

GHC DIRECTS ARBITRATION FOR DISPUTES BETWEEN RE GENERATOR AND SOLAR POWER PARK DEVELOPER



TPREL had filed a Petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (“the Act”) before the Hon’ble High Court of Gujarat against Gujarat Power Corporation Limited (“GPCL”) which is a Solar Park Implementing Agency / a Solar Power Park Developer (“GPCL”/“SPIA”/“SPPD”).

TPREL had entered into an Implementation and Support Agreement (“ISA”) with GPCL, by virtue of which GPCL was contractually obligated to provide all necessary infrastructure to ensure that the Project is commissioned on time.

However, due to various delays and deficiencies on part of GPCL, TPREL faced several losses, for which TPREL sought appointment of a sole arbitrator before the Hon’ble High Court.

GPCL s contested the Petition filed by TPREL and raised certain objections, namely:-

(a) The Arbitration is not maintainable in the present case as the State Commission i.e. Gujarat Electricity Regulatory Commission (“GERC”), is the appropriate commission to adjudicate the dispute between the parties.

(b) Even if the arbitrator is appointed, the same shall only be done, through the appointment of the arbitrator from the department of GPCL itself, as also stated in the ISA.

The matter was extensively heard by the Hon’ble High Court, thereafter which the Hon’ble High Court while allowing the Petition, categorically held that GERC while exercising powers under Section 86(1)(f) of the Electricity Act, 2003, does not have the requisite jurisdiction to adjudicate disputes between a Solar Power Developer i.e., TPREL and a Solar Power Park Developer i.e., GPCL.

The Hon’ble High Court accepted the contention of TPREL and held that GPCL is not a distribution licensee and that the State Commissions under Section 86(1)(f) of the Electricity Act, 2003, can only entertain those disputes which have arisen between a generating company and a distribution licensee.

The Hon’ble Court also held that in view of the decision of the Hon’ble Supreme Court in the case of *Perkins Eastman Architects DPC vs HSCC (India) Limited and M/s Glock Asia-Pacific vs Union of India Arbitration Petition No. 51 of 2022*, the Arbitrator cannot be of a party, where evident favoritism is present. Therefore, with the above views, the Hon’ble Court, allowed the Petition filed by TPREL and appointed an independent sole arbitrator to adjudicate the dispute arisen between TPREL and GPCL.

TPREL was advised and represented by Mr. Shalin Mehta, Senior Advocate, Mr. Shri Venkatesh, Managing Partner, Mr. Anant Singh Ubeja, Senior Associate and Mr. Kunal Chopra, Associate.