

MATTER UPDATE

HSA Advocates successfully represented M.B. Power (Madhya Pradesh) Limited before the Madhya Pradesh Electricity Regulatory Commission in proceedings concerning the true-up of generation tariff for its 2x600 MW Anuppur Thermal Power Project.

One of the key issues before the Ld. Madhya Pradesh Electricity Regulatory Commission (“MPERC”) was whether MB Power was entitled to gross-up its Return on Equity (“RoE”) notwithstanding the fact that, at the corporate level, it had not paid income tax during certain years owing to losses and unabsorbed depreciation arising from its other businesses. MPPMCL opposed the claim, inter alia, on the grounds that the claim was barred by limitation and that grossing-up could not be permitted in the absence of actual tax payment by the corporate entity.

In a significant order dated 29 May 2026, Ld. MPERC allowed MB Power’s claim for grossing-up of RoE with the applicable tax rate and approved consequential recovery of differential RoE for the period from FY 2015-16 to FY 2023-24 along with applicable Late Payment Surcharge as per the PPA executed between the parties.

Accepting MB Power’s submissions, the Ld. MPERC relied upon the judgments of the Hon’ble Appellate Tribunal for Electricity in Appeal Nos. 104, 105 and 106 of 2012 titled Tata Power Company Limited (Transmission) vs. Maharashtra Electricity Regulatory Commission, Appeal Nos. 283 of 2017, 131 of 2018 and 231 of 2018 titled Jaiprakash Power Ventures Limited vs. Madhya Pradesh Electricity Regulatory Commission, and Appeal No. 113 of 2022 titled Jaiprakash Power Ventures Limited vs. Madhya Pradesh Electricity Regulatory Commission. The Ld. Commission held that the regulated business must be evaluated on a standalone basis for determining entitlement to grossed-up RoE. It further observed that the applicable tariff regulations expressly contemplate grossing-up of RoE with the relevant tax rate and that such entitlement cannot be denied merely because the generating company has not paid tax at the aggregate corporate level.

In doing so, Ld. MPERC emphatically reaffirmed the principle that tariff determination must be undertaken with reference to the economics of the regulated business and not the overall financial position of the corporate entity. The Commission recognised that denying grossed-up

MATTER UPDATE

RoE on account of losses or tax shields arising from unrelated businesses would defeat the regulatory framework and undermine the assured return contemplated under the tariff regulations.

In addition to granting grossing-up of RoE, the Ld. MPERC approved various claims relating to additional capitalization of the Project. The Commission allowed capitalization of expenditure incurred towards the Flue Gas Desulphurisation (FGD) system, including discharge of liabilities, pre-operative expenses and incentives paid for early commissioning of the FGD system.

The Ld. MPERC also accepted MB Power's claim for sharing of gains arising from refinancing of project loans and permitted recovery of the corresponding amount from MPPMCL. Recognising that the refinancing exercise had resulted in a sustained reduction in borrowing costs, the Ld. Commission held that the resultant savings were required to be shared in accordance with the applicable tariff regulations. Further, the Ld. Commission approved the trued-up annual fixed charges for the relevant years, including depreciation, interest on loan capital, operation and maintenance expenses, water charges, security expenses, fly ash transportation expenses and interest on working capital, and directed recovery of the resultant tariff gap through future tariff adjustments.

The matter was argued by **Hemant Sahai** (Managing Partner) and he was assisted by **Nitish Gupta** (Partner), **Tushar Shrivastav** (Associate Partner) and **Aastha Bansal** (Associate).