

## **APEL DECLINED TO GRANT INTERIM STAY ON CERC'S ORDER, WHICH ALLOWED NTPC TO RECOVER ADDITIONAL COST INCURRED DUE TO TRANSPORTATION OF FLY ASH**



The Hon'ble Appellate Tribunal for Electricity ("Hon'ble APEL") in the batch of appeals preferred by various DISCOMs across the country, refused to grant interim stay on the Order dated 28.10.2022 passed by Learned Central Electricity Regulatory Commission ("Ld. CERC") in Petition No. 205/MP/2021, wherein, Ld. CERC had allowed recovery of additional expenditure on account of ash transportation incurred by the NTPC Ltd ("NTPC").

In the batch of Appeals, one of the grounds of the DISCOM was that the Tariff Regulations does not provide for such recovery mechanism. However, Hon'ble APEL turning down such argument held that absence of a specific provision cannot be a restriction on the Ld. CERC to exercise its regulatory power to allow such recovery which NTPC is incurring in compliance of a statutory notification.

Furthermore, Hon'ble APEL took note of the fact that the notifications mandating the ash transportation charges to be borne by thermal generating stations has already been recognized as a Change in Law event by the Ld. CERC in its earlier Order dated 05.11.2018 passed in 172/MP/2016, which has attained finality, and therefore binding upon all the DISCOMs. Thus, any expenditure incurred in compliance of the statutory notification is liable to be passed through.

Further, Hon'ble APEL was categorical in observing that any over-recovery or under-recovery is always subject to prudence check at the true-up stage of tariff determination.

Thus, the present ruling having sectoral importance will ensure timely recovery for NTPC and prevent any tariff shock upon the consumers which is in line with the scheme of Section 61(d) of the Electricity Act, 2003.

NTPC was by, Mr. Shri Venkatesh (Managing Partner), Mr. Ashutosh Srivastava (Counsel), Mr. Bharath Gangadharan (Senior Associate), Mr. Shivam Kumar (Associate) and Mr. Nihal Bhardwaj (Associate).