

# GATI - विधि

-LAW IN ACTION



## Legal Updates

**Adani Power  
Maharashtra  
Limited (APML) vs  
Maharashtra  
Electricity  
Regulatory  
Commission & Anr.**

The Appellate Tribunal for Electricity (“**APTEL**”) in *Adani Power Maharashtra Limited (“APML”) vs Maharashtra Electricity Regulatory Commission & Anr., Appeal No. 116 & 155 of 2019*, observed that every government directive or policy which has the force of law and seeks to alter, modify or replace the coal allocation regime contained in National Coal Distribution Policy, 2007 (“**NCDP 2007**”) would be treated as its successor and to the extent coal supply up to 100% of normative requirement is not provided to the generating companies, there will be a case of Change in Law as per the principles laid down by the Supreme Court in *Energy Watchdog* case and the terms of the Power Purchase Agreements (“**PPAs**”). Accordingly, it was held that the SHAKTI Policy, having continued restriction on coal supply even after the 12<sup>th</sup> Plan Period (31.03.2017), is an event of Change in Law.

The APTEL observed that both, the Ministry of Power (“**MoP**”) letter dated 31.07.2013 and the Tariff Policy, 2016 do not restrict the Change in Law relief to the minimum supply quantity specified in the NCDP 2013, rather the relief is to be allowed to the extent of shortfall against the quantity specified in the Letter of Award (“**LoA**”)/Fuel Supply Agreement (“**FSA**”). Further, the shortfall has to be determined against the 100% quantity assured under the NCDP 2007, which was the regime prevailing on the respective cut-off dates, *vis-à-vis* actual supply. Thus, the APTEL held that the finding of Maharashtra Electricity Regulatory Commission (“**MERC**”) on the issue of restricting the quantum of shortfall of domestic coal to a maximum of 25% of ACQ violates the fundamental principles of restitution under the Change in Law provisions under the PPAs.

In so far as preparation of Merit Order Dispatch (“**MOD**”) stack is concerned, the APTEL opined that the normal practice is to prepare MOD on the basis of the energy charge bill of (n-1)th or (n-2)th month in the order of precedence. Therefore, the impact of a regular or consistent usage of alternate coal gets

reflected in the MOD stack, albeit with the lag of one or two months. The APTEL, thus, held that the advance intimation requirement as directed by the MERC is not consistent with the normal rules of MOD preparation and does not provide a level playing field for Independent Power Producers (“IPPs”) leading to discrimination.

The MERC has, vide notification dated 25.09.2020, notified the operationalisation of principles for Merit Order Dispatch stack and provisions of technical minimum at 55% along with compensation mechanism as specified under the MERC (State Grid Code) Regulations, 2020. The salient features are as following:

- The principles for MOD stack (for operation of intra-state generating station connected to intra-state transmission system) specified in Regulation 33 of the MERC (State Grid Code) Regulations, 2020 (“**MEGC**”) shall be operationalised under existing Final Balancing and Settlement Mechanism (“**FBSM**”) framework, subject to operational governing principles and commercial settlement mechanism under the FBSM regime from the month of October, 2020.
- The timelines specified in Regulation 33 of the MEGC for submission of required information by sellers to buyers and from buyers to Maharashtra State Load Despatch Centre (“**MSLDC**”) shall be operationalised by all stakeholders and MSLDC.
- MSLDC is required to prepare and publish the MOD stack on its website in the specified formats on the 15th day of every month from the month of October, 2020, which would be effective from the 16th day of the month till the 15th day of the subsequent month, unless revised by MSLDC.
- The provisions of technical minimum of 55% along with compensation mechanism as specified in Regulation 34 and Annexure-4 of MEGC shall be operationalised under the existing FBSM framework, subject to operational governing principles and commercial settlement mechanism under FBSM regime from the month of October, 2020.
- The provisions of Regulation 34 and Annexure-4 of the MEGC shall be implemented by MSLDC while scheduling of generating units from the 16th day of the month of October, 2020 and appropriate compensation shall be payable to the generating units as specified in Regulation 34 and Annexure-4 of MEGC.

**MERC notifies MOD stack, provisions of technical minimum and compensation mechanism**

MERC has issued the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 on 21.09.2020 (“**CGRF Regulations 2020**”). The CGRF Regulations 2020 are to be construed harmoniously with the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (“**Standards of Performance**”) and the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (“**Supply Code**”). In case of any inconsistency with the CGRF Regulations 2020, the Standards of Performance and the Supply Code shall prevail.

The CGRF Regulations 2020 supersede the MERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2006 (“**CGRF Regulations 2006**”). However, the provisions of the CGRF Regulations 2006 shall continue to apply to all proceedings pending under it.

Ministry of New and Renewable Energy (“**MNRE**”), vide Order dated 25.09.2020, issued an amendment to the earlier Order dated 18.06.2019 and the subsequent amendment thereto dated 20.09.2019 and 09.12.2019. MNRE vide its Order dated 18.06.2019 set up a dispute resolution mechanism for resolving disputes in the wind and solar sector, in an expeditious manner. It also provided for the composition and the eligibility conditions of the Dispute Resolution Committee (“**DRC**”). Vide order dated 25.09.2020, the following amendments were issued:

- NHPC has been added in addition to SECI/NTPC as one of the entities against whose decisions, an appeal can be filed before DRC.
- The fee payable, in the event of Extension of Time dispute, has been reduced from 5% to 1% of the impact of SECI/NTPC/NHPC’s decision being challenged.
- The maximum amount of Performance Bank Guarantee reduced from Rs. 1 crore to Rs. 50 lacs.

**MERC issues the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020**

**MNRE amends order for setting up of a Dispute Resolution Mechanism**

## MoP issues Draft Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020

MoP vide Notification dated 01.10.2020 issued Draft Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020 (“Draft Rules”) and has invited comments from stakeholders within 21 days from the date of the letter i.e. by 22.10.2020. Some of the salient features of the Draft Rules are as under:

- Definition of change in law;
- Methodology for adjustment in tariff on occurrence of change in law including:
  - Time period.
  - The bidding document or PPA to lay down the formula according to which pass through shall be calculated and recovered.
  - Where the bidding document or PPA does not include the formula for pass through, the appropriate government may prescribe a formula by notification or direct that the formula given in the Draft Rules shall be followed.
  - Pass through shall be recovered along with tariff and shall form part of tariff and it shall be calculated and come into effect automatically after 30 days of change in law event.
- Must-run status to wind, solar, wind-solar hybrid or hydro power or a power plant from any other source of renewable energy, having a PPA to sell to any person.
- The power from a must-run plant may be curtailed or regulated in the event of any technical constraint in the electricity grid or for grid security reasons.
- In the event of such curtailment of a must run power plant, compensation shall be payable by procurer to generator at rates prescribed in the PPA. In case the notice for curtailment is received at least 24 hours in advance from the scheduled supply, it shall mandatorily sell the power not scheduled in the Power Exchange and the amount realised by power plant from sale of power, shall be adjusted against the compensation payable, on monthly basis.
- Where rate of compensation is not laid down in PPA, it shall be at 75% of the PPA rate per unit.
- Intermediary procurer allowed to procure power through a transparent bidding process for sale to distribution licensees.
- In case of bucket filling basis, the weighted average of all bids received shall be the resultant bid rate for the bid.
- For agreements signed prior to the coming into effect of these rules, the tariff applicable shall be the weighted average tariff of all suppliers selected in the same bidding process; the weighted average tariff shall be adopted after hearing the parties concerned; tariff shall be trued up by Appropriate Commission on yearly basis.
- Trading licensees allowed to retain trading margin as specified in the agreements/ regulations/ determined by Commission.
- Formula to calculate adjustment in the monthly tariff due to the impact of change in law, which is non-recurring in nature.

The Petroleum and Natural Gas Regulatory Board (“**PNGRB**”) on 25.09.2020 has notified the PNGRB (Gas Exchange) Regulations, 2020 (“**Gas Exchange Regulations**”) to regulate the establishment and operation of the Gas Exchange and Clearing Corporations.

The Gas Exchange Regulations will be applicable to day ahead contracts, intra-day contracts and term ahead contracts for natural gas or LNG as well as pipeline capacity contracts and any new contract for trading of natural gas or LNG, including those with price linkage to other established markets or reported indices in India or otherwise. Membership under the Gas Exchange Regulations may be of four categories: Trading Members, Clearing Members, Trading and Clearing Members, and Proprietary Members.

The gas exchange shall ensure objectives of fair, neutral, efficient and competitive price discovery and design contracts to increase liquidity. The bidding mechanism can be auction and/or continuous trade process. Market design shall complement the safety and reliability of natural gas pipelines. Physical market design shall not compromise with safety and integrity of natural gas pipelines.

Every authorized gas exchange or clearing corporation shall have a minimum net worth of Rs. 25 Crores at all times. In case the Clearing Corporation is an integral part of Gas Exchange, the minimum net worth requirement shall be as applicable for Gas Exchange. Regulations 18-20 provide the

## PNGRB notifies Gas Exchange Regulations

shareholding pattern for equity holders in the gas exchange and clearing corporation as well as the criteria of fit and proper person for directors and key managerial personnel. Schedule 4 provides the Code of Conduct for the directors on the board of directors of gas exchanges or clearing corporations and Schedule 5 provides the Code of Ethics for directors and key management personnel of gas Exchanges or clearing corporations.

**PNGRB notifies amendment to PNGRB (Levy of Fees and Other Charges) Regulations**

PNGRB on 25.09.2020 has notified the PNGRB (Levy of Fees and Other Charges) (Second Amendment) Regulations, 2020 to provide for the levy of fee and other charges for entities seeking authorisation and/or renewal of authorisation as a gas exchange/clearing corporation under the Gas Exchange Regulations.

PNGRB has sought views/comments on the PNGRB (Determination of Transportation Rate for CGD and Transportation Rate for CNG) Regulations, 2020 ("**Draft CGD & CNG Regulations**"). The Draft CGD & CNG Regulations propose to repeal PNGRB (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008.

The draft CDG & CNG Regulations state that these regulations shall apply, immediately at the end of the period of exclusivity from the purview of common or contract carrier, pursuant to 2008 Regulations. The exclusivity period, as per the 2008 Regulations, to lay, build, operate or expand a city or local natural gas distribution w.r.t. common carrier or contract carrier is eight years subject to conditions set out in 2008 Regulations. It is stated that the Draft CGD & CNG Regulations will apply to the following entities:

- Entity authorized by the Central Government before the appointed day i.e. date of appointment of PNGRB
- Entity not authorized by the Central Government before the appointed day
- Entity authorised to lay, build, operate or expand any pipeline as a common carrier or contract carrier and lay, build, operate or expand any city or local natural gas distribution network, under the PNGRB Act

The last date for submitting comments on the Draft CGD & CNG Regulations is 14.10.2020.

The Companies (Amendment ) Bill, 2020 which was introduced in both the houses of the parliament on 17.03.2020 was passed by the Lok Sabha on 19.09.2020 and by the Rajya Sabha on 22.09.2020, received the president's assent on 28.09.2020 and has been subsequently notified by the Ministry of Law and Justice. The amendments to the Companies Act, 2013 ("**Act**") have been made to facilitate ease of doing business in India. Following are the key amendments to the Act:

- Decriminalisation of certain offences under the act in case of defaults which can be determined objectively and lack any element of fraud or do not involve larger public interest.
- In consultation with SEBI, the Central Government would be empowered to exclude a certain class of companies from the definition of 'listed company' mainly for listing of debt securities i.e. generally when the shares of a company are not listed but debentures of such company are listed on the recognized stock exchange.
- Incorporation of a new Chapter XXIA in the Act relating to Producer Companies.
- To set up Benches of the National Company Law Appellate Tribunal.
- Provisions for allowing payment of adequate remuneration to non-executive directors (including independent directors) in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases have been incorporated.
- Relaxed provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403.
- Extended applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups.

**Companies (Amendment) Act, 2020**

- Power to exempt any class of persons from complying with the requirements of section 89 of the Act relating to declaration of beneficial interest in shares and exempting any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;
- Reduced the timelines for applying for rights issues so as to speed up such issues under section 62;
- Extended exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117;
- Companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees shall not be required to constitute the Corporate Social Responsibility Committee and eligible companies under section 135 have been allowed to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;
- Allowed direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed.

The rampant spread of the virus in the world, and more specifically in India, has called for relaxations in corporate compliance requirements. Click [here](#) to access the consolidated note on corporate compliance relaxations amid COVID-19.

**Corporate  
compliance  
relaxations due to  
COVID – 19**

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