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Legal Updates

The Central Electricity Regulatory Commission (“**CERC**”) in exercise of power conferred under Section 178 of the Electricity Act, 2003 (“**the Act**”), has issued *Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020* (“**Trading Licence Regulations**”) on 02.01.2020.

The salient features of the Trading Licence Regulations are as follows:

- Trading Licensee can undertake banking of electricity, however, for doing so such licensee is required to simultaneously execute a contract for supply of power and contract for return of power with each of the utilities participating in the banking arrangement.
- Trading Licensee shall make payment of dues to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller, and the same shall be equivalent to 1.1 times the average monthly bill amount with a validity of one year for long term contracts or 1.05 times of contract value for short term contracts.
- In case of short-term contracts and contracts through power exchanges upto one year, the Trading Licensee shall charge a trading margin of not less than zero (0.0) paise/kWh and not exceeding seven (7.0) paise/kWh. For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller. However, in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.

Central Electricity
Regulatory
Commission issues
the Central
Electricity
Regulatory
Commission
(Procedure, Terms
and Conditions for
grant of trading
licence and other
related matters)
Regulations, 2020

- For banking of electricity, the Trading Licensee shall charge a cumulative trading margin of not less than zero (0.0) paise/kWh and not exceeding seven (7.0) paise/kWh.
- For transactions under back to back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.
- The Trading Licensee shall maintain current ratio of 1:1 and liquidity ratio of 1:1 at the end of every Financial Year (“FY”). If the current ratio or the liquidity ratio at the end of the FY is less than 1:1, then the Trading Licensee shall be required to maintain additional net worth of 100% of the net worth stipulated for the respective category of trading licence under the Trading License Regulations.

Ministry of New and Renewable Energy (“MNRE”) vide office memorandum dated 02.01.2020 issued *Draft Scheme for Supply of Round-The-Clock (RTC) Power from Renewable Energy (RE) based (solar, wind or small hydro) Power Projects, complemented with Power from Thermal (coal) Power Projects (“Draft Scheme”)*, in order to facilitate development and deployment of grid connected solar power.

The salient features of the Draft Scheme are as follows:

- RE may include solar, wind, small hydro, or a combination thereof, with or without any Energy Storage System (“ESS”). The option of selecting the type and mix of RE sources and the usage of ESS shall be with the generator.
- The generator shall supply RE complemented with thermal Power, in RTC manner, keeping at least 80% availability on annual basis.
- The generator has to supply power such that at least 51% of the annual energy supplied, corresponds to RE and the balance is drawn from thermal sources.
- The generator can combine storage for ensuring that it achieves the required minimum annual availability of 80%. However, minimum of 51% of energy shall be dispatched from RE sources. This 51% shall also include dispatch from the storage system, provided RE sources were used to store energy in the storage system.
- The Scheme bidding process would be carried out by Solar Energy Corporation of India (“SECI”) or NTPC Limited (“NTPC”) or any other intermediary procurer authorised by the Central Government and the basis of selection of the successful bidder for renewable and thermal energy shall be through a transparent bidding process. The bids shall be invited for RE power combines with one thermal fuel source, and this quoted composite tariff shall be the bidding parameter.
- SECI or NTPC or any other intermediary procurer authorized by the Government shall sign Power Purchase Agreements (“PPA”) with generators at the discovered composite tariff, through transparent open competitive bidding process and shall also sign Power Supply / Sale Agreements (“PSA”) with the state utilities, etc. and shall be allowed to charge a trading margin.

Stakeholders comments/ feedback to be provided latest by 16.01.2020.

The Telecom Regulatory Authority of India (“TRAI”) has issued the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order, 2020 on 01.01.2020 (“**Tariff Second Amendment Order**”) which shall come into force from 01.03.2020 except Clauses 2, 6 and 7 of the said order, and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) (Third Amendment) Regulations, 2020 (“**QoS Third Amendment Regulations**”) which shall come into force from 01.03.2020.

The salient features of the Tariff Second Amendment Order are as follows:

Ministry of New and Renewable Energy issues the “Draft Scheme for Supply of Round-The-Clock (RTC) Power from RE Power Projects, complemented with Power from Thermal Power Projects”

Telecom Regulatory Authority of India issues the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second

**Amendment) Order,
2020**

And

**Telecommunication
(Broadcasting and
Cable) Services
Standards of
Quality of Service
and Consumer
Protection
(Addressable
Systems) (Third
Amendment)
Regulations, 2020**

- Bouquets offered by broadcasters cannot contain any pay channel for which Maximum Retail Price (“MRP”) per month is more than Rs. 12 (reduced from Rs. 19 under the 2017 tariff order).
- The sum of MRPs per month of the *a-la-carte* pay channels forming part of a bouquet cannot exceed 1.5 times the MRP per month of such bouquet, and the MRP per month of any *a-la-carte* pay channel, forming part of such a bouquet, cannot exceed three times the average MRP per month of a pay channel of that bouquet. The average MRP per month of a pay channel of a bouquet is to be calculated as MRP of a bouquet per month per subscriber divided by the number of pay channels in such bouquet.
- The MRP per month of a pay channel cannot exceed the MRP per month of the bouquet containing that pay channel.
- The number of bouquets of pay channels offered by a broadcaster cannot exceed the number of *a-la-carte* pay channels being offered by such broadcaster. However, TRAI may, on the request of a broadcaster, and in view of larger consumer interest, permit the broadcaster to offer number of bouquets greater than the number of a-la carte channels being offered by such broadcaster.
- The Network Capacity Fee (“NCF”) per month for network capacity up to initial 200 SD channels cannot exceed Rs. 130, excluding taxes. Further, Distribution Platform Operators (“DPOs”) cannot charge NCF of more than Rs. 160 per month for providing all channels available on their platform. All the channels notified by the Central Government shall be mandatorily provided to all the subscribers and all such channels shall be in addition to the number of channels which a subscriber is eligible to get for the NCF paid by him. DPOs have been given further flexibility to declare different NCF for different regions within its service area, and are required to report to TRAI, the details of such NCF for each region.
- In case of a multi-TV home, i.e. a household having more than one TV connection or set top box in the name of one person, DPOs can charge a maximum of 40% of the declared NCF for second and additional TV connections.

The TRAI has issued the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020 on 01.01.2020 (“**Interconnection Second Amendment Regulations**”) and the same shall come into force from 01.03.2020 except Regulations 3 and 5 which shall come into force from 15.01.2020.

The salient features of the Interconnection Second Amendment Regulations are as follows:

- A multi-system operator or internet protocol television operator or headend-in-the-sky operator cannot declare a target market larger than a state or a union territory.
- The rate of distribution fee declared by the broadcaster shall be same for pay channel and bouquet of pay channels and shall be uniform across all the distribution platforms.
- Broadcasters are now permitted to offer discounts to distributors of television channels on the maximum retail price of *a-la-carte* pay channels only, i.e. not exceeding 15% of the maximum retail price of such pay channel, and not on bouquets of pay channels.
- The total carriage fee payable for standard definition channel by a broadcaster to a distributor of television channels has been capped at Rs. 4,00,000 per month, and for high definition channels at Rs. 8,00,000 per month.
- Distributors have been mandated to place all the television channels available on their platforms in the electronic programme guide, in such a manner that all the television channels of a particular language in a genre are displayed together consecutively and one television channel shall appear at one place only.
- A channel number once assigned to a particular television channel cannot be altered by the distributor without prior approval of TRAI.

**Telecom Regulatory
Authority of India
issues the
Telecommunication
(Broadcasting and
Cable) Services
Interconnection
(Addressable
Systems) (Second
Amendment)
Regulations, 2020
dated 01.01.2020**

Securities Appellate Tribunal confirms penalty for non-appointment of Company Secretary, Independent Directors and Woman Director and non-constitution of various committees

The Securities Appellate Tribunal (“**SAT**”) upheld the penalty imposed by the Bombay Stock Exchange (“**BSE**”) in its order dated 19.08.2019 and 07.10.2019. M/s Advance Lifestyles Ltd. – Appellant filed an appeal against the order of BSE wherein a total penalty of Rs. 20,40,000 was imposed on the Appellant for non-compliance of various provisions of Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 (“**LODR Regulations**”). The Appellant committed violations by not constituting the board in accordance with Regulation 17(1) of LODR Regulations and non-appointment of Woman Director, Independent Directors and Company Secretary. Further the Appellant did not constitute various committees such as Audit Committee, Nomination and Remuneration Committee and Stakeholder Relationship Committee as required under the LODR Regulations.

The Appellant in his appeal filed before SAT sought shelter under the circular dated 03.05.2018 known as “*Standard Operating Procedure*” issued by Securities Exchange Board of India (“**SEBI**”) which adopted a uniform approach in the matter of levy of fines for non-compliance of certain provisions of the LODR Regulations. The said circular also provided a discretion to the stock exchange to deviate from the circular dated 03.05.2018 under exceptional circumstances such as natural calamity, seizure of books / computers by regulatory / statutory authorities, the compliances not approved by the Board, directions issued by the Court / regulator which prevented from making the requisite disclosure and accidental damage.

SAT in its order held that the aforesaid exceptions carved out in the circular dated 03.05.2018 relate to certain events which in the instant case were not existing. Further, no justification has been given as to why a Company Secretary and two Independent Directors could not be appointed. SAT dismissed the appeal in the absence of any convincing reasons.

Central Government issues Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

The Central Government in exercise of power conferred under Sub-Section (1) of Section 203 read with Section 469 of the Companies Act, 2013 has notified Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 (“**Amendment Rules**”) on 03.01.2020. The Amendment Rules shall come into effect from 01.04.2020.

The Central Government vide the Amendment Rules has made the following Amendments to the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

- The threshold for appointment of Company Secretary in a Company changes from 5 crores to Rs 10 crores of paid up share capital.
- Additional criteria of “*Outstanding Loan or borrowings from banks or public financial institutions exceeding Rs 100 crore*” for obtaining a Secretarial Audit Report has been added apart from the existing paid up capital and turnover criteria.

Insolvency and Bankruptcy Board of India issues the IBBI (Liquidation Process) (Amendment) Regulations, 2020

The Insolvency and Bankruptcy Board of India (“**IBBI**”) has issued the IBBI (Liquidation Process) (Amendment) Regulations, 2020 under Section 196(1)(t) read with Section 240 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). The salient features of these amendments are as follows:

- A proviso has been inserted in Regulation 2B(1) by which a person who is not eligible as per Section 29A of the IBC, 2016 to submit a resolution plan for insolvency resolution of the Corporate Debtor (“**CD**”) cannot in any manner be a party to any compromise or arrangement of the CD under Section 230 of the Companies Act, 2013.
- Regulation 37(8) has been inserted and now a secured creditor cannot sell or transfer an asset which is subject to security interest to any person who is not eligible under Section 29A of the IBC.
- Regulation 21A(2) has been substituted by which a secured creditor who has realised its security interest shall contribute its share of the insolvency resolution process cost and workmen’s dues within 90 days of the liquidation commencement date as per Section 53 of the IBC. The secured

creditor also has to pay the excess of the realised value of the assets within 180 days.

- Regulation 46 dealing with Corporate Liquidation Account has been substituted. The Liquidator will now have to deposit the amount of unclaimed dividends, if any, in a liquidation process along with any income earned thereon into this Account before he submits the application for dissolution of the CD. The Amendment also provides the Form by which a stakeholder can seek the permission of the IBBI to withdraw an amount deposited in this Account.

The amended regulations have come into effect from 06.01.2020.

The Tamil Nadu Electricity Regulatory Commission (“**TNERC**”) has issued a consultative paper under Regulation 4 of the Power Procurement from New and Renewable Sources of Energy Regulation, 2008 for procurement of power by Distribution Licensees from Bagasse based Co-Generation Plants (“**Consultative Paper**”).

Under the Consultative Paper the TNERC has adopted the tariff methodology on cost plus basis in order to encourage Co-generation of electricity within the State. The TNERC under the Consultative Paper has further proposes to continue with the ‘*Cost plus two part tariff*’ in continuation with its earlier tariff order.

The Consultative Paper further explains the methodology which the TNERC has adopted in order to ascertain the tariff components essential to determine the fixed cost and variable cost. Based on the variable cost and fixed cost determined by TNERC under the Consultative Paper, the TNERC has proposed the Total Cost for FY 2020-21 as Rs. 5.05 per unit and for FY 2021-22 as Rs. 5.22 per unit.

In addition, TNERC under the Consultative Paper has sought comments in respect of other issues like transmission and wheeling charges, cross subsidy charges, grid availability charges, billing and payments, metering, among others.

The cut-off date for the submission of comments/views under the Consultative Paper is set as 31.01.2020.

**Tamil Nadu
Electricity
Regulatory
Commission issues
Consultative paper
for procurement of
power by
Distribution
Licensees from
Bagasse based co-
generation plants**

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