

Supreme Court dismisses the challenge to APTEL Judgment in the case of acquisition of Prayagraj Power Generation Company Limited (PPGCL) through a resolution process undertaken by SBI

The Hon'ble Supreme Court in its recent order dated January 20, 2020 has dismissed the challenge to APTEL Judgment involving issues of regulatory overreach and the statutory role of a regulatory commission while dealing with debt resolution efforts of lenders. In the present instance, lenders have attempted to explore a solution for a stressed power generation asset outside of IBC purview with the intent of minimizing the haircut that lenders are typically forced to absorb. This judgment will be helpful to similar efforts being undertaken by banks, which is likely to give a much-needed boost to much needed debt resolution efforts in India's infrastructure and power generation sector.

Background facts: Renascent Power Venture Private Limited (**Renascent**), a WOS of Singapore based investment platform created by Tata, ICICI Ventures along with certain other international investors, had bid for the acquisition of PPGCL through a resolution process undertaken by SBI and other lenders under the umbrella of the RBI Guidelines. This resolution process adopted by SBI/lenders is first of its kind resolution of 1890 MW thermal power project, wherein bankers have attempted to explore a solution for the stressed asset outside of IBC purview, which will undoubtedly set a precedent for the industry.

This transaction required a prior approval from Uttar Pradesh Electricity Regulatory Commission (**UPERC**), for Renascent to step into the existing Power Purchase Agreement (**PPA**) with the UP-State utilities. During this process, UPERC had discounted the Tariff by INR 0.14/per unit for its erroneous understanding that Renascent shall make a windfall gain due to waiver of loan amount of INR 5000 crore by SBI/lead bankers, whereas Renascent's total financial commitment in lieu of acquiring 75.01% equity ownership of PPGCL is INR 8223 crore, as against the proportionate figure of INR 8085 crore being the original project cost.

UPERC further fell into error by failing to appreciate that such discounting of tariff is in excess of its jurisdiction and that the transaction is by all means in the consumer interest, especially in terms of benefits being offered by Renascent for settling all pending disputes with UPPCL/DISCOMs and settlement of capital creditors and additional capital expenditure. HSA successfully represented Renascent in obtaining a favourable Judgment from Hon'ble Appellate Tribunal for Electricity (**APTEL**) dated September 27, 2019 which set aside the Order of UPERC and granted conditional approval by reducing the bid out PPA tariff. This Judgment of Hon'ble APTEL was the subject matter of challenge before the Hon'ble Supreme Court through a civil appeal that was filed by certain individuals claiming to be consumers of the State of UP and thereby being aggrieved of Hon'ble APTEL Judgment.

Order: The Hon'ble Supreme Court by virtue of its order dated January 20, 2020 has refused to grant leave for filing Appeal to certain individuals claiming to be aggrieved consumers of the State of Uttar Pradesh (*Neeraj Shankar Saxena and Others vs UPERC & Ors*) against the Judgment dated September 27, 2019 passed by APTEL.

Our view: The refusal of Hon'ble Supreme Court to grant permission for filing Appeal would deter any further challenge to the findings of APTEL which, through a detailed, cogent and weighty Judgment, has put to rest the controversy in favour of Renascent. APTEL has laid down the law in relation to the statutory role of a Regulatory Commission while discharging its regulatory functions under Section 86(1)(b) and Section 63 of the Electricity Act. APTEL has also observed that the waiver of loan amount by SBI/lenders cannot be taken as a windfall gain by Renascent, especially in terms of specific facts including that of sustainable vs unsustainable debt, the regulatory process of transparent and competitive bid process being in compliance of Section 63 of the Electricity Act is sacrosanct among such other.

The APTEL Judgment also gains significance regarding the statutory role of a regulatory commission while dealing with debt resolution efforts of lenders. Refusal of Hon'ble Supreme Court to entertain an appeal against APTEL judgment maintains the above highlighted and the much-needed certainty to a debt resolution plan of a stressed asset where the provisions of IBC are not invoked.

HSA Advocates Partners Hemant Sahai, Apoorva Misra and Shreshth Sharma along with Principal Associate Molshree Bhatnagar successfully represented Renascent.