ECONOMIC LAWS PRACTICE
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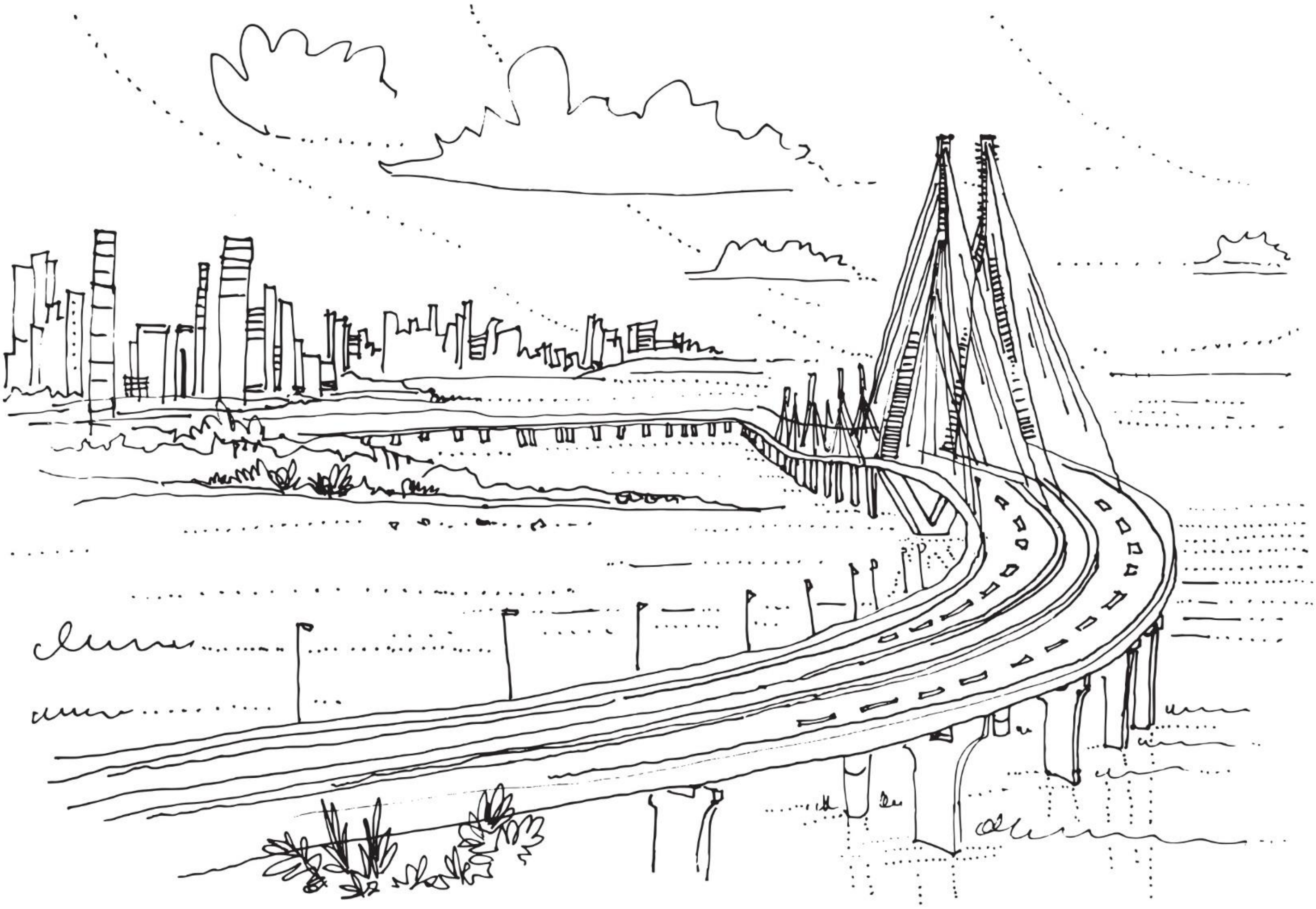

Infrastructure and Energy Digest

Overview of Legal and Regulatory Developments

FEBRUARY 2019

ENERGY

CERC Order on GST as "Change of Law"

The Central Electricity Regulatory Commission (**CERC**) vide its order dated February 5, 2019 (**Order**) has provided major respite to various solar power developers by declaring the introduction of Goods and Services Tax (**GST**) as a 'change of law' under their respective Power Purchase Agreements (**PPAs**).

Petitions had been filed by Renew Wind Energy (TN2) Private Limited, Phelan Energy India RJ Private Limited, ACME Jodhpur Solar Energy Private Limited and ACME Rewa Solar Energy Private Limited (**collectively Petitioners**) before the CERC. Since the issues in all these petitions were similar, the CERC clubbed the petitions and gave a common order.

The CERC resolved the following issues under the petitions:

- Whether the promulgation of the various central and state GST Laws are covered under the scope of 'Change in Law' under the PPAs?
- Whether the promulgation of the GST Laws would impact the cost on accounts and whether suitable mechanism to compensate the Petitioners for the increase in recurring and non-recurring expenditure incurred by the Petitioners on account of Change in Law was required?
- Whether the claim of 'Interest/ Carrying Cost' for delay in reimbursement by the Respondents was sustainable?

Answering the first issue in the affirmative, the CERC declared that any tax or application of new tax on 'supply of power' covers the taxes on inputs required for such generation and supply of power to distribution licensees. Since the introduction of GST Laws had resulted in change in cost of inputs required for generation, the same would be considered as "Change in Law" under the PPAs.

While dealing with the second issue, the CERC directed the Petitioners to provide relevant documents exhibiting clear and one-to-one correlation between the projects and the supply of goods or services, duly supported by relevant invoices and Auditor's Certificate. Consequently, the respondents were directed to reconcile the claims and pay the relevant amount as per the prescribed methodology within 60 days of the Order or submission of claims by the Petitioners, whichever was later, failing which late payment surcharge would be levied. However claims of the Petitioners on account of additional tax burden on operation and maintenance expenses were rejected.

Resolving the final issue the CERC held that if there was a provision in the PPA for restoration of the Petitioners to the same economic position as if no "Change in Law" event has occurred, the Petitioners would be eligible for "Carrying Cost". Since the PPAs in the current petitions did not contain such clauses, the claim regarding separate carrying cost was rejected.

Our View: The Order has provided much needed clarity on the issue and has provided a major relief to solar developers who are in a similar position as that of the Petitioners.

Draft National Logistics Policy

The Ministry of Commerce has invited comments/suggestions on the Draft National Logistics Policy, 2018 (**Policy**) published on February 5, 2019, from stakeholders in the logistics sector and from the public. The objective of the Policy is to create a national logistics e-marketplace (promoting greater transparency); set up a separate fund for start-ups in this sector; encourage partnerships between industry, government and academia; and to double the present employment in the sector. Additionally, the policy framework aims to clarify the role of the various stakeholders including central ministries, state governments and other key regulatory bodies.

The Government hopes that this will provide an impetus to trade and enhance India's export competitiveness. India is hoping to improve its ranking in the Logistics Performance Index (to between 25 and 30), reduce its losses due to agri-wastage (to less than 5 percent), and reduce logistics cost to 10 percent of GDP from the current levels of 13-14 percent.

The key highlights of the policy are listed below:

- The Logistics Wing would be the nodal agency to identify key projects for driving first mile and last mile connectivity. In order to decrease the logistics cost, the Policy provides that the Logistics Wing would work for identification and development of terminals/logistics parks next to specific rail sidings to optimize freight movement for key commodities, thus reducing first mile and last mile costs.
- Expedited clearances would be facilitated, and key corridors would be identified which would be developed as 'Model Logistics' corridors.
- An integrated policy would be defined for the development of Multi Modal Logistics Parks (MMLP). A Multi Modal Logistics Park Authority (MMLPA), chaired by the Commerce Secretary, would also be set up with representation from various central ministries as well as state governments. The MMLPA would be responsible for identifying right locations for setting up MMLP, facilitating single window for all approvals and monitor the development and performance of MMLPs in consultation with all relevant stakeholders. Provision for Viability Gap Funding to such MMLP projects has also been provided.
- A national logistics e-marketplace would be set up by the Logistics Wing. It would be a single window transactional platform and would involve simplification of documentation for all exports/imports thereby resulting in increase of transparency, faster clearances and reduction of logistics cost.
- A logistics data and analytics center would be set up by the Logistics Wing to serve as a single source of data for relevant performance metrics across the logistics value chain and would enable data driven decision-making for future infrastructure projects.
- The policy aims to encourage partnership between government, private players and academia by setting up a 'Center for Trade Facilitation and Logistics Excellence' in partnership with the Indian Institute of Foreign Trade, New Delhi.
- An integrated National Logistics Plan would be created in consultation with relevant ministries to align the different development plans of the states and ministries.
- In order to strengthen the warehousing sector, the Logistics Wing would coordinate with the relevant Central Ministries and Department of Horticulture in respective states to identify and fund initiatives to scale up use of technology and automation in warehouses and promote set up of specialized storage infrastructure.
- To encourage and incentivize start-ups in the logistics space, in verticals including market aggregation, freight forwarding, cold chain and telematics a start-up acceleration fund would be set up. The fund would be managed by the Logistics Wing and awards/rewards would be announced from this fund.
- The Policy also provides for creation of a non-lapsable logistics fund to drive progress against the key thrust areas such as viability gap funding for MMLP projects.
- To ensure a robust governance framework four committees/councils would be constituted:
  - National Council for Logistics chaired by the Prime Minister
  - Apex Inter-ministerial Committee chaired by the Minister of Commerce and Industry
  - India Logistics Forum chaired by the Commerce Secretary with representation from key industry/business stakeholders and academia
  - Empowered task force on logistics, as a standing committee chaired by the head of the Logistics Wing

Our View: The policy is a definitive step in the right direction and aims to optimize the current modal mix so that freight movement is less through the roads and more through railways and waterways. Currently, the logistics sector in India is witnessing increasing investments. Any structural improvements in the regulatory framework would likely result in a higher market confidence in the sector.

Supreme Court's relief to Adani in the Gas Distribution Network case

On January 29, 2019, the Supreme Court passed a judgment in the matter of *Adani Gas Limited and Another vs. Union of India and Others*. A welcome relief for Adani Gas, The Supreme Court held that the order of the Petroleum and Natural Gas Regulatory Board (**Board**) rejecting the application of Adani Gas Limited (**Adani**) for authorization of its gas distribution network (**GDN**) projects in Udaipur and Jaipur was illegal and directed that the order be quashed.

Facts

In March 2006, Adani was granted a no-objection certificate (**NOC**) by the Government of Rajasthan for laying of a GDN in Udaipur and Jaipur. Upon the grant of such NOC, Adani commenced work in respect of the GDN. Pursuant to the grant of the NOC, the Petroleum and Natural Gas Regulatory Board Act, 2006 (**Act**) was notified on April 3, 2006. As required under the Act, Adani made a request to the Board for authorization of its city GDN and contended that as per the Act there was a provision of a 'deemed authorization of the existing city gas distribution projects.

In October 2007, the Board required all concerned entities involved in or proposed to the laying, building, operating or expanding of a city or local GDN prior to the coming into effect of the Act (i.e. October 1, 2007) to furnish particulars of such activities to the Board. The Board further stipulated that entities which were not granted an authorization and had initiated the specified activities before the coming into Act, were required to apply for an authorization under the Act. The Government of Rajasthan intimated Adani regarding the aforesaid requirements and called upon it to submit the requisite details.

Subsequently, in March 2008, the Petroleum and Natural Gas Regulatory Board Regulations, 2008 (**Regulations**) were notified. Pursuant to the notification of the Regulations, Adani was issued a notice by the Board stating that it did not have the requisite authorization by the Central Government as per the Act. Consequently, Adani filed an application in accordance with the Regulations for grant of authorization of city GDNs in Udaipur and Jaipur.

In 2011, the Government of Rajasthan withdrew the NOC granted to Adani and forfeited the commitment fees of INR 2,00,00,000 deposited by Adani. Simultaneously, the Board rejected the applications filed by Adani seeking authorizations for its projects in Udaipur and Jaipur. Adani challenged the aforesaid withdrawal and rejection before the High Court of Rajasthan. However, the challenge was dismissed on account of which an appeal was filed before the Supreme Court.

Judgment

The Supreme Court noted that the application of Adani was rejected primarily on account of non-compliance of Regulation 18(2)(d) of the Regulations. As per Regulation 18(2), the Board can take into consideration the criteria specified therein whilst considering the application for grant of authorization. One such criteria as prescribed under Regulation 18(2)(d) is as follows:

"*… a physical progress of at least twenty five percent and a financial commitment of at least twenty five percent of the capital expenditure identified for the CGD project as per the DFR immediately before the appointed day may be considered as adequate*".

The Supreme Court observed that the Regulation 18(2) does not make the consideration of the criteria specified thereunder (including Clause (d)) mandatory but also observed that this would at the same time be relevant considerations. Accordingly, it was held that it was necessary for the Board to consider whether Adani was compliant with various other factors indicated in Regulation 18(2) whilst deciding the application. The Supreme Court was of the view that such other factors would also be equally significant in the determination.

Accordingly, the Supreme Court quashed the rejection order passed by the Board as also the order of the Government of Rajasthan revoking the NOC. The court directed the Board to take a fresh decision in the matter after considering the observations passed by the Supreme Court in the judgment.

Our View: The Supreme Court has rightfully considered the actions and the costs incurred by Adani relying on the NOC granted by the Government of Rajasthan. Further, the interpretation of Regulation 18(2) requiring consideration to be placed on all factors specified therein, as opposed to a single factor, while adjudicating an application may prove beneficial for other entities seeking such authorization. The intent, therefore, seems to be to consider a project holistically and arrive at a fair and just decision in respect to granting authorization.

Relaxation of clearance norms for captive power plants

The Ministry of Environment, Forest and Climate Change (**MoEF**), vide Office Memorandum dated January 23, 2019, has exempted industries such as cement, steel and metal from having to obtain mandatory prior environment clearance in cases of setting up new or expanding existing captive power plants employing waste heat recovery boilers (**WHRB**) without the usage of any auxiliary fuel. The spirit of exempting requirement of environmental clearance for thermal power plants using WHRB without any auxiliary fuel is to promote energy conservation, reduce greenhouse emissions and is in the larger interest of the environment.

In view of the above, the Office Memorandum has clarified that setting up new or expansion of captive power plants employing WHRB without using any auxiliary fuel, in existing cement plants, integrated steel plants, metallurgical industries (ferrous and nonferrous) and other industries having potential for heat recovery, does not attract the provisions of the EIA Notification 2006, read with subsequent amendments.

CERC recommendation for PGCIL on transmission infra sharing

The recommendation of a committee constituted by the Central Electricity Regulatory Commission (**CERC**) allowing monetization by Powergrid Corporation of India Ltd. (**PGCIL**) of its transmission line towers by offering it to mobile telecom service providers on a commercial basis under Section 41 of the Electricity Act, 2003, comes in the backdrop of a petition (number 180/MP/2017) filed by PGCIL before the CERC. Vide its petition, PGCIL sought to utilize its transmission line towers for telecom antenna, power and telecom equipment and draw power from earth wire [as per Regulation 4 (a) of the CERC (Sharing of revenue derived from utilization of transmission assets for other business) Regulations, 2007].

Summary of Petition

In its petition before the CERC, PGCIL, in support of its proposal to offer a cost-effective solution by providing transmission infrastructure to telecom mobile operators, submitted the following:

- That 'Digital India' is a flagship program of the Government of India, with universal mobile connectivity as one of its main pillars.
- That telecom service providers are reluctant to establish a telecom network in remote areas due to non-availability of Electricity Board power supply, difficulty in leasing land, high maintenance costs, low revenue due to low population and non-availability of Base Transceiver System in rural areas during flood like disasters.
- That, in alignment with the continued emphasis by TRAI on reduction in carbon footprint the Department of Telecommunications vide the National Digital Communications Policy, 2018 has, emphasized the leveraging of existing assets of the broadcasting and power sector to improve connectivity, affordability and sustainability and facilitate the establishment of Mobile Tower Infrastructure by promoting and incentivizing deployment of solar and green energy for telecom towers.

In alignment with directives of the committee constituted by the CERC, PGCIL submitted a financial proposal including a revenue sharing model with beneficiaries (in line with the mandate of the CERC (Sharing of Revenue derived from utilization of Transmission Assets for other business) Regulations, 2007) along with justifications and a technical paper for use of power induced in the earth wire, to which the replies of DISCOMs were sought.

Whilst some DISCOMs raised concerns relating to ensuring non-hindrance of transmission services by PGCIL and non-interruption in power supply through the proposed utilization of the transmission assets, certain other DISCOMs raised concerns on (i) the aspect of sharing of revenue; and (ii) the proposal of PGCIL amounting to sale and purchase of power, being in contravention of the first proviso to Section 38 (which prohibits a Central Transmission Utility to engage in the business of generation of or trading in electricity) and the third proviso to Section 41(which prohibits a transmission licencee to enter into any contract or otherwise engage in the business of trading in electricity) of the Electricity Act, 2003.

Certain recommendations of the committee constituted by the CERC

The committee provided its views on the technical and financial aspects of the proposal of PGCIL and recommended as follows:

- That the business proposed to be undertaken by PGCIL and pertaining to offering its transmission line towers to Mobile Telecom Service Providers/Telecom Service Providers/Telecom Infrastructure Providers was legally permissible.
- That the act of providing electricity by PGCIL for the telecom equipment installed on its transmission towers out of the electricity which was otherwise wasted, being distinguishable from 'generation' or 'trading' in electricity did not come within the purview of the prohibition prescribed under the first proviso to Section 38 and the third proviso to Section 41 of the Electricity Act, 2003.
- That revenue sharing with the beneficiaries would, in the initial stages, be in the ratio of 50:50, subject to review at a later date (after one year).

The report dated February 13, 2019 of the CERC containing recommendations as aforesaid has invited comments from the stakeholders by March 1, 2019.

The broad impact of the proposed tariff regulations is significantly more positive to power generation and transmission companies. Ergo, this would translate to lower procurement costs ultimately benefitting consumers.

Our View: The proposed business of PGCIL, which hinges on sharing of transmission infrastructure with telecom operators, would benefit areas having a deficiency of telecom mobile network, ensure productive utilization of assets and in all probability serve as a model for other transmission and distribution licensees to follow.

Revised guidelines for procurement of electricity for medium term from power stations set up on 'Finance Own and Operate' basis

The Central Government has, after extensive consultations with various stakeholders and experts, evolved a model contractual framework for procurement of electricity by the distribution licensees from power producers who agree to construct and/or operate power generating stations set up on a 'Finance, Own and Operate' (**FOO**) basis for medium term power or from traders/distribution licensees who have back to back arrangements with power producers. The Ministry of Power (**MoP**) vide its notification dated February 5, 2019 released the revised guidelines for Procurement of Electricity for Medium Term from Power Stations set up on Finance, Own and Operate basis (**FOO Guidelines**).

The FOO Guidelines are to come into effect subject to the following terms and conditions:

- The terms and conditions specified in the Model Bidding Documents referred to in the notification are to, by reference, form part of the FOO Guidelines and are to be treated as such.
- The application of the FOO Guidelines is to be restricted to projects from which power is procured in accordance with an Agreement for Procurement of Power for a period between 1 and 5 years, with a provision for extension of this period up to 25% of the initial contract period or 1 year - whichever is lower, with mutual consent.
- The tariff determined through the Discovery of Efficient Electricity Price (**DEEP**) e-bidding process using an e-reverse auction (based on the FOO Guidelines) is to be adopted by the Appropriate Commission in pursuance of the provisions of Section 63 of the Electricity Act, 2003.

- Any deviation from the Model Bidding Documents is to be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Any project specific modifications expressly permitted in the Model Bidding Documents are not to be construed as deviations from the Model Bidding Documents.
- The amendments made in the Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis [vide MoP Resolution No. 23/9/2015-R&R, dated April 16, 2015 in view of new coal block auction policy issued by the Ministry of Coal (MoC)], are to also apply, mutatis mutandis, for procurement of electricity for Medium Term from Power Stations set up on FOO basis.

The 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' (**Repealed Guidelines**) issued on January 17, 2017, including the Model Bidding Documents issued on January 16, 2017 have been repealed. Any agreements signed, or actions taken prior to the date aforementioned are not affected by such repeal of the Repealed Guidelines and are to continue to be governed by the same.

RENEWABLE ENERGY

Imposition of Solar Safeguard Duty held to be 'Change in Law'

On February 15, 2019, the Maharashtra Electricity Regulatory Commission (**MERC**) passed a common order in respect of three matters and held that imposition of safeguard duty qualifies as a 'change in law' event. The order was in respect of separate petitions filed by Tata Power Renewable Energy Limited, Adani Renewable Energy (RJ) Limited and ACME Chittorgarh Solar Energy Private Ltd (**Petitioners**) against the Maharashtra State Electricity Distribution Company Limited (**MSEDCL**).

Facts

On July 30, 2018, the Ministry of Finance issued a notification imposing safeguard duty on import of solar cells. The Petitioners, who were solar power generators, contended that imposition of the safeguard duty constituted a 'change in law' under the provisions of the Power Purchase Agreements (**PPAs**) entered by them with the MSEDCL. Accordingly, the Petitioners sought compensation on account of such 'change in law'.

The definition of 'change in law' under the PPAs was as follows:

"Change in Law" shall refer to the occurrence of any of the following events after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes, Duties and Cess which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends."

As per the PPAs, if a 'change in law' results in any adverse financial loss/ gain to the power producer, the power producer would be entitled to compensation, subject to the condition that the quantum and mechanism of compensation payment would be determined by the MERC. Further, the PPAs also contemplate a revision in the tariff on account of a 'change in law' which resulted in a change in the costs directly attributable to the project.

Order

The MERC held that the imposition of solar safeguard duty falls within the purview of 'change in law' under the PPAs. Whilst coming to the aforesaid conclusion, MERC observed that the following are the guiding principles for ascertaining whether the events claimed as 'change in law' are to be treated as such:

- The definition of 'Law' under the PPAs is an inclusive definition and contemplates all laws applicable in India in various forms. However, for an event to be considered a 'change in law' event requires that it be caused by the operation of law or by an Indian Governmental Instrumentality (*as defined in the PPAs*).
- The term 'Indian Governmental Instrumentality' covers the Government of India, Government of Maharashtra and any ministry, inspectorate, department, agency, body, authority or legislative body under their direct or indirect control.
- 'Change in law' encompasses introduction, increase, or modification of any law after last date of bid submission which results in additional expenditure to the power producer, or in increase or decrease in revenues or cost to it.
- The expenditure or income or decrease in cost must be on actual basis and must financially impact the power producer.
- The object of the 'change in law' provision is to compensate the party affected by such an event so as to restore it, to the same financial position as if such event had not occurred.
- During the Operating Period, the relief on account of a 'change in law' is governed by Article 9.2.2 of the PPA which states as follows:

  "9.2.2 If a Change in Law results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of MERC."

The MERC also noted that MSEDCL was not in denial regarding the notification of safeguard duty being a 'change in law'. MSEDCL had instead opposed the computation of compensation for 'change in law'. Further, considering that the parties were still in the process of importing solar panels, the MERC held that the impact of the 'change in law' could not be quantified. The MERC accordingly directed the Petitioners to approach the MERC at a later date for determination of increase in cost or/and revenue expenditure on account of imposition of safeguard duty, if any, and the mode of recovery of the same.

Our View: The MERC order would offer a breather to not just the Petitioners, but other solar power produces who may have entered into contracts with similar 'change in law' provisions. Further, given that the MERC has deferred the quantification of the impact of the 'change in law' to a later day, the same would ensure that just and equitable compensation is provided to the Petitioners on this account.

Article 5 - MNRE - Lease Rules (March 5 2019)

Renewable energy companies have often highlighted the pressing need for a binding framework for the development of offshore wind energy facilities in the country. In cognizance of this requirement, the Ministry of New and Renewable Energy (MNRE) issued the Draft Offshore Wind Energy Lease Rules, 2019 (Lease Rules) on January 25, 2019. These were open for comments/suggestions/views until February 25, 2019.

The Lease Rules have been issued with the intent to regulate the grant of leases along the coast line of India (up to 200 Nautical Miles within the Exclusive Economic Zone (EEZ) thereof, in exercise of the powers conferred by sections 7 and section 15 of the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976) to developers for setting up Offshore Wind Energy projects.

Prior to this, the National Offshore Wind Energy Policy (issued in October 2015) only provided a basic framework for development of offshore wind energy in the country. Now, as per the proposed policy, the offshore wind energy blocks are to be allocated to successful bidders through international competing bidding and the lease fees are to be collected by the designated nodal agency i.e. National Institute of Wind Energy (**NIWE**), Chennai.

Some of the significant provisions of the Lease Rules are as under:

- **Rights of the lessee:**

  i. In addition to data on geological and geophysical surveys, every lessee shall have the exclusive right to carry out studies relating to geo-technical surveys, investigations and testing operations required for development of offshore wind energy installations or/and related activities in the area covered under the lease. The lessee shall not have the overall right to sublease any part of the area covered under the lease.

  ii. Every lessee shall have the exclusive right to conduct development work such as construction of buildings, plants, waterways, roads, evacuation infrastructure (cables), off shore substations, telephone lines, under water electric cables and other structures and equipment as are necessary for the full enjoyment of the lease or for fulfilling his obligation under the lease. The lessee shall have no right to minerals and other resources in the lease area.

- **Term/renewal of the lease:** The area covered by a lease shall be specified and the terms of a lease shall in the first instance be valid for a period of five years (5) for prospecting and thirty (30) years for establishment of offshore wind power project. The renewal of the lease may be extended for five years at a time with due approval of Government of India

- **No royalty** will be applicable for the development of Offshore Wind Energy Projects.

- **Termination of the lease:** If the lessee or the executor, administrator or assignee at any time during the term of the lease causes environmental damage (both flora and fauna) beneath the sea water or poses a threat to human life and property while carrying out the activities (both under water as well as during operation of the wind energy turbines) during validity of the lease, the Central Government may forfeit the whole or any part of the security deposit made under the Rules and cancel the lease.

- **Transferability restrictions:** The lessee shall not assign or transfer his right, title and interest in respect to the lease or in respect to the area or mineral underlying the ocean within the territorial waters or the continental shelf of India, (granted by the Central Government) without the consent of the Central Government in writing. In the case of land covered by a lease granted by the State Government (for onshore infrastructure required for the offshore wind energy project), the consent in writing of the Central Government will have to be obtained through the State Government.
- **Power to assume control:** The Central Government may, after reasonable notice to the lessee, assume control of the operation of offshore Wind Turbines (wind operated electricity generators) in isolation or in groups within a particular zone/area and adopt such means, as may appear to it necessary or expedient, in order to prevent misuse of the lease area and malfunctioning of the Wind Turbine installations which may pose as a threat to national security, the environmental, public life and property.

Our View: Given the sensitivity of the areas in question, the Central Government has retained the power to assume control over areas leased under these rules for certain reasons. This may lead to some risk-perception in relation to the sanctity of these leases, given the wide reasons provided for termination of the lease.

No increase in RPO of captive projects if additional fossil fuel capacity not added

In response to requests made by various stakeholders regarding capping of renewable purchase obligations **(RPOs)** for captive power projects (**CPPs**), the Ministry of Power (**MoP**) vide its order dated February 1, 2019 (**Order**), clarified that such RPOs are to be fixed at the appropriate level in the year the projects have been commissioned. This order is a welcome move for industry and brings greater clarity and certainty for CPPs.

The Order has been made in reference to MoP orders dated July 22, 2016 and June 14, 2018 pertaining to long term growth trajectory of RPOs for both solar and non-solar for the period 2016-2019 and 2019-2022 respectively. The Order states that as and when a company adds to the capacity of the captive power plant, it has to provide for additional RPOs as obligated in the year that the additional capacity has been commissioned. Furthermore, there is no requirement for increase in RPOs in cases where additional fossil fuel capacity has not been added.