

SATURDAY | 09 NOVEMBER 2024

Case Update



APEL HOLDS REVIVAL OF MADHYA PRADESH'S "FOREST TRANSIT FEE" NOTIFICATION BY A SUPREME COURT JUDGEMENT AS A CHANGE IN LAW EVENT



On 22nd October 2024, the Appellate Tribunal for Electricity ("APEL") has held that Supreme Court's Judgement dated 15th September 2017 ("Supreme Court Judgement") reviving the levy of "Forest Transit Fee" imposed by the State of Madhya Pradesh vide notification dated 28th May 2001 ("2001 Notification") is a 'Change in Law' event under the Power Purchase Agreement ("PPA").

Sasan owns and operates a 3960 MW Ultra Mega Power Project in the state of Madhya Pradesh, pursuant to emerging as the successful bidder in the competitive bidding process. The power generated from Sasan's Project is being supplied to 14 distribution licensees across India in terms of the PPA dated 07th August 2007.

Although, on 28th May 2001, the State of Madhya Pradesh issued a notification levying a "Forest Transit Fee" for transporting coal through forest areas. The said Notification was quashed by the Hon'ble High Court of Madhya Pradesh vide its judgment dated 14th May 2007 in Writ Petition 2309 of 2002.

Thereafter, the bidding for the Project was concluded and the PPA was executed. The PPA contained a "Change in Law" clause, which entitled Sasan for compensation in the event of inter alia "change in interpretation of any law by a competent Court of Law" from "7 days prior to the bid deadline" – being 21st July 2007.

However, post execution of the PPA, the Government of Madhya Pradesh challenged the judgment dated 14th May 2007 in Writ Petition 2309 of 2002 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide an interim order dated 7th March 2008, stayed the operation of the

High Court Judgement. Thereafter, the Hon'ble Supreme Court on 15th September 2017, vide its judgement, set aside the Hon'ble High Court's judgement dated 14th May 2007 and upheld the 2001 Notification.

Meanwhile, Sasan approached the Ld. Central Electricity Regulatory Commission ("CERC") in a petition, seeking *inter alia* to recognise the Supreme Court's interim order dated 7th March 2008, as a Change in Law event. The CERC allowed the petition vide order dated 17th February 2017 ("CERC Order"), subject to the condition that if the judgement of the High Court is upheld by the Supreme Court, Sasan shall refund the money collection on account of transit fees with 9% interest from the date of payment till date of refund.

Aggrieved by CERC Order, MPPMCL filed Appeal No. 322 of 2017 before APEL. The APEL, in line with the CERC order, recognised that the Change in law clause within the PPA squarely covers "change in interpretation of any law by a competent court of law".

Hence, APEL was pleased to hold that the revival of the 2001 Notification by the Hon'ble Supreme Court squarely tantamount to a change in interpretation of law under the PPA and found no ground to interfere with the CERC Order.

[Click here](#) to read the full order.

Sasan Power limited was represented before the APEL by Shri Venkatesh, Managing Partner; Priya Dhankhar, Senior Associate; and Kunal Veer Chopra, Associate of the SKV Law Offices Team.