



# PROJECTS, ENERGY & INFRASTRUCTURE

## MONTHLY NEWSLETTER

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# LEGAL & POLICY UPDATES



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## Ministry of Mines issues the Offshore Areas (Existence of Mineral Resources) Rules, 2024

- Ministry of Mines (**MoM**) has notified the Offshore Areas (Existence of Mineral Resources) Rules, 2024 exercising authority from the Offshore Areas Mineral (Development and Regulation) Act, 2002 on June 6, 2024.
- The objective of these Rules is to define the criteria for determining the existence of mineral resources in offshore areas as well as to provide a framework for auction. Further, it also aims to ensure proper geological studies along with facilitation of mineral resource management.
- Further, these rules outline the criteria for determining the existence of mineral resources for both production lease and composite license grants. They also establish definitions for exploration stages, feasibility studies, and economic viability, along with geological parameters for exploration and reporting standards for mineral resources and reserves.
- Additionally, the rules provide for the relaxation of exploration norms based on local geological conditions, subject to Central government's approval. The notification also includes detailed schedules outlining exploration norms for different types of deposits and minerals, reporting standards, and a format for submitting proposals for auctioning areas for composite licenses.

## Madhya Pradesh Electricity Regulatory Commission (Manual of Procedure for Handling Consumers' Complaints, 2024)

- The Madhya Pradesh Electricity Regulatory Commission issued the Manual of Procedure of Handling Consumers' Complaints on June 19, 2024 (Manual).
- Key highlights of the Manual are as follows:
  - Manual is applicable to all the Distribution Licensees including deemed licensees and all consumers in the state.
  - Nature of the complaints received at Complaint centers will be categorized according to the following heads-
    - New Connection/Load enhancement/Load reduction/ Name change/ Temporary/ Permanent Disconnection
    - Normal Fuse-off call
    - Distribution Transformer Failure
    - Outage due to Line breakdown
    - Meter related complaints such as correctness of meter, meter reading etc.

- Conversion of service
- Bill related complaints
- Release of Temporary connection
- Issue of No dues Certificate
- Reconnection of supply
- Load shedding /scheduled outages
- It shall be the responsibility of the distribution licensee to reply to the consumer in each case of the complaint filed through any mode, by the consumer.
- Modes of lodging the complaints:
  - Through 24x7 Customer Care toll free number
  - Manual Complaint Handling at Customer Care Centers
  - Distribution Licensee Website
  - Mobile Application & E-Mail ID
- If the consumer is not satisfied with the Order issued by ECGRF, a representation against ECGRF Order may be filed before the "Electricity Ombudsman" as per provisions under MPERC (Establishment of Forum and Electricity Ombudsman for redressal of grievances of Consumers) Regulations 2021

### **Ministry of New and Renewable Energy granted exemption to renewable energy plants located inside SEZ or EOU from Revised List of Models and Manufactures for wind turbine models**

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- Ministry of New and Renewable Energy (MNRE) through office memorandum dated May 27, 2024 granted exemption to renewable energy plants located inside a Special Economic Zone (SEZ) or Export Oriented Unit (EOU) and supplying power exclusively for production plants of green hydrogen (or its derivatives), which are located inside an SEZ or set up as an EOU (either same or different SEZ/ EOU) from the purview of Revised List of Models and Manufactures for Wind Turbine Models. Notably, the exemption will be applicable on all renewable energy plants that satisfy the above criteria and are commissioned by December 31, 2030

# RECENT JUDGMENTS



## In this Section

Maharashtra State Electricity Distribution Co Ltd v. JSW Steel Ltd & Anr

Bhadreshwar Vidyut Private Limited v. Maharashtra Electricity Regulatory Commission & Ors

TP Kirnali Limited v. Maharashtra State Electricity Distribution Company Ltd

Tata Power Delhi Distribution Ltd v. Solar

## Maharashtra State Electricity Distribution Co. Ltd. v. JSW Steel Ltd. and Anr

Supreme Court | Judgment dated May 17, 2024 | Civil Appeal No. 8413 of 2009

### Background facts

- The Maharashtra State Electricity Distribution Co Ltd (**Appellant**) imposed an additional supply charge for uninterrupted power supply to its bulk consumers, including JSW Steel Ltd (**Respondent**).
- Maharashtra Electricity Regulatory Commission (**MERC**) by way of its Tariff Order dated June 20, 2008 discontinued the imposition of additional supply charges and directed the Appellant to refund the additional supply charge collected during the Financial Year (FY) 2006-07 and FY 2007-08 from bulk consumers.
- The Appellant preferred a petition before MERC seeking approval for recovery of reliability charges for implementing 'Zero Load Shedding' Maharashtra.
- MERC by way of its order dated June 15, 2009 (**MERC's Order**) allowed the imposition of a reliability charge for period June 16, 2009, till March 31, 2010 which was made payable by all the consumers in the Pen Circle area, including JSW Steel.
- Aggrieved by the Order, the Respondent challenged the MERC's Order before the Appellate Tribunal for Electricity (APTEL). The APTEL by way of its Judgment set aside MERC's Order.
- Subsequently, the Appellant challenged the Judgment passed by APTEL before the Supreme Court.

### Issue at Hand

- Can a distribution Licensee levy reliability charges on its consumers falling in its Pen Circle?

### Decision of the Court

- The Supreme Court while upholding the decision of the APTEL observed the following:
  - The Appellant could not have levied reliability charges. Section 62(3) of the Electricity Act 2003 (Act) and the Rules and Regulations framed by the MERC do not provide for levying of reliability charges.
  - The Respondent, being a continuous process industry on express feeder, had paid a higher tariff during the period from July 2009 till April 2010 to get supply without load-shedding. Thus, the Respondent had already paid a higher tariff for uninterrupted supply, negating the need for an additional reliability charge.



## HSA Viewpoint

The Supreme Court by way of this Judgment has categorically held that charges cannot be levied by any Discom on its consumers without any statutory basis under the Act. Industrial consumers are already paying higher tariffs which negate the need for the imposition of an additional reliability charge for implementing 'Zero Load Shedding'. This judgment will bring certainty and uniformity to electricity consumers.

## Bhadreshwar Vidyut Private Limited v. Maharashtra Electricity Regulatory Commission & Ors.

Appellate Tribunal for Electricity (APTEL) | Order dated May 31, 2024 | Appeal No. 89 of 2019, 103 of 2019 & 90 of 2019

### Background facts

- In the present case, the issue emerged between Bhadreshwar Vidyut Pvt Ltd (**BVPL/Appellant**), a Special Purpose Vehicle (**SPV**) that owns, operates and maintains a Captive Generating Plant (**CGP**) with an installed capacity of 300 MW, and Maharashtra State Electricity Distribution Company Limited (**MSEDCL/Respondent No.2**).
- The Appellant supplies power to various captive users located in multiple states including Maharashtra. Respondent No.2 levied Cross Subsidy Surcharge (**CSS**) and Additional Surcharge (**AS**), for the power supplied by the Appellant to its captive users in Maharashtra for the Financial Years 2015-16, 2016-17 and 2017-18, alleging that the Appellant had lost its captive status, which was required to be maintained annually in terms of Rule 3 of the Electricity Rules, 2005 (**2005 Rules**).
- Maharashtra Electricity Regulatory Commission (**MERC/ Respondent No.1**) through its common order dated February 22, 2019 directed Appellant to take the matter before Central Electricity Regulatory Commission (**CERC**), for determination of captive status for inter-state open access supply as the dispute is related to the open access transaction which was under the inter-state mode and was governed by CERC (Open Access in inter-State Transmission) Regulations, 2008.
- Appellant submitted that CERC has no jurisdiction, under Section 79 of Electricity Act (**EA**), 2003, to adjudicate the present dispute as Section 79(1)(f), the powers on the Central Commission is restrictive and confined only to disputes connected with clauses (a) to (d) of Sections 79(1) of the EA 2003, and the State Commission is the only authority under Section 86 of EA 2003 to adjudicate the present dispute.
- Appellant further submitted that the present case covers a situation where the Appellant, as a CGP, is sourcing power to a special category of consumers (called as captive users); and there is no supply/ sale of electricity since the same power is used for self-consumption as per Section 2(8) of the EA, 2003
- The Tribunal also appointed Amicus curiae to better evaluate and understand the issue. Amicus Curiae submitted that in case a generating company claims that it is supplying to a captive user (inter-state transaction), CERC has the powers to adjudicate the dispute and determine whether the captive user qualifies as a captive user in terms of Section 2(8) and Section 9 of the Electricity Act, 2003 and Rule 3 of the Electricity Rules, 2005; this will not be a case of lack of jurisdiction.

### Issues at hand

- Whether the jurisdiction to adjudicate the dispute related to the appellant's captive generating plant status under Rule 3(1) of the Electricity Rules, 2005 lie with the CERC or the MERC?

### Decision of the Tribunal

- The Tribunal observed that captive consumers or captive users are not liable to pay the additional surcharge under Section 42(4) of the Electricity Act, 2003. It noted that the additional surcharge under this subsection is not applicable to captive consumers, who are distinct from regular consumers defined under Section 2(15) of the Act.
- The Tribunal further clarified that Captive consumers form a separate class in itself and electricity generated by a captive generation plant for consumption by its captive users is considered as self-consumption of power. The said transaction does not amount to the supply or sale of electricity. Consequently, the authority to determine whether the Appellant qualifies as a captive generation plant does not fall under the jurisdiction of Section 79(1) and the status of a captive user has to be determined by the state commission. Only after establishing that the entity is not a captive

generation plant/captive user the dispute can be adjudicated by the CERC under Section 79(1) (for inter-state transaction).

- The APTEL finally held that the determination of whether the Appellant qualifies as a Captive Generation Plant, in accordance with Section 2(8) read with Section 9 of the Electricity Act and Rule 3(1) of the Electricity Rules 2005, falls under the jurisdiction of the State Commission as per Section 86(1)(f) of the Electricity Act, and not the CERC under Section 79(1)(f).



#### HSA Viewpoint

The Tribunal has passed a well-reasoned Order which is a favorable development in the country that also upholds the principles of judicial consistency. Tribunal's order provides a clear directive on the jurisdictional authority in determining the status of Captive Generation Plants. This approach not only ensures adherence to local regulatory frameworks but also supports the broader objective of maintaining a uniform regulatory practices.

## TP Kirnali Ltd v. Maharashtra State Electricity Distribution Company Ltd

Maharashtra Electricity Regulatory Commission's (MERC) | Order dated May 21, 2024 | Case No. 244 of 2022

### Background facts

- A Petition under Section 86 of the Electricity Act, 2003 (**Act**) read with Article 9 of the Power Purchase Agreements was filed by the Petitioner- T.P. Kirnali Limited (**TPKL**) seeking compensation for increase in the project cost on account of increase in rate of Goods & Services Tax (**GST**) and Basic Custom Duty (**BCD**) amounting to Change in Law (**CIL**) in terms of PPA dated September 16, 2020 as amended on October 25, 2021.

### Issues at hand

- Whether Ministry of Finance (**MoF**) Notification dated February 1, 2021, increasing BCD from 5% to 20% and Notification dated September 30, 2021 increasing GST from 8.9% to 13.8 % qualifies as CIL Event?
- Whether the Petitioner is entitled to claim a CIL compensation considering the undertaking dated September 9, 2021, given by it to MSEDCL?
- Whether the Petitioner is entitled for an increase in GST of INR 97.95 lakhs due to Difference in Invoice and Eway bill?
- Whether the Petitioner is entitled to claim to increase in GST INR 13.57 lakhs towards invoices post COD of the Project?
- Whether the claim of MSEDCL on Safeguard Duty is maintainable?

### Decision of the Tribunal

- With regard to the first issue, MERC observed that the Notifications dated February 1, 2021 and September 30, 2021 were subsequent to the last date of Bid Submission. Further, the said Notifications being issued by MoF, GoI satisfy the requirements of an 'Indian Government Instrumentality' under the PPA. Thus, an event arising from the actions of an authority covered withing the definition of 'Indian Government Instrumentality' would satisfy the requirement of CIL. Accordingly, MERC held that Notification dated February 1, 2021 and September 30, 2021 are CIL events under the PPA executed between the parties.
- Pertinently, while holding the above, MERC noted that the said Notifications have already been held to be CIL events in terms of its previous order dated May 27, 2023 in Case No. 174 of 2022 filed by Juniper Green Field Pvt. Ltd. for CIL)
- Further, while dealing with the next issue as to whether the Petitioner is entitled to claim CIL compensation considering its undertaking dated September 9, 2021 given to MSEDCL that it shall not claim any increase in the Project cost due to SCOD extension period, MERC held that in terms of its Order dated August 4, 2022 passed in Case No. 39 and 41 of 2022, the undertaking pursuant to the Office Memorandums (OMs) dated May 12, 2021 and June 29, 2021 cannot be held against the project developers, and thus, the Petitioner would be entitled to claim CIL compensation.
- In addition to the above, MERC also held that the Petitioner would be entitled to compensation of INR 97.95 Lakhs due to the difference in Invoice and Eway bill. In context of the issue as to whether the Petitioner would be entitled to claim an increase in GST of INR 13.57 Lakhs towards invoices post COD of the Project, MERC noted that the project achieved its COD on May 25, 2022 and the Petitioner raised the invoices on June 1, 2022, i.e., within 6 days from the COD. Accordingly, MERC was pleased to hold that Petitioner is entitled for GST compensation post COD of the Project.

- Lastly, with regard to the issue of carrying cost, MERC while relying on its Order dated May 17, 2022 in Case No. 5 of 2022 and following the principles of restitution allowed carrying cost at the rate of 1.25% plus SBI MCLR per annum on the compensation amount from the date of actual payment till date of the present Order.



HSA  
**Viewpoint**

MERC has passed a well-reasoned Order which is a favorable development for project developers in the country that also upholds the principles of judicial consistency. The Order reflects a robust regulatory framework that upholds contractual and statutory rights of project developers while ensuring fair compensation for unforeseen CIL events. This aligns with principles of equity and restitution, providing a conducive environment for sustainable infrastructure development.

## Tata Power Delhi Distribution Ltd v. Solar Energy Corporation of India Ltd

Delhi Electricity Regulatory Commission (DERC) | Order dated May 30, 2024 | Petition No. 75 of 2022

### Background facts

- A Petition under Section 86(1)(b) of the Act and in terms of DERC Comprehensive (Conduct of Business) Regulations, 2001 was filed by Tata Power Delhi Distribution Ltd (**TPDDL**) before DERC seeking approval of the Supplementary Power Sale Agreement (**SPSA**) to be executed between TPDDL and Solar Energy Corporation of India Ltd (**SECI**) for procurement of power from SBSR Power Cleantech Eleven Pvt Ltd (**SBSR**).
- TPDDL had entered into a Power Sale Agreement dated June 26, 2019 (Original PSA) with SECI for sale of 200 MW of solar power on a long-term basis. As per the terms of the Original PSA, SECI was to enter into Power Purchase Agreements with selected Solar Power Developers for procurement of 1200 MW solar power or the total capacity of projects elected under the provisions of Request for Selection, if it was less than 1200 MW, on a long-term basis.

### Issues at hand

- Whether DERC can grant approval of the SPSA to be executed between TPDDL and SECI for procurement of power from SBSR?

### Decision of the Tribunal

- DERC while following the directions of the Supreme Court passed vide its Order dated May 4, 2023 in Civil Appeal No. 6310 of 2021 noted that it has been directed to decide and dispose of the Petitions filed before it for approval of procurement of renewable power in schemes involving SECI. In this regard, it was noted that 150 MW out of 300 MW power from SBSR was already commissioned and proportionate sale of 100 MW was being made to TPDDL. Further, the balance 150 MW was a subject matter of proceedings before the CERC.
- Considering the fact that APTEL vide its Judgement dated July 2, 2021 in Appeal No. 52 of 2021 had set aside the Order dated December 31, 2020 in I.A. No. 1 of 2020 in Petition No. 65 of 2019 wherein the DERC had reduced the trading margin from INR 0.07/kWh to INR 0.02/kWh, DERC granted approval to the SPSA to be executed between Petitioner and the SECI for 200 MW power from SBSR at a total tariff of INR 2.68/kWh viz. tariff of INR 2.61/kWh plus INR 0.07/kWh as trading margin. However, DERC noted that the trading margin of INR 0.07/kWh shall be subject to the final outcome in the Civil Appeal No. 6310 of 2021, as directed by the Supreme Court of India vide its Order dated May 4, 2023.
- With regard to the balance 100 MW under the original PSA which was yet to start and was a subject matter of proceedings before the Ld. CERC, Ld. DERC directed the parties to intimate by way of an affidavit regarding commencement of the sale of the balance 100MW to the Petitioner within 30 days of its so commencing.



HSA  
**Viewpoint**

DERC's decision reflects a balanced approach while following the directions of the Supreme Court as well as considering the interests of all the parties while adhering to the legal and regulatory framework governing power procurement. The Commission's approach also aligns with the broader objective of promoting renewable energy adoption in Delhi while ensuring fair and transparent pricing mechanisms.

## CONTRIBUTIONS BY

**Molshree Bhatnagar** | Partner  
**Nimesh Jha** | Principal Associate  
**Rishabh Sehgal** | Senior Associate  
**Shubham Singh** | Associate  
**Samprati Singh** | Associate

**Nitish Gupta** | Partner  
**Nipun Sharma** | Principal Associate  
**Deepak Thakur** | Associate  
**Varnika Tyagi** | Associate  
**Divyansh Kasana** | Associate

**Shubhi Sharma** | Partner  
**Parichita Chowdhury** | Principal Associate  
**Kamya Sharma** | Associate  
**Aadarsh Bhardwaj** | Associate

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## CONTACT US



[www.hsalegal.com](http://www.hsalegal.com)



[mail@hsalegal.com](mailto:mail@hsalegal.com)



HSA Advocates

## PAN INDIA PRESENCE

**New Delhi**

Email: [newdelhi@hsalegal.com](mailto:newdelhi@hsalegal.com)

**Mumbai**

Email: [mumbai@hsalegal.com](mailto:mumbai@hsalegal.com)

**Bengaluru**

Email: [bengaluru@hsalegal.com](mailto:bengaluru@hsalegal.com)

**Kolkata**

Email: [kolkata@hsalegal.com](mailto:kolkata@hsalegal.com)