

SATURDAY | 04 MARCH 2023

## Case Update



# SUPREME COURT UPHOLDS APTEL ORDER DIRECTING TANGEDCO TO PAY WITHHELD PAYMENTS TOTTALLING TO MORE THAN RS. 400 CRORES ON ACCOUNT OF CAPACITY UTILIZATION FACTOR



The Supreme Court on 03.03.2023 was pleased to dismiss the Civil Appeal bearing (Dairy) No. 4842 of 2023 filed by Tamil Nadu Generation and Distribution Corporation ("TANGEDCO"). The said appeal was filed impugning APTEL's judgement dated 28.11.2022 in Appeal No. 119 of 2021 and batch, whereby TANGEDCO was directed to make payments to the Solar Power Generator ("SPGs") members of National Solar Federation of India ("NSEFI") for additional energy generated and supplied by the SPGs in excess of Capacity Utilization Factor ("CUF") i.e., 19% from their Solar Power Plants to TANGEDCO, pursuant to the Energy Purchase Agreements ("EPAs") executed between NSEFI's SPG members and TANGEDCO to the extent of 75% of cost of power (i.e., 75% the agreed tariff).

The genesis of the said Appeal lies in TANGEDCO's circular refusing to make payments to the SPGs for the power generated and supplied in excess of Capacity Utilization Factor ("CUF") i.e., 19% from their Solar Power Plants to TANGEDCO in the State of Tamil Nadu, including the members of NSEFI. The Supreme Court's Order dismissing TANGEDCO's Appeal brings significant relief to the SPGs as TANGEDCO had withheld significant outstanding dues (since 2016) to NSEFI's member SPGs totalling to more than Rs. 400 Crores.

The Supreme Court observed and reiterated the decision of APTEL that there was nothing in the EPAs or the applicable laws which permitted restriction/withholding of payments of the SPGs for additional power produced and supplied over the normative value of 19% CUF. Moreover, it was observed that the EPAs required that the power had to be evacuated to the maximum extent and in any case SPGs have been granted a 'Must Run' status under the Indian Electricity Grid Code as they are a green source of energy. Further, the Supreme Court observed that TANGEDCO had used the additional energy so produced and sold the same to its consumers. Therefore, the Supreme Court was pleased to dismissed TANGEDCO's Appeal as the power supplied to TANGEDCO was not gratuitous.

NSEFI was represented by Mr. Mukul Rohatgi (Senior Advocate) and Mr. K.V. Viswanathan (Senior Advocate) instructed by SKV Law Offices' team led by Mr. Shri Venkatesh (Managing Partner), Mr. Bharath Gangadharan (Senior Associate), Mr. Ashutosh K. Shrivastava (Senior Associate), Mr. Suhael Buttan (Senior Associate) and Mr. Siddharth Nigotia (Associate).