

# GATI - विधि

-LAW IN ACTION



## Legal Updates

**MNRE issues amendment to Dispute Resolution Mechanism for resolution of disputes between RE Developers and SECI/NTPC**

Ministry of New and Renewable Energy (“**MNRE**”) vide Order dated 09.12.2019, has issued an amendment to the earlier Order dated 18.06.2019 regarding “*Dispute Resolution Mechanism to consider disputes between solar/wind power developers and SECI/NTPC*”. The earlier Order set up a dispute resolution mechanism for resolving disputes that are beyond the scope of the contractual agreements 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. Vide Order dated 09.12.2019, the following amendments have been issued:

- In clauses (a) and (b) of Para No. 3(iii) the words “*by two or more causes*” have been substituted with “*as a result of two or more causes*”. The relevant portions of the para now reads as “*No separate extension of time shall be granted for overlapping periods of effect as a result of two or more causes.*”
- Para No. 3 (iii) (d) (i) has been amended to fix the Performance Bank Guarantee (“**PBG**”) to be not less than Rs. 1,00,000/- (Rupees one lakh) and not more than Rs. 1,00,00,000/- (Rupees one crore).
- In Para No. 3 (iii) (e), the words “*fee shall be deposited into the Payment Security Fund maintained by Solar Energy Corporation of India (“SECI”)/NTPC*” have been substituted with “*fee shall be deposited into appropriate Payment Security Fund maintained by SECI/NTPC*”.

**APTEL stays public hearing by APERC for revision/amendment of tariff for Wind Power Developers**

The Appellate Tribunal for Electricity (“**APTEL**”) vide order dated 05.12.2019 in *Rayala Wind Power Company Private Limited & Ors. versus Andhra Pradesh Electricity Regulatory Commission & Ors. - DFR No. 2405 of 2019 & IA No. 2137 of 2019* has stayed the proceedings pending before Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) in O.P. No. 66 of 2019 (“**O.P.**”), thereby staying the public hearing for revision/amendment of tariff for wind power developers. The O.P. was filed by the state discoms seeking revision/amendment of tariff for wind power developers and further for restricting the power purchase agreement (“**PPA**”) from 25 years to a period between 5 to 10 years from the date of commercial operation. APERC had issued notice for listing the petition for public

hearing on 07.12.2019. In view of the stay granted by APTEL, APERC has deferred the hearing of the case *sine die*.

**CERC dismisses review petition filed by SECI; reiterates law on review**

Central Electricity Regulatory Commission (“**CERC**”) vide Order dated 11.12.2019 has dismissed the Review Petition bearing *Petition No. 02/RP/2019 – Solar Energy Corporation of India Limited vs. Welspun Energy Private Limited & Ors.* filed by SECI seeking review of the order dated 17.12.2018 passed by CERC in *Petition No. 95/MP/2017*. CERC has held that in review, it is not permissible to substitute a view already taken with a different view. CERC further held that subsequent events or developments can be considered only if the court/tribunal is of the opinion that in light of such developments, the court has committed a mistake. The Respondent No. 1 – Welspun Energy Private Limited was represented by Neeti Niyaman.

**CERC disallows extension of SCoD on account of Demonetisation**

CERC vide order dated 11.12.2019 in *Petition No. 19/MP/2018 Talettutayi Solar Projects Four Private Limited vs Solar Energy Corporation of India Ltd. & Ors.* has observed that insufficiency of finances or funds is not covered as “force majeure” event in terms of the PPA entered into between the parties. In this regard, CERC has held that the event of ‘demonetization’ was not a force majeure event and consequently, no relief in terms of extension of SCoD or damages, can be granted to the developer.

**CERC revokes Trading License for contravention of License Regulations and non-compliance of directions**

CERC on 09.12.2019 in *Petition No. 7/SM/2019 - Non-compliance of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012* has revoked the licence of Parshavnath Power Projects Private Limited (“**PPPPL**”) under Regulation 14C (1) (d) of the CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 (“**Trading Licence Regulations**”). CERC has held that PPPPL has contravened Regulation 7 (m) and Regulation 14A (e) of Trading License Regulations by not paying the surcharge for the year 2017-18 and annual licence fee for the year 2018-19. CERC also noted that PPPPL failed to comply with or respond to the notice dated 4.9.2019 issued by CERC.

**APERC amends Conduct of Business Regulations w.r.t quorum of Commission**

APERC on 07.12.2019 has issued an amendment in APERC (Conduct of Business) Regulations, 1999 by inserting Sub-Clause (3) in Clause 7, which reads as “(3) *Quorum: If there is only one Member of the Commission available, the quorum of the proceedings also shall be one*”. Such amendment has been brought about pursuant to the directions issued by the APTEL to the effect that if there is only one member in the APERC, the quorum of the proceedings of the APERC shall also be one. There were no objections submitted to the proposed amendment at the public hearing and accordingly, the amendment was issued on 07.12.2019.

**TNERC issues revised procedure for verification of CGP status**

Tamil Nadu Electricity Regulatory Commission (“**TNERC**”) on 09.12.2019 has issued revised procedure for verification of Captive Generating Plant (“**CGP**”) status for stakeholders comments. The procedure proposed will be applicable to all power plants that generate power for captive consumption, and to its captive users.

The proposed procedure includes details of verification of the following:

- a) Ownership of CGP wherein verification of “Ownership” will be done by the Distribution Licensee before the commencement of captive use of generation at the beginning of the financial year/ at any time of the financial year. The different forms of entities wherein the generating plant is either a i) Company under the Companies Act ii) Partnership firm/LLP iii) Association of Persons iv) Special Purpose Vehicle or a v) Cooperative Society, require different documentary proof of ownership as specified. The criteria for verification of ownership, as proposed, is in accordance with the Electricity Act.
- b) Verification of qualification of CGP under Rule 3(1);
- c) Verification of consumption by captive users wherein the criteria of consumption is proposed to be on the aggregate energy generated from the generating unit(s) in a generating station i.e gross energy generated less aggregate auxiliary consumption;
- d) Ceasing of Qualification of CGP; and
- e) Methodology of verification of criteria of consumption annually in a financial year.

TNERC will be holding a Public Consultation on 23.12.2019.

### UPERC issues Open Access Regulations

Uttar Pradesh Electricity Regulatory Commission (“**UPERC**”) has issued the UPERC (Terms and Conditions for Open Access) Regulations, 2019 (“**OA Regulations 2019**”) on 10.12.2019, thereby repealing UPERC (Terms and Conditions of Open Access) Regulations, 2004. The OA Regulations 2019 have been introduced to cover the lacuna in the earlier Regulations which did not recognise medium term open access and also did not provide any treatment for the imbalance between the injecting entity & drawee entity.

### GERC initiates *Suo Motu* proceedings to verify RPO compliance by the Distribution Companies

Gujarat Electricity Regulatory Commission (“**GERC**”) on 06.12.2019 has initiated a *Suo-Motu* proceeding bearing No. 1847/2019, in order to verify the compliance of the Renewable Purchase Obligation by the distribution licensees of the State for the FY 2018-19. The petition states that in case of any default by the distribution licensees, GERC will take appropriate action against the defaulting distribution licensees. GERC has also issued a public notice inviting objections/suggestions to the said petition by 10.01.2020.

### MoP issues methodology for allocation of coal as per SHAKTI Policy to reduce stress in power sector

Ministry of Power (“**MoP**”) has issued a Notification dated 02.12.2019 introducing a methodology to help reduce stress in the power sector. The methodology has been formulated in consultation with the Ministry of Coal to facilitate allocation of coal as per provisions of Para B (viii) (a) covering Part B (iii) of SHAKTI Policy (“Scheme for Harnessing and Allocating Koyala Transparently in India”). Some key points of the same are as follows:

- Auction for coal linkage shall be carried out as a separate window for auction of coal linkage under SHAKTI Policy.
- Coal India Limited (“**CIL**”) and Singareni Collieries Company Limited (“**SCCL**”) will earmark areas and mines within their subsidiaries allocated for use as per these guidelines. The selected plants will be published on their websites indicating the quality, quantum and the period for which the coal shall be made available and the schedule for the start of supply of coal.
- Auctions for coal linkage shall be carried out every quarter to cater to the dynamic requirements and demand variations in short term and day-ahead markets. Annual calendar to be published on Coal Companies’ websites showing months in which the auctions will be held.
- All power plants excluding Captive Power Plants which have untied capacity (plant capacity without PPAs) of more than 50% shall be allowed to participate for auction of coal linkage for short term period.
- Quantity of coal linkage shall not be more than 2600 kilo-calories/kilo-watt-hour for the untied capacity of the plant.
- CIL/SCCL may grant future coal linkages to power producers without PPAs (that are commissioned). The coal linkage will correspond to consumption by the power plant for its running for a period of 3 months. Accordingly, CIL/SCCL shall specify the duration for which coal would be available.
- Agreement for supply of coal for sale of power in short term or power exchange shall be signed with the successful bidders after completion of auction process.
- Where previously, coal was allocated to medium-term and long-term PPA holders, now coal will be allocated for sale through short-term and day-ahead market (“**DAM**”) in power exchange.

Auctions for coal linkage will be carried out every quarter by CIL and SCCL. It aims to cater to the dynamic requirements and demand variations in short-term and day-ahead markets. CIL and SCCL will publish an annual calendar that shows the months in which the auctions will be held.

### MoCA notifies provision of IBC *qua* Personal Guarantors to Corporate Debtor

Ministry of Corporate Affairs (“**MoCA**”) has vide Notification dated 15.11.2019, appointed 01.12.2019 as the date from which the following provisions of the Insolvency & Bankruptcy Code, 2016 (“**IBC**”), in relation to personal guarantors to corporate debtors (“**CD**”) shall come into force:

- Section 2(e);
- Section 78 (except with regard to fresh start process);
- Section 79;
- Sections 94 to 187;
- Section 239(2)(g) to (i);
- Section 239(2) (m) to (zc)
- Section 240(2)(zn) to (zs)

- Section 249

MoCA has also notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for personal guarantors to Corporate Debtors) Rules, 2019 (“**Insolvency Process Personal Guarantor Rules, 2019**”).

Such proceedings may be initiated in case of a default by the debtor, either personally or through a Resolution Professional (“**RP**”) before the National Company Law Tribunal (“**NCLT**”). The NCLT has been recognised as the Adjudicating Authority under IBC in relation to insolvency resolution and liquidation for corporate persons including CDs and personal guarantors thereof. Hence, Creditors can now initiate insolvency proceedings against the personal guarantor before the NCLT.

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