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Legal Updates

MCA issues Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020

The Ministry of Corporate Affairs (“MCA”) has, vide its notification dated 16 October 2020, issued the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 (“**Amendment Rules**”). A new proviso to Rule 14(1) has been inserted in the Amendment Rules after the third proviso whereby in case of offer or invitation of any securities to qualified institutional buyers through private placement, taking prior shareholders’ approval only once a year by way of passing special resolution for all the allotments to such buyers during the year shall be sufficient compliance under Sections 42(2) and 42(3) of the Companies Act, 2013 read with the Amendment Rules.

MoP issues Draft Electricity (Late Payment Surcharge) Rules, 2020

The Ministry of Power (“MoP”) issued the Draft Electricity (Late Payment Surcharge) Rules, 2020 (“**Draft Rules**”) vide its notification dated 08.10.2020 and has invited comments from stakeholders within 21 days from the date of the letter, i.e. by 29.10.2020.

The Draft Rules, *inter alia*, provide for the following:

1. Definitions of ‘bank rate’, ‘due date’ and ‘late payment surcharge’;
2. Late payment surcharge shall be payable on payments outstanding after the due date at the applicable bank rate or the rate as provided in the agreement for supply or transmission of power, whichever is lower;
3. The rate at which late payment surcharge shall be payable on outstanding payment shall increase by 50 basis points each month after the expiry of the first month after the due date, subject to a maximum of applicable bank rate plus 200 basis points. However, the rate shall not be higher than the rate provided in the agreement for purchase of transmission of power; and
4. All payments by a distribution licensee to a generating company or a trading licensee or by user of a transmission system to a transmission licensee shall be first adjusted towards late payment surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

The Ministry of New and Renewable Energy (“MNRE”) has proposed a Draft Policy Framework for developing and promoting Decentralized Renewable Energy (“DRE”) livelihood applications in rural areas of the country with a view to provide a conducive environment for development and large-scale adoption of these applications. The Draft Policy Framework prepared by MNRE is circulated for comments of all the stakeholders concerned, which are to be submitted by 02.11.2020.

The Draft Policy Framework is proposed keeping in mind the following objectives:

- a. Enable a market-oriented framework to attract private sector for development and deployment of DRE livelihood applications;
- b. Easy access to end user finance for DRE livelihood applications;
- c. Introduction of standards, stringent monitoring and evaluation frameworks;
- d. Skill development for strengthening the service infrastructure at the local level; and
- e. Encourage innovation and research and development to develop efficient and cost-effective DRE livelihood applications.

The following steps are to be taken up under this framework for promotion of DRE livelihood applications:

1. Assessment of demand: In order to assess the possibilities of deployment of DRE livelihood applications across sectors of the rural economy and across regions, MNRE will develop a list of DRE livelihood applications in consultation with stakeholders, which will be updated regularly. An indicative list of DRE livelihood applications with potential for scale-up are placed at Annexure-I of the Draft Policy Framework.
2. Research & development and standardization: Collective efforts by institutions of MNRE and other ministries, state level institutions, private sector, technology incubation centres, bilateral and multilateral agencies, NGOs and other grassroot organisations will be required to identify, develop and promote appropriate DRE livelihood applications through multi-disciplinary research and innovation.
3. Pilot and up-scaling of DRE livelihood applications: Piloting and field demonstration of new DRE livelihood applications is vital to ascertain the success of any technology innovation on ground and the same may be taken up in any sector. In line with the guidelines issued by MNRE for innovative solar pumps, other programmes may also announce opportunities to run pilot projects under the existing schemes. A list of such programmes and guidelines will be available on the MNRE website.
4. Access to finance: MNRE will pursue with financial institutions for credit facilitation.
5. Skill development and capacity building: MNRE will facilitate in developing and implementing skills and training programs for DRE livelihood applications with Skill Council for Green Jobs, IITs promoting rural development and technology, National Institute for Rural Development and other organizations of stakeholder ministries / departments. In addition to this, existing community level institutional platforms, such as self-help group federations, farmer producer organizations, Krishi Vigyan Kendras, etc. will be mobilized to build capacity of potential users / buyers to boost adoption of DRE technologies.
6. Public information and awareness: Central and State government ministries / departments under their existing programmes may take up public awareness campaign to push adoption of DRE livelihood applications.
7. Programmes of various ministries / departments: It is pertinent to identify and exploit opportunities for DRE livelihood applications under schemes of various ministries and departments of Central / State Government. This will result in augmented benefits to the rural entrepreneurs and beneficiaries. An indicative list of programmes of various ministries / departments is given at Annexure-II of the Draft Policy Framework.

The Karnataka Electricity Regulatory Commission (“**KERC**”) has published the Draft KERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2019 (“**Draft Regulations**”) specifying the terms and conditions of generation tariff for the control period for the period 2019-24.

The Draft Regulations propose to apply in all cases where tariff for a generating station or a unit thereof achieving commercial operation during the period from 01.04.2019 up to 31.03.2024, is required to be determined by KERC under Section 62 of the Electricity Act, 2003, read with Section 86 thereof. The Draft Regulations state that the regulations will not be applicable to generating stations based on renewable sources of energy whose tariff is determined in accordance with KERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2004 and generating stations whose tariff has been discovered through tariff-based competitive bidding.

It has been clarified that in case of expansion of existing generating station, the tariff shall be determined for the expanded capacity in accordance with these Draft Regulations. Further, it also explains that the assets installed for implementation of the revised emission standards shall form part of the existing generation project and tariff thereof shall be determined separately on submission of the completion certificate by the board of the generating company. More so, the tariff of generating station using coal washery rejects developed by central or state public sector undertakings or joint venture between a government company and company other than government company have been proposed to be determined in accordance with the Draft Regulations. The Draft Regulations also provide applicability criteria for hydro projects.

Comments of stakeholders have been invited by all interested persons by 29.10.2020.

The Maharashtra Electricity Regulatory Commission (“**MERC**”), vide order passed in Case No. 130 of 2020 titled as *Captive Power Producers Association v. Maharashtra Energy Development Authority*, allowed the petition seeking relaxation or waiver / removal of difficulty / issuance of orders and practice direction / amendment (as alternative relief) under the MERC (Renewable Purchase Obligation, Its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016 (“**RPO – REC Regulations, 2016**”), in view of circular dated 01.02.2019 and 01.10.2019 issued by Government of India through Ministry of Power regarding capping of renewable purchase obligation (“**RPO**”) for captive power plants (“**CPP**”).

The MERC ruled that the composite RPO targets for the CPPs commissioned before 01.04.2016 would be 9% for the operating period of the RPO – REC Regulations, 2016, provided that in case of any augmentation of the captive generating plant, the RPO target for augmented capacity would be equal to the RPO target applicable for the year in which such augmented capacity had been commissioned. For the projects commissioned on or after 01.04.2016, the composite RPO target would be equal to the target applicable for the year in which the project was commissioned, for the operating period of the RPO – REC Regulations, 2016 onwards.

The MERC further noted that for the projects commissioned before 01.04.2016, the solar and non-solar targets would be 0.5% and 8.5% respectively, subject to the provisions for cross-over of one source to another, as provided in the 2016 Regulations and the MERC (Renewable Purchase Obligation, Its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019.

KERC issues the Draft KERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2019

MERC holds that the composite RPO targets for the CPPs commissioned before 01.04.2016 shall be 9% for the operating period of the RPO – REC Regulations, 2016

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