NEUTRAL CITATION
2026:GUJHC:66548

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15364 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE ***-Sd/-***

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Approved for Reporting	Yes	No
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STOCKWELL ENERGY VAULT FOUR PRIVATE LIMITED & ANR.
Versus
GUJARAT URJA VIKAS NIGAM LIMITED (GUVNL) & ORS.

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Appearance:
MR HARSH N PAREKH(6951) for the Petitioner(s) No. 1,2
PRIYAL M PARIKH(7593) for the Petitioner(s) No. 1,2
MR. HENIL SHAH, AGP for the Respondent(s) No. 3
MR DIPAK R DAVE(1232) for the Respondent(s) No. 1
MR PRADIP D BHATE(1523) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 19/10/2026
ORAL JUDGMENT

Draft amendment dated 19th October, 2026 is allowed. ***To be carried-out forthwith***.

1. By way of present petition under Article 226 read with Article 227 of the Constitution of India, the petitioner has invoked extraordinary writ jurisdiction of this Court thereby praying for following reliefs:

> *"(A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or*

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direction quashing and setting aside the impugned notice dated 18th September, 2026 (annexed at Annexure-A) issued by the respondent no.1.

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondent No. 1 to pass an order, after affording an opportunity of hearing to the Petitioners, on the Petitioner No.1's Force Majeure claim and requests for extension contained in its letters dated 30.04.2026, 24.09.2026 and 06.10.2026 (annexed at Annexure-H. Annexure-Q and Annexure-S), within such time as this Hon'ble Court may deem fit;

(C) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction restraining the Respondent No.1 from invoking or encashing the Performance Bank Guarantee dated 17.03.2026 for Rs.8,12,50,000/-(annexed at Annexure-E), and from terminating the BESPA dated 18.03.2026 or taking any other coercive action against the Petitioners, until the decision referred to in prayer (B) above is taken and communicated to the Petitioners and for a period of two weeks thereafter, so as to enable the Petitioners to avail of their remedies in accordance with law;

OR IN THE ALTERNATIVE

(D) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction restraining the Respondent No.1 from invoking or encashing the Performance Bank Guarantee dated 17.03.2026 for Rs.8,12,50,000/-(annexed at Annexure-E) and from terminating the BESPA dated 18.03.2026, and directing the Respondent No.4 not to make any payment under the said Performance Bank Guarantee, until the application for interim relief to be filed by the Petitioners before the Gujarat Electricity Regulatory Commission, in the petition to be filed under Section 86(1)(f) of the Electricity Act, 2003, is heard and decided by the Gujarat

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Electricity Regulatory Commission;

(E) Pending admission and final hearing of this Petition, Your Lordships may be pleased to restrain the Respondent No.1 from invoking or encashing the Performance Bank Guarantee dated 17.03.2026 for Rs. 8,12,50,000/- (annexed at Annexure-E) and from terminating the BESPA dated 18.03.2026, and to direct the Respondent No.4 not to make any payment under the said Performance Bank Guarantee, until final disposal of the petition;

(F) Ex-parte ad-interim relief in terms of prayers (D) and (E) above.

(G) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted.”

2. In order to appreciate the controversy raised in the present petition, it would be appropriate to take note of the relevant facts of the case.

2.1 The petitioner no.1 claims to be a company incorporated under the Companies Act , 2013. Whereas petitioner no.2 is the holding company of petitioner no.1 engaged in providing renewable energy solutions, including Battery Energy Storage Systems (for sake of brevity, referred as “BESS”) and solar engineering, procurement and construction services and claims to contribute to India's clean energy transition.

2.2 The petitioner no.2 is the successful bidder and has been assigned letter of intent by respondent no.1 who is the Battery Energy Storage System implementing agency nominated by

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the energy and petrochemical department, Government of Gujarat under the viability gap funding scheme for development of Battery Energy Storage Systems supported through the Power System Development Fund ("PSDF Scheme"), notified by the Ministry of Power. The respondent no.2 the Union of India is joined through the Ministry of Power which has promoted the development of BESS to facilitate integration of renewable energy, address its intermittency and improve the reliability and flexibility of the electricity grid.

The respondent no.3 State of Gujarat is joined through the Energy and Petrochemicals Department, which has nominated respondent no.1 as its implementing agency. Whereas respondent no.4 is the bank which has issued the performance bank guarantee and is joined as a proforma party as against it no substantive relief is sought except with regard to direction to not to make payment under the performance bank guarantee.

2.3 The petitioner no.2 had issued guidelines for "Procurement and Utilization of Battery Energy Storage Systems" under Section 63 of the Electricity Act, 2003 on 10th March, 2022. In furtherance of same, the respondent no.1 had issued the request by floating tender for selection of Battery Energy Storage System Developers for setting up of 4000 megawatt hertz MWH (2000 MW x 2 hours) Battery Energy Storage Systems in Gujarat for "on demand" usage under tariff based competitive bidding (phase 7) on a build -

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own - operate basis, with viability gap funding supported through the power system development fund. The aforesaid tender notice dated 23rd July 2025 was later on amended on 16th September, 2025 and 26th September, 2025.

2.4 On 2nd January, 2026 the petitioner no.2 was declared successful bidder for capacity of 130 MW / 260 MWh at a tariff of Rs.1,88,991/- per MW per month. The respondent no.1 had therefore issued letter of intent for the aforesaid capacity, comprising two projects of 65 MW / 130 MWh each, at the 132 KV Nandesari AIS substation and 132 KV Vasedi AIS substation respectively. Pursuant to the order passed by the Gujarat Electricity Regulatory Commission (in short GERC) in petition no.2612 of 2026, adopted the tariff discovered through the competitive bidding process undertaken by respondent no.1 under the RFS and directed respondent no.1 to execute the battery energy storage purchase agreements with the successful bidder. On 17th March, 2026 the petitioner had furnished a performance bank guarantee of Rs.8,12,50,000/- in favor of respondent no.1, corresponding to Rs.12,50,000/- per MW for the contracted capacity of 65 MW. On 18th March, 2026 the BESPA in respect of the project at Vasedi AIS substation came to be executed between petitioner no.1 and respondent no.1. The BESPA records the applicable tariff of Rs.1,88,991/- per MW per month and specified 17th September, 2026 as the financial closure deadline under Article 3.1(vii), subject to other applicable provisions of the agreement, including its force majeure framework.

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2.5 It is the case of the petitioner that following the execution of the BESPA, the implementation of the project was materially affected on account of the prevailing West Asia conflict and its escalation on account of closure and rerouting of maritime routes, imposition of war risk premiums, port congestion and withdrawal or revision of supplier delivery commitments which disrupted the international supply chains upon which the project depended.

2.6 Despite the aforesaid circumstances prevailing, the petitioner no.1 was constrained to issue a formal notice on 30th April, 2026 to the respondent no.1 invoking the force majeure clause under Article 11 of the BESPA which according to petitioner was well within the period of 15 days contemplated under Article 11.4.1. In response, the respondent no.1 vide letter dated 11th May, 2026 disputed the invocation of force majeure clause by citing that the case of the petitioner will not fall within the scope of force majeure events as provided under article 11.2(e). The respondent no.1 specifically requested the petitioner no.1 to submit the documentary evidence in support of their claim and recorded that invocation of force measure *cannot be considered at this stage*.

2.7 In the meanwhile the Gujarat Energy Development Agency granted provisional registration to the project as a standalone BESS project of 65 MW / 130 MWH at 132 KVV KV Vasedi AIS substation, pursuant to the application submitted by the petitioner on 9th June, 2026. On 6th July, 2026 the

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petitioner claims to have entered into memorandum of understanding with the owners of agriculture land bearing Revenue Survey nos.162, 163 and 194 situated at village Vasedi, Taluka and District Chhota Udaipur admeasuring approximately 2.21 Hectors of land. The petitioners have agreed to avail such land on lease for the project purpose for a period of 13 to 14 years.

2.8 On the other hand the Gujarat Energy Transmission Corporation Ltd., by its letter dated 6th August, 2026 granted 65 MW connectivity to the project at 132 KV Vasedi substation, pursuant to the application of the petitioner dated 11th June, 2026. However, on the next day the respondent no.1 issued a letter dated 7th August, 2026 calling upon the petitioner no.1 to submit the documents for financial closure as provided under Article 3.1 of the BESPA or alternatively to seek an extension under Article 3.2.2 of the BESPA. Again, the respondent no.1 vide letter dated 8th September, 2026 issued a further letter calling upon the petitioner no.1 to submit the documents for financial closure or, alternatively, to seek an extension under article 3.2.2 of the BESPA. Ultimately, the respondent no.1 had issued notice dated 18th September, 2026 recording that the scheduled date of financial closure had elapsed on 17th September, 2026 and the said notice to be treated as 30 day notice under Article 3 of BESPA thereby indicating that in case of non compliance of the contractual obligations by 16th October, 2026, the respondent no.1 shall without any further notice or correspondence, proceed to encash the performance bank guarantee as well as exercise

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their right of termination of agreement. Subsequently, the petitioner no.1 received confirmation from its EPC contractor the petitioner no.2 informing that the original equipment manufacturers of liquid cooled LPF battery containers and bidirectional power conversion systems approached for the project have in view of the prevailing West Asia situation and its effect on international shipping, declined to accept purchase orders confirmed and fixed delivery timelines and payment terms. The petitioner no.1 had immediately responded to the notice impugned by submitting their reply dated 24th September, 2026 as well as the letters addressed on 11th May, 2026, 8th September, 2026 by furnishing documentary evidence called for by the respondent no.1. In view of the aforesaid documents, the petitioner no.1 sought for an extension of 120 days for financial closure. The request was also made to respondent no.1 to take its decision on the force measure claim in terms of Article 11.4.1 of the BESPA within a period of 30 days and thereby requested respondent no.1 to keep in abeyance any action for encashment of performance bank guarantee pending such decision. Again on 6th October, 2026 the petitioner addressed further letter to respondent no.1 placing on record the advisory of Ministry of Power, seeking and entering day to day extension of the financial closure timeline and other contractual timelines pending decision on the force measure claim and requesting the respondent no.1 to confirm within 7 days that no coercive action, including encashment of performance bank guarantee would be taken pending such decision or in the alternative to communicate a reasoned decision. On 14th October, 2026 the

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petitioner issued a disputed notice via email to respondent no.1 in accordance with Article 16.2.1 of the BESPA. Despite pursuance of the petitioner to extend the timeline till the date of filing this petition, the respondent no.1 has not taken any decision on the petitioners force measure claim nor has responded to his letter dated 24th September, 2026 and 6th October, 2026 nor the respondent has withdrawn the notice. Since the 30 day period available to the respondent under Article 11.4.1 of the BESPA for taking decision on the documented claims runs up to 24th October, 2026 and apprehending the encashment of the performance bank guarantee which is likely to expire on 16th October, 2026, the petitioner has been constrained to approach this Court by invoking extraordinary jurisdiction under Article 226 of constitution of India.

3. Mr. Mitul Shelat, learned Senior Advocate appearing with Mr. Priyank Parikh, learned advocate on record for the petitioner has vehemently submitted that the BESPA agreement was entered between the parties on 18th March 2026. The petitioner company has adhered to the compliance of bidding requirements by furnishing a performance bank guarantee of Rs.8,12,50,000/- in favour of respondent no.1 corresponding to Rs.12,50,000/- per MW for contracted capacity of 65 MW. As agreed between the parties, the timeline for financial closure was scheduled as 17th September, 2026 under Article 3.1(vii) subject to other applicable provisions of the agreement. It was submitted that the aforesaid financial closure deadline however has to be

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read subject to other applicable provisions of the agreement including its force measure framework. It was further submitted that due to unprecedented circumstances the project was materially affected by the prevailing West Asia conflict and its escalation on account of closure and rerouting of maritime routes, imposition of war risk premiums, port congestion and withdrawal or revision of supplier delivery commitments, which disrupted the international supply chains upon which the project depended. It was therefore submitted that taking note of the aforesaid adverse circumstances the Ministry of Finance Department of Expenditure, Procurement Policy Division also issued office Memorandum dated 29th April, 2026, whereby it clearly stipulated that contractual obligations failing due on or after 20th February, 2026 where the parties were not in default as on 27th February, 2026 were directed to be extended for a period of not less than two months and not more than four months without imposition of any cost or penalty on the contractor. In view of the aforesaid instructions issued by the Ministry of Finance, and the unprecedented period of war, the petitioner was constrained to address a formal notice dated 30th April, 2026 to respondent no.1 seeking invocation of the force majeure clause under Article 11 of the BESPA which is filed within period stipulated of 15 days under Article 11.4.1.

3.1 It was contended that the essential components of the project which mainly includes battery modules, inverters and battery management systems are sourced through international procurement channels and in view of ongoing

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war, the schedule of delivery of such components has been affected. The attention of this Court was invited to Article 3.1 of the BESPA which provides that the BESSD shall complete the said activities again "unless such completion is affected by any force majeure event". The reference was also made of Article 3.2.1 of the BESPA as well as clause 23.4 of the RFS referring to Article 11.2 E of the BESPA, it was submitted that the aforesaid clause clearly stipulates force majeure events as any act of war whether declared or undeclared, invasion, armed conflict or act of foreign enemy, blockade, embargo.... if any and only if it is declared / notified by the competent State /Central Authority /Agency "as applicable".

3.2 Reference was also made of Article 11.3.1 and 11.4.1 as well as Article 11.5.1 and Article 11.5.2 with regard to the specific obligation and consequences of force measure event as agreed by the parties. Referring to Article 11.9, learned advocate had submitted that as per the aforesaid clause no party is to be held in breach of its obligation to the extent that their performances was prevented, hindered or delayed by a force measure event. Referring to aforesaid clause of the agreement, learned advocate had submitted that the petitioner has simultaneously approached the Gujarat Energy Regulatory Commission (GERC) by way of preferring a petition on 15th October, 2026 which has been physically accepted and registered on 16th October, 2026. It was submitted that since the member of the Bench of GERC hears the matters on the scheduled date, at the most the case of the petitioner may be taken up for hearing on 22nd October, 2026

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or lately by 27th October, 2026. However, in the interregnum the timeline of financial closure has been agreed between the parties as 15th October, 2026 in such circumstances, the petitioner had no other efficacious remedy but to approach this Court under Article 226 of constitution of India.

3.3 On the aspect of revocation of performance bank guarantee and termination of agreement is concerned, learned advocate had pointed out that the interpretation of the invocation of force majeure clause in the facts of the case and in view of the recitals made in the agreement is subject matter of consideration in view of pendency of the petition before the GERC. However, before adjudication of such a petition on merits, the respondent may be prohibited from revocation of performance bank guarantee as well as termination of the agreement by issuing appropriate directions to GERC to expedite the hearing of their petition. Alternatively, it was submitted that till the GERC hears the matter on the first date till such period the petitioner may be protected by directing the respondent no.1 to not to encash the performance bank guarantee and to not to terminate the agreement.

3.4 It was further submitted that the Ministry of New Renewable Energy has also issued a letter dated 6th July, 2026 directing the State as well as Union Territory Governments and their Agencies to take into consideration the instructions issued by the Ministry of Finance while dealing with the request of extension of time for implementation of the

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projects. It was submitted that subsequently on 21st August, 2026 the Ministry of New and Renewable Energy has issued further advisory acknowledging the fact that "war" is stipulated as a force majeure event under most power purchase agreements and reiterating that the State Government and the Agencies under them are required to take into consideration the instructions issued by Ministry of Finance while considering the request for extension of time. The attention of this Court was also invited to the instructions dated 5th October 2026 issued by the Ministry of Power (NRE section), which was addressed to the Principal Secretaries of Energy Departments of concerned Government including State of Gujarat. The attention of this Court was further invited to the fact that through such instructions the concerned Ministry having received various representations from the States, BESS Implementing Agencies (BIAs) and developers seeking extension of timeline for achieving financial closure in respect of BESS capacities implemented through viability gap funding (VGF) schemes. The respective States and their Nodal Agencies have been advised to allow a one time extension of the timeline for achieving financial closure for BESS projects which have not achieved financial closure within the prescribed timeline, subject to condition that such projects achieve financial closure by 6th November, 2026. In view of the above instructions, learned advocate had submitted that the aforesaid instructions being issued by the concerned department who has floated the scheme significantly taking note of the adverse circumstances on account of ongoing war, the respondent no.1 being a Nodal

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Agency is bound by such instructions. Learned advocate had therefore urged to give a fair opportunity to the petitioner to put forward his case for extension of timeline of financial closure before the respondent proceeds for revocation of performance bank guarantee and termination of the agreement by protecting the petitioner for the interregnum period till the matter is taken up by GERC for hearing.

4. Mr. Deepak R. Dave, learned advocate appearing for respondent no.1 being served by advance copy of the petition, Mr. Pradip Bhate, learned counsel representing respondent no.2 - Union, as well as Mr. Henil Shah, learned AGP appearing for respondent no.3 - State authorities.

5. Per contra, Mr. Dave, learned advocate for the respondent no.1 has objected to the aforesaid submissions by contending that as per the BESPA agreement executed with Gujarat Urja Vikas Nigam Ltd., (GUVNL) and M/s. Stock Energy World Force Private Ltd., petitioner herein on 18th March, 2026, the schedule date for compliance of financial closure as agreed between the parties was 17th September, 2026. He has further submitted that under Article-3 of the BESPA agreement, the contractual obligations incurred by the petitioner company in the first phase was to secure lease agreements for at least 90% of the required land area at the time of financial closure in the name of BESSD. The Article term 3.1(i) clearly stipulates that failure to do so will result in the termination of the BESPA agreement. He has further submitted that as per Article 3.1(v), the petitioner company

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was further expected to make project financing arrangements for which necessary certificate was to be undertaken before GUVNL in this regard. As per Article 3.1(viii), the petitioner company was required to submit documents to GUVNL at least 14 days prior to the scheduled financial closure date and in case of delay GUVNL was not to be held liable for delayed verification of documents and subsequent delay in financial closure. Referring to article 3.2.1, learned advocate had submitted that in absence of compliance of aforesaid contractual obligations by the petitioner, the respondent no.1 was constrained to issue notice in writing which was 30 days prior to the scheduled date of financial closure. He has therefore submitted that in the event of inaction on the part of the BESS, the termination of agreement shall consequently take effect upon expiry of 30th day of the said notice. He has therefore submitted that the notice being duly served upon the petitioner company in terms of the aforesaid clause on 18th September 2026, on the 30th day which is 17th October 2026, the consequences of termination of BESPA agreement and encashment of performance bank guarantee *ipso facto* follows.

5.1 He has further submitted that except for referring to the instructions issued by the concerned ministry, there is nothing on record to suggest that the petitioner company has taken any effective steps to comply with the contractual obligations. As regards submission made by learned Senior Advocate on the aspect of invocation of force majeure clause is concerned, learned advocate had submitted that the execution of lease

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agreement which is the first step to be complied with by the petitioner company shall not be affected by the ongoing West Asia war situation. As regards battery storage components are concerned, the same are mostly purchased from the market of countries like China. He has therefore submitted that having failed to abide by the contractual obligations the consequences as agreed has to follow in the facts of the case.

5.2 He has further objected to the conduct of the petitioner inasmuch as despite being served with the notice on 18th September 2026, period of 30 days almost being available, the petitioner has chosen to approach this Court on the last date of the scheduled date of financial closure so as to pressurize the Courts to issue the orders without any adjudication of the case on merits. He has further submitted that as submitted by learned advocate for the petitioner, the appropriate remedy was to approach directly before the Gujarat Electricity Regulatory Commission instead of preferring the present petition. The petition which is now preferred before GERC has been filed today and by pressing this Court at the last moments, the petitioner wants to secure interim protection which may later on continue because of prolonged hearing in the matters. He has therefore submitted that the Court may take into consideration the conduct of the petitioner while exercising discretion in favor of the petitioner.

5.3 In support of his submission, learned advocate has placed reliance upon the judgment of Hon'ble Supreme Court in the case of State of *Orissa Vs. Madan Gopal Rungta (1951*

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Law Suit SC 60 - 1952 AIR SC 12). It was submitted that while considering the scope of granting interim relief under Article 226 of Constitution of India, it has been held that when the Court declined to decide on rights of the parties and expressly held that they should be investigated more properly in a civil suit, the Court should not issue directions in the nature of temporary injunction under Article 226 of the Constitution of India. A similar view has also been taken by the division Bench of this Court in case of *Union of India Vs. Manubhai Parmar,* reported in *1998 Law Suit (Gujarat) 638*. The Court has categorically held that while disposing of the petition under Article 226 of the Constitution of India finally, the Court should refrain from giving interim relief, as interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of its right in a suit or proceeding. As regards invocation of performance bank guarantee is concerned, learned advocate has placed heavy reliance upon the decision of Hon'ble Supreme Court in the case of *Himadri Chemicals Industries Limited Vs. Coal Tar Refining Company* reported in *2007 8 SCC 110* as well as in the case of *Standard Chartered Bank Vs. Heavy Engineering Corporation Ltd., and another* reported in (*2020) 13 SCC 574*. Referring to the aforesaid judgments, learned advocate has submitted that it is settled legal position that in commercial transactions, the beneficiary of a bank guarantee or a letter of credit is entitled to realize the same in terms of the agreement irrespective of the fact that any dispute is pending in relation to the terms of the contract. He has further submitted that it is only where the Court is

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satisfied that allowing encashment of an unconditional bank guarantee shall result in irreparable harm or injustice to one of the parties, the Court may interfere. Otherwise, the Court should be slow in granting injunction against such payments. Learned advocate has therefore urged this Court to dismiss the petition as having availed the remedy before the GERC.

6. Heard learned advocates for respective parties and considered their arguments in light of the averments made in petition and documents placed on record. The short question which arises for consideration is whether petitioner is entitled to relief prayed for in the facts of the case. At the outset, it is required to be noted that the petitioner during the course of hearing of the matter has pointed out that an appropriate petition has been preferred before the Gujarat Electricity Regulatory Commission pending the present petition. In view of the above, the only relief at this stage which can be examined is whether the case of the petitioner can be considered for issuance of prohibitory orders as against encashment of performance bank guarantee and termination of agreement till the GERC takes up the petition for hearing. The amendment in this regard has been placed after the matter was kept for orders and the order was to be pronounced. The learned advocate for respondent has objected to the grant of aforesaid relief as well predominantly on the ground that there is no material worth which speaks of any action being taken by the petitioner company to fulfill even the first stage of contractual obligation.

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7. I have carefully considered the judgments relied upon by learned advocate for the respondent in the case of *Himadri Chemicals Private Limited (supra)* and *Standard Chartered Bank (supra)*, which lays down the legal principles regarding performance bank guarantees under very specific public law and equitable circumstances. However, this court while exercising its direction as a writ court is also expected to evaluate the surrounding circumstances and the action of the State or its instrumentalities through the lens of public law, fair play and Article 14 of the Constitution of India. In the facts of the case, the respondent is admittedly an instrumentality of the State and is bound to act reasonably and in fair manner while considering invoking of performance Bank guarantee. It is equally required to be noted that the petitioner has approached the commission wherein the aspect of *force majeure* event shall be objectively and in detail examined, however, before the same is established, the petitioner have rushed to the jurisdiction of this court in circumstances where the commission as per the calendar , the allocated dates of hearing of the matters, the matter of the petitioner is likely to be heard on 22nd October 2026 or latest by 27th October 2026, which are the days fixed for hearing by GERC. As against that the date of financial closure and consequential revocation of the performance Bank guarantee and termination of agreement indicated is 17th October 2026. Having noted the aforesaid relevant dates, the petitioner has though invoked the remedy available in law by preferring petition before GERC, however, in absence of date of hearing being allocated prior to the date of revocation of bank

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guarantee and termination of agreement, it cannot be said to be efficacious statutory remedy available to the petitioner for consideration of the interim prohibitory orders. It is true that it is a settled legal position that in commercial transactions, the beneficiary of bank guarantee stands on a different footing irrespective of any dispute pending consideration in relation to the terms of the contract. However, the Hon'ble Supreme Court in the case of *Standard Chartered Bank (supra)* has also recognised special equities as a distinct circumstance, justifying judicial intervention. In exception, circumstances like *force majeure*, event being pleaded, which is to be examined by the commission , invocation of performance Bank guarantee without providing a basic personal hearing or considering their representations, would amount to denying fair opportunity of hearing to the petitioner. The principle laid down by the Hon'ble Supreme Court in the case of *Himadri chemicals (supra)*, which governs the principles with regard to grant of an injunction to restrain the engagement, has to be appreciated in the facts of the case. In the case like present, where the petitioner is merely seeking the minimum relief of a fair opportunity of being heard, which according to court is in alignment with the principles of nature justice and *audi alteram partem.*

8. At this stage, it would be appropriate the recent view of the Hon'ble Supreme Court in the case of ***M/S Jindal Steel And Power Ltd. & Anr. Versus M/S Bansal Infra Projects Pvt. Ltd. & Others (Neutral Citation : 2025 INSC 640),*** in a similar set of facts though arising out of proceedings under

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Section 9 of the Arbitration and Conciliation Act, 1996, which otherwise mandates minimum judicial interference by the courts including the High Court, has upheld the order of the High Court granting interim relief under Article 227 in cases where the denial of interim relief can cause irreparable harm. Thus, the Hon'ble Supreme Court has also, while acknowledging the legal principles related to bank guarantees as well as the minimal interference by the courts, the Court observed that if the parties were permitted to invoke the bank guarantee, the prayer made in the arbitration petition would likely to become infructuous. The Court observed that the interim order passed by the High Court restraining the appellants from encashing the bank guarantee was in the interest of both the parties and shall remain in force until the disposal of the arbitration petition pending before the commercial court, subject to respondent no. 1 extending the validity of the bank guarantee. It would be appropriate to reproduce the relevant observations made by the Hon'ble Supreme Court as recorded hereunder:

> *"13. Admittedly, Respondent No. 1 initiated arbitration proceedings to resolve the disputes with the appellants. In the Section 9 arbitration petition filed by them, the arguments on behalf of Respondent No. 1 and Respondent No. 2 have already been concluded, and the matter stands partly heard, pending further arguments on behalf of the appellants. Furthermore, pursuant to the order dated 06.11.2024 passed by the High Court, an Arbitral Tribunal was constituted to adjudicate the disputes between the parties and a hearing was held on 03.01.2025, during which, the parties involved herein appeared and the Arbitral Tribunal*

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> *directed them to file statement of claim, statement of defence and counter claim, if any, and reply to the same. Thus, in view of the ongoing arbitration proceedings concerning the bank guarantee, it is imperative to maintain the existing position regarding the bank guarantee until the final outcome of the Section 9 arbitration petition.*

9. It is also to be pointed out that as directed by the High Court, respondent no.1 renewed the bank guarantee till 31st December, 2024, which was subsequently, extended till 30th June, 2025 pursuant to the directions of this Court. Furthermore, the learned counsel for Respondent No. 1 has given an undertaking to extend the validity of the bank guarantee till the disposal of the Section 9 arbitration petition. As such, no prejudice whatsoever is occasioned to the appellants, for the present. Therefore, we will not decide the legal issues raised herein and the same are left open."

10. Having noted the aforesaid guiding principles as to peculiar circumstances, this Court is of the view that in absence of any interim measures, the proceedings may be defeated by mere passage of time and the remedy though being availed may become illusory as it may lead to situation where an act complained of will get completed before it is adjudicated by competent forum. As a result, there is a likelihood of multiplicity of proceedings and final adjudication turning to be only an empty formality. Hence, in order to prevent an irreversible situation and prevent a *fait accompli*, it would be in the interest of justice to balance equities by issuing following directions :

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10.1 The respondent no.1-Gujarat Electricity Regulatory Commission (GERC) is directed to peremptorily hear and adjudicate Interim Application dated 15th October, 2026, preferred by the petitioner, on 27th October, 2026, by providing an opportunity of hearing to the parties on record and to take a decision on such interim applications strictly in accordance with law, preferably within a period of two weeks from date of such hearing.

10.2 In the interregnum, the respondents are hereby directed not to encash the performance bank guarantee furnished by the petitioner in the context of the Power Purchase Agreement dated 18th March, 2026, pending the adjudication of such interim application.

10.3 The respondents are also directed to maintain status quo with regard to the Power Purchase Agreement dated 18th March, 2026, pending adjudication of interim application by the GERC till 27th October, 2026.

11. It is clarified that the aforesaid directions are issued by way of interim measure solely considering the principle of *audi alteram partem* and principle of fair trial so as to extend both the parties a meaningful opportunity of hearing and the subject matter of dispute is preserved. Thus, this Court has not examined the merits of the matter and all the rights and contentions of the respective parties are kept open. The GERC shall examine the matter on its own merits strictly in

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accordance with law.

12. With these observations, the petition is ***allowed*** to the aforesaid extent. ***Direct service is permitted***.

Sd/-
(NISHA M. THAKORE, J.)

AMAR RATHOD.../sfs/21.10

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