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-LAW IN ACTION



Legal Updates

MoP issues clarification for late payment surcharge in view of nationwide lockdown

Ministry of Power (“**MoP**”) vide letter dated 06.04.2020, with reference to its earlier order 27.03.2020 and letter dated 28.03.2020, has issued clarifications with respect to late payment surcharge (“**LPS**”) in view of the force majeure situation arisen due to Covid-19. The same are provided below:

- The obligation to pay for power within 45 days of the presentation of the bill or as provided in the PPA remains unchanged.
- LPS shall apply at reduced rate only for the period between 24.03.2020 to 30.06.2020 (on those payments that become overdue during the period between 24.03.2020 to 30.06.2020 and not on those payments which were already overdue before 24.03.2020) and after 30.06.2020 the delayed payment surcharge shall be payable at rates given in the power purchase agreement (“**PPA**”)/regulations.
- Obligation to pay for capacity charges as per the PPA shall continue, as does the obligation to pay for transmission charges.

The letter further states that efforts are being made to infuse some liquidity in the power sector, the details of which would be shared with the distribution licensees. In the meanwhile, distribution licensees may also raise funds, if required, to meet this crisis.

MNRE clarifies curtailment of RE during lockdown would amount to deemed generation

Ministry of New and Renewable Energy (“**MNRE**”) has issued office memorandum (“**O.M.**”) dated 04.04.2020 with reference to its earlier O.M. dated 01.04.2020, wherein it was clarified that renewable energy generating stations’ ‘must-run’ status remains unchanged during Covid-19 lockdown period. Vide O.M. dated 04.04.2020, MNRE has once again clarified that renewable energy retains ‘must-run’ status and that any curtailment, but for reasons of grid safety, would amount to deemed generation.

MNRE extends effective date for implementation of 'Approved List of Models and Manufacturers'

The MNRE, with the objective of ensuring reliability of solar photovoltaic (“PV”) manufacturers by ensuring that solar PV cells and modules are indeed made in units in which production has been claimed, had issued “Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019” on 02.01.2019. The said order provided for enlistment of eligible models and manufacturers of solar PV cells and modules complying with the BIS Standards and published the same in a list called the “Approved List of Models and Manufacturers” (“ALMM”). The order further provided that for LIST-I (solar PV modules) and LIST-II (solar cells), the effective date for implementation would be 31.03.2020, after which date all government projects/government assisted projects under government schemes and programmes shall have to source their modules from models and manufacturers from ALMM LIST-I, which in turn source their solar cells from manufacturers enlisted in ALMM LIST- II.

However, due to disruptions on account of Covid-19 and the current lockdown, vide O.M. dated 07.04.2020, the effective dates for ALMM LIST-I and ALMM LIST-II have been extended by 6 months from 31.03.2020 i.e. till 30.09.2020.

MNRE vide O.M. dated 13.04.2020, has issued an amendment to its earlier order dated 05.03.2019 regarding ‘Scheme Guidelines for Central Public Sector Undertaking (“CPSU”) Scheme Phase-II’ (Government Producer Scheme). The key amendments have been captured below:

MNRE issues amendment to Guidelines for Central Public Sector Undertaking Scheme Phase-II

- Indian Renewable Energy Development Agency Limited (“IREDA”) has replaced Solar Energy Corporation of India Limited (“SECI”) as the nodal agency for the purpose of conducting bidding amongst government producers for allocation of solar power project under the scheme.
- Viability gap funding (“VGF”) provided under the scheme can be used by the government producers as their equity in solar power project being set by them. Further, if a government producer sets up solar PV power project under CPSU Scheme in an ultra-mega renewable energy power park (“UMREPP”)/solar park, the producer will be eligible to both central financial assistance as per UMREPP/solar park scheme as well a VGF under CPSU Scheme.
- All requests regarding time extension or dispute resolution on force majeure events which were to be dealt with by SECI, are now to be referred to IREDA.
- Where earlier, solar power projects were given 18 months for commissioning from date of issuance of letter of award, now solar power projects under the scheme shall be commissioned within a period of:
 - (i) For projects up to 500 MW capacity - 24 months from date of letter of award
 - (ii) For projects with more than 500 MW capacity – Capacity up to 500 MW must be commissioned within 24 months from date of letter of award and the balance capacity to be commissioned within next 6 months.
- A new clause has been inserted providing that notwithstanding anything contained in the guidelines, IREDA shall be permitted to allot solar PV project capacities under CPSU Scheme of up to 50MW to any willing government entity at the L1 rate discovered in the most recent last bidding within 4 months of such bidding. Such entity would not be required to participate in the bidding but is required to fulfil qualification requirements. Further, the limit of 50MW is w.r.t. project capacities being allotted to one government entity for the duration between the two bids under CPSU Scheme by IREDA.

CERC issues Terms & Conditions of Tariff (First Amendment) Regulations, 2020

Central Electricity Regulatory Commission (“CERC”) vide notification dated 13.04.2020 has notified the CERC (Payment of Fees) (Second Amendment) Regulations, 2020 amending the CERC (Payment of Fees) Regulations, 2012 (“Principal Regulations”) w.e.f. 01.04.2020. The said amendment seeks to modify regulation 7 of the Principal Regulations which provides the annual license fee for various categories of trading license granted by CERC under CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 as well as CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009.

CERC implements directions of MoP regarding reduction of late payment surcharge

CERC vide order dated 03.04.2020 in Suo Motu Petition No. 6/SM/2020 has implemented the directions of the Government of India, issued by the Ministry of Power (“MoP”) on 28.03.2020 under section 107 of the Electricity Act, 2003 (“Electricity Act”), regarding reduction of LPS. The directions issued by CERC are summarised hereinbelow:

- Generating companies (“**Gencos**”) and inter-state transmission licensees (“**ISTS**”) can opt for moratorium on payment of instalments of term loan and defer the payment of interest in respect of working capital facilities during the period from 01.03.2020 up to 31.05.2020, without waiving the interest accrued which shall be recovered immediately after the completion of this period at the rate prescribed by the lending institutions/banks.
- Adoption of a normative rate of LPS @ 12% p.a. in place of the penal rate of LPS specified under regulation 59 of the CERC (Terms and Conditions of Tariff) Regulations, 2019 (“**2019 Tariff Regulations**”), for delayed payments beyond 45 days of the bills issued during the period between 24.03.2020 to 30.06.2020 by the distribution companies (“**Discoms**”). However, the Discoms shall be liable to pay the LPS as per regulation 59 of the 2019 Tariff Regulations in case of delayed payment of bills issued before 24.03.2020 or after 30.06.2020.
- The beneficiaries of Gencos and ISTS will continue to avail rebates under regulation 58 of the 2019 Tariff Regulations in case of timely payment.
- In case of Gencos and ISTS whose tariffs have been determined under section 63 of the Electricity Act, the LPS shall be governed as per their respective PPAs and transmission service agreements read with the CERC (Sharing of Transmission Charges and Losses) Regulations, 2010.

CERC vide order dated 06.04.2020 in Suo Motu Petition No. 7/SM/2020 has granted extension of time to file petitions for determination of tariff by relaxing the provisions of regulation 9(2) of the 2019 Tariff Regulations. CERC has taken note of the delay caused in audit of tariff filing forms and compilation of information due to outbreak of Covid-19. Accordingly, CERC has permitted the generating companies to file the tariff petitions for 2019-24 period along with truing up petitions for 2014-19 period, by 30.06.2020, where tariff orders for 2014-19 have been issued. However, it has been clarified that in case of the existing generating stations/units or existing transmission assets, where final orders for the 2014-19 period are yet to be issued, the filing of tariff petitions for truing up of tariff of the 2014-19 tariff period and determination of tariff for the 2019-24 period shall be governed by order dated 28.10.2019.

Vide addendum dated 07.04.2020, CERC has clarified that the time extension granted to generating companies up to 30.06.2020 shall be applicable to transmission licensees, including deemed transmission licensees, which are regulated by CERC.

Maharashtra Electricity Regulatory Commission (“**MERC**”) vide order dated 02.04.2020 in Case No. 77 of 2020 under the MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2019 (“**Tariff Regulations 2019**”) has determined the generic tariff for Renewable Energy (“**RE**”) projects for FY 2020-21, applicable with effect from 01.04.2020. MERC has observed that the scope of determination of generic tariff under Tariff Regulations 2019 is limited to the notification of generic tariff for solar rooftop PV projects and determination of variable charge for biomass and non-fossil fuel-based co-generation projects. It was further observed that an independent study was to be initiated by MERC to evaluate the district-wise biomass and bagasse fuel availability and their prices including transportation cost, loading/unloading cost, escalation factor for fuel price, etc. in the state of Maharashtra, for the purpose of determination of variable charge/fuel cost as provided under regulation 46 and regulation 56 of the Tariff Regulations 2019. However, the same has not been initiated in the prevailing circumstances of Covid-19 and in the interim, the existing variable charges for biomass and non-fossil fuel based co-generation projects as determined under RE Tariff Order dated 30.04.2019 shall continue on provisional basis. Further, any variation in variable cost determined through the study commissioned hereinafter will be applicable as a variable charge for 2020-21 and shall be adjusted in subsequent bills. Accordingly, MERC has notified Rs. 2.83/kWh as the generic tariff for rooftop PV projects, variable charge for existing biomass based RE project is Rs. 5.55/kWh and for non-fossil fuel based co-generation projects is Rs. 4.38/kWh.

Petroleum and Natural Gas Regulatory Board (“**PNGRB**”) vide various public notices dated 13.04.2020 has extended the time period for submission of views/comments for the following draft regulations/amendments till 30.04.2020, due to the current situation of country-wide lockdown in wake of Covid-19 disease:

- Draft PNGRB (Technical Standards and Specifications including Safety Standards for Refineries and Gas Processing Plants) Regulations, 2020.

CERC grants extension of time to file tariff petitions

MERC issues Generic Renewable Energy Tariff for FY 2020-21

PNGRB extends time period for submission of comments on various draft regulations / amendments

- Amendment to PNGRB (Codes of Practices for Emergency Response and Disaster Management Plan (ERDMP)) Regulations, 2010.
- Amendment to PNGRB (Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Network) Regulations, 2008.
- Amendment to PNGRB (Technical Standards and Specifications including Safety Standards for Retail Outlets dispensing Petroleum, Auto LPG and CNG) Regulations, 2018.

PNGRB has also clarified that the open house discussion scheduled on 27.04.2020 at PNGRB, New Delhi stands deferred until further notice.

The Telecom Regulatory Authority of India (“**TRAI**”) has released its recommendations on “Interoperability of Set-Top Box” on 10.04.2020 (“**Recommendations**”). The Recommendations have been finalized by TRAI pursuant to responses received from stakeholders on the consultation paper on “Interoperability of Set-Top Box” dated 11.11.2019 issued by TRAI, and an open house discussion on 29.01.2020. The salient features of the Recommendations are as follows, *inter alia*:

- All Set-Top Box (“**STBs**”) are required to support technical interoperability in principle, i.e. every STB provided to a consumer is required to be interoperable.
- The interoperability of STBs shall be applicable within the direct-to-home (“**DTH**”) segment and within the cable segment respectively due to technical and commercial constraints with respect to universal interoperability of STBs.
- The MIB may notify mandatory use of Digital Video Broadcasting Common Interface (“**DVB CI**”) Plus 2.0 (with USB CAM) as per the ETSI TS 103 605 specifications both for DTH STBs and STBs being used by multi-system operators (“**MSOs**”) from a prospective date through licensing conditions / vide amendment to the Cable Television Networks Rules, 1994 / through any other appropriate mechanism. Direct-to-home operators and MSOs may be provided a time of six months to adopt DVB CI Plus 2.0 (with USB CAM) as per the ETSI TS 103 605 specifications from the date of MIB notification.
- The MIB may set up a coordination committee with members from the MIB, MeitY, TRAI, BIS as well as representatives of TV manufacturers which may steer implementation of revised STB standards for both the DTH and the cable TV segment in a time-bound manner. The committee may further maintain oversight with respect to setting up of digital TV standards by BIS to provide for DVB CI Plus 2.0 port based on ETSI TS 103 605 standards and to have provision for reception of both DTH and cable TV signals.

TRAI releases its recommendations on “Interoperability of Set-Top Box”

MCA relaxes procedure related to transfer of money and transfer of shares under section 124(5) and 124(6) of the Companies Act, 2013

Ministry of Corporate Affairs (“**MCA**”) vide General Circular No. 16/2020 dated 13.04.2020 has relaxed the procedure related to transfer of money and transfer of shares under section 124(5) and section 124(6) of the Companies Act, 2013 (“**CA 2013**”) read with Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (“**IEPFA Rules**”) due to outbreak of COVID-19. The direction came to be passed in view of the representations received by MCA in seeking relaxation in procedures related to transfer of money remaining unpaid or unclaimed for a period of seven years to Investor Education and Protection Fund (“**IEPF**”) in terms of provision of section 124(5) of CA 2013 and transfer of shares in respect of which dividend has not been paid or claimed for seven consecutive years or more under section 124(6) of CA 2013 read with IEPFA Rules. In this regard, MCA had already allowed filing of various forms including IEPF e-forms and e-verification of claims filed in e-form IEPF-5 without additional fees till 30.09.2020 vide General Circular No. 11/2020 dated 24.03.2020 and General Circular No. 12/2020 dated 30.03.2020. Therefore, MCA has issued General Circular No. 16/2020 to align the timelines for the transfer of money and transfer of shares under section 124(5) and 124 (6) of CA 2013 and other concomitant actions thereto.

MCA issues clarification on passing of ordinary and special resolutions under CA 2013

MCA vide General Circular No. 14/2020 dated 08.04.2020 has allowed companies to hold extraordinary general meetings (“**EGMs**”) through video conferencing (“**VC**”) or other audio visual means (“**OAVM**”) complemented with e-voting facility without requiring the shareholders to physically assemble at a common venue on or before 30.06.2020. The same has been issued in view of the several representations received by MCA for providing relaxations in the provisions of the CA 2013 and rules and regulations framed thereunder to allow companies to pass ordinary and special resolutions of urgent nature, in view of the difficulties faced by the stakeholders on account of threat

posed by COVID-19.

Under CA 2013, listed companies and companies with 1000 or more shareholders need to provide e-voting facility. Therefore, MCA has directed that such companies shall provide e-voting facility for conducting EGMs through VC or OAVM. For other companies, a simple procedure of voting through registered emails has been put in place. As the meetings will be conducted over VC/OAVM, the facility for appointment of proxies has been dispensed with, while representatives in accordance with section 112 and 113 of CA 2013 will continue to get appointed for participation in such meetings. As an additional check, all companies using this option are required to maintain a recorded transcript of the entire proceedings in safe custody, and public companies are also required to host this transcript on their website, if any, for greater transparency. Further, all resolutions passed through this framework will be required to be filed with the Registrar of Companies within 60 days of the meeting, clearly indicating therein that the mechanism provided herein along with other provisions of CA 2013 and rules were duly complied with during such meeting.

Subsequent to the issue of the aforesaid circular, MCA has received representations from stakeholders for clarification on some of the elements in the framework laid down therein. Accordingly, MCA has issued General Circular No.17/2020 dated 13.04.2020 which provides clarifications on the matters enlisted below:

- Manner and mode of issue of notices to the members before convening the general meeting
- Requirement for voting by show of hands
- Passing of certain items only by postal ballot without convening a general meeting
- Sending of emails by members, where a poll on any item is required.

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