

GATI - विधि

-LAW IN ACTION



Legal Updates

MNRE issues clarification regarding power generation from co-firing of biomass in thermal plants

Ministry of New and Renewable Energy (**MNRE**) has issued a clarification on the 'Policy of Biomass utilisation for Power Generation through co-firing in Pulverised Coal fired Boilers' notified by the Ministry of Power, to the effect that power generation from co-firing of biomass in the thermal power plants is renewable energy, and would be eligible for meeting non-solar Renewable Purchase Obligation. Central Electricity Regulatory Commission (**CERC**) has been requested to formulate and notify a procedure / methodology for quantifying such energy produced from biomass in biomass co-fired thermal power plants.

APTEL issues directions in the suo-moto proceedings on the letter received from Ministry of Power

Directions have been issued to the State Electricity Regulatory Commissions / Joint Electricity Regulatory Commissions (**State / Joint Commissions**) in the suo-moto proceedings initiated by the Appellate Tribunal for Electricity (**APTEL**) pursuant to a letter from the Ministry of Power pertaining to overdue payments by various state electricity distribution utilities to power plants. State / Joint Commissions have been directed to furnish information as per directions at paragraphs 65 and 66 of the Judgment dated 11.11.2011 passed in O.P. No. 01 of 2011, with respect to the annual performance review, true-up of past expenses, annual revenue requirement and tariff determination for the financial year 2015-16, 2016-17, 2017-18 and 2018-19 to the Secretary of Forum of Regulators. The Secretary of Forum of Regulators has been directed to file compilation of compliance reports furnished by State / Joint Commissions before APTEL on or before 31.10.2019. The matter is now listed on 01.11.2019.

State Commission cannot revisit tariff adoption process which was concluded and had reached finality

APTEL in its Judgment dated 27.09.2019 in *Renasant Power Ventures Pvt. Ltd. v. Uttar Pradesh Electricity Regulatory Commission and Ors.* has observed that the relief sought in the Petition before Uttar Pradesh Electricity Regulatory Commission (**UPERC**) was not for revision / review of tariff and thus, the reduction of tariff in this case amounts to revisiting the tariff adoption process which was concluded and had reached finality, and such exercise undertaken by the UPERC is beyond the scope of its jurisdiction.. Thus, the order passed by UPERC was set-aside to the extent that it reduced the adopted tariff.

Andhra Pradesh High Court set asides GO issued by GoAP and the Letter issued by HLNC. Fixes interim rate for procurement of Solar and Wind Power

Andhra Pradesh High Court in its common order passed in *Renew Power Ltd. v. State of Andhra Pradesh and other batch matters*, has disposed of the Writ Petitions filed by the Wind and Solar Power Generators (**Generators**) against the Government Order dated 01.07.2019 (**GO**) issued by Government of Andhra Pradesh (**GoAP**) and the consequent letters dated 12.07.2019 issued to the Generators seeking to reduce the tariff already determined by Andhra Pradesh Electricity Regulatory Commission (**APERC**).

The Andhra Pradesh High Court relied upon Section 108 of the Electricity Act, 2003, and observed that the GoAP can only issue directions in the matter of policy and planning and the re-determination of tariff is not a policy decision. The High Court further relied upon Article 162 of the Constitution of India to hold that when there is central law governing a field, the State Government cannot exercise its executive powers and pass any order which would intrude upon an area occupied by APERC under the statutory powers. It was also held that DISCOMs are bound to discharge their functions as per the contract that has been entered into until the same has been modified or set aside. However, in view of the losses suffered by the DISCOMs and the fact that the Generators required funds to run their plants the High Court fixed an 'interim rate' of Rs. 2.44/kWh for solar power and Rs. 2.43/kWh for wind power, till the dispute is resolved by APERC. APERC has been directed to dispose of the matter within six months.

Andhra Pradesh High Court directs APERC to complete proceedings in O.P. No. 17/2019 within a period of 6 months

Andhra Pradesh High Court in its common order has disposed of a batch of writ petitions filed by the Wind and Solar Power Generators (**Generators**) challenging the action of DISCOMs in approaching APERC by way of OP No. 17 of 2019, seeking to amend the Regulation 01 of 2015 by specifying the reduced norms and parameters effectuating reduced / amended tariff in the Power Purchase Agreements entered pursuant to issuance of Regulation 01 of 2015. The petitions also challenged the right of APERC to entertain such petition.

The matter was disposed of with the following directions-

- i. APERC to determine the issues raised in OP No. 17/2019 and the Petitioners are given liberty to raise all grounds including the defence of lack of jurisdiction before the Commission.
- ii. APERC to follow the procedure as laid down in the Electricity Act, 2003 and any other applicable law.
- iii. APERC to complete the proceedings in a time bound manner, within six months, owing to the importance and impact such proceedings would have on the economy of the State.

O.P. No. 17 of 2019 is listed for hearing before the APERC on 05.10.2019.

RERC passes order to address the grievances faced in implementation of RERC Forecasting Regulations and its Procedure

Pursuant to the judgment dated 29.05.2019 passed by the Jodhpur High Court relegating the parties to approach the Rajasthan Electricity Regulatory Commission (**RERC**) with their grievances / representations concerning the RERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2017 (**RERC Forecasting Regulations**) and the Procedure for implementation of the Framework on Forecasting and Scheduling for Renewable Energy (RE) Generating stations (Wind and Solar) (**Procedure for Implementation**), public hearings were held by the RERC in the month of August, 2019.

After detailed hearing, RERC vide order dated 27.09.2019 observed that forecasting and scheduling of renewable energy is the most critical issue for future addition of the renewal energy capacity and stable operation of the grid. RERC issued directions, inter-alia, with respect to the following issues:

- i. Metering and Data Sharing:
 - a. RE Generators to install check meter at injection point where the pooled RE power is being injected by RE generators;
 - b. RE Generator to provide telemetry, SCADA and relevant data of the inter connection points to facilitate the grid operations;
 - c. SLDC to create web portal to enable transparent sharing of data;

- d. SLDC to issue guidelines with respect to meter installation, integration, testing and periodic calibration. Also, to convene regular meeting of the QCAs and the generators for necessary coordination and facilitation.
- ii. All interactions between the generators and the QCAs to be governed by mutually agreed contractual agreements. Generators free to include clauses related to non-satisfactory performance of QCA in order to increase their accountability. Amendments introduced in the Procedure for Implementation to bring more clarity and to provide flexibility in the appointment of the QCA.
- iii. Options on how to de-pool the energy deviations as well as the deviation charges to each generator, have been provided;
- iv. Commercial mechanism of the RERC Forecasting Regulations to come into force from 01.10.2018. From October, 2018 till March, 2020, the DSM charges to be recovered in a graded manner, as provided by RERC, for ease of implementation;
- v. Disputes between SLDC and generators may be referred to the Commission;
- vi. Amendment to Regulation 3 introduced to include generators supplying power through a trader under the ambit of the RERC Forecasting Regulations.
- vii. Method to calculate the Available Capacity in case of concentrated solar projects/ solar thermal power projects has been provided;
- viii. Where electrical separation is not possible, a combined schedule of inter and intra state transaction with bifurcated schedule shall be allowed and actual generation of the connected generators to be considered and adjusted in the ratio of inter and intra state schedules;
- ix. SLDC not required to make generator centric forecast but is required to make system centric. Methodology for the same has also been provided;
- x. Suitable changes were introduced to the Procedure for Implementation, as provided in Annexure-II of the order, for smooth implementation of the RERC Forecasting Regulations;
- xi. Suitable amendments were proposed in the RERC Forecasting Regulations provided in Annexure -III of the order.

The Central Electricity Regulatory Commission (**CERC**) has issued the Draft CERC (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019 (**Regulation**) which shall be applicable to the inter-state transmission licensees. Some of the key highlights of the draft Regulation are:

- i. Intimation of other business proposed by a transmission licensee for optimum utilization of its assets by filing a petition along with requisite details as provided under Regulation 4(2). The intimation is required to be furnished by the transmission licensee to CERC and the Long-Term customers on yearly basis by 31st October and also every time there is a change in the utilization of its assets for other business;
- ii. A transmission licensee engaged in telecommunication business is required to share 10% of the gross revenue from such business in a given financial year with the Long-Term Customers;
- iii. In case a transmission licensee is involved in any other business apart from telecommunication, the sharing of revenue shall be decided by the CERC on case-to-case basis, based on consideration of the value of transmission assets utilised for such other business;
- iv. The revenue shared by the transmission licensee shall be utilised towards reduction of transmission charges payable by the Long-Term Customers of the transmission assets utilised for other business;
- v. The transmission licensee shall maintain separate accounts for each of its other business / businesses and are further required to submit the copies of the balance sheet, profit and loss account and auditor's reports to the CERC annually.

The stakeholder's suggestions / objections may be sent on or before 31.10.2019.

CERC issues Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019.

Telecom Regulatory Authority of India (TRAI) issues a Consultation Paper on Issues related to Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

Telecom Regulatory Authority of India (TRAI) has issued a Consultation Paper on Issues related to Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (**Interconnection Regulations, 2017**). The Consultation Paper has been issued pursuant to representations being submitted to TRAI by various broadcasters, alleging that the Distribution Platform Operators (DPOs) are arm-twisting them to sign marketing / promotion fee deals, in the garb of putting their channels in a specific package, by exploiting the regulatory forbearance on such placement / marketing agreements.

Through the Consultation Paper, TRAI seeks to review the provisions of the extant Interconnection Regulations, 2017 and has invited comments from stakeholders majorly on the following:

- i. issues relating to declaration of target market; and
- ii. issues relating to placement agreements, marketing agreements or any other technical or commercial arrangements between broadcasters and DPOs.

Written comments on the Consultation Paper are invited from stakeholders by **23.10.2019** and counter comments, if any, are to be submitted by **06.11.2019**.

NCLAT observes that Section 7 Application against Corporate Guarantor is maintainable

National Company Law Appellate Tribunal (NCLAT) vide its common judgment in *Edelweiss Asset Reconstruction Co. Ltd. v. Sachet Infrastructure Pvt. Ltd.* (batch matters) has set aside the common order dated 07.03.2019 passed by National Company Law Tribunal, New Delhi (NCLT). Edelweiss Asset Reconstruction Company Limited, the Appellant before NCLAT, had initiated the Corporate Insolvency Resolution Process (CIRP), by way of a Section 7 application, against the Corporate Guarantors with respect to the loan granted to the Principal Borrower by the Appellant. The NCLT dismissed these petitions holding that when CIRP has been initiated against the Principal Borrower, the application against the Corporate Guarantors separately is not maintainable.

NCLAT observed that in the facts of the case, where the Principal Borrower was the developer and the Corporate Guarantors were the owners of the land, both entities have to be treated jointly. The Ld. NCLAT held that the present project is a case of joint consortium of different 'Corporate Debtors' and therefore a group insolvency is required so that the township can be developed.

Arbitration Proceedings under Section 34 to not ordinarily require anything beyond the record that was before the Arbitrator

Supreme Court in *M/S Canara Nidhi Limited v. M. Shashikala and Others* has held that arbitration proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 are summary in nature and do not ordinarily require anything beyond the record that was before the arbitrator. The Supreme Court further held that additional evidence is to be adduced only in exceptional circumstances and cross-examination of persons swearing in to the affidavits should not be allowed unless absolutely necessary. The Supreme Court referred to its judgement passed in *Emkay Global Financial Services Limited v. Girdhar Sondhi*, in which it was observed that matters not contained in the record before the arbitrator and relevant to the determination of issues arising under Section 34(2)(a), may be brought to the notice of the Court by way of affidavits filed by both parties.

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