**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION**

**GANDHINAGAR**

**Petition No. 2460 of 2025.**

**In the matter of:**

**Petition under Section 86 (1) (b), (e), (f) and (k) of the Electricity Act, 2003, read with Article 8 of the PPA dated 15.12.2022 executed between M/s Martial Solren Pvt. Limited and GUVNL for supply of 200 MW Solar Power from its Solar PV Power Plant in the State of Gujarat seeking *inter-alia* extension of the Scheduled Commercial Operation date on account of certain Force Majeure events affecting the project implementing and thereby passing appropriate Order (s) / Direction(s) in this regard to the extent prayed by the Petitioner herein.**

**And**

**IA No. 24 of 2025 in Petition No. 2460 of 2025.**

**In the Matter of:**

**Application under Section 94 (2) of the Electricity Act, 2003 and under Regulation 26 of the GERC (Conduct of Business) Regulations, 2004 seeking urgent directions in the Petition.**

**And**

**IA No. 67 of 2025 in Petition No. 2460 of 2025.**

**In the Matter of:**

**Application filed under Section 94 (2) of the Electricity Act, 2003 and under Regulation 26 of the GERC (Conduct of Business) Regulations, 2004 seeking urgent directions in the captioned Petition on account of the subsequent developments.**

**And**

**IA No. 62 of 2026 in Petition No. 2460 of 2025.**

**In the Matter of:**

**Application filed under Section 94 (2) of the Electricity Act, 2003 and under Regulation 30 of the GERC (Conduct of Business) Regulations, 2004 seeking to amend the prayer of the captioned Petition filed by the Applicant/Petitioner alongwith Order VI Rule XVII alongwith supporting affidavit.**

Applicant/Petitioner : Martial Solren Pvt. Limited

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| Represented by: | : | Ld. Sr. Adv. Mr. Rashesh Sanjanwala with Advocate Ms. Nipun Sharma. |
| | | V/s. |
| Respondent | : | Gujarat Urja Vikas Nigam Limited |
| Represented By | : | Ld. Adv. Ms. Shristi Khindaria with Mr. R. K. Gohil. |

**CORAM:**

**Pankaj Joshi, Chairman**
**Jatin N. Thakkar, Member**

**Date: 23/09/2026.**

**ORDER**

1. The above matters alongwith IA No. 62 of 2026 were kept for hearing on 17.09.2026.

2. Ld. Sr. Counsel Mr. Rashesh Sanjanwala, appearing for the Applicant/Petitioner submitted that in the present matter, the Applicant/Petitioner has sought, inter-alia, recognition of certain events as force majeure events and consequentially, sought extension of SCOD of the project. It is submitted that the matter was not earlier argued on merits before the Commission. He further submitted that during the pendency of the main Petition, the Respondent GUVNL has recovered an amount of approximately Rs. 1.76 crore from the Applicant/Petitioner. In view of the subsequent development, the Applicant/Petitioner has preferred the IA being IA No. 62 of 2026 seeking amendment of the Petition by incorporating two additional prayers, whereby refund of the amount so recovered is sought in the event the main Petition is ultimately allowed. It is further submitted that the proposed amendment does not alter the basic nature or foundation of the main Petition but merely seeks to incorporate the consequential relief arising from the subsequent recovery made by the

Respondent GUVNL. He also submitted that the pleadings in the said Interlocutory Application are completed by the parties.

3. Ld. Counsel Ms. Shristi Khindaria, appearing on behalf of the Respondent GUVNL, submitted that the Respondent GUVNL has already filed its reply in the IA No. 62 of 2026. It is submitted that the question as to whether the proposed amendment ought to be permitted or rejected may be considered by the Commission in accordance with law.

4. Heard the parties. Since the rival contentions have been raised by both the parties on the amendment sought by the Applicant/Petitioner, we deem it appropriate to deal with the aforesaid IA No. 62 of 2026 filed by the Applicant/Petitioner before deciding the main matter.

5. We note that the Applicant/Petitioner has filed the IA No. 62 of 2026 in the present matter under the provisions of the GERC (Conduct of Business Regulations), 2004 seeking amendment of the main Petition and for placing additional facts and documents on record and *inter-alia*, seeking the following reliefs:

   *(a) Allow the present Application seeking to amend the Prayer Clause in the captioned Petition; and*

   *(b) Allow the Applicant to file the amended petition.*

   *(c) Pass any such other or further order(s) as this Hon'ble Commission may deem fit and necessary in the interest of justice and in the facts and circumstances of the present case.*

6. We note the facts mentioned in the IA No. 62 of 2026, in brief, are stating as under:

6.1. The present Petition has been filed by M/s Martial Solren Private Limited under Section 86 (1) (b), (e), (f) and (k) of the Electricity Act, 2003 read

with Regulation 80 of the GERC (Conduct of Business) Regulations, 2004 invoking the adjudicatory and regulatory powers of the Commission praying for an extension in the Scheduled Commercial Operation Date (SCOD) of the Applicant/Petitioner's project i.e., 200 MW Solar Power Project located at Villages Dholvani, Gokachuvan, Kunol, Modarsumba, Muloj And Vaniyavada, Taluka Modasa, District Aravalli, Gujarat, on account of the Force Majeure events beyond its control.

6.2. The SCOD of the Project was 06.02.2025 and the Applicant/Petitioner has commissioned its Project in four tranches of 50 MW each. The commissioning status of the Project (commissioned in tranches) is as follows:

| Sr. No. | Project Capacity (in MW) | Commissioning Date | Delay in the SCOD on account of the FM Events |
|---|---|---|---|
| 1. | Ist tranche of 50 MW | 06.02.2025 | No delay |
| 2. | IInd tranche of 50 MW | 13.05.2025 | 96 days |
| 3. | IIIrd tranche of 50 MW | 03.07.2025 | 147 days |
| 4. | IVth tranche of 50 MW | 26.07.2025 | 171 days |

6.3. It is submitted that on account of the aforesaid delay in commissioning of the Project, the Respondent has recovered Liquidated Damages (LD) amounting to Rs. 9,17,77,778/- from the Applicant/Petitioner. Notably, the said payment has been made by the Applicant/Petitioner subject to the outcome/adjudication of the captioned Petition.

6.4. The details of the Force Majeure events have been duly dealt with by the Applicant/Petitioner in its pleadings already filed before the Commission in the captioned matter, including additional affidavit dated 02.09.2025. The Applicant/Petitioner had filed an Additional Affidavit dated 02.09.2025 to bring on record subsequent developments that have occurred after the filing of the Petition. The Respondent GUVNL has duly filed its response to the Additional Affidavit thereby making submissions on the merit of the subsequent events. Hence, the Applicant/Petitioner is not repeating them herein for the sake of brevity and to avoid prolixity.

The contents of the pleadings filed by the Applicant/Petitioner before this Commission, including Additional Affidavit dated 02.09.2025, be read as part and parcel of the present Application. The Applicant also reserves its right to rely upon and refer to the same during the course of hearing.

6.5. By way of the present Application, the Applicant/Petitioner seeks leave to amend the Prayer Clause of the Petition to the limited extent of incorporating two additional prayers i.e., (i) seeking refund of the LDs recovered by the Respondent along with carrying cost/interest as per Clause 6.3 of the PPA; and (ii) the COD of the project shall be considered as 26.07.2025 and the power supplied before the said date shall be billable as per Article 5.4 of PPA. The proposed amendment is purely consequential and ancillary to the principal relief already sought in the Petition, viz., extension of the SCOD on account of the Force Majeure events beyond the Applicant/Petitioner's control. Considering that the Applicant/Petitioner having a strong case on merits, the Applicant/Petitioner would consequently be entitled to refund of the Liquidated Damages amounts so recovered along with interest/carrying cost and extension of SCOD. The proposed amendment is, therefore, being sought only to incorporate the consequential relief flowing from the principal reliefs already sought in the Petition. The same does not alter the nature or scope of the proceedings. The necessary documents in support of claim of SCOD extension are already placed on record.

6.6. The addition of prayer is sought by the Applicant/Petitioner in the interest of justice and to obviate any technical or procedural objection that may be raised by the Respondent regarding the maintainability of the consequential relief of refund of the LDs in the absence of an express prayer to that effect. The present Application has, therefore, been preferred to expressly incorporate the consequential relief in the Prayer Clause so as to avoid multiplicity of proceedings and to ensure that the Applicant/Petitioner is not deprived of the amounts recovered from it,

should the Commission be pleased to grant the principal relief sought in the Petition. The present application is made in furtherance of settled principle of law and amendment of pleadings more specifically Order VI Rule XVII of the Civil Procedure Code, 1908.

6.7. In view of the foregoing, the Applicant/Petitioner seeks leave of the Commission to amend the Prayer Clause of the captioned Petition, limited to the extent of incorporating the following additional prayer after the existing Prayer F, to be numbered as Prayer G:

> *"G. Issue appropriate Orders/directions to the Respondent to refund the liquidated damages recovered from the Petitioner along with applicable interest/carrying cost as provided under Clause 6.3 of the PPA, and;*
>
> *H. Hold and direct that the COD of the project will be considered as 26.07.2025 and the power supplied before the said date shall be billable as per Article 5.4 of PPA."*

6.8. It is stated that it is just, appropriate and in the interest of justice that the present Application be allowed and the amended Prayer is taken on record of the accompanying Petition. The proposed amendment is purely consequential in nature and does not alter the scope or character of the proceedings.

6.9. It is submitted that no prejudice whatsoever shall be caused to the Respondent if the present Application is allowed as the said amendment is purely consequential to the main case set up in the Petition read along with other pleadings. On the contrary, refusal of the proposed amendment would result in grave financial prejudice to the Applicant/Petitioner.

7. We note that the Respondent GUVNL filed its reply vide affidavit dated 14.09.2026 in the present IA No. 62 of 2026 stating as under:

7.1. It is contended that the Applicant/Petitioner has filed the present Petition for declaration of force majeure events and extension of the Scheduled Commercial Operation Date (SCOD) in relation to the Power Purchase Agreement dated 07.08.2023 between the Applicant/Petitioner and the Respondent No. 1 in relation to the 200 MW Solar Power Project to be set up at Aravalli, Gujarat. It is submitted that GUVNL has already filed the reply to the same and thereafter the Applicant/Petitioner has sought to file Additional Affidavit allegedly to place subsequent events on record. GUVNL had also filed the response to the same and *inter-alia* objected to raising of new issues by way of Additional Affidavit.

7.2. It is submitted that the Applicant/Petitioner is seeking to add two prayers which cannot be accepted as the pleadings are already completed, and the Applicant/Petitioner cannot keep raising other issues.

7.3. At the outset, it is submitted that there is no force majeure event and therefore, there is no basis for seeking any refund of liquidated damages. The Applicant/Petitioner has been admittedly delayed and therefore is liable to make payment of liquidated damages.

7.4. It is submitted that even otherwise, there cannot be any claim of interest of carrying cost. The Applicant/Petitioner had agreed to pay the liquidated damages. While the same is without prejudice to the rights to claim force majeure, there cannot be any claim for interest. There is no provision for any interest on liquidated damages.

7.5. It is submitted that in any event, it may be noted that the Applicant/Petitioner has in the Petition filed documents and claims which were not submitted to GUVNL prior to filing of Petition and documents were filed in rejoinder and additional affidavit. The issue of force majeure has to be adjudicated by the Commission. There are genuine disputes and consideration of evidence and there cannot be any interest in such cases.

7.6. Further, it may be noted that the Applicant/Petitioner has sought adjournments in the matter, and the Applicant/Petitioner cannot take advantage of its own delays.

7.7. It is submitted that the claim that the amendment is consequential or ancillary to principal relief is not admitted. The Applicant/Petitioner is raising an entirely new issue and relief based on Article 5.4 of the PPA which was not raised before.

7.8. It is submitted that the Applicant/Petitioner has completely misconstrued the provisions of the PPA. Article 5.4 of PPA states as under:

> *"5.4 In cases of early part-commissioning of the project prior to SCOD, GUVNL shall reserve the right to purchase the generation at 75% (seventy-five per cent) of the PPA tariff till SCOD. However, in case the entire capacity is commissioned prior to SCOD, GUVNL may purchase the generation at PPA Tariff."*

7.9. It is submitted that the Article 5.4 can apply only in case of commissioning prior to SCOD and does not apply when the project has been delayed. The attempt to claim supply post SCOD of the project as per PPA under Article 5.4 is flawed and misconceived.

7.10. Further, it is submitted that the Applicant/Petitioner itself in the additional affidavit dated 02.09.2025 has admitted to some amount of delay and the liability to pay some amount of Liquidated damages. While it is GUVNL's case that there is no force majeure event and there is no extension of SCOD and the liquidated damages are payable for the entire period of delay; however, even as per the Applicant/Petitioner, there is some of delay and therefore the SCOD cannot be taken as 26.07.2025.

8. We have considered the averments made in the Interim Application, the reply filed by Respondent, and the oral submissions advanced during the course of hearing and the material placed on record. The limited question

which arises for consideration at this stage is whether the amendments sought by the Applicant/Petitioner vide IA No. 62 of 2026 are necessary for the complete and effective adjudication of the controversy involved in the main Petition and whether permitting such amendments would cause any prejudice to the Respondent. We note that the power to permit amendment of pleadings is intended to facilitate determination of the real controversy between the parties and to avoid multiplicity of proceedings. The procedural rules governing amendment of pleadings are meant to advance the cause of substantial justice and are not intended to defeat adjudication of the real dispute on account of subsequent developments which have a direct bearing upon the reliefs sought.

8.1. At the outset, it is required to be noted that the present Petition is founded upon the Applicant/Petitioner's claim for recognition of certain events as Force Majeure events and consequential extension of SCOD. The question of delay in commissioning and the consequences flowing therefrom are, therefore, already within the scope of adjudication in the main Petition. The subsequent recovery of LD by GUVNL is directly connected with the aforesaid controversy. The liability to pay LD necessarily depends, *inter-alia*, upon the contractual SCOD, the actual dates of commissioning, the extent of delay attributable to the Applicant/Petitioner and the period, if any, which is required to be excluded on account of qualifying Force Majeure events. Therefore, once the Applicant/Petitioner asserts that the delay was caused by events beyond its control and seeks extension of SCOD, the subsequent recovery of LD during pendency of the Petition constitutes a development having direct bearing upon the reliefs ultimately to be granted.

8.2. In our considered view, the prayer seeking refund/restoration of LD, in the event the Applicant/Petitioner succeeds in establishing its entitlement to extension of SCOD, cannot be regarded as an independent or unrelated cause of action. The proposed relief is consequential upon the

determination of the controversy involved in the matter. If the Commission were ultimately to hold that a particular period of delay is required to be excluded while determining the contractual SCOD, the consequential question as to the validity and extent of LD recovered for such period would necessarily arise for consideration.

8.3. We also note that the Applicant/Petitioner has not sought, by way of the present amendment, to abandon or replace its original case. The original dispute remains one concerning the effect of the pleaded Force Majeure events upon the contractual commissioning schedule. The amendment seeks to bring on record subsequent commissioning and the actual recovery of LD and to incorporate consequential prayers arising therefrom.

8.4. Per contra, the Respondent GUVNL submitted that the Applicant/Petitioner cannot seek amendment merely because the pleadings have progressed also does not persuade us. The stage of the proceedings is certainly a relevant consideration; however, it cannot by itself constitute an absolute prohibition against taking subsequent developments on record, particularly where such developments have a direct bearing upon the relief already claimed in the main proceedings.

8.5. It is submitted by the Respondent that the Applicant/Petitioner could not, at the time of institution of the Petition, have pleaded the subsequent recovery of LD in the form in which it subsequently occurred. The commissioning of the Project in four tranches and the consequential recovery of LD are subsequent developments. The purpose of amendment in such circumstances is to enable the adjudicating forum to take cognizance of the factual position existing at the time of final adjudication so that the dispute is decided comprehensively.

8.6. We further note that the Applicant/Petitioner has specifically relied upon its earlier pleadings and additional affidavit dated 02.09.2025 wherein the

Force Majeure events and subsequent developments have already been placed on record and the Respondent GUVNL has also filed its response thereto. Thus, the proposed amendment does not take the Respondent by surprise insofar as the foundational dispute concerning Force Majeure and extension of SCOD is concerned.

8.7. It is the contention of the Respondent that the Applicant/Petitioner is seeking to introduce a new issue by referring to Article 5.4 of the PPA also does not, at this stage, justify rejection of the amendment. Whether Article 5.4 is ultimately applicable to the facts of the present case, whether the Project falls within the contractual situation contemplated by the said provision, and what tariff consequence, if any, follows therefrom are matters of substantive adjudication. At the stage of amendment, the Commission is not required to return a final finding on the correctness or otherwise of the proposed prayer.

8.8. It is settled law by the Hon'ble Supreme Court that while considering an amendment of pleadings, the adjudicating forum should primarily examine whether the proposed amendment is necessary for determining the real controversy between the parties and whether its admission would cause such prejudice to the opposite party as cannot be adequately addressed by granting an opportunity to respond. Applying the aforesaid principle to the facts of the present case, we find that the proposed amendments have a sufficient nexus with the original controversy. The question of LD is not an independent dispute divorced from the issue of SCOD. Rather, it is a consequential contractual consequence of the very delay whose attribution is the subject matter of the main Petition.

8.9. Similarly, the proposed prayer concerning SCOD and treatment of generation under Article 5.4 arises from the actual commissioning dates of the Project and the determination of the contractual consequences flowing from such commissioning. The said prayer may ultimately succeed or fail on its substantive merits; however, that question cannot be conflated with

the question of whether the Applicant/Petitioner should be permitted to place the relief before the Commission for adjudication.

8.10. We are also unable to accept the contention of the Respondent that the Applicant/Petitioner's consent to deduction of LD, by itself, forecloses the proposed amendment. The material before us, as recorded in the present proceedings, shows that the Applicant/Petitioner's payment/recovery position is stated to be subject to the outcome of the main Petition. Whether such consent constitutes waiver, acquiescence, admission or otherwise is itself a matter which may be considered, if necessary, while deciding the substantive controversy. At the stage of amendment, it cannot be treated as an absolute bar to bringing the subsequent recovery on record.

8.11. We also note the submission of GUVNL that the Applicant/Petitioner is not entitled to interest or carrying cost is also a matter going to the substantive merits of the consequential relief. Whether any such amount is payable and, if so, under which contractual or legal provision, is not required to be finally determined while deciding an application for amendment. The proposed prayer merely enables the Commission to adjudicate the complete consequential relief arising from the principal dispute.

8.12. We further find substance in the Applicant/Petitioner's submission that refusal to permit the amendment may result in multiplicity of proceedings. If, after adjudication of the main Petition, the Commission were to find that the Applicant/Petitioner was entitled to extension of SCOD and that LD had consequently been recovered for a period for which the Applicant/Petitioner was not contractually liable, requiring the Applicant/Petitioner to institute another proceeding merely for restoration of the amount would serve no useful purpose.

8.13. On the other hand, permitting the amendment does not determine the Applicant/Petitioner's substantive entitlement. The Respondent GUVNL

shall continue to have the full right to contest the Force Majeure events, the extent of the claimed extension, the commissioning dates, the applicability and interpretation of Article 5.4, the computation and recoverability of LD, and the claim for interest/carrying cost. Thus, the Respondent's substantive defence remains fully protected.

8.14. In view of the foregoing discussion, we are of the considered view that the proposed amendments sought by the Applicant/Petitioner are relevant and necessary to decide the controversy already pending before the Commission and necessary for determining the real questions in dispute between the parties. The proposed amendments do not fundamentally alter the nature or character of the original Petition, nor do they introduce an unrelated cause of action. The amendments merely incorporate subsequent developments and consequential reliefs arising out of the existing contractual dispute. The various objections raised by Respondent GUVNL are the aspects to be decided on the merits after hearing both the parties by providing an opportunity of amending the pleadings to the Respondent.

8.15. In view of the above deliberation, we decide to allow IA No. 62 of 2026 and accordingly, permit the Applicant/Petitioner to file amended Petition as sought in the Interim Application. The Respondent GUVNL would be at liberty to file its consolidated reply to the amended Petition, on or before 08.10.2026 after receipt of amended Petition from the Applicant/Petitioner, with a copy to the Applicant/Petitioner. The Applicant/Petitioner is directed to file its rejoinder to the consolidated Reply as may be filed by the Respondent, on or before 22.10.2026. We also clarify that the grant of amendment is confined only to permitting the Applicant/Petitioner to amend the Petition and shall not, by itself, constitute an adjudication upon the merits of the claims of either party. All the contesting issues shall be adjudicated by the Commission in

accordance with law after hearing the parties and on the basis of the pleadings and material placed on record by both the parties.

9. With this Order, IA No. 62 of 2026 filed by the Applicant/Petitioner in Petition No. 2460 of 2025 stands disposed of.

10. Next date of hearing in the main matter will be intimated separately after completion of the pleadings.

11. Order accordingly.

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| **Sd/-** | **Sd/-** |
| **[Jatin N. Thakkar]** | **[Pankaj Joshi]** |
| **Member** | **Chairman** |

Place: Gandhinagar.

Date: 23/09/2026.