

MERC HOLDS GST NOTIFICATION AS CHANGE IN LAW-GENERATOR ELIGIBLE FOR COMPENSATION



The Maharashtra Electricity Regulatory Commission (“MERC”) on 20.06.2024 has passed an Order holding that the increase in the rate of Goods and Service Tax (“GST”) vide Notification dated 30.09.2021 constitutes a ‘Change in Law’ event. MERC has held that TP Saurya Limited (“TPSL”) will be eligible for compensation on account of the same.

TPSL had approached MERC seeking a declaration that the increase in GST rates post the bid submission date, qualifies as a ‘Change in Law’ event under the Power Purchase Agreement and the resultant financial impact, TPSL is entitled to be compensated. On the other hand, Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) contested TPSL’s claims, arguing that since TPSL agreed to the revised tariff in Case No. 59 of 2022, it had already factored in the increased GST rates in the light of Notification dated 30.09.2021. Thus, TPSL should not claim additional compensation under the ‘Change in Law’ provision under the PPA. MSEDCL further argued that TPSL did not issue the Change in Law notice within the stipulated 7 days as required by Article 9.3.1 of the PPA as the subject Notification was issued on 30.09.2021, TPSL issued the notice only on 12.08.2022, i.e., after a considerable delay.

TPSL clarified that the revised tariff (Rs. 2.56/kWh) proposed in Case No. 59 of 2022 did not include the impact of the increased GST rates. The revised tariff was proposed due to change in the cost of steel. However, MERC did not calibrate/redetermine the competitively bid Tariff under Section 63 of the Electricity Act, 2003 and only applied a test of market reflectiveness. Therefore, MERC did not analyse factors which impact Tariff quoted by successful bidders.

Pursuant to the detailed submissions, MERC held that the provisions of the PPA, specifically Article 9 define ‘Change in Law’ as any statutory change in tax structure occurring after the last date of bid submission, which in the present case was 23.06.2021 in terms of the bidding documents and subsequent amendments thereto. Further, the GST rate change was notified after the bid submission date, making it a qualifying event. TPSL issued a Change in Law notice within a reasonable time after the execution of the PPA, complying with Article 9.3.1 of the PPA.

The increased GST rates has resulted in a significant financial impact on TPSL’s project costs. MERC concluded that the increase in GST rate qualifies as Change in Law event under the PPA., which has necessitated compensation to bring TPSL to the same economic position as originally envisaged.

Tata Power Saurya Limited was represented by Mr. Shri Venkatesh, Managing Partner, assisted by Mr. Suhael Buttan, Counsel and Mr. Vineet Kumar, Senior Associate.

The Order can be accessed [here](#).