

GATI - विधि

-LAW IN ACTION



Legal Updates

The Appellate Tribunal for Electricity (“**APTEL**”) has, vide order dated 16.07.2021 in *Pipeline Infrastructure Limited v. Petroleum & Natural Gas Regulatory Board*, taken serious note of the non-declaration of capacity by the Petroleum & Natural Gas Regulatory Board (“**PNGRB**”) for the appellant’s pipeline within a specified time which can have impact on tariff determination as well as open access obligations. The APTEL noted that even after issuing specific time-bound directions to the PNGRB, the capacities for the appellant’s pipeline had not been declared from FY 2010-11 onwards till date - which was a lapse of more than 10 years.

In view of the above, the APTEL noted, *inter alia*, that the PNGRB is responsible for the speeding up of the Government of India’s Vision on Gas Economy; thus, it was necessary to have infrastructure laid as per schedule. Further, safe operation is also equally essential for the hydrocarbon sector. Therefore, APTEL directed the PNGRB to, *inter alia*:

- (a) File affidavit with an explanation for the delay in deciding the present case;
- (b) Develop a governance standard operating procedure (“**SOP**”) to deal with disputes, i.e. processing processes in line with Sections 24 and 25 of the PNGRB Act, 2006 along with benchmark timelines, and to submit the same to APTEL through an affidavit;
- (c) Submit a six-monthly report on an affidavit to APTEL on the status of all cases covered on point (b) above which were pending for more than three months;
- (d) File an affidavit every six months on status of all infrastructure projects including City Gas Distribution networks under the purview of PNGRB, including catch up plan; and
- (e) Issue guidelines to have a review mechanism at the board level ensuring safety and security (including cyber security) for ensuring safety in hydrocarbon sector.

APTEL issues directions to PNGRB to, *inter alia*, develop governance SOP for dealing with disputes

APTEL, in *Talwandi Sabo Power Limited v. Punjab State Electricity Regulatory Commission and Ors.* (Appeal no. 220 and 317 of 2019), took up the challenge to orders dated 11.04.2019 and 30.08.2019 passed by the Punjab State Electricity Regulatory Commission (“**PSERC**”) whereby the incremental cost incurred by Talwandi Sabo Power Limited (“**TSPL**”) in procurement of alternate/ imported coal on behalf of Punjab State Power Corporation Limited (“**PSPCL**”) was disallowed. APTEL set aside the impugned orders of the PSERC and directed PSPCL to make payments for the differential amount on account of alternate sourcing of coal by TSPL along with late payment surcharge. While giving the said directions, APTEL gave the following reasons:

- (a) All bidding documents i.e., Competitive Bidding Guidelines, request for proposal, memorandum of understanding and the power purchase agreement (“**PPA**”) expressly state that it was the obligation of PSPCL to sign the fuel supply agreement (“**FSA**”) and arrange adequate quantity and quality of coal to TSPL project. Therefore, anything contrary cannot be implied under the schedule of PPA. It is well settled that when express inclusions are specified, anything not mentioned expressly is excluded. Therefore, the expression ‘*expressum facit cessare tacitum*’ applies;
- (b) Despite PSPCL’s failure to assign FSA and arrange supply of coal, in order to ensure uninterrupted power supply to PSPCL, TSPL has been arranging the coal from Mahanadi Coalfields Limited (“**MCL**”) on behalf of PSPCL in terms of interim FSA signed on ‘without prejudice’ basis from MCL / others as per the directions of APTEL in the order dated 18.04.2013. Hence, in such situation, when TSPL procures the coal itself, then PSPCL ought to pay the energy charges. Moreover, the obligation to supply coal does not necessarily mean that PSPCL only has to pay for the coal; and
- (c) TSPL took all reasonable possible measures to mitigate the damage so as to operate the plant continuously and to avoid usage of alternate coal.

The Ministry of Power (“**MoP**”), vide its office memorandum dated 20.07.2021 issued the “Revamped Distribution Sector Scheme: A Reforms-Based and Results-Linked Scheme” (“**Scheme**”) with the objective of improving quality and reliability of power supply to consumers through a financially sustainable and operationally efficient distribution sector, and reducing aggregate technical & commercial losses to pan-India levels of 12-15% and the average cost of supply (ACS)-average revenue realised (ARR) gap to zero by 2024-25. The salient features of the Scheme are as follows:

- (a) The Scheme has two parts:
 - (i) Part ‘A’ – Financial support for upgradation of the distribution infrastructure and prepaid smart metering and system metering; and
 - (ii) Part ‘B’ – Training and capacity building and other enabling and supporting activities. Part B of the Scheme will be fully funded by grant through Central / State Governments.
- (b) In order to avail funding under Part A, an eligible distribution company (“**DISCOM**”) is required to prepare an action plan for strengthening their distribution system and improving its performance by way of various reform measures, which would result in improvement in their operational efficiency and financial viability as well as to improve the quality and reliability of power supply to the consumers. A DISCOM which is making losses will not be able to access funds under the Scheme unless it draws up a plan to reduce the losses, get the State Government’s approval for the same and file the same with the Central Government.
- (c) All State-owned DISCOMs and State / UT power departments, excluding private sector power companies will be eligible for financial assistance under the Scheme. For distribution system upgradation works, maximum financial assistance given to DISCOMs of “Other than Special Category States” will be 60% of the approved cost, while for DISCOMs in “Special Category States”, the maximum financial assistance will be 90% of the approved cost.
- (d) An inter-ministerial monitoring committee for the Scheme will be constituted under the chairmanship of Secretary, MoP. The monitoring committee will frame and approve all operational guidelines, sanction all action plans and detailed project reports under Part B, and review and monitor implementation of Scheme including review of third-party mid-term

APTEL holds that Punjab State DISCOM is liable pay the cost of alternate coal incurred by thermal power generator

Ministry of Power issues office memorandum regarding “Revamped Distribution Sector Scheme: A Reforms-Based and Results-Linked Scheme”

evaluation of the Scheme carried out by the nodal agency. REC Limited and Power Finance Corporation Limited will be the nodal agencies for the Scheme.

- (e) The State Governments and their DISCOMs will sign a tripartite agreement with the Central Government before availing benefits under the Scheme.
- (f) The duration of the Scheme is five years (FY 2021-22 to FY 2025-26). The sunset date for the Scheme will be 31.03.2026.
- (g) The nodal agencies will submit monthly progress report indicating both financial and physical progress on the implementation of the Scheme to MoP and the Central Electricity Authority.

The detailed guidelines for the implementation of the Scheme will be issued separately.

The Ministry of Corporate Affairs (“MCA”) has, vide notification dated 22.07.2021, notified the Companies (Incorporation) Fifth Amendment Rules, 2021 (“Amendment Rules”) which shall come into force from 01.09.2021. The Amendment Rules insert a new Rule 33A in the Companies (Incorporation) Rules, 2014 which provides for allotment of a new name to an existing company under Section 16(3) of the Companies Act, 2013 (“CA 2013”).

The Amendment Rules provide that in case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under Section 16(1) of the CA 2013 within a period of three months from the date of issue of such direction, the letters “ORDNC” (which is an abbreviation of the words “Order of Regional Director Not Complied”); the year of passing of the direction; the serial number; and the existing Corporate Identity Number of the company will become the new name of the company, without any further act or deed by the company. The concerned Registrar of Companies (“RoC”) will accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No. INC-11C.

A company whose name has been changed as aforesaid will be required to at once make necessary compliance with the provisions of Section 12 of the CA 2013 and the statement “Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)” will have to be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved. No such statement will be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of Section 13 of the CA 2013.

The MCA has, vide notification dated 22.07.2021, appointed 01.09.2021 as the date on which the amendments to Section 16 of the CA 2013 - relating to rectification of name of company - shall come into force. Section 16 of the CA 2013 was amended vide the Companies (Amendment) Act, 2020. The amendments provide that a company will be required to change its name within a period of three months (earlier six months) from the issue of direction by the Central Government, if in the opinion of the Central Government (and on an application by a registered proprietor of a trade mark), the name is identical with or too nearly resembles an existing trademark.

Further, if a company is in default in complying with the aforesaid direction, the Central Government will allot a new name to the company and the RoC will enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company will use thereafter. A company will not be prevented from subsequently changing its name in accordance with the provisions of Section 13 of the CA 2013.

MCA issues the Companies (Incorporation) Fifth Amendment Rules, 2021

MCA notifies commencement date for coming into force of amendments to Section 16 of the CA 2013 relating to rectification of name of company

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