



NEWSLETTER

# ENERGY AND INFRASTRUCTURE

December, 2021

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## CERC ISSUES DRAFT INTER STATE CONNECTIVITY REGULATIONS, 2021

(16/12/2021)

### INTRODUCTION

On 16.12.2021, the Central Electricity Regulatory Commission (**CERC**) had issued draft Regulations namely – ‘Connectivity and General Network Access to the Interstate Transmission System (**ISTS**) Regulations, 2021’ (**Draft Regulations**). The Draft Regulations provide for a framework which facilitates the open access power to consumers, Generating companies, as well as the Distribution licensees for ISTS use through General Network Access (**GNA**). GNA is an open access to ISTS connectivity which is granted under these Draft Regulations.

### BACKGROUND AND FEATURES

In month of October 2021, the Ministry of Power (**MoP**) notified the Electricity (Transmission System Planning, Development, and Recovery of Inter-State Transmission Charges) Rules, 2021 to enable power utilities to access the transmission network across the country smoothly. Prior to same, had issued a detailed procedure for granting connectivity to renewable projects to ISTS.

In this backdrop, the Draft Regulations have been issued proposing as follows:

- The applications for the grant of connectivity or grant of GNA is to be made online to a Nodal Agency which is to be signed by the Applicant along with a fee of Rs. 5 lakhs (with applicable taxes). This is exclusive of the State Transmission Utilities (**STU**) who are applying for a GNA as no application fee is payable by the STU.
- These Draft Regulations enlists entities which are eligible to apply for the grant of connectivity to the ISTS and the same are as follows:
  - Generating stations, including renewable projects (**REGs**) with or without energy storage system (**ESS**), with an installed capacity of 50 MW or above individually or with an aggregate installed capacity of 50 MW and above through a lead generator / a Lead ESS.
  - Captive generating plant with capacity for injection to ISTS of 50 MW and above
  - Standalone ESS with an installed capacity of 50 MW and above individually or with an

aggregate installed capacity of 50 MW and above through a lead generator or lead ESS

- Renewable Power Park Developer
- REGs or standalone ESS with an installed capacity of 5 MW and above applying for the grant of connectivity to ISTS through the electrical system already having connectivity to ISTS

➤ In addition to the above, the following entities are eligible for the grant of a GNA under these Draft Regulations:

- STU on behalf of distribution licensees connected to ISTS and other intrastate entities
- A buying entity connected to the intrastate transmission system
- A distribution licensee or a bulk consumer seeking to connect to ISTS, directly, with a load of 50 MW and above
- Trading licensees engaged in cross border trade of electricity
- Transmission licensee connected to ISTS for drawl of auxiliary power

➤ In a situation wherein, some transmission constraints or in the interest of grid security, it becomes inevitable to curtail power flow on a transmission corridor, the transactions already scheduled may be curtailed by the RLDC in terms of the following:

- Transactions under Temporary -GNA shall be curtailed first followed by transactions under GNA.
- Within transactions under Temporary -GNA, bilateral transactions shall be curtailed first, followed by collective transactions under day ahead market followed by collective transactions under real time market.
- Within bilateral transactions under Temporary -GNA, curtailment shall be on pro rata basis based on Temporary -GNA.
- Within transactions under GNA, curtailment shall be on pro rata basis based on GNA.

Please find link to Draft Regulations [here](#)



*The new Draft Regulations, if notified will provide guidance for the optimal utilization of open access to licensee / generating companies / consumers for the use of ISTS through GNA. These Draft Regulations provide for a regulatory framework which was the need of the hour for facilitating the non-discriminatory open access.*

● ● ● **SKV Comment**



## CLAIMS WITH RESPECT TO CHANGE IN LAW EVENTS OUGHT TO BE MUTUALLY SETTLED BETWEEN PARTIES IN ACCORDANCE WITH THE CHANGE IN LAW RULES, 2021

(02/12/2021)

### INTRODUCTION

The Central Electricity Regulatory Commission (**CERC**) by way of its Order dated 02.12.2021 has held that claims with respect to “*Change in Law*” raised by an Affected Party i.e. a Generating Company or a Transmission Licensee has to be settled in accordance with the Electricity (Timely Recovery of Costs dues to Change in Law) Rules, 2021 (**Change in Law Rules, 2021**) notified by the Ministry of Power, Government of India (**MoP, GoI**) on 22.10.2021.

Notably, the said Rules have been promulgated/notified by the Central Government in exercise of the powers enshrined under Section 176 of the Electricity Act, 2003 (**Act**). The legislative intent and true purport of the said Rules is to restore the affected party to the same economic position as if the Change in Law Events had never occurred. As per the said regime, in order to restore the affected party to the same economic position, the appropriate commission in accordance with Rule 3(8) would verify the calculations submitted by the affected party and thereafter adjust

the amount of impact of Change in Law from the monthly tariff within 60 days of receipt of relevant documents.

### BRIEF FACTS

Coastal Energen Private Limited (**Coastal Energen**) filed the present Petition under 79(1)(b) and (f) of the Act seeking compensation on account of Change in Law events in terms of the Power Purchase Agreement (**PPA**) dated 19.12.2013 entered into with Tamil Nadu Generation and Distribution Corporation Limited (**TANGEDCO**) for supply of 558 MW power generated from Coastal Energen’s generating station.

In the said Petition, Coastal Energen *inter-alia* sought direction qua TANGEDCO for payment of Rs. 145.8 Crores towards the additional expenditure incurred by Coastal Energen till 31.03.2021 towards Change in Law events and Rs. 15.64 Crores incurred by Coastal Energen towards increase in levy of Counter Veiling Duty due to Change in Law Events. In addition to the aforesaid

reliefs, Coastal Energen sought grant of carrying cost on account of occurrence of Change in Law Events.

The compensation sought by Coastal Energen for “Change in Law” was on account of the following events:

- (a) Levy of royalty on stevedoring and shore handling operations on imported Coal;
- (b) Levy of Tariff for Mechanization of Evacuation of Cargo on imported Coal;
- (c) Levy of Tariff for electrically operated Hopper on imported Coal;
- (d) Increase in Wharfage, including levy for supply of labour & Pension fund levy on imported Coal;
- (e) Increase in Counter Veiling Duty on imported Coal; and
- (f) Carrying cost

**RULING**

Before delving into the merits of the Petition and the reliefs sought thereunder, the CERC examined Rule 3 of the Change in Law Rules, 2021 which deals with the

procedural framework to be adopted by the Affected Party in case of occurrence of Change in Law Events.

While examining the said Rules, the CERC emphasized on sub-Rule 3(7) and 3(8) of the Change in Law Rules, 2021 which stipulates submission of relevant documents along with detailed calculations of the amount of impact of Change in Law by the Generating Company or Transmission Licensee to the Appropriate Commission within 30 days, pursuant to which the Appropriate Commission would verify the same and adjust the amount of impact from the monthly tariff within 60 days of receipt of relevant documents.

Taking into account aforesaid Rules, the CERC being the Appropriate Commission directed both the parties to mutually settle the claims arising on account of Change in Law Events in accordance with the procedural framework envisaged under Rule 3 and thereafter approach the Commission in terms of Rule 3(8) by way of a separate Petition.

Please find link to Judgment [here](#)



*In our view, the notification of the Change in Law Rules, 2021 primarily aims at timely recovery of costs for an Affected Party due to occurrence of Change in Law Events. The promulgation such rules is a welcome step as the investment in power sector is largely dependent upon timely payments. If the payments are not made in a timely manner, the viability of the power sector gets severally affected thereby leading to financial crunch for the generating companies. The intent of the said Rules has been reiterated by the CERC in this Order which henceforth will be followed as the grundnorm in so far as change in law claims are concerned.*

*However, CERC has taken a view that existing matters are also required to be addressed through the Rules. This would perhaps not achieve the intended result of expediency as matters where disputes are already pending before CERC, if the parties are sent back for reconciliation then the overall progress is realizing Change in Law relief would be delayed.*

● ● ● **SKV Comment**





## CLAIMS WITH RESPECT TO CHANGE IN LAW EVENTS OUGHT TO BE SETTLED IN ACCORDANCE WITH THE CHANGE IN LAW RULES, 2021

(16/12/2021)

### INTRODUCTION

The Central Electricity Regulatory Commission (**CERC**) in a Petition filed by Azure Power Forty One Private Limited, Azure Power India Private Limited and Azure Power Maple Private Limited (**Azure Power**) held that compensation for Change in Law shall be computed in terms of Rule 3(5) of the Electricity (Timely Recovery of Costs dues to Change in Law) Rules, 2021 (**Change in Law Rules, 2021**) notified by the Ministry of Power, Government of India (**MoP, GoI**) on 22.10.2021 which provides that where the agreement lays down any formula, the same shall be in accordance with such formula; or where the agreement does not lay down any formula, it would be in accordance with the formula given in the Schedule to the Change in Law Rules.

### BRIEF FACTS

On 06.01.2011, the Ministry of Finance, Government of India (**MoF**) issued a Notification whereby all items of Machinery and components required for setting up of a solar power generation plant were exempted from Customs duty, *ad valorem* duty of 5% and Additional

Custom Duty leviable under Section 3 of the Customs Tariff Act, 1975.

However, on 01.02.2021, MoF issued another Notification whereby it rescinded the exemption that was accorded to Solar Generators *vide* the Notification dated 06.01.2011. As a result of the aforesaid rescission from 02.02.2021, Basic Custom Duty to the tune of 20% is now leviable on Solar Inverters leading to an increase in capital cost for setting up a solar plant.

The said increase in the Basic Customs Duty resulted in a consequent increase in the quantum of Social Welfare Surcharge and IGST. Due to the said imposition, Azure Power was constrained to file the subject Petitions seeking approval of the said Notification dated 01.02.2021 as a Change in Law event, as well as an appropriate mechanism for grant of adjustment/compensation to offset financial/ commercial impact of the said Change in Law event.

The main issue to be decided in the present set of Petitions was whether the Change in Law Rules, 2021 would have retrospective application or not.

**RULING**

The CERC while placing reliance on the Change in Law Rules, 2021 observed that the same have been framed to facilitate timely recovery of costs due to Change in Law events and provide a process and methodology to be followed.

Since the Rules envisage/mandate that upon occurrence of a Change in Law event, the affected party and the other parties are to settle the claims amongst themselves and only after a settlement has been mutually achieved, they must approach the CERC in terms of Rule 3 (8) of the Change in Law Rules, 2021.

Please find link to Judgment [here](#)

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*However, CERC has taken a view that existing matters are also required to be addressed through the Rules. This would perhaps not achieve the intended result of expediency as matters where disputes are already pending before CERC, if the parties are sent back for reconciliation then the overall progress is realizing Change in Law relief would be delayed.*

● ● ● **SKV Comment**





## **PRESIDENT SANCTIONS CONTINUANCE OF RENEWABLE ENERGY RESEARCH AND TECHNOLOGY DEVELOPMENT (RE-RTD)**

*(09/12/2021)*

### **INTRODUCTION**

On 09.12.2021, the Ministry of New & Renewable Energy (**MNRE**) got a sanction from the President of India for its continuation of the Renewable Energy Research and Technology Development (**RE-RTD**) (**Scheme**) Programme for implementation during the of 2021-22 to 2025-26. A sum total of Rs. 228 crore has been sanctioned to continue the Scheme which aims at scaling up R&D for RE-RTD. The main objective is also to promote indigenous technology development and manufacture for wide spread applications of new and renewable energy in an efficient and cost-effective manner across the country.

### **OBJECTIVE**

The scheme aims to support the R&D projects for technology development and demonstration in various areas of new and renewable energy such as solar photovoltaic systems, biogas systems, waste to energy systems, wind energy systems, hybrid systems, storage systems, hydrogen and fuels cells, geothermal, etc. The ultimate aim of the scheme is to increase shares of

renewable energy in the country. Technology development shall be supported through:

- Technology mapping and benchmarking
- Aligning costs of new and renewable energy products and services with international levels
- Carrying out renewable energy resource survey, assessment and mapping
- Providing sustained feedback to manufacturers on performance parameters of new and renewable energy products and services with the aim of effecting continuous upgradation
- Providing cost-competitive new and renewable energy supply options
- International collaboration for joint technology development and demonstration, testing, and standardization.

The scheme is aimed to lead to research, design, technology development and demonstration in New & Renewable Energy which will be measured in terms of improvement of process/efficiency, cost reduction and technology validation for scaling up for demonstration

and commercialization. Moreover, strengthening of expertise in R&D/academic institutions in specific advance areas for technology development and demonstration is also expected.

Please find link to the Notification [here](#)

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*In our opinion, this is a huge step for the country in achieving 40% of electric power installed capacity from non-fossil fuel sources by 2030 as it promote the renewable energy market in the county and at the same time encourage manufacturing of wide range of equipments used in the Renewable Energy Industry in a more efficient and cost effective manner. India for far too long has been heavily reliant on imports of Renewable Energy equipment and with this initiative it will encourage local manufacturing of equipments and reduce its dependence on imports from countries like China.*

● ● ● **SKV Comment**



## SUPREME COURT HOLDS CONSUMERS ARE NOT LIABLE TO PAY ADDITIONAL SURCHARGE UNDER SECTION 42 (4) OF THE ELECTRICITY ACT, 2003

(10/12/2021)

### INTRODUCTION

The Supreme Court of India by way of its Judgment dated 10.12.2021 in a Civil Appeal filed by Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) has held that captive consumers/captive users are not liable to pay Additional Surcharge leviable under Section 42 (4) of the Electricity Act, 2003 (**the Act**). The Supreme Court vide the said Judgment further directed MSEDCL that the Additional Surcharge already collected from the Captive Consumer, i.e. JSW Steel Limited (**JSW**) in the said case be adjusted in the future wheeling charges bills.

### BRIEF FACTS

In 2016, MSEDCL had filed a petition before the Maharashtra Electricity Regulatory Commission (**MERC**) for Multi-Year Tariff (**MYT**) approval for the FY 2014-15, provisional truing up of the Aggregate Revenue Requirement (**ARR**) for the FY 2015-16, and MYT for third control period from FY 2016-17 to FY 2019-20. MERC by way of its Order held that the additional surcharge shall be applicable to all consumers who have

availed open access to receive supply from sources other than the distribution licensee to which they are connected.

Thereafter, in 2017, MSEDCL submitted its revised Review Petition seeking an approval of applicability of additional surcharges for all open access consumers including those sourcing power from Captive Power Plants. On 12.09.2018, MERC by way of its Order held that Additional Surcharge is leviable under Section 42(4) of the Act on the captive consumers/captive users.

Aggrieved by MERC's Order, JSW filed an appeal before the Appellate Tribunal for Electricity (**APTEL**). On 27.03.2019, APTEL vide its Order set aside MERC's Order and held that Captive Consumers such as JSW are not liable to pay Additional Surcharge under Section 42(4) of the Act.

MSEDCL, being aggrieved by APTEL's Judgment, approached the Supreme Court in a Civil Appeal. Notably, the Supreme Court vide Order dated 01.07.2019 stayed APTEL's Judgment dated 27.03.2019.

## RULLING

The Supreme while placing reliance on a conjoint reading of Section 9 and Section 42 of the Act observed that captive consumers/captive users are not liable to pay additional surcharge. The Supreme Court also opined that the right to open access to transmit/carry electricity to the captive user is granted by the Act and is not subject to MERC's permission. The said right is conditioned by availability of transmission facility, which aspect can be determined by the Central or State transmission utility. In the said backdrop, the Supreme Court concluded by holding that Sub-section (4) of Section 42 shall be applicable only in a case where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply and only such consumer shall be liable to pay additional surcharge on the charges of wheeling, as may be specified by the State Commission.

In so far as Captive Users being a consumer in terms of Section 2(15) of the Act is concerned, the Hon'ble Supreme Court noted that there are two classes of

consumers, ordinary consumers as defined under Section 2(15) of the Act and Captive Consumers as defined under section 9 of the Act.

In light of the aforesaid, the Supreme Court held that Captive Consumers are different and distinct, and they form a separate class by themselves and incur huge expenditure for construction, maintenance or operation of a captive generating plant and dedicated transmission lines. However, the consumers defined under Section 2(15) don't incur any expenditure and/or invest any amount at all and hence Additional Surcharge is imposed upon them. Accordingly, it was held that it would not be justified if Additional Surcharge is levied on Captive Consumers as well.

While concluding, the Supreme Court also directed the Additional Surcharge already recovered from the captive consumers/ captive users shall be adjusted in the future wheeling charges bills to avoid an additional financial burden on MSEDCL.

Please find the link for the Order [here](#)

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*In our opinion, the Supreme Court's Judgment is not only a major relief for the Captive Users/Consumers but is also in line with the intent of the legislature to exempt the Captive Plants from payment of any kind of Surcharges while availing Open Access. It will also promote efficient utilisation of idle Captive Generating Plant capacity as also to induce investments in the CGP sector with now there being certainty that additional surcharge shall not be leviable on Captive Users/Consumers.*

● ● ● **SKV Comment**



## RERC DECLARES IMPOSITION OF BASIC CUSTOM DUTY AS CHANGE IN LAW

(13/12/2021)

### INTRODUCTION

The Rajasthan Electricity Regulatory Commission (**RERC**) by way of its Order has recognised the imposition of Basic Custom Duty (**BCD**) on Solar Inverter and levy a BCD on import of solar cells/modules/panels as a Change In Law event. The Petition was filed by The Rajasthan Urja Vikas Nigam Ltd. (**RUVNL**), seeking adoption of tariff for 1070 MW Solar PV power discovered through competitive bidding conducted by Solar Energy Corporation of India (**SECI**). SKV Law Offices represented NTPC Renewable Energy Limited (**NTPC REL**), one of the successful bidders in the proceedings before RERC.

However, GIB Judgment passed by the Apex Court was not approved as a Change in Law event on the basis that the Generators could have set up its Project anywhere in the State of Rajasthan.

### BRIEF FACTS

On 16.07.2020, SECI issued Request for Selection (**RfS**) for selection of Solar Power Developers for setting up of 1070 MW Grid-Connected Solar PV Power Projects in

Rajasthan. On 28.12.2020, SECI issued Letter of Award (**LoA**) to the power generators for development of 1070 MW solar power project in the State of Rajasthan.

RUVNL, beneficiary under the PPA, moved the RERC for adoption of tariff for 1070 MW Solar PV Power under Section 63 of the Electricity Act, 2003 impleading Green Infra as one of the Respondents therein. The RERC passed an Order on 23.07.2021, whereby RERC recorded satisfaction that the bid discovered tariff merited acceptance and adoption in as much as the process undertaken was in accord with the guidelines issued by the Central Government, the process undertaken being transparent.

In the run-up to the above Order, on account of increase in basic custom duty on import of solar inverters, levy of basic customs duty on import of solar cells and certain other development upward revision of the discovered tariff was necessitated as these events were in the nature of Change in Law and Force Majeure.

However, RERC declined to grant any relief in above nature and closed the proceedings by the above order leaving RE Generators to approach it again after

adoption of tariff on the tentative view that at the stage of adoption of tariff, the Commission could only examine whether the competitive bidding process under Section 63 of the Electricity Act, 2003 was in accordance with the guidelines issued by the Government of India and whether the process was held in a transparent manner. Aggrieved by the said Order, Green Infra filed an Appeal.

In the Interregnum, MoF, GoI *vide* its notification dated 30.09.2021, increased the GST rate to 12% applicable upon Renewable Energy devices and parts for their manufacture, instead of 5% which was initially applicable upon Generators at the time of submission of bid. In this backdrop, NTPC REL sought the said increase in GST Rates as an event of Change in Law.

APTEL, *vide* its Order dated 12.10.2021 and after considering the issues raised by the Generators, remanded the matter to RERC for reconsideration of the change in law event.

## **RULING**

RERC basis the remand directions of the Hon'ble Tribunal, limited its finding only to the three change in

law event. The generators were restrained from seeking consideration of any other aspect.

RERC basis the remand directions and the terms of the PPA, held that any change *qua* Safeguard duty, GST and BCD after last date of submission i.e. 28.10.2020 which results in overall cost of the Project, will be treated as Change in Law.

In this backdrop, RERC gave an in principle approval *qua* imposition of BCD on solar inverters pursuant to MOF notification dated 01.02.2021 and levy of BCD on import of solar cells/modules/panels pursuant to MNRE OM dated 09.03.2021, as change in law event under the PPA as they resulted in change in project cost. However the impact shall be considered separately by the procurer on case to case basis.

However, in so far as the issue of GIB is concerned, the RERC observed that the said claim holds no ground as the bid for procurement of solar power was not location specific and generators are free to set up a project anywhere in the State of Rajasthan. Thus Generators cannot claim benefit of Change in law relating to any specific location.

Please find link to Judgment [here](#)



“

*In our opinion, while RERC has taken note of the imposition of statutory levies such as BCD a Change in Law event thereby providing a huge respite to the RE Generators, it has rejected the Claim of NTPC REL qua GST and GIB despite holding that as per Article the PPA any change in rates qua Safeguard Duty, GST and BCD after the last date of bid submission i.e. 28.10.2020 which has resulted in change in overall cost Project shall be treated as a Change in Law. RERC while denying relief on GIB has held that it was open for bidders to set up their project at any location hence if the project falls under GIB area the cost implications thereof cannot be passed on to end consumers. In our view, this interpretation may not be tenable as it seeks to read words in the Change in Law provision which is otherwise not provided.*

*It would be interesting to see whether the said finding of the RERC holds good or not in the days to come.*

● ● ● **SKV Comment**



## DRAFT AMENDMENTS TO GUIDELINES FOR SHORT-TERM PROCUREMENT OF POWER BY DISTRIBUTION LICENSEES THROUGH TARIFF BIDDING PROCESS

(22/12/2021)

### INTRODUCTION

On 22.12.2021, the Ministry of Power (**MoP**) issued a Notification whereby it sought comments on the Draft Amendments to the Guidelines for Short-Term Procurement of Power by distribution licensees through tariff bidding process (**Guidelines**). The comments will be invited until 12.01.2022. The first amendment to the Guidelines was made on 30.03.2016. This is the second time the MoP has decided to amend the Guidelines in order to address the issue of sale of power by generator in the market without the consent of procurer.

### BACKGROUND

On 30.03.2016, the MoP in order to promote competition and ensure reduction in overall cost of procurement of power, notified the Guidelines.

Thereafter, another amendment was brought about by the MoP on 30.12.2016 to implement auto extension in the reverse e-auction process.

### AMENDMENT

The amendment has been made after Clause 6.4(vi)(f) of the existing guidelines. Clause 6.4 of the Guidelines pertains to the standard documentation to be provided by the procurer in the Request for Proposal (**RfP**).

The amendment has been titled as “Consequences on sale of contracted power to third party without consent of the procurer”. By way of the same, MoP has proposed that in case a seller/generator fails to offer the contracted as per the Power Purchase Agreement (**PPA**) and instead proceeds to offer/sell the contracted power capacity in part or full to any other party, then in that case the Procurer in terms of the PPA will be entitled to claim damages from the seller for an amount equal to or the higher of : (a) Twice the Tariff as per the PPA; and (b) The entire sale revenue accrued from Third Parties on account of sale of the contracted power.

Moreover, the aforesaid damages payable will be in addition to the Payment of Liquidated Damages for failure to supply the Instructed Capacity as per Clause

6.4(vi)(e) of the Guidelines. The relevant extract of the Amendment proposed is as follows:

*“In case the seller fails to offer the contracted power as per the Agreement to the Procurer and sells this power without the Procurer’s consent to any other party, the Procurer shall be entitled to claim damages from the seller for an amount equal to the higher of:*

- (a) Twice the Tariff as per the PPA; and*
- (b) The entire sale revenue accrued from Third Parties on account of sale of the contracted power.*

*These damages shall be in addition to Liquidated Damages as per para 6.4 (vi) (e) of existing guidelines, for failure to supply*

*the instructed capacity. Further, there will not be any fixed charge liability to the procurers, for the power which was not supplied.*

*On a complaint to this effect by the procurer to the concerned load dispatch centre, the seller shall be debarred from participating in power exchanges and scheduling of this power in any short term/ medium term/ long term contracts from that generating station for a period of three months from the establishment of default, in the complaint. The period of debarment shall increase to six months for second default and shall be one year for each successive default.”*

*Please find link to Draft Amendment [here](#)*



## GOVERNMENT OF ANDHRA PRADESH CANCELS THE 6400 MW SOLAR TENDER AND WITHDRAWS ITS WRIT APPEAL

(15/12/2021)

### INTRODUCTION

The Government of Andhra Pradesh (**GoAP**) has scrapped the 6400 MW Solar Tender that was floated on 30.11.2020 by Andhra Pradesh Green Energy Corporation Limited (**APGECL**), a 100 % subsidiary of Andhra Pradesh Power Generation Corporation (**APGENCO**). The GoAP has opted to procure the said quantum of power from Solar Energy Corporation of India (**SECI**) at the Tariff of Rs. 2.49 per unit.

By doing so, the GoAP has also withdrawn its Writ Appeal before the Hon'ble High Court of Andhra Pradesh which was filed assailing the Order dated 17.06.2021 whereby the Ld. Single Judge had allowed the Writ Petition filed by Tata Power Renewable Energy Limited (**TPREL**) and quashed the Request for Selection dated 30.11.2020 (**RfS**) and draft Power Purchase Agreement (**PPA**) dated 30.11.2020 as the same were not in consonance with the provisions of the Electricity Act, 2003 (**Act**) and the Tariff Based Competitive Bidding Guidelines (**CBG**) notified by the Ministry of Power. SKV Law Offices represented TPREL in the aforesaid matters.

### BACKGROUND

APGECL had issued RfS and the PPA for development 6400 MW Grid Connected Solar Photo Voltaic Ultra Mega Power Project spread over 10 Solar Parks in state of Andhra Pradesh. and invited bids from the Solar Power Developers (**SPDs**) issued by APGECL.

The same was challenged by TPREL by way of a Writ Petition on the ground that the RfS and the PPA were against the provisions of the Act and the CBG issued by Ministry of Power as the same in effect sought to oust the jurisdiction of the Andhra Pradesh Electricity Regulatory Commission.

The Ld. Single Judge by way of Order dated 17.06.2021 quashed the Challenged 6400 MW RfS and PPA on the ground that the same in not in conformity with the Act. The Order dated 17.06.2021 passed by the Ld. Single Judge was challenged the GoAP by way of a Writ Appeal.

During the pendency of the Writ Appeal, APDISCOMs approached the APERC for 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. The same as approved by the APERC on 11.11.2021.

In this backdrop, the GoAP as well as APEGCL filed Applications seeking withdrawal of the Writ Appeal before the Hon'ble High Court of Andhra Pradesh.

## RULING

The Hon'ble High Court of Andhra Pradesh by way of Order dated 15.12.2021 allowed the Applications filed by the GoAP and APEGCL and disposed of the Writ Appeals as withdrawn without granting liberty to approach the Hon'ble High Court again thereby upholding the Order passed by the Ld. Single Judge.

Please find the link to access the Judgment [here](#)

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*With the GoAP now withdrawing it essentially means that the Ld. Single Judge's order has been accepted by the GoAP. The withdrawal with no liberty being granted also affirms our position that Draft RfS and PPA were against the provisions of the Electricity Act as well as the Competitive Bidding Guidelines and that no bidding can be conducted without adhering to the provisions of the Act and the Guidelines issued by the Ministry of Power.*

● ● ● **SKV Comment**

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