HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

PROJECTS, ENERGY & INFRASTRUCTURE

MONTHLY NEWSLETTER

APRIL 2022

LEGAL & POLICY UPDATES

In this Section

Ministry of Power issues Electricity (Rights of Consumers) Amendment Rules, 2022

- On April 20, 2022, Ministry of Power (**MOP**) issued the Electricity (Rights of Consumers) Amendment Rules, 2022 (**Amendment Rules**) amending the Electricity (Rights of Consumers) Rules, 2020. It has inter alia notified that:
  - In view of increasing pollution level, particularly in the metros and cities with a population 100,000 and above, the distribution licensee will ensure 24x7 uninterrupted power supply to all the consumers, so that there is no requirement of running the diesel generator sets. For such cities, the State Commission has provide the trajectory of system average interruption frequency index and system average interruption duration index accordingly.
  - The State Commission may consider the customer average interruption duration index, customer average interruption frequency index and momentary average interruption frequency index as additional indicators of reliability of supply and the minimum interruption time for calculation of additional reliability indicators.
  - In case the interruption time is not specified by the State Commission, 3 minutes will be considered as interruption time for calculating the additional reliability indicators.
  - The consumers who are using diesel generator sets as essential back up power, will endeavor to shift to cleaner technology, such as renewable energy with battery storage, etc. in five years from the date of commencement of the Amendment Rules or as per the timelines given by the State Commission for such replacement, based on the reliability of supply in that city covered under the area of supply of distribution licensee.
  - To avoid any use of diesel generator sets for temporary activities in the area of the distribution licensee, it has been directed that temporary connections to the consumers for construction activities will be given on an urgent basis (i.e., not later than 48 hours and within 7 days in case augmentation of the distribution system is required).

Ministry of Power issues rules to plan communication systems for transmission networks

- On March 09, 2022, Ministry of Power (**MoP**) has formulated the Guidelines on Planning of Communication System for Inter-State Transmission System (**Guidelines**) to help define their categories and the approval procedure.
- The Guidelines define communication system as a collection of individual communication networks, communication media, relay stations, tributary stations, terminal equipment capable of inter-connection and inter-operation to form an integrated communication backbone for the power sector.

- After considering the critical role of communication systems in Inter-State Transmission System (**ISTS**), these Guidelines have been issued to help efficient, coordinated, smooth, economic, and uniform planning of communication system for **ISTS**.
- Central Transmission Utility (**CTU**) will be the nodal agency for planning and coordination to develop communication systems for ISTS.
- Communication systems are categorized as Category A and Category B.
  - **Category A:**
    - Category A refers to communication systems directly associated with the new ISTS. These systems are incidental due to implementation of new ISTS elements like line-in & line-out of existing lines on new or existing substations, where optical ground wire or terminal equipment is not available on the existing mainline.
    - The new ISTS system will also include the requirement for linked communication systems. The combined proposal will be approved as per the directions in MoP Office Order dated October 28, 2021 regarding Re-constitution of the National Committee on Transmission.
    - Communication requirements that are incidental due to implementing new ISTS elements will also be approved along with the transmission system package.
  - **Category B:**
    - Category B will include the upgradation or modification of existing ISTS communication systems, including adding or modifying missing links, system strengthening, capacity upgradation, or adopting new communication technologies.
    - Communication systems proposed by CTU for upgrading or modifying the existing ISTS communication system, standalone projects, and new technologies, will be forwarded to Regional Power Committees (**RPCs**) for their views.
    - RPCs will provide their views within 45 days of receipt of the proposal. The packages, along with the views of RPC, will be then approved by the National Committee on Transmission.
    - For development of reliable communication system for the power system, these communication systems will be planned according to the Central Electricity Authority (Technical Standards for Communication System in Power System Operations) Regulations, Central Electricity Regulatory Commission (Communication System for inter-State transmission of electricity) Regulations, and Manual of Communication System Planning in Power System Operation published by Central Electricity Authority and along with other relevant guidelines and policies issued by Government of India.

RECENT JUDGMENTS

In this Section

NRSS-XXIX Transmission Limited & Ors v. Central Electricity Regulatory Commission and Ors

APTEL Judgment dated April 05, 2022 in O.P. No. 1 of 2022 and Batch

Background facts

- The present Original Petition (and Appeals) had been filed by various power developers and other stake holders challenging the Orders passed by Central Electricity Regulatory Commission (**CERC**), wherein, the Commission had disposed of pending as well fresh matters pertaining to Change in Law (**CIL**) claims, whille holding that the procedure prescribed under the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (**CIL Rules**) is required to be followed irrespective of the fact that whether the cause of action has arisen before or after the notification of CIL Rules, and had also directed the stakeholders to approach the Commission again after following the procedure prescribed under the said rules.
- Ministry of Power (**MoP**) on October 22, 2021 notified the CIL Rules, in which Rule 3(2) states that the affected party, intending to recover the cost due to change in law, is required to give a three weeks' prior notice to the other party about the proposed impact of the change in law event on the tariff or charges.
- Considering the aforementioned CIL Rules notified by the MoP, CERC disposed of various pending Petitions filed before it (including the Petitions filed before the notification of CIL Rules) while holding that the said rules will be applicable retrospectively, and any party which intends to claim CIL is required to follow the procedure as prescribed in the CIL Rules.
- CERC vide the said orders also held that if the agreement entered within the parties does not provide for any formula for compensation, then the formula as provided under the CIL Rules is required to followed for any CIL claim (irrespective of the fact that the CIL as claimed has occurred prior to the notification of CIL Rules).
- Aggrieved by the aforementioned directions passed by CERC, various stakeholders approached the Appellat Tribunal for Electricity (**APTEL**) challenging the legality, validity and propriety of such an approach taken by CERC in the petitions which had been pending for adjudication prior to the CIL Rules being notified on October 22, 2021.

Issues at hand

- Whether the CERC is legally correct in disposing off the pending petitions filed prior to notification of CIL Rules?
- Whether the CIL Rules can be applied retrospectively?
- Whether CERC, while disposing of the pending Petitions, has failed to fulfil its statutory obligations as provided under the Electricity Act, 2003?

Decision of the Tribunal

- In the present matter, APTEL, after hearing all the parties, stated that:
  - CIL Rules are substantive in nature as they create a new mechanism for recovery of CIL compensation and grants right of adjustment and recovery to the parties. Therefore, the said rules will only apply prospectively and cannot be retrospectively applied to proceedings pending for adjudication before the Commission, particularly where the cause of action had arisen before the CIL Rules were brought into existence.
  - The rule making authority (i.e. MoP) vide its clarification dated February 21, 2022, itself has clarified that the CIL Rules will apply to CIL events which occur on or after October 22, 2021. Therefore, the events that occurred prior to CIL Rules shall be dealt as per the prevalent dispensation or rules applicable at the time of occurrence of such event.
  - The approach adopted by CERC in disposing of the matters without deciding CIL claims is contrary to its statutory duty and functions, and would lead to multiplicity of litigation, causing delay in the process which, in turn, would be against consumers' interest.
  - CERC failed to bear in mind that no purpose would be served by directing the parties to settle the dispute under CIL Rules, specifically when parties have already disputed such claim.

HSA
Viewpoint

The CERC Order had gravely and adversely impacted various stakeholders. APTEL has rightly set aside this Order for being unlawful and unsustainable. The findings of APTEL are legally cogent and have brought about much needed relief in the sector where multiple cases were asked to be taken back to ground zero. Also the direction of APTEL for CERC to invoke/exercise its suo moto powers to adjudicate the disposed off matters through review have reduced burden upon the generators to approach the CERC afresh.

M/s Shapoorji Pallonji Infrastructure Capital Company Pvt Ltd v. Power Grid Corporation of India Ltd & Ors

APTEL Judgment dated April 12, 2022 in Appeal No. 53 of 2022

Background facts

- The present Appeal had been filed by the Appellant against the Order dated February 15, 2022 (**Impugned Order**) passed by the Central Electricity Regulatory Commission (**CERC**), wherein CERC partly allowed the claim of the Appellant for discharge or return of the Connectivity Bank Guarantees (**CBGs**) of INR 5 crore each. The CERC directed the Power Grid Corporation of India (**PGCIL**) to forfeit an amount of INR 50 lakh each and return the balance amount to the Appellant.
- By way of Regulation 27 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (**Connectivity Regulations**), the Detailed Procedure for Grant of Connectivity to Projects based on Renewable Sources to Inter-State Transmission System (**Detailed Procedure**) was notified. The said Detailed Procedure was notified on May 15, 2018, which was modified by issuance of Revised Detailed Procedure issued on February 20, 2021.
- The Appellant was awarded two solar projects of 250 MW each at Anantapur in Andhra Pradesh and Tuticorin in Tamil Nadu (**solar projects**) for supplying power to distribution licensees in the State of Telangana through an intermediary procurer i.e., NTPC.
- Subsequently, the Appellant applied for Stage-I connectivity to PGCIL (the transmission service provider) for the development of its solar projects, and PGCIL granted the same on August 24, 2018.
- Later, the Appellant applied for Stage-II connectivity for the solar projects, and PGCIL granted the same on January 17, 2019.
- Further, the Transmission Service Agreements (**TSAs**) were executed between the Appellant and PGCIL on February 12, 2019. In furtherance of the same, on February 14, 2019, the Appellant furnished the two CBGs of INR 5 crore each to PGCIL.
- Thereafter, on March 11, 2019, NTPC signed a Power Sale Agreement (**PSA**) with the DISCOMs of Telangana, and on March 20, 2019, two separate Power Purchase Agreements (**PPAs**) were signed between NTPC & the Appellant for the solar projects.

Issue at hand

- Whether the CERC rightly applied the Revised Detailed Procedure to the facts of the present case?

Decision of the Tribunal

- The APTEL observed that the CERC had made an error by applying the Revised Detailed Procedure which was issued on February 20, 2021, merely on the reasoning that it is a procedural law and is to be applied even on existing agreement. The question as to whether Revised Detailed Procedure is procedural was not germane or of any consequence for the simple reason that Clause 5.1 of the Revised Detailed Procedure itself makes it clear that it would apply if the revocation of Stage-II connectivity was ordered or action initiated for encashment of bank guarantee 'after the issue of this Procedure'.
- The Tribunal also stated that if the action for initiation of either revocation of Stage-II connectivity or encashment of CBGs is after the issuance of the Revised Detailed Procedure, it would be under the said Detailed Revised Procedure; else, the Detailed procedure would continue to apply. In the present case, revocation was already complete since the request for revocation of Stage-II connectivity by the Appellant had concededly been made to PGCIL more than a year prior to the issuance of the Revised Detailed Procedure. PGCIL also acceded to the said request by more than 11 months prior to issuance of the Revised Detailed Procedure, hence, no action for encashment was initiated, before or after, by PGCIL.
- Further, the Tribunal explained that the purpose of requirement of CBGs is to insulate or indemnify the transmission utility against any loss it might incur on account of defaults on the part of the entity entering into TSA with regard to timely compliances, till the commencement of evacuation of power. Since PGCIL had not suffered any financial loss (admittedly) in the process and since it was not finding a cause to initiate action to encash CBGs under the Revised Detailed Procedure, the only just and fair dispensation to be accorded on the petition of the appellant by CERC was to allow the CBGs to be discharged and returned.
- APTEL also held that the decision of the CERC also falls foul of Section 73 of the Indian Contract Act, 1872, wherein compensation is payable to the party to the contract in the event it has suffered loss due to inability of the party to discharge contract. Since no claim had been made by PGCIL of having suffered any loss as requires to be compensated, concededly, there had been no occasion for PGCIL to invoke Clause 11.2 of the Detailed Procedure to claim a right to encashment of CBGs.
- Thus, for the foregoing reasons, APTEL has set aside and vacated the Impugned Order and directed that forfeiture of INR 50 lakh each from the two CBGs cannot be upheld. Hence, the APTEL directed PGCIL to return the CBGs immediately and in case PGCIL had encashed the CBGs to the extent of forfeiture permitted by CERC through the Impugned Order, the same shall be refunded immediately.

HSA
Viewpoint

APTEL has applied the well-settled principles of law and the underlying scheme of the Connectivity Regulations while overturning the decision of CERC. This decision also lays down a guideline that to claim a right to encashment of CBGs, the party, in whose favor a bank guarantee has been submitted, has to show that losses have been suffered due to non-discharge of the contract.

NTPC Ltd and Anr v. Ajmer Vidyut Vitaran Nigam Ltd & Ors

CERC Order dated March 22, 2022 in Petition No. 65/MP/2019

Background facts

- In terms of Guidelines for Selection of 3000 MW Grid – Connected Solar PV Power Projects under Batch-II - State Specific Bundling Scheme issued by the Ministry for New and Renewable Energy (**MNRE**) on March, 2015 (**Guidelines**), National Thermal Power Corporation Ltd (**Petitioner/NTPC**) agreed to purchase power from the Solar Power Developers (**SPDs**) as an intermediary procurer, and sell power to distribution companies after bundling it with unallocated thermal power from NTPC coal-based generating station.
- Accordingly, NTPC was to sign Power Purchase Agreements (**PPAs**) with the SPDs and also sign back-to-back Power Sale Agreements (**PSAs**) with State Utilities/Discoms for sale of power.
- On May 21, 2015, NTPC floated the Request for Selection (**RfS**) for the Bhadla Solar Park, Rajasthan for setting up and installation of Solar PV Projects in Rajasthan. On July 03, 2015, the Rfs for Non-Solar Park, Rajasthan was floated by NTPC.
- Thereafter, during the period between April 2016 to September 2016, NTPC executed PPAs with SPDs for procurement of solar power.
- On February 26, 2016, NTPC executed PSA for Bhadla Solar Park and on May 11, 2016 and July 28, 2016 NTPC executed PSA for Non-Solar Park with Ajmer Vidyut Vitaran Nigam Ltd (**Respondent**

No. 1), Jaipur Vidyut Vitaran Nigam Ltd (**Respondent No. 2**), and Jodhpur Vidyut Vitaran Nigam Ltd (**Respondent No. 3**).

- During May 2017 to December 2017 i.e., immediately before the Commercial Operation Date (**COD**) of the SPDs, infirm power (the power injected when the SPD is ready but could not be declared under commercial operation pending allocation of power in the thermal power station for bundling with the solar power) was injected by the SPDs into the Grid. It was the case of NTPC that such infirm power as injected into the Grid by SPDs was drawn by Respondents Nos. 1-3. Therefore, for such drawl of power, NTPC raised invoices as per Para 3.13 of the Guidelines at the rate of INR 3/kWh along with the trading margin/consideration 7 Paisa/kWh.
- Upon failure of the Respondents to pay the said amount, NTPC filed the present Petition seeking the above consideration as well as any delayed payment surcharge on account of the same.
- The submissions of the NTPC are as under:
  - Respondents are liable for infirm power as per a holistic reading of the terms of the Guidelines, PPA and PSA considering the fact that they are part of a single transaction and are back-to-back agreements.
  - The principle of 'Quantum Meruit' as provided in Section 70 of the Indian Contract Act, 1872 (**ICA**) would apply to the facts herein to allow NTPC to claim compensation for providing power to Respondent Discoms from which they have benefitted.
- The Respondents claimed that the commercial arrangement between the parties is governed by the provisions of the PSAs entered into between the parties. The PPAs with the SPDs provide for payment of infirm power, though there is no mention of infirm power in the PSAs. Further, Para 3.13 of the Guidelines hold NTPC liable to pay for infirm power. Further, the injection of infirm power was without the consent of the Discoms.

Issue at hand

- Whether NTPC is entitled to recover the consideration from the Respondents for the infirm power supplied during the period from May 2017 to Dec 2017 i.e. until the declaration of the commercial operation of the solar power projects in terms of the provisions of the PPAs and PSA at the rate of INR 3/kWh along with an additional sum of 7 Paise/kWh towards trading margin?

Decision of the Commission

- The CERC considered the relevant provisions of the Guidelines, the PPA and the PSA viz. Para 3.13 of the Guidelines, Articles 4.2.2 and 5.1.6 of the PPA and Article 6.8.4, which, inter alia, allowed SPDs to sell infirm power to any third party prior to declaration of COD and also specified the rate for such sale at INR 3/kWh, wherein only the excess energy, if accepted by the Discoms, is to be purchased by NTPC at the aforesaid price.
- CERC noted that NTPC had failed to bring on record any document conveying the acceptance of Respondent Discoms to purchase such infirm power or any drawl requisition from the Respondent Discoms to prove that such infirm power was injected at the request of the Respondent Discoms.
- The commission alsos held that in the absence of such acceptance, provisions of Article 4.4.2 had not been complied and there was no sale of infirm power.
- On the issue of Quantum Meriut, the CERC laid out its essential ingredients;
  - Person claiming the benefit under this section was acting lawfully when he was delivering anything to the other party
  - He should not intend to do it gratuitously
  - The other party did enjoy the benefits voluntarily
- Accordingly, CERC concluded that since the Discoms have been disputing the injection of infirm power as unilateral and without their consent and NTPC has failed to prove any evidence for such approval, it establishes that Discoms had neither accepted nor enjoyed the benefits of infirm power voluntarily. Hence, the requirements of Section 70 of ICA had not been met in the facts of the present case held that NTPC is not entitled for recovery of the consideration for infirm power from the Respondent Discoms.

HSA
Viewpoint

CERC has applied the well settled principle of law and underlying scheme of the Guidelines while rejecting NTPC's claim towards consideration for injection of infirm power, particularly in absence of consent by Discoms. Further, by way of the present Order, CERC has reiterated the principles under which the concept of Quantum Meruit would apply to a case and for the reasons why NTPC's claim was not allowable under the legal framework of Section 70 of the Indian Contract Act, 1872.

Azure Power Earth Pvt Ltd v. Bangalore Electricity Supply Company Limited & Anr

KERC Judgment dated March 29, 2022 in OP No. 107/2018

Background facts

- The present Appeal had been filed by the Appellant against the Order dated March 21, 2021 passed by the Maharashtra Electricity Regulatory Commission (**MERC**), granting the Transmission Licence for the proposed 1000MW HVDC link between 400kV MSETCL Kudus and 220kV AEML Aarey EHV Station (**HVDC Transmission Project**) to Adani Electricity Mumbai Infra Ltd (**AEMIL**).
- The present petition has been filed by Azure Power Earth Pvt Ltd (**Petitioner**) before the Karnataka Electricity Regulatory Commission (**Commission**) seeking declaration that the imposition of Safeguard Duty vide Notification No.01/2018-Customs (SG) dated July 30, 2018 issued by Ministry of Finance, Government of India is a Change in Law event under the Article 15 of the PPA dated March 20, 2018 (**SGD Notification**) and, therefore, the Petitioner is entitled for reimbursement for corresponding increase in the project cost or incremental tariff.
- The Petitioner is a Solar Power Developer (**SPD**) having capacity of 50 MW, and the Petitioner entered into the PPA dated March 20, 2018 with Bangalore Electricity Supply Company Ltd and Hubli Electricity Supply Company Ltd.

Issues at hand

- Whether the Petitioner proves that the imposition of Safeguard Duty vide Notification No.01/2018-Custom (SG) dated July 30, 2018 issued by the Ministry of Finance, Government of India, on import of Solar Modules or Panels from China PR amounts to Change in Law as per Article 15 of the PPA?
- Whether the Petitioner was under obligation to avoid payment of Safeguard Duty by importing Solar Modules or Panels from Developing Countries other than China PR & Malaysia or purchasing the same from domestic market, as per terms of PPA?
- Whether the Petitioner was entitled to install solar modules or panels in excess of the contracted capacity of 50 MWAC on DC side of the power project in both Block Nos.B-11 & B-12?
- Whether the additional solar modules or panels installed in Block Nos.B-11 & B-12, subsequent to the date of commissioning of the projects can be considered for reimbursement of Safeguard Duty and the GST paid on it?
- Whether the Petitioner is entitled to reimbursement of Safeguard Duty and the GST paid on it and if so, to what extent?
- What shall be the mode of reimbursement of the Safeguard Duty and GST found payable to the Petitioner?

Decision of the Commission

- After analysis of the pleadings submitted by the parties and based on arguments advanced, the Commission allowed the present petition by holding that:-
  - **Issue No. 1 & 2**
    - As per the Article 15.1.1. of the PPA, imposition of Safeguard Duty is a Change in Law event as the Safeguard Duty was imposed post the submission of Techno-Commercial Bid.
    - If the import of solar modules or panels from China PR or Malaysia was intended to be discouraged by imposing Safeguard Duty, the SGD Notification should have contained a specific clause. In the absence of any such term in the SGD Notification or in the PPA, the Petitioner could not be obliged to purchase Solar Modules/Panels from places other than China PR and Malaysia.
  - **Issue No. 3**
    - Right of generator/developer/Petitioner to declare the maximum CUF at its discretion at the time of execution of the PPA and the rights & liabilities of the parties to inject and off-take the minimum and maximum energy in terms of MU. Therefore, the Petitioner at its discretion can install DC capacity in the Solar Power Projects exceeding the contracted capacity of 50 MW(AC) to meet its minimum obligation of supply and its right to supply up to the maximum quantum of energy.
    - The Commission placed reliance on judgment dated November 16, 2021 passed in Appeal No. 163 of 2020 & Batch by the APTEL, in a somewhat similar situation, wherein the APTEL held that the generator/developer is at liberty to install solar modules/panels on DC side of the project exceeding the contracted capacity.
  - **Issue No. 4 & 5**
    - It was observed that based on an independent analysis of facts, coupled with historicity, the MERC had rightly decided to award the transmission project under

Section 62 of the Act by granting transmission licence under Section 15 of the Act which cannot be faulted.

- A conjoint reading of Article 15.1.1 and the other provisions of the PPA makes it clear that the consequences of Change in Law would compensate the Petitioner only till the commissioning of the Project. Therefore, the solar modules installed subsequent to the date of commissioning of the Projects cannot be considered for compensation on account of safeguard duty.

– **Issue No. 6**

- The Commission determined the incremental tariff on the basis of Generic Tariff Order dated May 18, 2018 in the matter of 'Determination of Tariff and other Norms in respect of New Solar Power Project (Ground mounted and Solar Rooftop Photovoltaic Units)' (**Generic Tariff Order**) in respect of Block No.11 and Block No 12 respectively. Accordingly, Commission has arrived at an average tariff of 22 paise per unit for 25 years being the life of the project in respect of Block-11 and average tariff of 20 Paise per unit for 25 years being the life of the project in respect of Block - 12.
- Further, considering the Discounting Rate – Weighted Average Capital Cost (**WACC**) of 11.20% per annum, the levellised tariff for 25 years over the life of the project works out to 28 paise per unit in respect of Block-11 and 26 Paise per unit in respect of Block-12. In the alternative, the Commission provided option to the Respondents/Discoms to pay the compensation amount in lump sum within a period of two months from the date of this order with carrying cost at 11% p.a. as decided/adjudicated by the Commission in Generic Tariff Order till the date of payments.

HSA
Viewpoint

The Commission has correctly held that imposition of Safeguard Duty is a Change in Law event and in absence of any specific bar in the bidding documents and the PPA, the Appellant could import the solar modules form China/Malaysia. This view is consistent with previous orders issued by the CERC qua imposition of Safeguard Duty. Further, aligned with the MNRE OM dated November 05, 2019, the Commission has also rightly held that the Petitioner can install solar modules/panels on DC side of the project exceeding the contracted capacity. The Commission's view on incremental tariff while relying on normative parameters as provisioned in the relevant Tariff Regulations is also based on cogent reasons as SECI had initiated payments through annuity model (based on normative parameters), which has been approved by the CERC in its order dated August 20, 2021 passed in Petition No. 536/MP/2020 & Batch. However, the said Order of the CERC to this effect is in challenge before APTEL for the Order does not factor in the Debt Equity ratio while applying the normative parameters and only considers interest on loan component on the entire quantum of claim.

Southern Power Distribution Company of Telangana Ltd & Anr v. Central Electricity Regulatory Commission & Ors

APTEL Judgment dated April 12, 2022 in IA No. 1717 of 2019 in DFR No. 2291 of 2019 & IA No. 1719 of 2019

HSA represented the Acme Group in this matter and led the arguments objecting the sustainability of delay applications and affidavits.

Background facts

- The present Appeal had been filed by the Distribution Companies in the State of Telangana (**Telangana DISCOMs**) against the common order dated October 09, 2018 (**Impugned Order**) passed by Central Electricity Regulatory Commission (**CERC**) whereby the CERC held that the promulgation of GST Laws is covered by Change in Law (**CIL**) provision stipulated under the Power Purchase Agreement (**PPA**) executed between Respondent Nos. 2 & 3 and Respondent No.5 National Thermal Power Corporation Limited (**NTPC**), respectively, and allowing the consequential impact of GST on the solar project.
- Along with the present Appeal, Telangana DISCOMs had also filed an Application seeking condonation of delay of 292 days in filing of the Appeal. The Respondents had filed their objections to the said Application stating that the Telangana DISCOMs had failed to substantiate and explain the delay of almost 10 months in filing the present Appeal.
- APTEL, in its daily Order dated February 15, 2020, took serious note of the factual inaccuracies in the Application for condonation of delay by the Telangana DISCOMs and directed them to ensure the presence of the officer responsible for verifying the pleadings in the Application, as well as the senior most officer approving the contents of the Application.

- Subsequently, the Telangana DISCOMs filed affidavits, but failed to clarify the specific reasons for the delays, including the officers responsible for the same. It was merely stated that being a government organization, the decision-making process and approvals required time. Further, it was pleaded that non-availability of counsel during summer vacations also contributed to the delay in filing of the Appeal.

Issue at hand

- Whether the Application seeking condonation of delay of 292 days in filing the present Appeal is maintainable or not?

Decision of the Tribunal

- The APTEL observed that the excuses presented for the faults and the excessive delay in submitting the Appeal could not be trusted and were unacceptable coming from such a high government position. The Appellant's ambiguous submissions were deemed not appropriate. Moreover, it was observed that the statements given by the Appellant raising the excuses afresh are not reasonable and are contradictory to their earlier stand. The Tribunal further held the reasons for the condonation of delay were revised only after the Respondents raised their concerns and serious observations were made by the Tribunal.
- The Tribunal also applied the well settled principles of law that each day of delay is required to be explained with cogent reasons and delay has to be backed by sufficient cause causing no injury to the opposite party. In this regard, APTEL also placed reliance on certain decisions of the Supreme Court.
- Further, with respect to the submissions made by the Telangana DISCOMs regarding time taken in seeking intra-departmental approvals, the APTEL took into account the precedents cited by the Respondents wherein the Courts had held that irrespective of being governmental bodies, the departments/organizations could not claim separate period of limitation and for condonation of delay, and reasonable explanation is required to be provided.
- The APTEL held that the Telangana DISCOMs had failed to explain the specific reasons for the delay, including bringing the officers responsible for the same. The Appellants have not only revised their reasons but also changed and contradicted the stand taken earlier, which was only to mislead the Court and failed to extend any convincing reasons for inordinate delay. The Tribunal also held that the casual and callous behavior of the concerned officers of the Telangana DISCOMs were beyond the justifiable cause and the same could not be condoned in the interest of justice and judicial conscience.
- In view of the above findings, the APTEL dismissed the Application for condonation of delay and accordingly disposed of the present Appeal, being time barred.

HSA
Viewpoint

The Order passed by the APTEL rightly captures the essence of principles laid down by the Supreme Court regarding the instances where delay may not be condoned and the requirements of the substantial reasons to be cited in such Applications for condonation of delay. Further, APTEL, in accordance with the various decisions of the Supreme Court, has cogently held that despite being government bodies, Telangana DISCOMs could not plead for condonation of delay without substantiating the accurate reasons for inordinate delay.

CONTRIBUTIONS BY

Shreshth Sharma | Partner
Shefali Tripathi | Associate
Utkarsh Singh | Associate
Aditya Jain | Associate
Molshree Bhatnagar | Associate Partner
Nishant Talwar | Associate
Avdesh Mandloi | Associate
Saurobroto Dutta | Associate
Nehul Sharma | Associate
Neel Rahate | Associate

HSA
AT A GLANCE

FULL-SERVICE CAPABILITIES

- BANKING & FINANCE
- COMPETITION & ANTITRUST
- CORPORATE & COMMERCIAL
- DEFENCE & AEROSPACE
- DISPUTE RESOLUTION
- ENVIRONMENT, HEALTH & SAFETY
- INVESTIGATIONS
- LABOR & EMPLOYMENT
- PROJECTS, ENERGY & INFRASTRUCTURE
- PROJECT FINANCE
- REAL ESTATE
- REGULATORY & POLICY
- RESTRUCTURING & INSOLVENCY
- TAXATION
- TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

GLOBAL RECOGNITION

The Legal 500 Asia Pacific Leading Firm 2022
asialaw Awards 2021
India Business Law Journal Award Winning Law Firm 2021
The A List India Business Law Journal
IFLR 1000 Recommended Firm 2021-22
Recognised in Who's Who Legal WWL
Ranked in Chambers Global 2022
Ranked in Chambers Asia-Pacific 2022

CONTACT US

www.hsalegal.com
mail@hsalegal.com
HSA Advocates

PAN INDIA PRESENCE

New Delhi
Email: newdelhi@hsalegal.com

Mumbai
Email: mumbai@hsalegal.com

Bengaluru
Email: bengaluru@hsalegal.com

Kolkata
Email: kolkata@hsalegal.com