

FRIDAY | 26 JANUARY 2024

Case Update



TARIFF ORDERS ONCE ATTAINED FINALITY CANNOT BE RETROSPECTIVELY REVISED



The Central Electricity Regulatory Commission (“CERC”) has passed an Order dated 20.01.2024 in Petition filed by M.P. Power Management Company Limited (“MPPMCL”) against one of the leading generating companies i.e., NTPC, wherein MPPMCL sought revision of tariff orders issued during the period from 2004 to 2020 in respect of various generating stations of NTPC by re-allocating the Foreign Exchange Rate Variation (“FERV”) amount against debt liability in place of allocation of same between debt and equity on basis of the judgment dated 09.05.2019 passed by the Hon’ble Supreme Court in Civil Appeal No. 684 of 2007 and Civil Appeal No. 13452 of 2015 (“SC Judgment”).

The CERC while deciding the said issue of reallocation of FERV amount against debt liability retrospectively, has concluded that, in the instant case, the SC Judgment cannot be considered a law declared under Article 141 of the Indian Constitution and is a simplicitor dismissal of the Civil Appeals without deciding a substantial question of law.

While placing emphasis on the fact that determination of Tariff being a multi-stage process provides ample of opportunities to the parties to challenge not only at the stage of determination but also at a later stage as well, CERC held that since the tariff orders sought to be revised by MPPMCL have already attained finality, hence, cannot be revised with a retrospective effect.

The Order comes as a relief to not only NTPC but also to other Thermal Power Generators as well, since revision of the earlier tariff orders would have opened a Pandora’s box and would have created additional liability on the end consumers who might not have been consumers when the said tariff orders were passed.

Our Managing Partner, Mr. Shri Venkatesh, assisted by Mr. Ashutosh Srivastava, Counsel, Mr. Nihal Bhardwaj, Associate, and Mr. Kartikay Trivedi, Associate, represented NTPC Limited in the aforesaid proceedings.

The Order dated 20.01.2024 can be accessed here: [Click Here](#)