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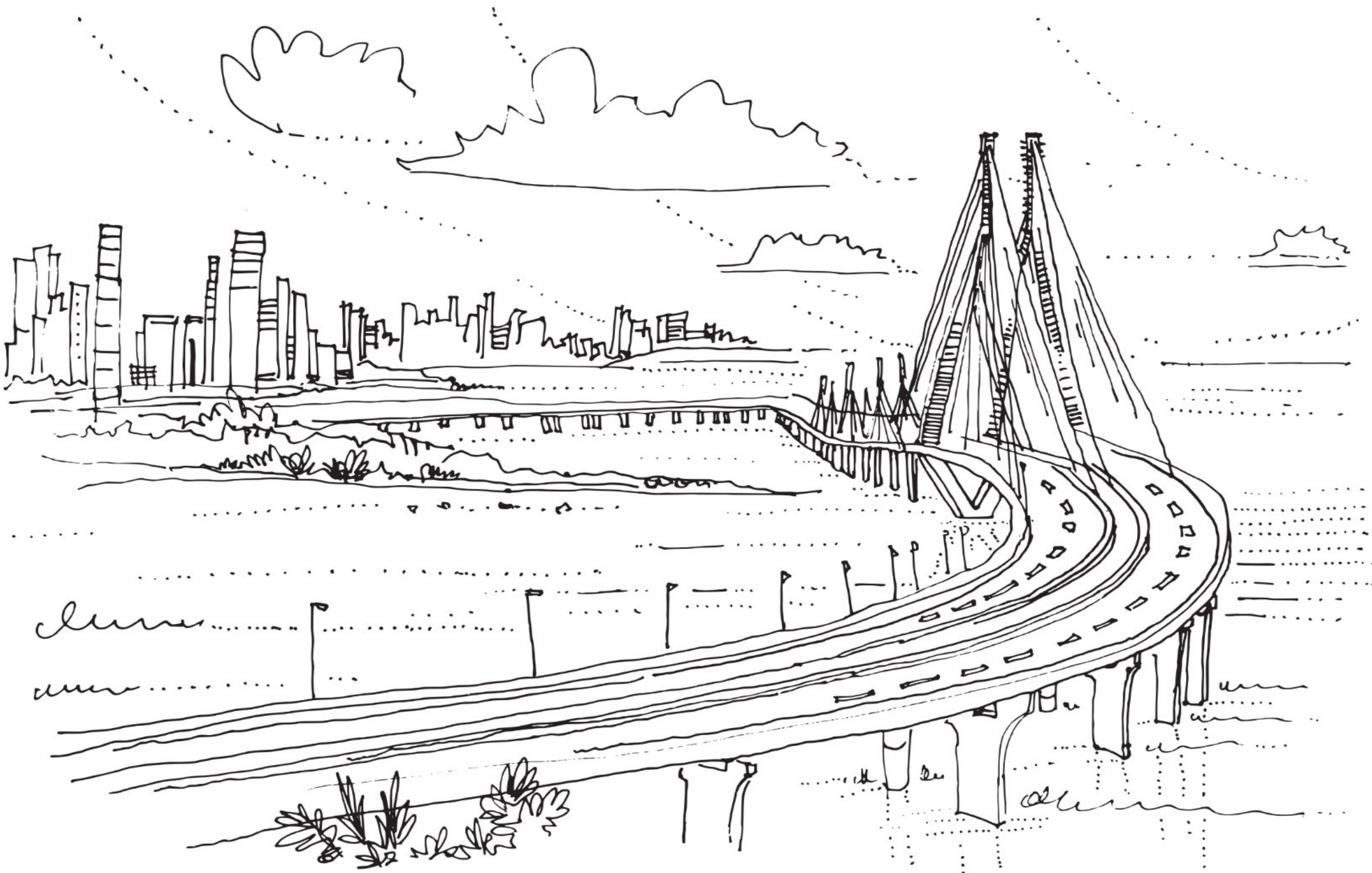
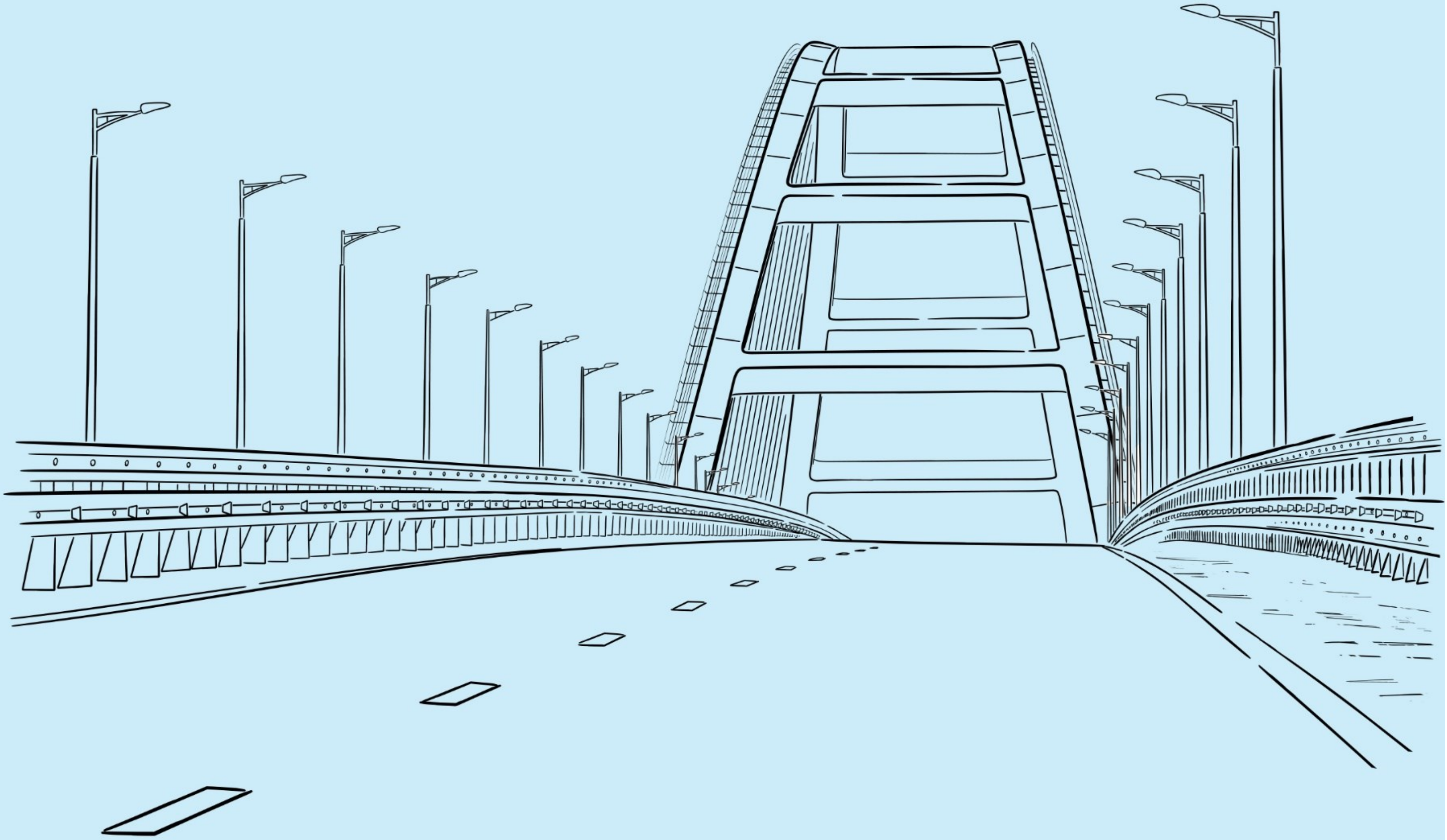


Infrastructure and Energy Digest

Overview of Legal and Regulatory Developments

August 2020

INFRASTRUCTURE



INFRASTRUCTURE

Delhi Notifies EV Policy 2020

Brief Background

On December 23, 2019 the Delhi Government approved the Delhi Electric Vehicles Policy. On August 7, 2020, the Transport Department of the Government of Delhi has notified the Delhi EV Policy 2020 (**Policy**). The EV Policy has been notified and is currently in effect. The EV Policy is designed to give impetus to the adoption of electric vehicles (**EVs**) in Delhi, which despite the Government's earlier efforts has, not gained traction. The main objective of the Policy is to accelerate the pace of EV adoption across vehicle segments, especially in the mass category of two-wheelers, public/shared transport vehicles, and goods carriers so that EVs contribute to 25% of all vehicle registrations by 2024. The Policy will remain valid for 3 years from the date of issue. The Government of the National Capital Territory of Delhi (**GNCTD**) is to be the nodal agency and a State EV Board is to be constituted as the apex body for the implementation of the Policy.

What are the key features of, and incentives offered under, the Policy?

The main verticals for the implementation of the Policy are financial incentives; waiver of road tax and registration fees; establishment of a wide network of charging stations and swappable battery stations; constitution of the State Electric Vehicle Board, establishment of a dedicated EV cell, and developing an intensive public outreach program focused on creating the awareness about the benefits of EVs and key elements of the policy. The fiscal incentives provided under the Policy are in addition to the demand incentives under the FAME India Phase – II Scheme.

The key incentives offered are as follows:

Electric two wheelers:

- **Eligibility criteria:** The incentives are available only to electric two-wheelers with advanced batteries (*vehicles with advanced batteries are those models that are certified as so by the Automotive Research Institute of India)* and are subject to a maximum incentive of INR 30,000 per vehicle. The criteria for eligibility have been set at a minimum top speed of 40 km/hr; minimum acceleration of 0.65 m/s^2; maximum electric energy consumption not exceeding 7 kWh/100 km; and a comprehensive warranty of at least 3 years including the battery from the manufacturer. Two-wheeler original equipment manufacturers (**OEMs**) are to register their vehicles as per the aforementioned criteria with the Transport Department of GNCTD.
- An incentive of INR 5,000 per kWh of battery capacity is to be provided per vehicle to the registered owner, with a cap of INR 30,0000 per vehicle. Additionally, there is also an incentive offered for scrapping and de-registering an old Internal Combustion Engine (**ICE**) two-wheeler subject to evidence of matching contribution from the dealer or OEM and confirmation of scrapping and de-registration of the ICE vehicle.
- Delivery service providers are expected to convert 50% of their fleet operating in Delhi to EVs by March 31, 2023 and convert 100% of their fleet to EVs by March 31, 2025. The compliant delivery service providers would be eligible for financial support from the Delhi Finance Corporation.

E-Autos:

- E-Autos with advanced batteries and which are eligible under Phase II of the FAME India Scheme will be eligible for incentives under the Policy. Swappable models, where battery is not sold with the vehicle are also to be included within the Policy.
- An open permit system is to be applicable for e-autos with permits to be granted on a first – come – first – serve basis. Individuals with a valid light motor driving license and a PSV badge are eligible to apply for the permit, subject to limit of one e-auto per individual. It is indicated that GNCTD is in the favor of not having any cap on permits issued to e-autos in Delhi, since they are zero emissions vehicles and can be very effective in ensuring clean, last-mile

connectivity. Pending further orders from Supreme Court, the open permit system for e-autos would be subject to the cap on maximum number of autos in Delhi as fixed by the Supreme Court.

- An incentive of INR 30,000 per vehicle is to be provided to the registered owner of the e-auto. Additionally, interest subvention of 5% on loans and /hire purchase is to be offered. A scrapping incentive is also offered up to INR 7,500 per vehicle for scrapping and de-registering old ICE autos registered in Delhi, subject to evidence of matching contribution from the dealer or OEM and confirmation of scrapping and de-registration of the ICE two-wheeler. Auto permits that are linked to de-registered ICE autos can now be exchanged for e-auto permits for no extra cost.

E-rickshaws and E-carts:

- Individuals with a valid driving license may purchase one e-rickshaw/e-cart with incentives under the Policy. A purchase incentive of INR 30,000 per vehicle is to be provided. Interest subvention of 5% on loans and/or hire purchase schemes is to be provided to e-rickshaws and e-carts with advanced batteries.

***Buses*:**

- The GNCTD has committed to provide appropriate incentives with the objective of ensuring that pure electric buses constitute at least 50% of all new stage-carriage buses (*stage-carriage buses are those public transport vehicles with 15 seats or more*) procured for the city fleet including for last mile connectivity. The GNCTD intends to induct 1000 pure electric buses by 2020.

Goods carriers

- 3-wheeled goods carriers and goods carriers having a gross vehicle weight that does not exceed 3.5 tonnes with advanced batteries and having satisfied the eligibility criteria under Phase II of the FAME India Scheme are to be eligible for the incentives offered under the Policy.

- A purchase incentive of INR 30,000 is to be offered to the first 10,000 e-carriers registered in Delhi after the issuance of the Policy along with interest subvention of 5% on loans and/or hire purchase schemes. E-carriers are to be completely exempted from the prohibition on plying and idle parking on certain roads in Delhi during specified timings as per Chapter VIII of the Central Motor Vehicles Rules, 1989. A scrapping incentive is also offered up to INR 7,500 per vehicle for scrapping and de-registering old ICE goods carriers registered in Delhi, subject to evidence of matching contribution from the dealer or OEM and confirmation of scrapping and de-registration.

Four– wheeled e-cars:

- A purchase incentive of INR 10,000 is to be offered per kWh of battery capacity for e-cars, subject to a cap of INR 1,50,000 per vehicle for the first 1000 e-cars registered in Delhi after the issuance of the Policy. Such e-cars would be required to have advanced batteries that satisfy the eligibility criteria under Phase II of the FAME India Scheme.

- GNCTD intends to transition its entire fleet to EVs. All leased/hired cars used for commute of GNCTD officers are to be transitioned to electric within a period of 12 months of the issuance of the Policy.

Charging Infrastructure:

- **Private charging:** Building bye-laws are to be amended so as to ensure that all new homes and workplaces have 20% of all vehicle parking/holding capacity equipped with conduits and power supply infrastructure in place for EV chargers.

- The GNCTD is to provide a grant of 100% of the cost of purchasing charging equipment up to INR 6,000 per charging point to building owners for the first 30,000 charging points in existing residential and non-residential buildings.

- Customers of all Delhi distribution companies (**DISCOM**) may purchase a private charging point at a price that is net of the GNCTD grant as mentioned above, and the DISCOM is to install these charging points at the customers' premises as requested. The DISCOMs are to recover the installation charges through the electricity bill.

- **Public Charging:** The Policy aims to ensure that public charging facilities are accessible within 3 km of travel anywhere in Delhi. Locations are to be made available for setting up charging and battery swapping stations by energy operators at bare minimum lease rentals and are to be carved out from existing public parking zones and other identified locations such that they offer easy entry and exit. The energy operators are also allowed to put up these stations at any other locations with the requisite public access.

- The GNCTD is to provide a capital subsidy for the cost of the installation of the chargers to the selected energy operators. 100% of the net State GST, accrued to the GNCTD, is to be provided as reimbursement to the energy operators for purchase of advanced batteries to be used at swapping stations.
- **Tariff rates:** Favorable tariff rates are to be provided for public and private charging facilities in accordance with the Policy.

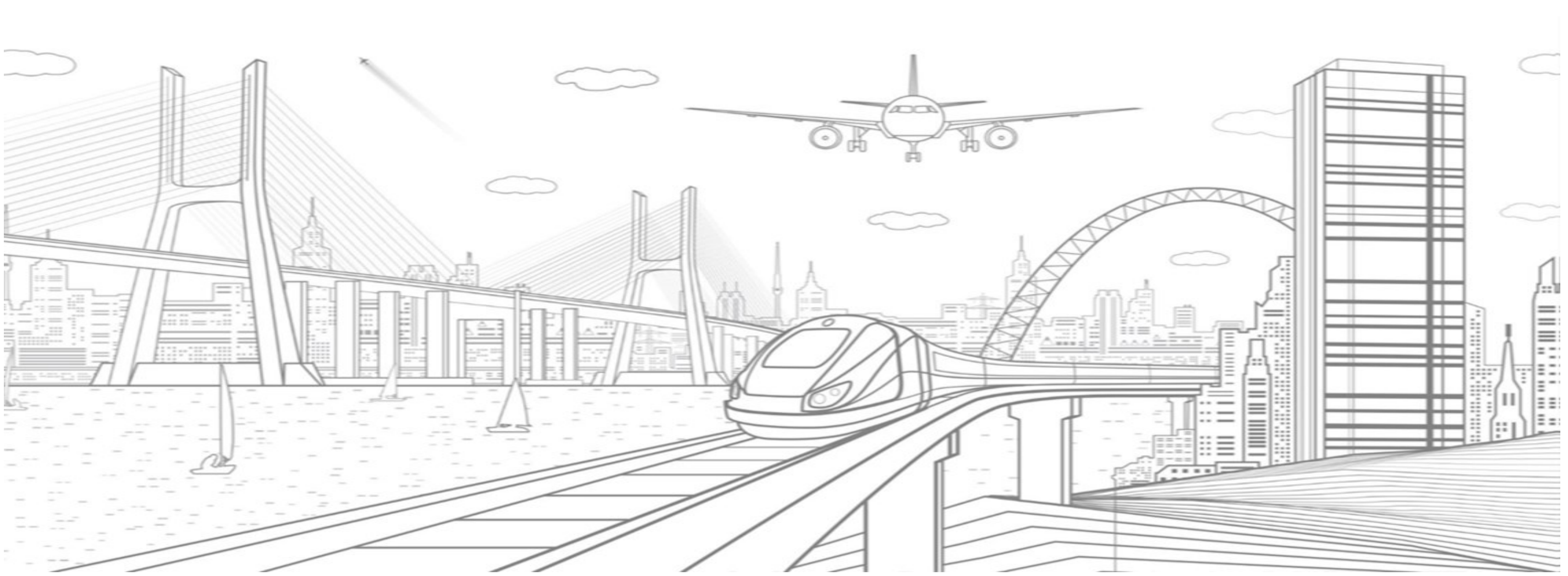
Funding:

- The GNCTD is to fund most of the incentives described above through a '**feebate**' concept – surcharges (fee-) such as pollution cess, parking surcharge, additional road tax, and congestion fee etc. are to be levied on inefficient and polluting vehicles and efficient vehicles are to receive rebates (-bate). The proceeds of the surcharges levied on polluting vehicles are to constitute a non-lapsable '**State EV fund**'. The EV fund is to be the primary contributor towards funding the proposals in the Policy.

Other incentives and directions:

- The Policy provides for the recycling, replacement, and reuse of EV batteries once they have come to the end of their usable life.
- The Policy sets out objectives with respect to the creation of new jobs geared toward to the EV adoption in both the public and private sectors.

Our view: The Policy is comprehensive in its scope with emphasis on all aspects of EV infrastructure in Delhi. With the alarming levels of pollution present in Delhi, Government initiatives like the Policy are much needed in order to provide long-term sustainable solutions to pollution and emission levels. We hope that the implementation of EV policies continues to be a priority for States in India.



ENERGY

ENERGY

Late Payment Surcharge for Gencos and Trancos

Background:

- By way of a press release dated August 22, 2020, the Ministry of Power (**MoP**) noted that the rate of Late Payment Surcharge (**LPS**) is quite high and in many cases is up to 18% per annum. this has adversely impacted DISCOMs during the lockdown.
- The MoP has therefore advised generating companies and transmission companies to levy the LPS at a rate not exceeding 12% per annum (simple interest) for all payments made under the Liquidity Infusion Scheme of Power Finance Corporation (**PFC**) and Rural Electrification Corporation (**REC**) under Atmanirbhar Bharat.

Our view: The COVID-19 pandemic has adversely affected liquidity of all stakeholders of the power sector, especially DISCOMs. The aforesaid announcement by the MoP will help alleviate the financial stress in the power sector. Further, all measures taken to ease the financial stress would also eventually benefit the consumers by way of smooth power supply and reduction in charges.

Partial release of Performance Security/Bank Guarantees to the extent contracts are partially completed

Background:

- The MNRE issued an office memorandum dated August 19, 2020 (PS/BG OM) pertaining to the partial release of Performance Security/Bank Guarantees, to the extent contracts are partially completed.
- Vide the PS/BG OM, the MNRE forwarded the office memorandum dated May 13, 2020 issued by the Department of Expenditure, Ministry of Finance and the subsequent clarification dated June 25, 2020, for due compliance by the Solar Energy Corporation of India Limited, NTPC Limited and NHPC Limited.
- Our analysis of the office memorandum dated May 13, 2020 issued by the Department of Expenditure, Ministry of Finance is available here.

Public Procurement (Preference to Make in India) to provide for Purchase Preference (linked with local content) in respect of Power Sector

Background:

- The Government of India, Department for Promotion of Industry and Internal Trade (**DPIIT**) had issued the “Public Procurement (Preference to Make in India), Order 2017” for encouraging ‘Make in India’ and promoting manufacturing and production of goods and services in India with a view to enhancing income and employment. The aforesaid order was revised by the DPIIT on June 4, 2020.
- In the light of the Public Procurement (Preference to Make in India) Order 2017, the MoP had notified the purchase preference (linked with local content) for the hydro and transmission, thermal and the distribution sectors.
- On July 28, 2020, the MoP issued the following directions (**MoP Order**) in supersession of the aforementioned orders:
  - For the procurement of all goods and services or works in respect of which there is sufficient

local capacity and local competition, only "Class–I local supplier" would be eligible to bid irrespective of purchase value.

- For procurement of all goods, services or works not covered by the preceding paragraph, and with estimated value of purchases less than INR 200 crore, in accordance with Rule 161(iv) of the General Financial Rules, 2017 (**GFR**), Global Tender Enquiry (**GTE**) would not be issued except with the approval of the competent authority as designated by Department of Expenditure. Only 'Class-I local supplier' and 'Class-II local supplier' would be eligible to bid in the procurement undertaken by procuring entities, except when GTE has been issued. In Global tender enquiries, 'Non-local suppliers' will also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'.
- Works would imply all works as per Rule 130 of the GFR and also include 'turnkey works', Engineering, Procurement and Construction (**EPC**) contracts and service contracts including System Integrator (**SI**) contracts. This order would be applicable to Tariff Based Competitive Bidding (**TBCB**) projects as well.
- A committee would be constituted for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- Another committee would be constituted to examine the grievances in consultation with stakeholders and recommend appropriate actions to the Competent Authority in MoP.

- A complaint fee of INR 2 lakhs or 1% of the value of the local item being procured (subject to maximum of INR 5 lakhs), whichever is higher, is to be paid. In case the complaint is found to be incorrect, the complaint fee will be forfeited. In case, the complaint is upheld and found to be substantially correct, the deposited fee would be refunded without any interest.
- This order will be applicable:
  - in respect of the procurements made by all attached or subordinate offices or autonomous body under the MoP,
  - Government of India including Government Companies as defined in the Companies Act,
  - the States and Local Bodies making procurement under all Central Schemes/ Central Sector Schemes where the Scheme is fully or partially funded by Government of India, and /or
  - in respect of funding of capital equipment by PFC/ REC.
- Procuring entities have been advised to revise their tender documents fully complying with the said DPIIT's Order and the subsequent Orders that would be issued in this regard by DPIIT/MoP from time to time.
- All tenders for procurement by Central Government Agencies have to be certified for compliance of the PPP-MII Order by the concerned procurement officer of the Government Organization before uploading in the portal.
- Equipment used in the power sector which are manufactured under license from foreign manufacturers holding intellectual property rights and where there is a transfer of technology agreement as specified in the MoP Order. The items specified in the MoP order will undergo regular review to check for items for which sufficient local manufacturing capacity and competition have gotten developed and which meet minimum local content requirement of 50%.
- General guidelines have also been stipulated.

Our view: The MoP order will augment the Make in India initiative of the Government. We have observed that tenders issued post the DPIIT order have not implemented the guidelines in an effective manner. As a result, several clarifications were needed in order to understand the eligibility criteria for such tenders. Accordingly, it would be important that the MoP Order is implemented in a manner that does not create further uncertainty

RENEWABLE ENERGY

Blanket Extension for Renewable Energy Projects

Background:

On August 13, 2020, the Ministry of New and Renewable Energy (**MNRE**) issued an office memorandum (**OM**) regarding extension of time in Scheduled Commissioning Date of Renewable Energy (**RE**) Projects considering disruption due to lockdown resulting from COVID-19. The OM supersedes the OMs dated April 17, 2020 and June 30, 2020.

What are the features of the OM?

- All implementing agencies of the MNRE are to treat lockdown due to COVID-19 as Force Majeure.
- State Renewable Energy Departments (including agencies under Power/Energy Departments of States, dealing in renewable energy) may also treat the lockdown as Force Majeure and consider granting appropriate extension of time on account of such lockdown.
- All RE projects under implementation as on March 25, 2020 (date of commencement of the lockdown) through implementing agencies designated by the MNRE or under various schemes of the MNRE (**RE Projects**) will be given a time extension of 5 months from March 25, 2020 to August 24, 2020. Such blanket extension, if invoked by the RE developers will be given without case to case examination and no documents / evidence will be asked for such extension.
- The timelines for intermediate milestones of a project may be extended within the extended time provided for commissioning.
- Developers of RE Projects under implementation as March 25, 2020 may pass on the benefit of time extension, by way of granting similar time-extensions to other stakeholders down the value chain like Engineering Procurement Construction (**EPC**) contractors, material, equipment suppliers, Original Equipment Manufacturers (**OEMs**), etc.

Our view: The MNRE had, vide OM dated March 20, 2020 inter alia directed the grant of suitable time extension for RE projects on account of COVID-19, subject to the production of evidence/documents by developers. The latest OM, which supersedes the earlier OMs, stipulates that a blanket extension would be given without requiring any examination of the circumstances or documents. Such blanket extension would offer a relief to the RE developers.

MERC's order rejecting grace period sought by renewable energy generators for regulatory delays

Background:

- On August 12, 2020, the Maharashtra Electricity Regulatory Commission (**MERC**) passed an order in a petition (**Petition**) filed by Gajalaxmi Industries HUF and 27 other petitioners (**Petitioners**) against Maharashtra State Load Dispatch Centre (**MSLDC**) and Manikaran Analytics Limited.
- The Petition was filed in respect of non-compliance of the directives given to MSLDC in MERC's order dated September 30, 2019. The Petitioners sought a trial/grace period to assess the challenges faced in compliance with the MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 (**Forecasting Regulations**) and amended procedure dated December 19, 2019 relating to

scheduling and forecasting (**Amended Procedure**). They also prayed that no penalty be levied for any deviation during the grace period.

What were the submissions of the Petitioners?

In support of their Petition before the MERC, the Petitioners broadly contended as follows:

- They were unable to avail of the 6-month trial period post the implementation of the Forecasting Regulations due to MSLDC's delay in issuing the Amended Procedure.
- There was a lack of clarity regarding the calculation of Deviation Settlement Mechanism (**DSM**) charges at the State periphery.
- The data requirements for the calculation of deviation charges and DSM charges at the State periphery were not provided by the MSLDC. This led to difficulties in calculating the charges for renewable energy (**RE**) generators.
- There was difficulty in collecting metering data by the qualified coordinating agencies (**QCAs**).

The aforesaid contentions of the Petitioner, including the alleged non-compliance were refuted by the MSLDC.

What was the decision of the MERC?

- The MERC rejected the prayer of the Petitioners for additional trial/grace period for implementation of the Forecasting Regulations. It directed that MSLDC compute the impact of State periphery charges as per existing procedure and held that while issuing RE DSM bill to QCAs, only the RE DSM Charges at Pooling Sub-Stations level will be made applicable.
- The MERC directed the DSM Working Group to:
  - undertake detailed scrutiny of the computation of impact of the State periphery charges vis-à-vis the requirements laid down under the procedure and the Forecasting Regulations;
  - complete the analysis of the sample RE DSM bills already issued by MSLDC within 3 months from the date of issuance of the order and submit its report to the MERC.
- The MERC further observed that, based on the outcome of the analysis of the DSM Working Group, it would determine the further course of action with respect to component of RE DSM State periphery charges already collected and to be collected in the future bills by MSLDC.

Our view: The order of the MERC clarifies that a mere delay in notifying the Amended Procedure will not be construed as a non-compliance when the requisite diligence for implementing the forecasting and scheduling framework under the Forecasting Regulations has already been done by the stakeholders.

Waiver of ISTS charges and losses on transmission of electricity generated from solar and wind sources of energy

Background:

On August 5, 2020, the Ministry of Power issued an order (**Order**) regarding waiver of inter-state transmission system (**ISTS**) charges and losses on transmission of the electricity generated from solar and wind sources of energy.

What are the features of the Order?

- The Order directs waiver of ISTS charges and losses for a period of 25 years from the date of commissioning of the power plants.
- The following eligibility criteria has been set out for availing the aforesaid waiver:
  - Power plants using solar and wind sources of energy (including solar-wind hybrid power

plants with or without storage) commissioned till June 30, 2023 for sale to entities having renewable purchase obligations (**RPO**), irrespective of whether the power is within the RPO or not. In the case of distribution licensees, the power is required to be procured competitively under the guidelines issued by the Central Government.

- Solar photovoltaic (**PV**) projects commissioned under the second phase of the Central Public Sector Undertaking Scheme of the MNRE.
- Solar PV projects commissioned under the Solar Energy Corporation of India Limited's manufacturing-linked capacity scheme for sale to entities having RPO, irrespective of whether the power is within RPO or not.

Our view: The RE Sector has witnessed unprecedented challenges in the wake of the pandemic. In this backdrop, the waiver of ISTS charges provides welcome relief to stakeholders and is an important step towards filliping the growth of the RE sector.

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