NEWSLETTER

ENERGY AND INFRASTRUCTURE

November, 2021

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MNRE ISSUES CLARIFICATION REGARDING TIMELINE EXTENSIONS

(03/11/2021)

INTRODUCTION

On 03.11.2021, the Ministry of New & Renewable Energy (**MNRE**) issued an Office Memorandum (**OM**) clarifying that the time extension granted by it in previous months due to the COVID lockdown will not hamper the change in law claims as the same shall continue to be governed by the provisions of Power Purchase Agreement (**PPA**) and shall be decided by the Appropriate Commission.

BACKGROUND

MNRE issued an O.M. on 12.05.2021 permitting RE projects having their Scheduled Commercial Operation Date (**SCOD**) on or after 01.04.2021 for an extension in their SCOD provided that an undertaking is furnished by the RE Developer that such time-extension shall not be used as a ground for claiming termination of PPA or for claiming any increase in the project cost. At this stage the period of extension was not stipulated by MNRE.

MNRE on 29.06.2021 issued another OM and quantified the period of extension to be granted to RE developers i.e. 01.04.2021 to 15.06.2021 on account of second wave.

Thereafter, on 15.09.2021, MNRE after examining requests of RE project developers issued another OM. Vide the said OM, an extension of another 2.5 months has been accorded to the RE Projects. The aforesaid entire period is to be allowed for extension of time in the SCOD of RE Projects / RE developers dehors the PPAs (**Out-of-contract**) and have been granted liberty to approach the appropriate forum as per their respective PPAs for claiming appropriate time extension. However, if the RE Developer has opted for an extension under OMs issued for the second wave, then in that case, the RE developer will be precluded from claiming any increase in cost even on account of Change in Law qua period of time extension.

Due to certain confusion arising out of the previous OMs pertaining to performance of PPAs and the timelines stipulated therein, MNRE had received various representations to further clarify the issue of change-in-law context with regard to the previous OMs issued regarding time-extension. MNRE now has clarified that the OM dated 15.09.2021, is purely an out of contract relief and it shall not preclude RE Developers to claim Force Majeure/ Change in Law under the PPA if the said OM is not invoked

Please find link to OM here

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Although the OMs do not disclose the applicable provision of the Electricity Act, 2003 being invoked, however MNRE's overall intent has been to balance the interest of all parties and to insulate procurers from any increase in cost (including change in law) due to time extension on account of COVID-19 pandemic which is a huge sigh of relief for the cash/ time strapped RE projects across the country. Having said that OM dated 15.09.2021 had created confusion amongst stakeholders as it appeared that the RE developers' rights under the PPA were being curtailed. This is more so when RE developers are facing force majeure for reasons other than second wave. This ambiguity has now been cleared by MNRE enabling RE developers to invoke the applicable provisions of the PPA in case they opt not to avail the out of contract relief.

SKV Comment

MNRE ISSUES DIRECTIONS FOR DISPUTE RESOLUTION MECHANISM TO GRANT ADDITIONAL TIME TO RENEWABLE ENERGY DEVELOPERS THAT ARE DUE TO COMMISSION BEFORE APRIL 2022

(03/11/2021)

INTRODUCTION

The Ministry of New & Renewable Energy (**MNRE**) by way of its OM dated 03.11.2021 and has empowered/directed the Dispute Resolution Committee (**DRC**) to examine whether any additional time can be granted to Solar Power Developers (**SPDs**) that are due to commission in the next 5 months until the Basic Custom Duty (**BCD**) comes into force from April 2022,

in view of the temporary disruptions in supply of imported solar PV modules being faced across the country.

BACKGROUND

On 20.09.2019, the MNRE issued procedural guidelines regarding its Dispute Resolution Mechanism which have been amended from time to time.

Recently, it was brought to the attention of MNRE that temporary disruptions in supply of imported solar PV modules was leading to extension in project commissioning timelines and accordingly a prayer was made for deferment of BCD on import of solar cells & modules and additional time to achieve time for Scheduled Date of commissioning.

On examination of the issue, it was noted that generally the procurement of solar PV modules for solar power projects take place only in the last few months of commissioning and therefore the projects scheduled for commissioning in the next 5-6 months are likely to get affected due to this temporary situation.

In this backdrop, MNRE has decided to empower the DRC to look into any additional time extension requirement of such projects in exceptional circumstances on account of any issues pertaining to the aforementioned. The DRC is also to make recommendations to the Ministry on merits on a case-to-case basis.

Presently, the RE developer first approaches the concerned Renewable Energy Implementing Agencies (**REIA**) to seek desired relief and in case the RE

developer is not satisfied with the decision, then such RE developer then approaches the DRC. A fee @ 1% of the impact dispute, subject to a minimum fee of INR 1,00,000/- and maximum of INR 50,00,000/- is to be paid.

However, to expedite the matter, RE Developer can now approach the DRC directly without having to approach another authority by paying a fee of INR 1,00,000/-.

Please find link to Order here

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MNRE has taken comprehensive steps to promote Renewable Energy and to overcome the difficulties being faced by the RE Developers . In doing so the overall process has also been expedited.

SKV Comment

MINISTRY OF POWER PROVIDES FORMULA FOR TIMELY RECOVERY OF COSTS

(09/11/2021)

INTRODUCTION

On 09.11.2021, the Ministry of Power (**MoP**) in order to ensure viability of the power sector in light of the recent coal crisis as well as the spike in coal and gas prices has issued a circular regarding the issues relating to availability of fuel, mainly coal and gas for the power plants to ensure there is timely recovery of cost in terms of the formula envisaged under the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (**Change in Law Rules**), till the time a separate formula is prescribed by the State Commission.

BACKGROUND

Until now, owing to the lack of a robust mechanism of timely automatic pass through of fuel cost and transportation cost, the generating companies have been facing constraints in maintaining stock of fuel during such periods. As a result, there is a shortage of supply in the grid which may end up affecting the power supply to the consumer.

It has also been observed that distribution companies face revenue constraints as the corresponding pass through of cost in not done regularly and timely in the retail tariff. Timely collection of revenue from consumer would ensure timely payment by the distribution company to the generating station and coal companies. This is expected to help ensuring the availability of supply to meet the expected increase in demand.

CURRENT POSITION

The goal is to ensure that the power sector does not face any constraints in maintaining assured power supply to meet the demand. Timely recover of cost involves two steps:

- The cost pass through by the generating companies to the distribution companies.
- The cost pass through from distribution companies to the consumer.

Some states have already placed a formula for fuel surcharge adjustment which is being used for this purpose. The current direction also encloses a state-wise list of the status of fuel surcharge formula prescribed by the State Commission.

Please find link to Direction here

This is a step in the right direction considering the recent coal and gas crisis. The present circular ensures that there is timely recovery of cost with the recovery taking place within 180 months or until the impact persists (in the case of a recurring impact), in terms of the Change in Law Rules.

SKV Comment

THE PUNJAB RENEWABLE ENERGY SECURITY, REFORM, TERMINATION AND DETERMINATION OF POWER TARIFF BILL, 2021

(11/11/2021)

INTRODUCTION

On 11.11.2021, the Punjab Vidhan Sabha (State Legislative Assembly) unanimously passed the Punjab Renewable Energy Security, Reform, Termination and Determination of Power Tariff Bill, 2021 (**Bill**). This Bill proposes to revise the long-term Power Purchase Agreements (**PPAs**) between the Punjab State Power Corporation Ltd. (**PSPCL**) and the renewable energy generators.

BRIEF FACTS

One of the main objectives of the Bill is to reduce the tariffs for renewable energy projects approved by the Vidhan Sabha. A notable observation was made by the Minister of New and Renewable Energy Sources, Shri Raj Kumar Verka about the tariffs discovered through a competitive bidding process 7-8 years ago were considerably higher than the current tariffs.

Another objective stated by the State Government is the necessity to enact a law in the interest of the public and provide measures to supply electricity to consumers at an affordable rate.

It has been stated that the state regulatory commissions can redetermine renewable energy tariffs in the interest of the consumers.

The need for a more transparent tariff bidding system has been expressed along with achieving a more sustainable way of electric development of the industries in the State.

Please find link to Bill here

> *The bill ex facie appears to be impinging upon the law made by the Parliament i.e., Electricity Act, 2003. It would be interesting to see whether the legality of such an act of Vidhan Sabha would sustain in law.*
>
> ***SKV Comment***

MOP REVISES MECHANISM FOR FLOW OF GENERATION AND SCHEDULING OF TPPS

(15/11/2021)

On 15.11.2021, the Ministry of Power (**MoP**) revised the detailed mechanism for Flexibility in Generation and Scheduling of Thermal Power Stations. The objective behind this mechanism was previously to promote bundling of Renewable Energy (**RE**) with Thermal Power for meeting the Renewable Purchase Obligation (**RPO**) of Distribution Licensees.

The revised mechanism now provides to cover the replacement of thermal and hydro power with RE power or an unspecified combination of RE with battery energy storage systems. The purpose is to reduce the financial burden on existing distribution licensees in order to enable them to meet their Renewable Purchase Obligation (**RPO**) within the existing contracted capacity and without facing any additional financial burden.

Moreover, the large-scale integration of Grid connected RE consequently generating huge variability has led to the requirement in balance of power to maintain security and stability of Grid. The previous system required Discoms to arrange the balance power. However, the revision of the mechanism now places the responsibility of balance power on the generators.

There are three reasons given for the issuance of the Notification:

- Provide Power Generators an opportunity to utilize generation from RE in an optimum manner
- Help in reducing emissions
- Facilitate RE Capacity addition

The revised scheme shall be applicable to all new and existing coal/lignite/gas based thermal generating stations or hydro power stations which are referred to as "generating station".

Any generating station company may establish or procure renewable energy (**RE**) from a renewable energy power plant that is either co-located within the premises or at new locations within the vicinity of an existing generating station.

The following 3 types of cases will be eligible under the renewable energy power bundling and flexibility in

generation and scheduling of thermal/hydro power stations policy,

- RE power plant co-located within the premises of a generating station
- RE power plant located in the vicinity i.e, within 100km of a generating station

RE power plant co-located within the premises or located in the vicinity of a generating station supplying RE power to procurers of another generation station, located at a different location and owned by the same generating company.

Please find link to Notification here

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The Central Government in order to boost and promote Renewable Energy as well as cater to the overall interest of the consumers, has once again taken note of the surmounting dues on existing distribution licensee thereby enabling them to meet their RPO within the existing contracted capacity and without facing any additional financial burden.

SKV Comment

MERC REJECTS COMPENSATION CLAIM UNDER 'CHANGE IN LAW' DUE TO IMPOSITION OF GST

(08/11/2021)

INTRODUCTION

The Appellate Tribunal of Electricity (**APTEL**), *vide* its Judgment dated 08.11.2021 has set aside Order dated 10.05.2021 (**Impugned Order**) passed by the Maharashtra Electricity Regulatory Commission (**MERC**) thereby rejecting compensation claimed by Azure Power Thirty-Four Private Limited (**Azure**) under the 'Change in Law' clause due to the imposition of Goods and Services Tax (**GST**).

BRIEF FACTS

On 09.04.2018, Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) floated a tender, to procure 1,000 MW of solar power on a long-term basis from new or existing solar projects to meet its renewable purchase obligation (**RPO**) targets. Azure was one of the successful bidders and subsequently entered into a Power Purchase Agreement (**PPA**) on 30.07.2018 for the supply of 130 MW of Solar Power at a Tariff of Rs. 2.72/unit.

At the time of submission of bids, Azure had considered GST at the rate of 5% (2.5% Central GST and 2.5% State GST) on Supply Contracts and 18% (9& CGST and 9% SGST) on Contracts for Civil Works in terms of the Ministry of Finance (**MoF**) dated 28.06.2017.

Thereafter, to resolve the issues raised qua the applicable GST rates for Composite Contracts, i.e., Contracts providing for both Supply and Services for setting up of Solar Power Plants (**SPPs**), the MoF, on the recommendation of the GST Council, issued Notification Nos. 24/2018-Central Tax (Rate) and 27/2018-Central Tax (Rate) dated 31.12.2018. As a result of these Notifications, GST at the composite rate of 8.9% (5% on 70% of the consolidated taxable value of the Contracts and 18% on the remaining 30% of the consolidated taxable value of the Contracts) became payable on Supply and Service Contracts for setting up of an SPP. The change in the applicable GST brought about the Notifications dated 31.12.2018 adversely affected the cost of the SPP envisaged by Azure at the time of submission of bids.

In view of the same, Azure filed a Petition before MERC seeking the following reliefs :

(a) Hold and declare that the change in rate of GST applicable to Supply and Service Contracts pursuant to the Notifications mentioned hereinabove, for setting up of Azure's solar power plants, amounts to Change in Law events under the PPA

(b) Hold and declare that the Azure is entitled to the cost incurred along with the carrying cost towards restriction on account of the impact of such Change in Law events on the Azure's Solar Power Plant

(c) Direct MSEDCL to make payment of the cost incurred along with the applicable carrying cost towards compensation for such Change in Law events to Azure.

MERC while noting Azure's contention that placing of EPC contract for setting up of Solar power generating system is a well-accepted industrial practice, held that for services such as erection, testing and commissioning, Azure could have place separate contracts. Any adverse implication of such contracting practices adopted by Azure could not be allowed to be passed on to the buyer under 'Change in Law' provision of the PPA. Based on this observation, the compensation was denied, and the case of the appellant was dismissed by MERC.

Being aggrieved by this decision of MERC, Azure filed the Appeal before APTEL.

RULING

APTEL while observing that the instant Appeal was similar to the Judgment dated 20.09.2021 passed in Appeal No. 215 of 2021titled as *Tata Power Renewable Energy Limited vs. MERC & Anr* allowed the Appeal filed by Azure, setting aside the Impugned Order. APTEL remitted the matter back to MERC and directed MERC to reconsider the Petition filed by Azure and pass appropriate Orders, in accordance with the law expeditiously within a period of three months from the first date of appearance of the parties.

Please find a link to the Judgment dated 08.11.2021 here.

> *This is a welcome move for the Solar Power Generators as it affords them the opportunity to be heard qua the issue of the additional costs being borne by them on account of the new GST Notifications. MERC had ventured into re-writing express terms of the PPA and basically held that contracting process of the RE developer to be imprudent. Such an Order would have created uncertainty in the sector because if the RE Developer is otherwise in contract entitled to relief under Change in Law, the relief must be granted. APTEL by its Judgment has rectified the error committed by MERC.*
>
> ***SKV Comment***

APTEL ORDERS PRIOR FLOOR AND FORBEARANCE PRICES TO STAND REVIVED UNLESS FRESH ORDER IS ISSUED FROM THE MINISTRY

(09/11/2021)

INTRODUCTION

Indian Sugar Mills Association (**ISMA**) along with a batch of Renewable Energy Generators (**RE Generators**) had filed the present batch of Appeals before the Appellate Tribunal for Electricity (**APTEL**) challenging the Central Electricity Regulatory Commission's (**CERC**) Order dated 17.06.2020 (**Impugned Order**) whereby the methodology of price determination of Renewable Energy Certificates (**REC**) has been revised retrospectively. *Vide* the Impugned Order, CERC has further revised the floor and forbearance price of solar and non-solar RECs at Rs. 0/MWh and Rs. 1000/MWh respectively. ISMA was represented by SKV Law Offices in the matter.

APTEL by way of its judgment has set aside the Impugned Order and directed that Order governing floor and forbearance prices prior to the Impugned Order would stand revived so long as a fresh Order is not issued. Further, in interest of justice, the RECs issued on or after 31.03.2017 which are still valid for trading and have remained unsold, shall continue to be valid and be good for sale or purchase for their remainder period of validity.

BRIEF FACTS

Under Section 178(2)(y) of the Electricity Act, 2003 (**Act**), CERC has been conferred powers to frame regulations with respect to the manner in which the market for power trading is to be developed in terms of Section 66 of the Act. In exercise of its powers, CERC had framed regulations for development of market of non-conventional energy sources by issuance of transferable and saleable credit certificates also known as CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generations) Regulations, 2010 (**REC Regulations**).

Regulation 9 of the REC Regulations (amended w.e.f. 11.07.2013) is at the heart of the controversy in the present case. Regulation 9 provides for pricing of REC and the proviso to Regulation 9(1) permits CERC to specify the "*floor price and forbearance price*" separately for solar or non-solar certificates. Whereas Regulation

9(2) states the factors to be taken into consideration for determination of floor and forbearance price.

The expression "floor price" is defined in Regulation 2(1)(f) as the minimum price at and above which a RECs can be dealt in the power exchange. Similarly, the expression "forbearance price" is defined in Regulation 2(1)(g) as the ceiling price within which the RECs can be dealt in the power exchange.

Vide the Impugned Order, CERC revised the floor and forbearance price for future as well as retrospectively for RECs issued between 01.04.2017 to 17.06.2017. The RE Generators had contended that CERC has prejudiced the legitimate interest of RE generators inasmuch as pending RECs would not be purchased at prices lesser than the price they would have been originally purchased.

RULING

APTEL in order to address the present controversy framed three questions of law which are as follows:

(a) Whether the Appeals are maintainable**?**

(b) Whether the Impugned Order violates Regulation 9(2) of REC Regulations?

(c) Whether CERC failed to comply with Regulation 9(1) of REC Regulations?

Answering the first question, APTEL held that the Appeals are maintainable under Section 111 of the Act considering that Order revising the floor and forbearance prices of RECs is in the nature of Tariff Order. Even though APTEL cannot sit at judicial review of the Regulations framed by CERC, it is still vested with powers to adjudicate upon an Appeal filed by anyone aggrieved form a decision-making process order of CERC.

Answering the second question, APTEL held that the Impugned Order suffers from infraction of Regulation 9(2) of REC Regulations since there was no determination of "cost of generation" or expected RE generation capacity or variations to justify a fresh determination. APTEL held that every time CERC decides to change the floor and forbearance prices, it must conduct market study.

Further, APTEL observed that it has become unviable for small scale RE generators to sustain and they might get pushed out of RE industry, if the lowest bid made by one of the bidders, with larger risk appetite, is relied upon for determination of forbearance and floor price, which is completely anti-competitive and an anathema to the Act.

In so far as the third issue is concerned, APTEL held that it is evident from the Impugned Order that CERC was supposed to mandatorily consult Central Agency (POSOCO) and Forum of Regulators before revising the floor and forbearance prices.

In view of the above, APTEL set aside the Impugned Order and directed that Order governing floor and forbearance prices prior to the Impugned Order would stand revived so long as a fresh Order is not issued. Further, in interest of justice, the RECs issued on or after 31.03.2017 which are still valid for trading and have remained unsold, shall continue to be valid and be good for sale or purchase for their remainder period of validity.

Please find the link for Judgment here

"

In our opinion, APTEL has rightly set aside the Impugned Order, which had effectively negated the competition in the market. It has been rightly held that CERC does not have the powers to tinker with RECs retrospectively. Further, given the situation around trading of RECs, APTEL has in complete fairness to all the stakeholders directed that the previous Order on the subject would stand revived.

● ● ● ***SKV Comment***

APERC GRANTS IN-PRINCIPLE APPROVAL FOR ADDITIONAL PROCUREMENT OF SOLAR POWER

(11/11/2021)

INTRODUCTION

The Andhra Pradesh Electricity Regulatory Commission (**APERC**) on 11.11.2021 by way of its Order has granted approval to the Distribution Companies operating within the state of Andhra Pradesh (**APDISCOMs**) for an Interim Power procurement plan (**Interim plan**) for the 5th Control period (FY 2024-25 to FY 2028-29) which envisages procurement of 7000 MW of solar power from Solar Energy Corporation of India (**SECI**) in a phased manner commencing from September 2024 for a period of 25 years with a ceiling limit of 17000 MU/year.

FACTUAL BACKGROUND

On 05.11.2021, APCPDCL on behalf of APDISCOMs sought approval for an interim power procurement plan for the 5th Control period which mandated procurement of 7000 MW of solar power from SECI in a phased manner commencing from September 2024 to September 2026 in three tranches for 3000 MW, 3000 MW and 1000 MW respectively.

Thereafter, APDISCOMs vide letter dated 08.11.2021, further sought permission to enter into a tripartite Power Sale Agreement (**PSA**) along with Government of AP and SECI for procurement of power for a period of 25 years.

APDISCOMs by way of the interim plan submitted that the proposed plan is in line with the commitments of Government of India's Nationally Determined Contributions (**NDC**) set under the Paris Agreement, and that the State Government has conceived the proposed plan of procurement mainly to achieve the objects of providing 9 hours daytime free supply to the farmers without increasing the financial burden on the APDISCOMs for the next 25 years and to relieve the APDISCOMs of accumulation of subsidy burdens and also take care of the Payment Security Mechanism.

RULING

The APERC after considering the DISCOMs' plan held as follows:

(a) The proposed energy procurement is necessary and in the best interests of the state's power sector.

(b) The AP Government being one of the three parties to the PSA will be responsible for the payment security mechanism.

The proposed power purchase will not impose any burden on any consumer category because the purchased power is intended for supply to the agriculture sector, the cost of which will be entirely borne by the State Government.

Please find the link to Order [here]

The said approval accorded by APERC although has been done in the best interest of the consumers within the state, however, while doing so, APERC has failed to consider the plight of the existing RE Generators within the state which are not only being paid at the full tariff as per the PPA but at the same time are being curtailed arbitrarily. Further, the Government has also taken a diametrically opposite stand by stating that they will take care of the Payment Security Mechanism in the present contracts whereas State Government through DISCOMs admittedly owe huge amounts and has failed to maintain Payment Security Mechanism qua the older RE Generators.

SKV Comment

APTEL SETS ASIDE ORDER OF MERC RESTRCITING COMPENSATION FOR LIMITED CAPACITY OF SOLAR MODULES/PANELS

(16/11/2021)

INTRODUCTION

The Appellate Tribunal for Electricity (**APTEL**) by way of a Judgment dated 16.11.2021 has set aside the Order dated 23.07.2020 (**Impugned Order**) passed by the Maharashtra Electricity Regulatory Commission (**MERC**) wherein MERC had restricted the compensation in the favour of the Nisagra Renewable Energy Pvt. Ltd. (**Nisagra**) and Juniper Green Energy Pvt. Ltd. (**Juniper**) (hereinafter collectively referred to as SPDs) for a limited capacity of solar modules/panels as against the total installed Direct Current (**DC**) capacity.

BRIEF FACTS

Government of Maharashtra appointed Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) as implementing agency under Mukhyamantri Solar Ag Feeder Scheme (**Scheme**) for giving daytime power to agricultural consumers. Under this, MSEDCL intended to undertake development of 1000 MW (AC) Solar PV Ground mount power plants in Maharashtra to be implemented in 218 talukas to fulfil its renewable power purchase obligation and meet its future requirements. Pursuant to the aforesaid, on 27.04.2018, MSEDCL invited bids for development of solar PV ground mount power plants in Maharashtra. Juniper submitted its bid on 21.06.2018.

On 30.07.2018, Ministry of Finance (**MoF**) issued a notification imposing *Safeguard Duty* on import of solar cells (**Notification**), irrespective of the fact whether assembled or not in modules or panels for two years, which came to be accepted by MERC as *Change in Law* (**CIL**) event.

On 06.09.2018 & 07.09.2018, Juniper requested MSEDCL to issue Letter of Award (**LoA**), making it clear that in case Safeguard Duty was applied, such burden would be over and above the tariff under the PPAs and claimed as *pass through* to MSEDCL in terms of RfS, stating that the discount for the project had been offered by it excluding the imposition of safeguard duty imposed subsequently vide Notification. However, MSEDCL was of the view that the same can only be decided/adjudicated upon by MERC.

Consequently, the SPDs approached the MERC by way of separate Petitions, namely Case No. 61 and 62 of 2020 seeking in principle approval qua Safeguard Duty notification as a CIL.

The MERC by way of the Impugned Order held the Notification to be CIL event and directed that the imposition on account of safeguard duty shall be considered for reimbursement on actual basis. However, the MERC restricted the claims of the SPDs for compensation on account of imposition of Safeguard Duty for a limited capacity of solar modules/panels as against the total installed DC capacity.

Aggrieved by the aforesaid finding rendered by MERC, the SPDs approached APTEL.

RULING

APTEL while passing its Judgment held that once the RfS and PPA have been approved by MERC and the declared Capacity Utilization Factor (**CUF**) has been accepted *inter se* parties as well as the MERC, the same cannot be questioned at this stage. Further APTEL placed reliance on Article 9.2.1 of the PPAs, dealing with Change in Law, which also envisages that the affected party shall be restored to the same financial position had the CIL event had not occurred. Accordingly APTEL was of the view that CIL impact ought to be computed on actuals.

APTEL further noted that MERC has failed to bear in mind that the Late Payment Charge or the Late Payment Surcharge is for limited purposes i.e., delay in payment under the PPA, and the same cannot be read into provision of 'Change in Law' which provides for full restitution of actual costs. It further held that payment of carrying cost is a part of the Change in Law clause which is an in-built restitution clause.

Accordingly, APTEL remanded the matter back to MERC and directed the same to be heard afresh, as the reduction in compensation was held to be arbitrary, unjust and bad in law.

Please find the link for the Order here.

> *In our view, this Order comes as a sigh of relief for the RE developers,, especially at a time when a number of states across the country are attempting to re-open and renegotiate concluded PPAs. By way of the said Judgment, APTEL has once again re-enforced the sanctity of PPAs as well as the terms thereunder. Further, this also brings about much needed clarity with respect to installation of additional panels/DC Capacity to achieve the CUF in terms of the PPA being the prerogative of the developer.*
>
> ***SKV Comment***

CERC DETERMINES FORBEARANCE AND FLOOR PRICE FOR THE REC FRAMEWORK

(18/11/2021)

INTRODUCTION

The Central Electricity Regulatory Commission (**CERC**) by way of its Order dated 18.11.2021 in Petition No. 05/SM/2020 and in terms of the directions of the Appellate Tribunal for Electricity (APTEL) on 09.11.2021 in a batch of Appeals filed by Indian Sugar Mills Association (**ISMA**) along with a other Renewable Energy Generators (**RE Generators**) challenging the CERC's Order dated 17.06.2020. APTEL by way of its judgment set aside the Impugned Order and directed that Order governing floor and forbearance prices prior to the Impugned Order would stand revived so long as a fresh Order is not issued. Further, in interest of justice, the RECs issued on or after 31.03.2017 which are still valid for trading and have remained unsold, shall continue to be valid and be good for sale or purchase for their remainder period of validity.

BRIEF FACTS AND RULING

CERC vide Order dated 17.06.2020 had revised the methodology of price determination of Renewable Energy Certificates (**REC**) retrospectively. *Vide* the said Order, CERC had revised the floor and forbearance price of solar and non-solar RECs at Rs. 0/MWh and Rs. 1000/MWh respectively. ISMA was represented by SKV Law Offices in the matter.

The same was challenged by ISMA and a batch of RE Generators before APTEL wherein APTEL by way of its Judgment set aside the Impugned Order and directed that in interest of justice, the RECs issued on or after 31.03.2017 which are still valid for trading and have remained unsold, shall continue to be valid and be good for sale or purchase for their remainder period of validity. In this backdrop, the CERC was directed to issue formal directions in this regard.

Accordingly, in terms of the said directions, CERC passed the present Order thereby implementing the directions passed by APTEL.

Please find the link to Order here

> *Given the situation around trading of RECs, APTEL has in complete fairness to all the stakeholders directed that the previous Order on the subject would stand revived which has subsequently been implemented by CERC.*
>
> ***SKV Comment***

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