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PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES

In this Section

CERC notifies the Draft of Central Electricity Regulatory Commission (Ancillary Services) Regulations, 2021

- In exercise of powers conferred under Section 178 read with Clause (h) and (i) of sub-Section (1) of Section 79 of the Electricity Act, 2003, Central Electricity Regulatory Commission (**CERC**) has issued the draft of CERC (Ancillary Services) Regulations, 2021 (**Draft Regulations**).
- The objective to the Draft Regulations is to provide mechanisms for procurement, through administered as well as market-based mechanisms, deployment and payment of Ancillary Services for maintaining the grid frequency close to 50 Hz, and restoring the grid frequency within the allowable band as specified in the Grid Code and for relieving congestion in the transmission network, to ensure smooth operation of the power system, and safety and security of the grid
- The Draft Regulations shall be applicable to regional entities, including entities having energy storage resources and demand side resources qualified to provide Ancillary Services and other entities as provided in these regulations.
- Types of Ancillary Services:
  - Primary Reserve Ancillary Service (**PRAS**)
  - Secondary Reserve Ancillary Service (**SRAS**)
  - Tertiary Reserve Ancillary Service (**TRAS**)
  - Such other Ancillary Services as specified in the Grid Code
- The mechanism of procurement, deployment and payment of SRAS and TRAS are specified in these Regulations and the mechanism of procurement, deployment and payment of PRAS and other Ancillary Services as specified in the Grid Code shall be as specified in the Grid Code or under these regulations to be specified separately, as the case may be.
- **Procurement of SRAS**
  - SRAS shall be procured on regional basis by the Nodal Agency through the mechanism as specified in the Regulation, provided that the Commission, based on review of the operation of SRAS, may direct procurement of SRAS through market-based bidding mechanism to be specified separately.
  - An SRAS Provider willing to participate in SRAS shall be required to provide standing consent to the Nodal Agency for participation, which shall remain valid till it is modified or withdrawn, provided that standing consent cannot be modified or withdrawn without giving notice of at least forty-eight hours.
  - The SRAS Providers that are generating stations, shall be required to declare in such time interval as may be stipulated in the Detailed Procedure, the technical parameters as required by 8 the Nodal Agency, including but not limited to installed capacity, Technical Minimum, Ramp up and Ramp down capability.

- The SRAS Providers other than the generating stations, shall be required to declare the technical requirements as may be stipulated in the Detailed Procedure.
- The SRAS Providers that are generating stations, shall declare their variable charge upfront on monthly basis in the manner as stipulated in the Detailed Procedure.
- The SRAS Provider other than the generating stations, shall be required to declare the compensation charges upfront on monthly basis in the manner as stipulated in the Detailed Procedure.
- The Nodal Agency, based on the estimate of the SRAS requirement as per Regulation 6 of these regulations, shall ascertain availability of adequate reserves on day-ahead basis and on realtime basis before the gate closure of the Real Time Market.
- In case of the generating stations whose tariff is determined by the Commission under Section 62 of the Act , the Nodal Agency shall identify the generating stations for providing SRAS
  - On day-ahead basis, based on the capacity available after the schedule has been communicated at 2300 hrs for the next day
  - On real-time basis before the gate closure for incremental SRAS requirement.

- **Payment for SRAS**
  - SRAS Provider shall be paid from the Deviation and Ancillary Service Pool Account, at the rate of their variable charge or compensation charge, as declared by the SRAS Provider, as the case may be, for the SRAS-Up MW quantum despatched for every 15 minutes time block, calculated as per clause (12) of Regulation 10 of these regulations.
  - SRAS Provider shall pay back to the Deviation and Ancillary Service Pool Account , at the rate of their variable charge or compensation charge, as the case may be, for the SRAS-Down MW quantum despatched for every 15 minutes time block, calculated as per clause (12) of Regulation 10 of these regulations.
  - SRAS Provider shall be eligible for incentive based on performance as per Regulation 12 of these regulations.
  - Methodology of computation under clauses (1) to (3) of this Regulation shall be stipulated in the Detailed Procedure.
- **Procurement of TRAS**
  - **Buy Bid:** The Nodal Agency shall communicate to the power exchange(s), the quantum of requirement of TRAS-Up and TRAS-Down on day-ahead basis before commencement of the Day Ahead Market and incremental requirement, if any, over and above the procurement in the Day Ahead Market, on real-time basis, before the commencement of the Real Time Market, provided that the quantum of requirement on day-ahead basis shall be communicated after considering the TRAS resources likely to be available on real-time basis.
  - **Sell Bid:** The TRAS Providers shall submit bids in the following manner:
    - Bids for TRAS-Up and TRAS-Down shall be submitted for each time block or for a minimum of two consecutive time blocks in the Day Ahead Market or in the Real Time Market
    - For TRAS-Up, Energy-Up bid in INR/MWh shall be submitted for the offer volume in MW
    - For TRAS-Down, Energy-Down bid in INR/MWh shall be submitted for the offer volume in MW
  - The capacity offered, as a sell bid in power exchange(s) for providing TRAS-Up or TRAS-Down from a resource in the same time-block, shall be separate and non-overlapping.
  - The power exchanges shall collect the bids for TRAS-Up and TRAS-Down and share the same with the Nodal agency for price discovery in terms of Regulation 17 of these regulations.
  - TRAS Provider cleared in the Day Ahead Market may place incremental bids in the Real Time Market. TRAS Provider not cleared in the Day Ahead Market or which has not participated 13 in the Day Ahead Market, may also place bids in the Real Time Market.
- **Payment for TRAS**
  - TRAS-Up Provider shall receive MCP-Energy-Up, as discovered in the Day Ahead Market or the Real Time Market, as the case may be, for the quantum of energy instructed to be despatched by the Nodal Agency.
  - TRAS-Up Provider shall receive commitment charges at the rate of ten percent of the MCPEnergy-Up-DAM or the MCP-Energy-Up-RTM, as the case may be, subject to the ceiling of 20 paise/kWh for the quantum of TRAS-Up cleared in the Day Ahead Market or the Real Time Market as the case may be, but not instructed to be despatched by the Nodal Agency.
  - The TRAS-Down Provider shall pay back to the Deviation and Ancillary Service Pool Account at the rate of their Energy-Down bid in the Day Ahead Market or the Real Time Market, as the case may be, for the capacity instructed to be despatched by the Nodal Agency.

MoP extends timeline for the waiver of Inter-State Transmission Charges for Solar and Wind Projects until June 30, 2025

- Ministry of Power (**MoP**) on June 21, 2021 has passed an Order, in continuation to its earlier Order passed on January 15, 2021, regarding the waiver of Inter-State Transmission System (**ISTS**) charges on transmission of electricity generated from solar and wind sources of energy.
- By virtue of the Order, MoP has issued following directions with respect to waiver of ISTS charges:
  - The waiver on ISTS charges for transmission of power generated by solar and wind sources, which was earlier applicable to power projects commissioned up to June 30,2023, has now been extended till June 30,2025.
  - The aforementioned waiver of ISTS charges is also applicable to power generated by Hydro Pumped Storage Plant (**PSP**) and Battery Energy Storage Systems (**BESS**) projects which are commissioned by June 30, 2025, provided they meet the prescribed conditions. As per the terms, at least 70% of the annual electricity requirement for pumping water in the pumped hydropower project will have to be met through solar and or wind power. Additionally, at least 70% of the annual electricity requirement for charging BESS will have to be met through solar and or wind power.
  - Further, the ISTS charges for power generated from pumped hydro and BESS would be levied gradually, i.e., 25% of the short-term open access (**STOA**) charges for the first five years of operation, which would be gradually increased by 25% after every third year to achieve 100% of STOA charges from the 12th year onwards.
  - The above waiver of ISTS charges is also allowed for trading electricity generated and supplied from solar, wind, pumped hydro, and BESS in the Green Term Ahead Market (**GTAM**) for two years until June 30, 2023. The above arrangement would be reviewed by MoP on an annual basis, depending on the future development of the power market.
- The MoP has clarified that the waiver is only allowed for ISTS charges and not losses.
  - The above waiver of ISTS charges is applicable on usage of ISTS for transmission of electricity across the territory of an intervening State and transmission of electricity within the State that lies on the path of the inter-State electricity transmission. Further, waiver would also apply to conveyance of electricity within the State that is incidental to such inter-State transmission of electricity. The transmission charges for such ISTS would be reimbursed by the Central Transmission Utility (**CTU**), pursuant to identification of such lines by the concerned Regional Power Committees.

MNRE grants extensions in the timelines for project execution under Tranche I, II and III of CPSU Scheme Phase-II

- Ministry of New and Renewable Energy (**MNRE**) has issued an Office Memorandum (**OM**) dated June 2, 2021 for granting extension to project timelines under Tranche I, II and III of the CPSU Phase II Scheme in response to the request letters issued by Solar Energy Corporation of India (**SECI**). The extension is being granted primarily on account of temporary shortage of equipment for Solar PV power projects, particularly, domestically manufactured solar PV cells.
- As per the OM, the commissioning period has been enhanced from 24 to 30 months from the date of the Award Letter (**LoA**). In addition to this, the timeline for the intermediate milestone of 'Award of EPC Contract' which was previously 6 months from the date of LoA in Tranche-I and Tranche-II, has also been extended to 12 months from the date of LoA.
- In accordance with these new timelines, for projects under Tranche I and II:
  - Government Producers who were awarded the EPC contract within 6 months of SECI's issuance of the LoA shall extend the time period for project execution by the EPC contractor so that the total project timeline is 30 months from the date of SECI's issuance of the LoA.
  - Projects where the award of EPC contract occurred beyond 6 months but within 12 months of LoA by SECI, such delay is regularized and the Government Producers shall keep the time period for project execution by EPC contractor so that the total project timeline is 30 months from the date of LoA.
  - In case the EPC contract is not awarded within 12 months of the issuance of the LoA, SECI may carefully assess the project's readiness for commissioning within 30 months of the issuance of the LoA and, based on that, decide to extend the time for awarding the EPC contract, subject to the payment of applicable penalties by such Government Producers. In such circumstances, the entire project completion timeline will remain at 30 months. All other projects will be cancelled, and organisations will be able to reapply or participate in future CPSU Scheme tenders.
  - The above timelines are excluding the extension given on account of Covid-19, including the 5 months blanket extension already given by MNRE.

RECENT JUDGMENTS

In this Section

Tamil Nadu Power Producers Association v TNERC & Ors

APTEL Judgment dated June 7, 2021 in Appeal No. 131 of 2020

Background facts

- The present Appeal had been filed by Tamil Nadu Power Producers Association (**TNPPA**) against the Impugned Order dated January 28, 2020 passed by Tamil Nadu Electricity Regulatory Commission (**TNERC**) wherein a procedure had been formulated for verification of status of captive user(s) and Captive Generating Plant(s) (**CGP**) located in the State of Tamil Nadu, in terms of the directions of High Court of Madras (**HC**) in W.A (MD) No. 930 of 2017.
- Pursuant to challenge to the various circulars issued by the Tamil Nadu Generation and Distribution Corp (**TANGEDCO**) requiring the captive generators and captive users to furnish documents, data for the purpose of verification of CGPs in accordance with Rule 3 of the Electricity Rules, 2005 (the Rules), HC directed TNERC to issue either a general or special order detailing the procedure to be followed for verification of the CGP status.
- Accordingly, TNERC issued a revised draft procedure on December 09, 2019 for verification of status of captive users(s) and CGPs by TANGEDCO. Thereafter, pursuant to conducting a hearing, TNERC passed the Impugned Order passing various directions for verification of status of captive user(s) and CGPs by TANGEDCO.

Issues at hand?

- Whether the appointment of TANGEDCO as the verifying as well as adjudicating authority is justified in law?
- Whether the documents to be provided for availing open access under Section 9 of the Electricity Act, 2003 (**Act**) can be linked to Wheeling/Open Access with captive verification?
- Whether it is correct on the part of TNERC to treat SPV as an Association of Persons (**AoP**) for ascertaining the eligibility of captive status?
- Whether the TNERC is justified in implementation of the proposed Draft amendment to Electricity Rules, 2005 proposed by Ministry of Power which are yet to be approved and notified?
- Whether TNERC has correctly followed the criteria for verification of consumption provided under Rule 3?
- Whether retrospective applicability of proposed procedure/guidelines is justified under the law?
- Whether the proposed methodology for verification of change in ownership and consumption is in accordance with law?

Decision of the Tribunal

- With respect to issue regarding appointment of TANGEDCO as the verifying as well as adjudicating authority, the APTEL observed that vesting critical functions like verification of status of CGPs, captive users in the State of Tamil Nadu by TNERC upon an authority which can be a direct beneficiary of such process, could not be said to be free and fair. As such, appointing TANGEDCO as the verifying authority for the captive status would be in the nature of permitting it to act as a judge in its own cause. Thus, the APTEL held that TANGEDCO can be appointed for undertaking an exercise of collecting and verifying data for the purpose of verification of CGP status in Tamil Nadu, without the powers to itself take any coercive action against any CGP/captive users. However, initiation of any coercive action against CGP/captive users regarding captive status or recovery of Cross Subsidy Surcharge (**CSS**) needs to be done through appropriate proceedings before TNERC.
- APTEL placed reliance on its decision in *Prism Cement Limited v. MPERC & Ors*[1] to state that verification of minimum shareholding and minimum consumption on proportionate basis for CGPs and Captive Users has to be done strictly in terms of Rule 3 of the Rules without any deviation and the said Rule envisages verification under Rule 3(1)(a)(i) and Rule 3(1)(a)(ii) to be at the end of financial year only. APTEL observed that when Rule 3 and the provisions of the TNERC Grid Connectivity and Intra-State Open Access Regulations, 2014 do not provide for verification of shareholding of CGPs/ captive users to be done before grant of open access under Section 9 of the Act, then grant/ approval cannot be made subject to such a condition by way of an order of TNERC. Further, it was determined that the above statutory provision does not envisage that documents for availing open access have to be furnished to TANGEDCO, and that such documents need to be provided to only the nodal agencies, i.e. SLDC/ STU. When TANGEDCO is not entitled to collect any documents for providing open access at the first place, it cannot then withhold open access subject to prior verification of shareholding criterion mentioned in Rule 3(1)(a)(i).
- As regards the treatment of SPV as an AOP for ascertaining the eligibility of captive status, APTEL observed that by way of the Impugned Order, the TNERC had endeavoured to add an intention to Rule 3(1)(b) which was otherwise absent from its construction. By holding that the second proviso to Rule 3(1)(a) is applicable to Rule 3(1)(b) thereby equating a SPV with an AOP, the Impugned Order has committed an error in interpreting the said Rule in the manner in which it has been enacted by the Parliament. Thus, TNERC could not have applied the second proviso to Rule 3(1)(a) to Rule 3(1)(b). Hence, the requirement of consuming minimum of 51% electricity generated on an annual basis and the requirement of the captive users holding 26% of the ownership of the plant in aggregate, and such consumption being in proportion to the shares of ownership of the power plant can only be applicable to power plants set-up by an AOP but cannot be applied to power plants set up by SPV.
- Further, in view of the reliance of the Respondents on the *Kadodara Power Pvt. Ltd. v. GERC & Ors*[2] (**Kadodara Judgment**), APTEL held that the said Judgment did not consider the established legal tenet that an AOP and a SPV under general law as well as Rule 3 cannot be equated on a similar footing. It was also not considered that SPV is a 'company' and an AOP is an unincorporated entity and, once an Association of Persons is incorporated, it becomes a 'company'. It has also ignored the settled ratio to the effect that 'association of persons' is a recognized tax entity, which is not an incorporated entity and is akin to a partnership, wherein, an association of persons, comes together for a common purpose or object. APTEL has held that the Kadodara Judgment was passed without taking into consideration of the provisions of Rule 3 of the Rules to the extent that Second Proviso to Rule 3(1)(a) being an exception under law could not have been applied to Rule 3(1)(b). APTEL held that the said decision was also passed in ignorance of caselaw(s) which establish that an 'Association of Persons' is a recognized tax entity and not an incorporated one. Thus, the said Judgment to the extent it equates a SPV and an AOP has been declared 'per incuriam'.
- In view of APTEL's holding that any verification for determining ownership and consumption for CGPs and captive users under Rule 3 of the Rules, being an interdependent exercise, has to be done on an annual basis, at the end of financial year. The directions issued by TNERC for verification of ownership and consumption for any change in the group captive structure for each corresponding period of such change, have thus been set aside.
- As regards the issue whether TNERC correctly followed the criteria for verification of consumption provided under Rule 3 of the Rules, APTEL observed that it was clear that the requirement of 26% shareholding and 51% captive consumption are the minimum requirements to be fulfilled by a set of captive users, and once the same is done, the rest of the captive users not fulfilling the above conditions will have no impact to the overall captive structure. APTEL held that there cannot be any liability to make payment of CSS by defaulting captive users if the rest of the captive users fulfil the minimum requirements of 26% shareholding and 51% of consumption.

[1] Appeal No. 2 and 179 of 2018

[2] Judgment passed by APTEL in Appeal Nos. 171,172, 10 of 2008 and Appeal No. 117 of 2009

- With respect to the retrospective applicability of proposed procedure/guidelines, APTEL stated that it is a settled law that delegated legislation cannot have a retrospective applicability unless the parent legislation under which it came into existence permits such retrospective applicability. Since, no provision of law in the Act allows such retrospectivity, thus, there cannot be retrospective application of the procedure formulated under the Impugned Order for verification of status of CGPs and Captive Users in the State of Tamil Nadu.
- Lastly, as regards the proposed methodology for verification of change in ownership and consumption, APTEL observed that the concept of weighted average could not be applied since the Order of Maharashtra Electricity Regulatory Commission concerning Sai Wardha regarding weighted average calculation in terms of shareholding is under challenge before APTEL in A. No. 340 & 341 of 2018, which is pending adjudication.
- APTEL held that the direction in the Impugned Order that in the event the weighted average of shareholding of captive users changes within a financial year, then the same was to be intimated within 10 days to TANGEDCO, otherwise the said
- licensee would proceed to verify captive status without considering weighted average of shareholding, was set aside.
- Thus, the Appeal has been partly allowed and the impugned Order has been set aside to the extent of the above findings and directions.

Our viewpoint

The decision rendered by APTEL settles the law pertaining to verification of captive status of captive power plants in terms of Rule 3 of the Electricity Rules, 2005. The findings that the need for 26% shareholding and 51% captive consumption are minimum requirements to be fulfilled by group captive users, is going to set precedent w.r.t structuring of group captive companies.

Adani Power (Mundra) Ltd v. CERC & Ors | Uttar Haryana Bijli Vitran Nigam Ltd v. CERC & Ors

APTEL Judgment dated June 7, 2021 in Appeal Nos. 158 of 2017 and 316 of 2017

Background facts

- The present Appeal had been filed to challenge the legality, propriety and validity of a portion of the Order dated February 06, 2017 (**Impugned Order**) passed by the Central Electricity Regulatory Commission (**CERC/Respondent No. 1**) in Petition No. 156/MP/2014 whereby the CERC had denied certain claims of compensation to the Appellant on account of Change in Law events in terms of Article 13 of the Power Purchase Agreement (**PPA**) dated August 7, 2008.
- Adani Power Mundra Ltd (**APL**) is a company engaged in the business of generation, transmission and sale of electricity having composite scheme for generation and sale of electricity to more than one State, had set up thermal power plant with total capacity of 4620 MW within Special Economic Zone at Mundra. APL had entered into long term PPAs with Uttar Haryana Bijli Vitran Nigam Ltd (**UHBVL/Respondent No. 2**) and Dakshin Haryana Bijli Vitran Nigam Ltd (**DHBVNL/Respondent No. 3**) (Collectively **Respondent Discoms**) for sale of long term power from the Appellant's Mundra power plant.
- Pursuant to additional expenditure on the Appellant on account of recurring/non-recurring events but not limited to introduction of new taxes, levies, change in the rates of taxes, etc. or change in the incidences on which the taxes, levies etc., which allegedly fell within the ambit of 'Change in Law' as embodied in Article 13 of the PPAs.
- On the occurrence of various 'Change in Law' events, the Appellant in accordance with Article 13.4.1 of the PPA, notified the occurrence of such events to the Respondent Discoms and sought consequential reliefs. However, due to non-payment of the same by the Discoms, the Appellant was constrained to approach the Respondent Commission by filing Petition No. 156/MP/2014. Vide the impugned Order dated February 06, 2017, CERC allowed only part of the claims of the Appellant and rejected certain other claims on alleged arbitrarily and illegally on untenable reasons. As such, the APL filed Appeal No. 158 of 2017.
- On April 06, 2017, the APL filed Appeal No. 158 of 2017 claiming the following events/components as Change in Law events, which were not considered by the Central Commission as change in law events:
  - Increase in Busy Season Surcharge and Development Surcharge on transportation of coal
  - Increase in Surface Transportation and Sizing Charges of coal
  - Change in pricing of coal from UHV to GCV basis
  - Levy of Minimum Alternate Tax on power plants situated in SEZ
  - Carrying Cost

- The APL submitted that the events with respect to Increase in Busy Season Surcharge and Development Surcharge on transportation of coal and Carrying Cost were squarely covered by the following judgments of the APTEL: *Adani Power Rajasthan Ltd. v. RERC*[3] (**Adani Power Judgment**), *GMR Warora Energy Ltd v. CERC*[4] (**GWEL Judgment**), *GMR Kamalanga Energy Ltd v. CERC & Ors*[5] (**GKEL Judgment**) and in the cases of *UHBVNL v. Adani Power Ltd*[6] and *Energy Watchdog v. CERC*[7].
- The Discoms submitted that insofar as the issues of 'increase in busy season surcharge on transportation of coal' and 'increase in development surcharge on transportation of coal' were concerned, the said claims of the APL are wholly unjustified inasmuch as the charges imposed by the railways, from time to time, are not in pursuance of any statutory declaration or levy, and therefore cannot be considered as Change in Law. Further, the freight charges are the cost involved for procuring coal which is an input for generating power for supply, and the generator is expected to take into account the possible revision in these charges while quoting the bid.
- As regards the issue of increase in Sizing Charges of Coal, the Discoms submitted that the Tribunal has already decided this issue in favor of the Respondents/Procurers vide its judgment in *GMR Warora Energy v. MSEDCL & Ors*[8] and *APL (Raj) v. CERC & Ors*[9]. Further, it was submitted that CERC had been consistently following the rulings of this Tribunal and holding that increase in Sizing Charges and Surface Transportation Charges are not covered under Change in Law.

Issue at hand

- Whether the following claims made by APL could be allowed as Change in Law under the PPAs:
  - Increase in Busy Season Surcharge and Developmental Surcharge on transportation of coal
  - Increase in surface transportation and Sizing Charges of coal
  - Carrying cost
  - Levy of Customs Duty

Decision of the Tribunal

- The APTEL took into account the judgments passed by the APTEL in this regard, and stated that the issue of Busy Season Surcharge and Developmental Surcharge as it stands today is already answered by the Tribunal as change in law event and the generator needs to be compensated if such change in law occurs subsequent to the cut-off date. Since, the change in law event had occurred subsequent to the cut-off date and therefore, the Appellant Generator was entitled for change in law compensation in respect of Busy Season Surcharge and Developmental Surcharge on transportation of coal.
- As regards the issue of increase in Surface Transportation and Sizing Charges of coal, the APTEL upheld the reliance of Discoms on the Order dated April 2, 2019 made by CERC in Petition No. 72/MP/2018 is distinguishable. The Tribunal in Appeal Nos. 111 of 2017 and 119 of 2016 rejecting the claim of the generators therein pertaining to sizing/crushing charges and surface transportation charges of coal. The APTEL was not convinced that there was modification of such opinion by any higher authority i.e., Supreme Court of India (**SC**). As such, the APTEL upheld the decision of CERC rejecting the change in law compensation in respect sizing charges and surface transportation charges of coal.
- As regards the claim of Carrying Cost, the APTEL, in light of abovementioned judgment of SC in *Haryana Bijli Vitran v. Adani Power Ltd*, observed that the controversy is no longer *res integra*, therefore, the opinion of the CERC in rejecting the claim of Carrying Cost was set aside holding that the APL is entitled for Carrying Cost on deferred payment.
- As regards the levy of Customs Duty, the APTEL observed that APL was required to include all tax, duties, cess etc. in the bid. Considering that there was no such customs duty at the time of bid, the said customs duty was absent as on the cut-off date and the same was introduced by Indian Governmental Instrumentality as stated above, they amount to change in law. Therefore, any financial burden added to the shoulders of the generator deserved to be compensated in terms of PPA. Therefore, it was held that CERC was justified in allowing Customs Duty as change in law event in the Impugned Order.

Our viewpoint

APTEL has rightly placed reliance on its earlier decisions to set aside the Impugned Order as regards disallowance of increase in Busy Season Surcharge and Developmental Surcharge on transportation of coal and Carrying Cost. Further, the APTEL rightly took into account that the levy of customs duty had emerged after the cut-off date and was liable to be appropriately compensated in terms of the PPA.

[3] Judgment dated August 14, 2018 passed in Appeal No. 119/2016, 277/2016
[4] Judgment dated August 14, 2018 passed in Appeal No. 111/2017
[5] Judgment dated December 21,2018 passed in Appeal No. 193/2017
[6] (2019) 5 SCC 325 (Uttar Haryana Judgment)
[7] (2017) 14 SCC 80
[8] Judgment dated August 14, 2018 in Appeal No. 111 of 2017
[9] Judgment in Appeal No. 119 of 2016

Rihand Floating Solar Pvt Ltd v. SECI

CERC order dated May 24, 2021 in Petition No. 611/MP/2020

Background facts

- Rihand Floating Solar Pvt Ltd (**Petitioner**) filed petition before CERC/Commission seeking direction to Solar Energy Corporation of India (**SECI**) to return the bank guarantee dated September 25, 2019 submitted by the Petitioner under the contractual obligation as a consequence of termination of the Power Purchase Agreement (**PPA**) by the Petitioner dated December 17, 2019 executed for development of 50MW solar power project at Rihand Dam in State of Uttar Pradesh (**Project**).
- SECI, as intermediary procurer, agreed to purchase the power from the generating station in terms of the PPA and to sell it to buying entity, Uttar Pradesh Power Corp Ltd (**UPPCL**) on back to-back basis as per the Power Supply Agreement (**PSA**)
- However, due to nationwide lockdown on account of Covid-19, Petitioner could not continue with the Project. Since, the cumulative and individual effects of Force Majeure have caused an unreasonable delay in execution of the Project, the Petitioner proceeded to exercise its right to terminate the PPA. Accordingly, Petitioner filed the instant petition seeking return of BG submitted by the Petitioner on account of termination of the PPA.

Issue at hand

- Whether the CERC has the jurisdiction to decide the issues raised in the Petition under Section 79(1)(f) of the Electricity Act, 2003 (**Act**)?

Decision of the Commission

- As per Section 79 of the Electricity Act and law settled by *Energy Watchdog v. CERC & Ors*[10] in its judgment dated April 11, 2017, if the generation and supply of power is in more than one state, then it qualifies as 'composite scheme' and CERC will have the jurisdiction to adjudicate disputes arising out of such scheme. In this regard, CERC observed that mere involvement of an inter-State trading licensee, SECI herein, as an Intermediary Procurer does not render the generating company to qualify as a composite scheme for generation and sale of power in more than one State in terms of Section 79(1)(b) of the Act, specially in a case wherein the generators and the sole end-procurer i.e. the distribution licensee is located in the same State.
- Since all generating companies, including the Petitioner, will be located in the State of Uttar Pradesh and will be selling power to the end-procurer, UPPCL, the present arrangement for generation and sale of power fails the test of 'composite scheme' in terms of Section 79(1)(b) of the Act. Therefore, the entire transaction is purely intra-State in nature and does not involve any 'composite scheme' of generation and sale of electricity in more than one State.
- As regards the CERC having been defined as 'the Appropriate Commission' under the PPA with the Petitioner, it is well settled principle that the parties cannot confer the jurisdiction on any forum by consent. Unless the jurisdiction of CERC can be traced to the provisions of the Act and the Guidelines, the definition under the PPAs as agreed to between the parties and will not have any bearing while examining the jurisdiction of the Commission.
- Consequently, the jurisdiction of CERC does not get attracted either under Section 79(1)(b) of the Act or Section 79(1)(f) of the Act. Accordingly, CERC dismissed the petition at the admission stage on the preliminary issue of jurisdiction.

Our viewpoint

CERC has clarified the meaning of expression 'composite scheme' as explained by SC in its judgment dated April 11, 2017 in Civil Appeals titled *Energy Watchdog v. CERC & Ors* and stated that that if the bid is floated by the trading licensee at the behest of a State Distribution company and the entire quantum of power will be generated and supplied in the state itself, the same will not attract CERC's jurisdiction.

[10] Supra Note 7

D.B. Power Ltd v. PTC India Ltd & Ors

CERC Order dated June 11, 2021 in Petition No. 366/MP/2019

Background facts

- The Petitioner is a generating company under the Electricity Act, 2003 and owns and operates a 1200 MW capacity coal driven thermal power plant located in the State of Chhattisgarh.
- By way of the present Petition, the Petitioner has sought for approval of cost to be incurred on account of Change in Law, for installation/retrofit of 'Electrostatic Precipitators' (**ESP**), installation of Flue Gas Desulphurisation (**FGD**), installation of low NOx burners, providing Over Fire Air (**OFA**) and any other measures for compliance of the notification dated December 7, 2015 (**2015 Amendment**), issued by the Ministry of Environment, Forests and Climate Change, Government of India (**MoEF**) in respect of Thermal Power Plants installed/commissioned after January 01, 2003 and before December 31, 2016.
- The Petitioner and the Respondent No. 1 entered into a Power Purchase Agreement on January 1, 2013 (**PPA**) for supply of 311 MW power by the Petitioner to the Respondent No. 1 for further supply to Respondent No. 3 to 5, under which the Petitioner is presently supplying 250 MW power.

Issues at hand

- Whether the provisions of the PPA in respect to the notice in respect of Change in Law situation have been complied with?
- Whether the 2015 Amendment Rules should be qualified as an event of Change in Law in light of the PPA?
- Whether approval of the capital expenditure can be granted to the Petitioner for incurring the proposed expenditure which is determined towards installation of FGD system?
- Whether the approval of the determined operating expenditure primarily due to installation of the FGD system are admissible as claimed by the Petitioner in the present case?
- What shall be the specific norms and mechanism for calculating or computing the adjustment in tariff corresponding to the additional investment and increase in the operating costs due to the 2015 Amendment so as to restore the Petitioner to same economic position as if such Change in Law event has not occurred?

Decision of the Commission

- CERC observed that as per Article 10.4 of the PPA, the Petitioner is required to give notice immediately about the occurrence of the Change in Law situation after being aware of the occurrence which has taken place after the cut-off date i.e. September 11, 2021. The Petitioner has followed the said clause and provided the notice which contained the amendment in respect to the environmental regulations under the domain of Change in Law situation. Therefore, CERC has held that the Petitioner has complied with the regulation of furnishing the notice.
- The 2015 Amendment does come up as Change in Law situation in respect to PPA and the Commission while considering the impact of the same also observed that in case the Central Electricity Authority is not being able to provide any solution to lower down the emission levels of Unit-II to below 450 mg/NM3 and due to which the Petitioner needs to incur substantial expenditure for installation of the NOx control equipment, CERC at that instance may consider allowing such expenditure as a part of capital cost of ECS provided that there goes through prudence check to determine the actual incurred damage.
- CERC has held that pre-operative expenses need to be granted, since such expenses have been accrued due to the installation of emission control system. Further, such expenses can only be allowed after the prudence check of CERC.
- CERC held that the Petitioner is allowed to take up the compensation due to the installation of FGD. Further, CERC has held that the computation and calculation of such compensation will be finalised in due course of time after due consultation.

Our viewpoint

The view taken by CERC is consistent with its previous orders pertaining to similar issues. The installation of FGD and emission control system has been considered as a Change in Law event and as such encourages the thermal power developers to install emission control systems which is in the interest of environmental safety.

Exide Industries Ltd v. MSEDCL & Anr

MERC order dated June 3, 2021 in Case No. 10 of 2021

Background facts

- Exide Industries Ltd (**Petitioner**) filed a petition before Maharashtra Electricity Regulatory Commission (**MERC**) seeking directions against Maharashtra State Electricity Distribution Co Ltd (**MSEDCL**) claiming that MSEDCL has illegally levied and recovered the Additional Surcharge (**ASC**) on the captive consumption of electricity generated from the power plant of CSE Solar Sunpark Maharashtra Pvt Ltd (**CSE**) and supplied to the Petitioner under captive Open Access (**OA**) arrangement.
- Petitioner contended that it is a sole captive user of the Power Plant with it holding 27.19% equity shareholding in the power plant of CSE Solar Sunpark therefore it is a consumer of non-group captive power plant as per provisions of Electricity Rules 2005. According to the Petitioner, such levy and recovery of the Additional Surcharge is illegal as in terms of the ruling of the Commission in Case No. 195 of 2017 vide order dated September 12, 2018 (**Commission's Order**), the Additional Surcharge is leviable only on the consumers of group captive power plants and not on the individual or non-group captive power plant.
- MSEDCL contended that the captive user with 100% equity shareholding in the power plant would only qualify to be non-group group captive power plant else it has to be treated as group captive power plant. Therefore, Petitioner is liable to pay additional surcharge on the captive consumption of electricity.

Issues at hand

- Whether the Petitioner can be treated as a 'Captive Consumer' or it has to be treated as a 'Group Captive Consumer'?
- Whether the Petitioner is entitled to pay Additional Surcharge?

Decision of the Commission

- MERC observed that group captive arrangement would be the arrangement wherein there are multiple users of the given captive power plant such as association of persons, registered co-operative society or Special Purpose Vehicle. Petitioner is a single captive user of the power plant of CSE Solar Sunpark and is the sole beneficiary of the power plant and thus in spite of existence of three different consumers at three different locations, the power plant needs to be treated as the single user captive power plant and not a multi user captive power plant with co-operative society or association of persons.
- MERC further stated that Electricity Rules, 2005 allows even a single captive user with minimum equity shareholding of 26% in the power project to be a captive user of the project, which can consume a minimum of 51% energy generated from the power project.
- MERC further clarified the intent of the Commission's order which is to recover Additional Surcharge from the captive consumers of the group captive power plants where there are multiple consumers. The number of consumers of the given group captive power plant varies in dynamic manner, randomly and repeatedly to ensure the compliance of minimum 26% equity shareholding in the captive power plant. Considering the impact on the Distribution Licensee on account of such frequently changing captive users, the Commission allowed levy of the Additional Surcharge on the captive users of group captive power plant. However, the instant case is different wherein admittedly the Petitioner is a sole consumer of the captive power plant.
- Further, Commission's order did not differentiate the captive power plant and the group captive power plant based on percentage of equity shareholding of the captive user in the captive power plant. It nowhere suggests that a sole user of a captive power plant having equity shareholding less than 100% should be treated as a captive user of the group captive power plant.
- Accordingly, MERC held that Petitioner is a consumer of the individual captive power plant and hence it would not be entitled to pay the Additional surcharge as per the principles laid down under the Commission's Order.

Our viewpoint

In the instant judgment, MERC has discussed the difference between individual captive user and group captive user and further clarified that as per Rule 3 of Electricity Rules, 2005, if the minimum requirement of 26% shareholding and 51% captive consumption are fulfilled by a legal entity, then it qualifies as a captive user. There is no requirement to have 100% equity in the power plant to qualify as a single captive user. Regarding the applicability of additional surcharge on consumers of group captive power plants, the matter is sub-judice before SC and it would be a landmark ruling if SC enforces the requirement of payment of additional surcharge to only a particular type of captive users.

Bramhacorp Ltd v. MSEDCL

MERC order dated, 9 June 2021 in Petition No. 164 of 2020

Background facts

- Brahmacorp Ltd (**Petitioner**) filed petition before Maharashtra Electricity Regulatory Commission (**MERC**) seeking direction to MSEDCL to adjust the Open Access (**OA**) credit units (Wind generated Units) for the month of June 2016, September 2017, July 2018 and October 2019 and extend the credits in the subsequent month's energy bills.
- Petitioner, a commercial consumer of Maharashtra State Electricity Distribution Company Limited (**MSEDCL**), under OA sources power from a variety of renewable energy sources. In the instant case it was relying on MSEDCL in good faith for credit adjustment of wind units. However, MSEDCL neither denied nor adjusted the units generated by open access wind projects.
- To this MSEDCL responded that any claim filed prior to August 3, 2017 was barred by Limitation Act of 1963 (which prescribes the time limitation of 3 yrs). Accordingly, Bramhacorp's claim for the period of June, 2016 is time-barred, and any such claim could not be adjudicated. Further it was contended that no MSEDCL consumption record was available for the month of September 2017 against which the open access units credit adjustment could be made. As a result, no adjustment for that month was given.
- To this, Petitioner contended that it has followed up with MSEDCL on the credit adjustment of wind units on a regular basis. Even after this, MSEDCL had not considered the adjustment of units for the month of June 2016 on the ground of limitation.
- Accordingly, Petitioner filed the instant petition on account of adjustment of units.

Issue at hand

- Whether the Bramhacorp's claim for the adjustment of OA credit units for the period of June 2016 is time-barred?

Decision of the Commission

- MERC observed that that MSEDCL has provided the OA credit adjustments for the months of July 2018 and October 2019, which were also accepted by Petitioner. Therefore, both the parties have resolved the issues for the month of July 2018 and October 2019 which was also accepted by the Petitioner vide hearing dated April 16, 2021.
- The Commission noted that for September 2017, no MSEDCL units were consumed for the adjustment of OA units after reviewing the bills enclosed with the Petition. The Commission also noted that, MSEDCL submitted details about the adjustment and reconciliation of OA units for the month of September 2017, via email dated April 27, 2021. However, Petitioner did not dispute or make any submission for the month of September 2017. Hence no adjustment is provided for the said month.
- For the period of June 2016, Commission observed that the Petitioner had made no claim under the Limitation Act and was simply following up with MSEDCL on credit adjustments for wind units on a regular basis. It has made the correspondence vide letter dated July 19, 2016, February 6, 2018, August 20 2018, September 19, 2018 and March 28, 2019,
- However, it has not approached the Court within the period of limitation pertaining to June 2016, which ends in June 2019. Commission noted that it is a settled principle of law that mere correspondence between the contracting parties cannot extend the period of limitation. The aggrieved party has to approach the courts within the period of limitation. Therefore, the Commission rejects the claim for credit adjustment of wind units for June 2016, for being barred by limitation.

Our viewpoint

In the instant judgment, MERC has relied upon the law settled by SC in its judgment titled *CLP India Pvt Ltd v. Gujarat Urja Vikas Nigam Ltd* (2020) 5 SCC 185 and emphasized on the importance to approach the courts within the period as specified under Limitation Act specially in recovery suits wherein any delay can cause major financial impact on the companies.

Coastal Energen Pvt Ltd v. Tamil Nadu Generation and Distribution Corp Ltd & Anr

CERC Order dated May 31, 2021 in Petition No. 351/MP/2018 with I.A. No. 4/2020

Background facts

- Coastal Energen Pvt Ltd (**Petitioner**) is a generating company and has set up a 1200 MW (2X600 MW) power plant (Generating Station) at village Ottapidarum, Tuticorin district in the State of Tamil Nadu. On December 19, 2013, the Petitioner has entered into a PPA with TANGEDCO (**Respondent No. 1**) for supply of 558 MW for the period of 15 years.
- It has been submitted by the Petitioner that under Article 10 of the PPA, it is entitled to be compensated on account of occurrence of Change in Law events thereby resulting into additional recurring/ non-recurring expenditure by the Petitioner. It has been further submitted that Change in Law events have occurred after the cut-off date i.e. February 28, 2013, which is seven (7) days prior to bid deadline, i.e. March 6, 2013.
- The Petitioner has sought compensation on account of the following Change in Law events during the operating period which have resulted into additional financial impact on the Petitioner for supply of power to the Respondent, TANGEDCO:
  - Increase in Clean Energy Cess on coal
  - Increase in Wharfage Charges
  - Introduction of Integrated Goods and Service Tax (IGST)
  - Carrying cost

Issues at hand

- Whether the CERC has necessary jurisdiction to adjudicate the instant issue?
- Whether compensation claims are admissible under change in law and to what extent?

Decision of the Commission

- CERC held that the Petitioner whose generating station is located in the State of Tamil Nadu, is supplying only 558 MW of the total installed capacity of 1200 MW to the State of Tamil Nadu. The Petitioner has been selling the remaining capacity to other States through various contracts/LoIs enumerated in the order. Therefore, the Petitioner meets the criteria of generation and sale of electricity to more than one State. Since the judgment of Hon'ble Supreme Court in the case of Energy Watchdog Case does not establish any qualifying criteria with regards to the term of the contract for a scheme to be classified as "composite scheme", the contention of TANGEDCO to link composite scheme with long term or medium term PPA does not have merit.
- TANGEDCO submitted that the present Petition is not maintainable in absence of 'composite' scheme. It has been submitted by the Respondent, TANGEDCO that the Petitioner's generating station does not have composite scheme as it does not have any subsisting long-term/medium-term PPA except for the PPA with TANGEDCO. It has been submitted by the Respondent, TANGEDCO that as per the judgment of Hon'ble Supreme Court in the case of Energy Watchdog Case, the composite scheme as specified under Section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed long term or medium term PPA prior to the date of commercial operation of the Project. However, the Petitioner did not have any composite scheme on the date of the filing of the present Petition. CERC held that the contention of TANGEDCO that the Petitioner did not have composite scheme at the time of filing of the Petition is also incorrect as it is also an effort to link composite scheme with term of the PPA. For the Petitioner, the State Commission shall have jurisdiction only when the Petitioner is generating and supplying power only to the State of Tamil Nadu and it is not selling power outside the State by any means.
- Thus, in the light of the decision of SC in Energy Watchddog Case, CERC held that the Petitioner satisfies the condition of having a 'composite scheme' and, therefore, this Commission has the jurisdiction to adjudicate the disputes raised in the present Petition in terms of Section 79(1)(b) read with Section 79(1)(f) of the Act. It is answered accordingly that the present petition as framed is maintainable and further this commission has the necessary jurisdiction.
- CERC allowed the following as change in law events – increase in clean energy cess on coal, introduction of IGSST on imported coal and carrying cost.

Our viewpoint

With this order, CERC has widened the scope of 'composite scheme' and granted much needed change in law relief to both the generators. This order of CERC has now set a new precedent in the energy sector, as there has been a categorical observation that for proving a 'composite scheme' of a generator, there only needs to be generation and sale of electricity in more than one state, and not a contract for a specified term. Hence, even if there is short-term contract, sale through exchange by issuance of LOIs, MoU with Traders, which establish the 'scheme' of generation and sale in more than one state, then also the jurisdiction of CERC can be invoked for adjudication of a dispute.

Tata Power Renewable Energy Ltd v. Union of India, Ministry of Power & Ors

Andhra Pradesh High Court at Amravati in Writ Petition No. 674 of 2021

Background facts

- Tata Power Renewable Energy Ltd (**Petitioner**) filed the writ petition before the High Court of Andhra Pradesh (**HC**) under Article 226 of the Constitution of India, to quash the Requests for Selection (**RfS**) dated November 30, 2020 for a capacity of 6400 MW as well as the draft Power Purchase Agreements (**PPA**) issued by Andhra Pradesh Green Energy Corp Ltd (**Respondent No.4**) and direct Respondent No. 4 to issue fresh Requests for Selections, strictly in accordance with the Guidelines for Tariff Based Competitive Bidding process for procurement of power from Grid connected Solar voltaic power projects dated August 3, 2017 issued under Section 63 of the Electricity Act, 2003 (**Electricity Act**).
- Petitioner's case was that the impugned RfS and draft PPA are issued contrary to the provisions of the Electricity Act and competitive bidding guidelines dated August 3, 2017 issued by the Central Government under Section 63 of the Act and thereby the competitive bidding process lacks its transparency. Hence, it could not participate in the bidding process as it is prejudicial to the Petitioner's right to participate.
- Further Petitioner contended that the Respondent No. 4 issued impugned RfS inviting bids from Solar Power Developers (**SPD**) for development of 6,400 MW Grid connected Solar Photo Voltaic Ultra Mega Power Project spread over 10 Solar parks in the State of Andhra Pradesh in violation of provisions of the Act and guidelines for Tariff based competitive bidding process for procurement of power from Grid connected Solar photo voltaic power projects dated August 3, 2017 (Competitive Bidding Guidelines/CBG) framed by the Ministry of Power, Union of India (Respondent No.1) in exercise of power under the provisions of Section 63 of the Electricity Act. As per the scheme, Respondent No. 4 issued impugned RfS and impugned draft PPA seeking to create a parallel Generation, Transmission and Distribution system in the State of Andhra Pradesh in gross violation of the provisions of the Electricity Act.

Issue at hand

- Whether the RfS and draft PPA are issued contrary to the provisions of the Electricity Act and competitive bidding guidelines dated August 3, 2017 issued by the Central Government?

Decision of the Court

- HC held that Respondent No. 4 will purchase power from solar developers and supply the same to the agriculturists/consumers free of cost. However, the Respondent No. 4 is being paid the cost (cost of power purchased and costs of transmission and distribution) of the power supplied to the end-consumer by Government of Andhra Pradesh (**Respondent No. 3**). Hence, Respondent No. 4 is not supplying power free of cost to the consumers. The cost of the power is being borne by the Respondent No. 3 from its exchequer. Hence, the activity of procurement of power by the Respondent No. 4 and supply the same to the consumer involves trading. Therefore, the contention of respondents that no trading activity is involved in the transaction/activity of the Respondent No. 4, could not be accepted. The Respondent No. 4 cannot act as a nodal agency for the Respondent No. 3 for implementation of the scheme, as it is not a department of the Respondent No. 3.
- The Respondent No. 4 is an independent company, juristic person incorporated under the Companies Act. The Government Order issued by the Respondent No. 3 is not binding on the Respondent No.4. It shall be made binding only by way of separate agreements. However, the scheme is floated by the Respondent No. 3 and seeks to implement the same through the Respondent No. 4.
- The activity of the Respondent No. 4 comes within the ambit of Clause 1.2 of competitive bidding guidelines and within the meaning of 'Trading' as defined under Section 2(71) of the Act.
- Hence, the Respondent No. 4 cannot purchase/procure power from the SPD by inviting bids without obtaining any licence. The Generator may establish, operate and maintain a generating station without obtaining a licence under the Act, but it could not supply the same to the Respondent No. 4 - non-licensee to supply the same to the end consumer contrary to the provisions of the Act.
- The Electricity Act, 2003 is a special Act and a comprehensive enactment/code promulgated by the Parliament to regulate and govern Electricity Section in India. Hence, any action (including issuance of the Impugned Documents) must conform to the requirements set out in the Electricity Act, 2003 and the rules, regulations and guidelines framed thereunder. The action of Respondent No. 4 could not be said to be outside the provisions of Electricity Act. The Respondent No. 3 formulated the scheme to provide supply of 9 hours day time free power supply to the agriculturists. The project is schematically prepared to take the activity of generation, supply,

purchase and payments made to the Respondent No. 4 and SPD outside the purview of provisions of Electricity Act and thereby ousted the jurisdiction of Respondent No. 6 under Section 86 of the Electricity Act for extraneous considerations. The Respondent No. 3 should not forget that it is going to supply power to the agriculturists free of cost by making huge payment to the SPD from the State exchequer i.e., public money through Respondent No. 4.

- Power could be purchased through transparent bidding process in strict adherence to the provisions of the Electricity Act, by adopting competitive bidding guidelines, by entering legally binding contracts as the power Tariff has to be approved by the 6th Respondent - Commission under Section 63 of the Electricity Act. Hence, the Respondent No. 3 cannot act arbitrarily in procuring/purchasing power with the avowed objective of supplying power free of cost to the agriculturists in the State, resolve any dispute through the dispute resolution mechanism envisaged under the scheme which gives scope for nepotism, favouritism by acting arbitrarily.
- As per the provisions of Section 12 of the Electricity Act, no person shall (a) transmit or (b) distribute electricity or (c) undertake trading in electricity, unless he is authorized to do so by a licence issued under Section 14, or is exempt under Section 13. The provisions of Section 14 of the Electricity Act authorizes the appropriate commission may grant licence to any person, but one of the proviso says that in case an appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under the Electricity Act. As per Section 7 of the Electricity Act, a generating company may establish, operate and maintain a generating station without obtaining a licence under this Act, if it complies with the technical standards relating to connectivity with the grid referred to in Clause (b) of Section 73.
- The activity of the Respondent No. 4 comes within the meaning of 'Trading' as defined under Section 2(71) of the Electricity Act. In that process, the Respondent No. 3 is spending huge public money, even though for the benefit of agriculturist, its action should be fair and transparent. It is under obligation to follow the statutory provisions applicable to the scheme of activity.
- The impugned RfS and draft PPA were substantially deviated from the provisions of the Act and the CBG and the said deviations were not approved by the 6th Respondent Commission. As the impugned RfS and draft PPA are not in conformity with CBG and the provisions of the Act, obviously its continuance by the successive Governments without any legal impediments is doubtful and it will reduce the higher participation of the bidders in the bidding process as it lacks fair bidding process. Hence, impugned RfS and draft PPA are liable to be set aside.

Our viewpoint

HC has emphasized on the importance of issuance of RFS and PPA in conformity to the provisions of the competitive bidding guidelines and Section 63 of Electricity Act subject to any deviations approved by Central/State Electricity Regulatory Commission. This decision further crystallized the statutory compliances to be implemented by distribution companies while issuing RFS and draft PPA in order to avoid cancellation of tenders at a later stage.

CONTRIBUTIONS BY

Shreshth Sharma | Partner

Parichita Chowdhury | Senior Associate

Shefali Tripathi | Associate

Molshree Bhatnagar | Associate Partner

Manpreet Kaur | Associate

Jyotsna Khatri | Senior Associate

Nehul Sharma | Associate

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mail@hsalegal.com

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New Delhi
Email: newdelhi@hsalegal.com

Mumbai
Email: mumbai@hsalegal.com

Bengaluru
Email: bengaluru@hsalegal.com

Kolkata
Email: kolkata@hsalegal.com