUVNL.
- (d) The Petitioner has failed to establish the veracity of the tendering process conducted by the Petitioner. The Agreement dated 19.7.2022 makes no reference to the tender process. The Coal Sale and Purchase Agreements dated 19.7.2022 and 13.10.2022 entered into by the Petitioner with SAIL and

Tradeserv Business Services LLP (TBS) are invalid. The two agreements are not admitted by GUVNL. They are not on the stamp paper. Moreover, the Agreements produced are on the Petitioner's letterhead, and their genuineness and relevance, need to be verified. The Agreement dated 19.7.2022 entered into between the Petitioner and SAIL has not been stamped/signed by SAIL on all pages, although the stamp of GMR has been produced on all pages. The above Agreements have also not been witnessed, no witness can be produced to authenticate the signing of the two Agreements.

- (e) The entire coal used by the Petitioner did not qualify the GCV/GAR criteria as per the Agreement dated 13.10.2022. Thus, the Petitioner had the right to reject the coal received and recover from TBS any amount, including customs duty, stevedoring charges, and other statutory charges, etc., paid by the Petitioner for the import of coal which would have been rejected. The Petitioner chose to accept the imported coal of lower GCV and used it, despite having the option to reject it, even though it knew there was no obligation or requirement to use the imported coal. The Agreement dated 13.10.2022 with TBS is materially different from the Agreement dated 19.7.2022 with SAIL. The Agreement dated 13.10.2022 with TBS is at a much higher price compared to the Agreement dated 19.7.2022 with SAIL.
- (f) The narration in the Petition and the documents annexed to the Petition do not support the genuineness and authenticity. There are contradictions and inconsistencies. The alleged Agreement dated 13.10.2022 is not a follow-up to the Agreement dated 19.7.2022. While the Petitioner claims that it is the same quantum of coal and the same source, there is no explanation for the fact that the price has been changed and is now higher. The mere fact that there is the same quantum of coal does not make the agreement a follow-up. There is no reference in the agreement dated 13.10.2022 to the agreement dated 19.7.2022, nor to SAIL or even ENR. Therefore, this is a fresh Agreement, not a novation.
- (g) Since the Petitioner had imported coal only after the withdrawal of the directions of the MoP, it is not entitled to any relief. The Petitioner itself has stated that it had been blending coal since December 2022 which is much after 11.8.2022. The invoices raised by the Petitioner for such coal are therefore not only inadmissible under the PPA but even otherwise cannot be accepted.

3. Considering the submissions made by the learned counsels for the parties, the Commission directed the Respondent, GUVNL, to file its advance written submissions/notes of arguments, including on the aspects of various discrepancies alleged by CSPs, within two weeks. The Petitioner is directed to file its response thereto within two weeks thereafter.

4. The matter remained part-heard and will be listed for hearing on **23.4.2026**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)

