Legal Updates

MoP issues draft Electricity (Rights of Consumers) Rules, 2020

Ministry of Power ("**MoP**") on 09.09.2020 issued the draft Electricity (Rights of Consumers) Rules, 2020 ("**Draft Rules**") for comments. Some of the main features of the Draft Rules are, *inter alia*, as follows:

- The Draft Rules introduce the definition of the terms, *'maximum demand'*, *'occupier'*, *'point of supply'*, *'prosumer'*, and *'temporary connection'*.
- The Draft Rules propose to introduce a new category i.e. '*Prosumer'*, wherein the prosumer in addition to maintaining the status and rights of the general consumer, will also have the right to set up Renewable Energy (RE) generation unit, with the total generation capacity not exceeding the limit prescribed by the Commission. The energy generated by the prosumer shall be adjusted against energy consumed or the bill amount and the distribution licensee shall pass on the financial incentives so provided by Central and State Government.
- The distribution licensee shall prominently display on its website and notice board all the information relating to the release of new connection and modification in existing connections, the detailed procedure for grant of connection, transfer of ownership, contact details of the offices, a complete list of copies of documents, all applicable charges, etc.
- The maximum time period for providing new connection and modifying an existing connection shall not be more than 7 days in metro cities, 15 days in other municipal areas and 30 days in rural areas
- No connection shall be given without a meter (meters shall be *smart pre-payment meter* or *pre-payment meter*) and any deviation to the specified meter has to be duly approved by Commission.

- Within 30 days from the receipt of a complaint from the consumer, the distribution licensee shall test the meter. If during testing, the meter is found defective and such defect is attributable to the consumer, the consumer will bear the cost of a new meter and if the meter is found inaccurate, the excess of deficit charges shall be adjusted in the subsequent bill(s) as specified by the Commission. The consumer may have the meter tested by a third-party testing facility, if the consumer disputes the result of the distribution licensee test.
- It stipulates that if the bill is served with a delay of 60 days or more, the consumer shall be given a rebate of 2% to 5%.
- It stipulates for rules about disconnection and reconnection of meter, reliability of supply of power, and standard of performance. The Commission shall specify the parameters to maintain the reliability of supply by distribution licensee and further provides for a compensation mechanism wherein the consumer is automatically compensated for the parameters which can be monitored remotely.
- Establishment of a Customer Relation Manager System ("**CRMS"**) and Consumer Grievance Redressal Forum ("**CGRF"**) for purpose of better monitoring of all the services requested by the consumer and resolution of consumer's grievance, respectively. The performance of CGRF shall be monitored by the Commission.
- General provisions and obligation of the distribution licensee for creating awareness.

MoP has invited comments on the Draft Rules and the same may be submitted within 21 days from the date of the letter i.e. by 30.09.2020.

CERC issues Staff Paper on Mechanism for Compensation on account of change in law for compliance with Revised Emission Standards notified by MoEF&CC in respect of Competitively Bid thermal generating stations

The Central Electricity Regulatory Commission ("**CERC"**) has acknowledged the Environment (Protection) Amendment Rules, 2015 ("**the 2015 Rules**") notified by the Ministry of Environment, Forest and Climate Change, Government of India ("**MoEF&CC**") as a change in law event and issued a staff paper on the issue of compensation mechanism and tariff implications on account of the 2015 Rules in case of those thermal power plants where the power purchase agreements ("**PPAs"**) do not have explicit provision for compensation mechanism during the operation period and the PPA. The 2015 Rules specify revised emission standards and water consumption limit for coal and lignite based thermal generating stations. CERC has acknowledged the same as a change in law event in respect of some of the PPAs whose tariff is determined under Section 63 of the Electricity Act, 2003 ("**Act**"). The salient features of the staff paper are as under:

- The mechanism proposed in this Staff Paper can be made applicable to following generating stations provided that the PPAs do not have any pre-specified formulae for providing relief for Change in Law event during the operation period:
  a. Generating stations which have been commissioned under Section 63 of the Act and which have installed/ upgraded ECS for compliance with the 2015 Rules; and
  b. Generating stations which have valid PPA(s) with procurer(s), having provisions of relief under Change in Law and the 2015 Rules qualifying as a Change in Law event in terms of the said PPA.
- Compensation mechanism for Change in Law event only during the operation period in accordance with the provisions of PPAs.
- The compensation during operation period would require estimating the following impacts:
  a. Impact due to additional capital expenditure;
  b. Impact due to additional Operation & Maintenance ("**O&M"**) expenses and additional Interest on Working Capital;
  c. Impact due to consumption of reagent; and
  d. Impact due to additional auxiliary energy consumption.
- The proposed methodology of computation for additional O&M expenses and additional IWC are as under:
  a. Additional O&M Expenses
  b. Additional IWC
  c. Additional Operational Expenses due to Consumption of Reagent
  d. Additional Auxiliary Energy Consumption
- The mechanism further prescribes methodologies for recovery of "Monthly Supplementary Capacity Charges" and "Monthly Supplementary Energy Charges" and "Procedure for

Payment". Provisions related to Due Date, Rebate, Late Payment Surcharge etc. will be as provided in the PPAs.

- Mechanism for Compensation for Change in Law event during construction period.

The CERC has invited comments/ suggestions on or before 04.10.2020.

MERC rules that it has jurisdiction to adjudicate on disputes arising out of PSA executed between MSEDCL and SECI and PPA executed between SECI and solar power developers

The Maharashtra Electricity Regulatory Commission ("**MERC**"), vide order dated 14.09.2020, has held that it has jurisdiction to adjudicate on the dispute arising out of power sale agreement ("**PSA**") executed between Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**") and Solar Energy Corporation of India Limited ("**SECI**") and power purchase agreement ("**PPA**") executed between SECI and solar power developers ("**SPD**"). MSEDCL had filed petition before MERC under Section 86(1)(f) of the Electricity Act, 2003 ("**Act**") seeking compensation as per the PSA executed between itself and SECI and compensation on account of delay in achieving the scheduled commercial operation date as per PPA executed between SECI and SPD. SECI had objected to the jurisdiction of the MERC to deal with relief sought by MSEDCL. Thus, vide order dated 14.09.2020, the MERC first adjudicated upon the issue of jurisdiction as to which is the Appropriate Commission in the present case – MERC or the CERC.

The MERC observed that in the present case, the entire project capacity was commissioned in the State of Maharashtra and SECI had not entered into any other subsequent PSA with any other utility / buyer and that since 100% capacity had already been tied-up with MSEDCL, there was no capacity left for contracting with other States. The MERC opined that merely having an enabling feature of inter-state supply of energy under JNNSM Guidelines without acting on it, would not render it a 'composite scheme' to attract jurisdiction of the CERC. The MERC further noted that the generator already had PPAs with more than one State in *Energy Watchdog*. However, in the present case, PSAs had been signed with only one State and 100% capacity generated within the State had been contracted within the State by invoking intra-state transmission connectivity. In view of the above, the MERC held that with respect to power projects commissioned under PSAs / PPAs in the present case, there was no existence of 'composite scheme' as envisaged under Section 79 (1)(b) of the Act.

With respect to the issue whether SECI was acting as an inter-state trader or intra-state trader in the present case, the MERC noted that SECI's right to sale of power to third party under the PSA was only subsequent to default of MSEDCL with respect to events as listed under the PSA and that under normal circumstances, when there was no default from MSEDCL, SECI could not entertain this right of selling power to third parties. Therefore, such clause, which was applicable only under circumstances of default of party, could not be the basis for deciding nature of the agreement (inter-state / intra-state). The MERC therefore noted that generating plants in the present case were located in the State of Maharashtra and that 100% capacity of these projects was contracted with MSEDCL under the PSAs. The MERC thus ruled that SECI was buying energy from, and selling energy to, entities which were present in the State of Maharashtra only and thus SECI was acting as an intra-State trader in the present matter.

Enforcement Courts may refuse enforcement of foreign award but cannot set aside or correct a foreign award

The Supreme Court in *Government of India v. Vedanta Limited & Ors., Civil Appeal No. 3185 of 2020* held that though enforcement courts may refuse enforcement of a foreign award, if the conditions contained in Section 48 of the Arbitration and Conciliation Act, 2015 ("**Arbitration Act"**) are made out, but it cannot set aside or correct a foreign award, even if such conditions are made. The power to set aside a foreign award vests only with the court at the seat of arbitration, since the supervisory or primary jurisdiction is exercised by the curial courts at the seat of arbitration. The Supreme Court further held that the enforcement court is not to correct the errors in the award under Section 48 of the Arbitration Act, or undertake a review on the merits of the award, but is conferred with the limited power to "refuse" enforcement, if the grounds are made out. If the Court is satisfied that the application under Section 48 of the Arbitration Act is without merit, and the foreign award is found to be enforceable, then under Section 49 of the Arbitration Act, the award shall be deemed to be a decree of "that Court". The Supreme Court further held that a foreign award does not become a decree until and unless the Court adjudicates on the enforceability of the foreign award under Sections 47 to 48 of the Arbitration Act. Post such adjudication, the foreign award is declared as a deemed decree under Section 49 of the Arbitration Act.

Relaxation of additional fees and extension of last date of filing of CRA-4 for FY 2019-20 under the Companies Act, 2013

In view of the extraordinary disruption caused due to the pandemic, the Ministry of Corporate Affairs ("**MoCA**") has decided that if cost audit report for the financial year 2019-20 by the cost auditor to the board of directors of the Companies is submitted by 30.11.2020 then the same would not be treated as violation of Rule 6 (5) of Companies (cost records and audit) Rules, 2014 which lays down submission of cost audit report to the board of directors by the cost auditor within 180 days from the closure of the financial year to which the report relates. Hence, the cost audit report for the financial year ended on 31.03.2020 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the Company. However, in case of a Company availing extension of time for holding Annual General Meeting ("**AGM"**) then e-form CRA-4 may be filed within 30 days of the date of the annual general meeting.

Extension of Time to hold Annual General Meeting for financial year 2019-20

MoCA through its press release dated 08.09.2020 has extended the timeline for holding the AGM till December 31 from September 30 for the financial year 2019-20 and has issued directions to the Registrar of Companies ("**ROCs**") to issue orders for extension without filing of formal application or payment of fees. Even applications already filed but not approved or rejected are also covered under this relief.

Annual General Meeting (AGM) Extension orders by Registrar of Companies (ROCs)

In line with the orders of MoCA for extension of AGM, ROCs across the country have issued orders for extension of the deadline for conducting AGMs other than the first AGM for the financial year ended on 31.03.2020. For Companies which are unable to hold their AGMs within the due date an extension for a period of three months from the due date by which the AGM ought to have been held has been granted without requiring the Companies to file applications in Form GNL-1 for seeking such extension. This implies that:

- Wherein the last AGM of the Company i.e. for financial year ended 31.03.2019 was held before 29.06.2019, the extension will not be up to 31.12.2020.
- Wherein the last AGM was held on or after 30.06.2019 the extension will be up to 31.12.2020.

Extension granted under these orders shall also cover the following:

- Pending applications filed in Form GNL-1 for the extension of AGM for the financial year ended on 31.03.2020, which are yet to be approved;
- Applications filed in Form GNL-1, for the extension of AGM for the financial year ended on 31.03.2020, which were rejected.

Companies (Acceptance of deposits) Amendment Rules, 2020

In exercise of the powers conferred by Section 73 read with sub-sections (1) and (2) of Section 469 of the Companies Act, 2013, MoCA has notified the Companies (Acceptance of Deposits) Amendment Rules, 2020 ("**Amendment Rules**") in order to ease fund raising by startups. This notification shall come into force with immediate effect. The notification amends Rule 2(1)(c)(xvii) and explanation to the aforesaid rule and Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014. The amendment brings in the following changes:

- Receipt in a single tranche of an amount of Rs 25 lakhs or more, by a startup by way of a convertible note, which is convertible into equity shares or repayable within a period of 10 years from the date of issue will not be considered as a deposit. Earlier the specified limit was only 5 years. Hence the notification grants an additional or extra time of 5 years for startups.
- For the aforesaid, the startup must fulfil the criteria specified in the February 12, 2019 notification issued by the Department for Promotion of Industry and Internal Trade. The earlier reference to the February 2016 notification has been omitted.
- Maximum limits for acceptance of deposits from members will not apply to the private companies (startups) for a period of 10 years from incorporation. The earlier limit was 5 years.

Re-lodgement of transfer requests shares

In exercise of the powers conferred by Section 11 (1) of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India ("**SEBI**") has decided to fix 31.03.2021 as the cut-off date for re-lodgement of transfer deeds. Further, the shares that are re-lodged for transfer (including those requests that are pending with the listed company / RTA, as on date) shall henceforth be issued only in demat mode. Earlier in terms of Regulation 40 (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, transfer of securities held in physical mode had been discontinued. Subsequently, vide Press Release No. 12/2019 dated 27.03.2019, it was clarified that transfer deeds lodged prior to deadline of 01.04.2019 and rejected / returned due to deficiency in the documents may be re-lodged with requisite documents. This cut-off date of 31.03.2021 has been fixed with respect to the aforesaid re-lodgement.

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