

## JUDGMENT UPDATE

### UPERC RESOLVES CONFLICT BETWEEN OLD PPAS AND NEW REGULATIONS

#### Background facts

A petition was filed by Jaiprakash Power Ventures Limited (JPVL) before the Uttar Pradesh Electricity Regulatory Commission (UPERC) in respect of its 400 MW Vishnuprayag Hydro Electric Project challenging the recovery initiated by Uttar Pradesh Power Corporation Limited (UPPCL) on account of excess reimbursement made by UPPCL of taxes on income and payment of secondary energy charges in the tariff paid to JPVL.

#### Order

In a significant order dated June 12, 2020 passed by UPERC in favor of UPPCL, the Commission unequivocally confirmed the intent of the UPERC Tariff Regulations (as amended from FY 2014 onwards) and stated that the Regulations would override any inconsistent provisions contained in Power Purchase Agreements approved by the UPERC in the past, especially in the context of secondary energy charges. Additionally, UPERC's order also confirms that generators in the State of UP would be entitled to reimbursement of taxes on income strictly in accordance with the UPERC Tariff Regulations, 2014 and subject to actual payment of the same as certified by statutory auditors.

#### Our view

This order is important in that it upholds the principle of 'Regulations overriding the PPA' and clarifies pertinent aspects regarding payment of secondary energy charges for hydro power plants. This order puts an end to the attempt on the part of the generating companies to enrich themselves at the cost of the consumers by claiming the tariff pass-through of taxes on income on a notional basis, without shelling out a penny from their own pockets

**HSA Advocates Partners Hemant Sahai and Puja Priyadarshini along with Associate Nived Veerapaneni were involved in strategizing, drafting the pleadings and contesting the matter on behalf of UPPCL before the UPERC and securing a favorable order for UPPCL.**

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