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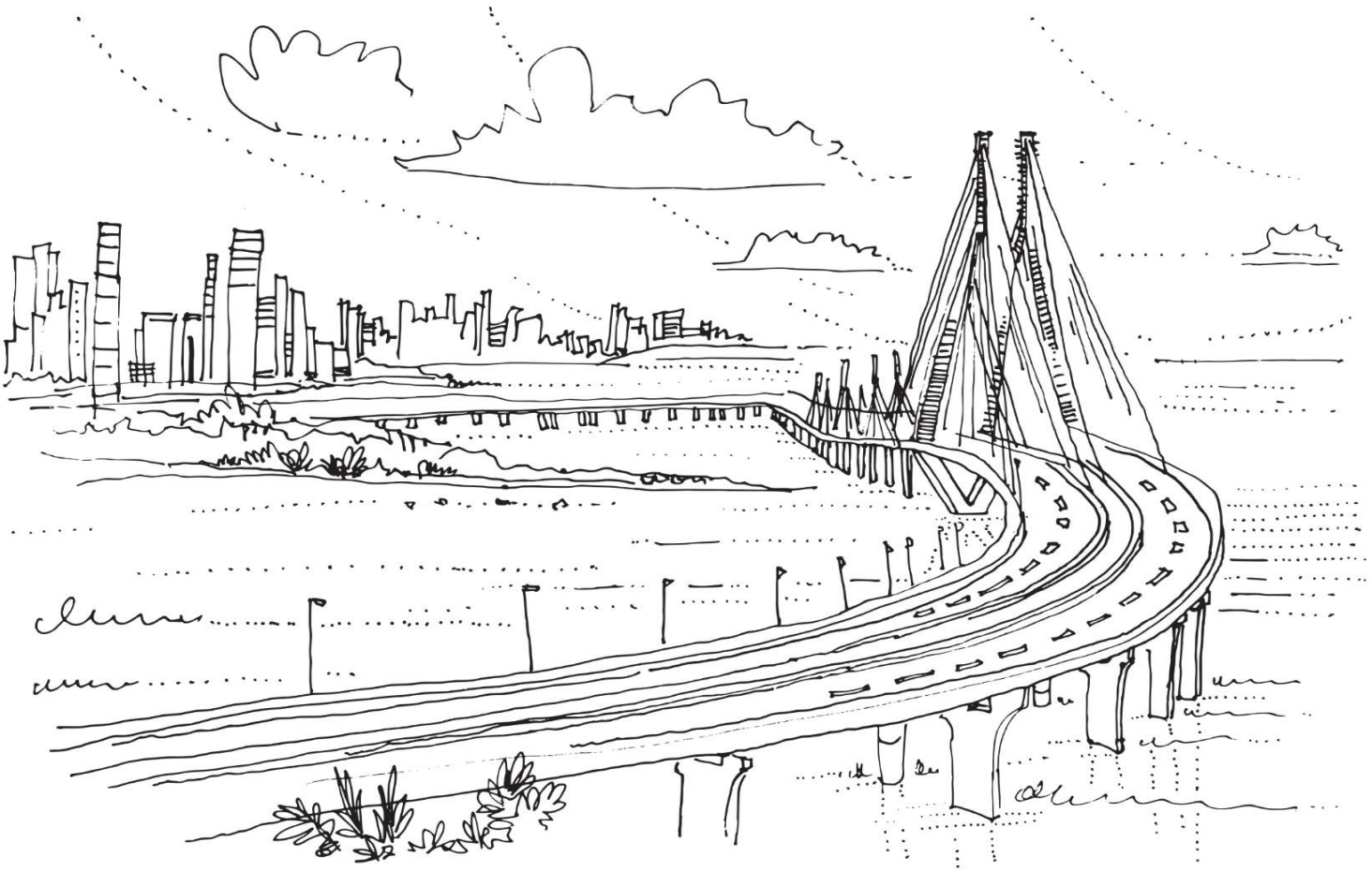

Infrastructure Newsletter

November 2021

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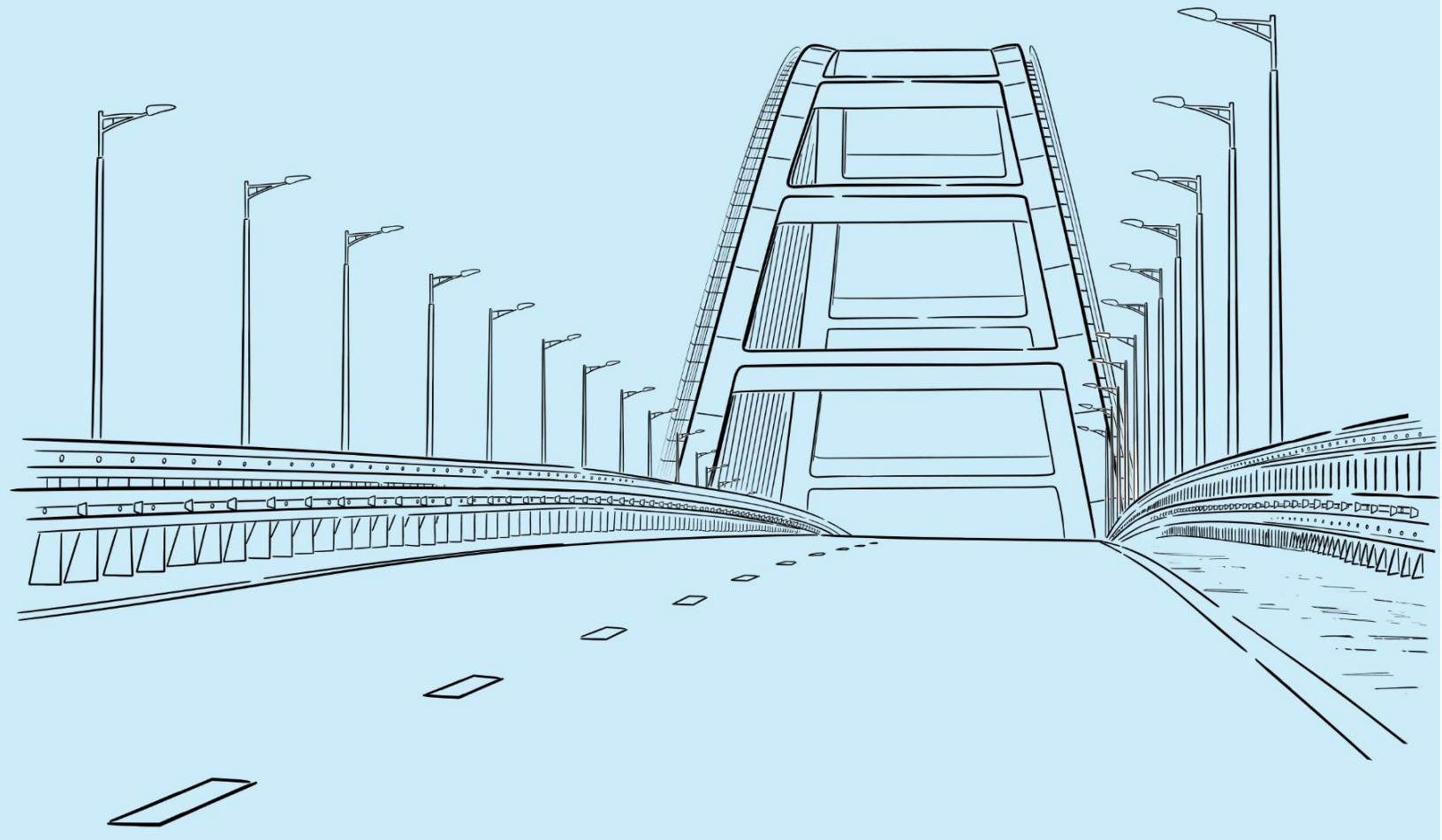

SC's decision regarding Limited Role of Courts in Judicial Review of Tender Documents

Background:

The Government of Tamil Nadu had issued a Notice Inviting Tenders (**NIT**) for the production and supply of polyester-based hologram excise labels in October 2020. These labels were to be affixed on the caps of liquor bottles sold by the Tamil Nadu State Marketing Corporation. The NIT also contained various technical specifications and eligibility criteria.

To address the concerns and objections of prospective applicants, the Government of Tamil Nadu had called for a pre-bid meeting. Without waiting for the outcome of the pre-bid meeting, two applicants proceeded to challenge the conditions prescribed under the NIT via a writ petition. This writ petition was disposed of by a single judge bench of the Madras High Court. This decision was subsequently appealed before a Division Bench of the High Court, which ruled that the Government of Tamil Nadu was required to invite fresh tenders as certain tender conditions were found to be restrictive. This decision was then appealed before the Supreme Court by the successful tenderer Uflex Limited in the case of *Uflex Limited vs. Government of Tamil Nadu and Others.*[1]

Issues:

- Were the conditions in the NIT restrictive and arbitrary?
- To what extent can appeal courts review tender conditions?
- Were the tender conditions such that they reflected Decision Oriented Systematic Analysis (**DOSA**) i.e., were they tailor made for a specific applicant?

Supreme Court's Decision:

- The two-judge bench of the Supreme Court (**SC**) emphasized the limited role of courts in judicial review of contractual matters. It stated that the courts will intervene in administrative actions only when the tender conditions or the decision-making process is actuated by arbitrariness, irrationality, unreasonableness, bias or mala fide. It stated that the court's purpose is to check whether the decision is made lawfully and not to check whether the choice of decision is sound.
- The SC held that there were adequate checks and balances that had been provided for in the tendering process. The constitution of an independent Technical Specification Committee (**TSC**) and a Tender Scrutiny and Finalisation Committee (**TSFC**) was evidence of the same.
- The SC also stated as the sale of liquor brings revenue to the State Government, the State Government was best placed to decide the best way to maximize its revenue. In such a case, courts cannot sit in judgment over the eligibility turnover requirements specified in the NIT.
- With regards to the contention that the tender conditions reflected DOSA and were geared towards favouring one party, the SC held that a situation where there is lesser participation than is necessary, would not automatically imply that the tender conditions were made to favour one party only.
- Finally, as the SC found the litigation initiated by the unsuccessful tenderers to be vexatious, it awarded costs of INR 23.25 lacs and INR 7.58 lacs payable to Uflex Limited and the Government of Tamil Nadu respectively towards legal expenditure.

[1] Civil Appeal No. 4862-4863 of 2021

Once again, the SC has emphasized on the limited role to be played by courts when tender awards or conditions are challenged. In the above decision, the SC noted that the ground reality today was that almost every tender is challenged by either the unsuccessful parties or parties not participating in the tender. The objective of tender jurisdiction was to accord greater transparency and the consequent right of an aggrieved party to invoke a writ jurisdiction. However, such judicial review would have its inherent limitations and the power should be exercised carefully to only strike down arbitrary decisions[2].

SC decision on time as the Essence of the Contract

Background:

On November 13, 2021, the Supreme Court upheld the award of the arbitral tribunal in the case of *Welspun Specialty Solutions Limited vs. Oil and Natural Gas Corporation Limited*[3]. In this case, the SC observed that merely having an explicit clause may not be sufficient to make time the essence of the contract. Contractual clauses having extension procedure and imposition of liquidated damages were held to be good indicators that 'time was not the essence of the contract'.

Factual Matrix:

- A global tender was floated by the respondents, Oil and Natural Gas Corporation Ltd. (**ONGC**) for the purchase of seamless steel casing pipes. The appellant, Welspun Specialty Solutions Limited (formerly known as Remi Metals Gujarat Ltd.) (**Remi Metals**) was a successful bidder, who had bid as a supplier on behalf of Volski Tube Mills, Russia.
- Four purchase orders (**PO**) were issued, which mentioned that the delivery period would commence within 16 weeks and be completed in 40 weeks, or earlier, from the date of the PO. Amongst other important PO conditions, it was stated that the time and date of delivery was the essence of the PO. ONGC was entitled to levy liquidated damages if Remi Metals failed to deliver the goods within the agreed timelines.
- During the execution of the PO, there were delays by Remi Metals in meeting its obligations under the PO. In this context, ONGC granted various extensions to Remi Metals. Remi Metals accepted such extensions and performed the contract. However, ONGC deducted liquidated damages from various bills submitted by Remi Metals. Hence, Remi Metals disputed this before the arbitral tribunal (**Tribunal**) alongside other claims.
- The Tribunal held that merely having a clause in the contract making time the essence of it would not be determinative. Rather, an overall view having regard to all the terms was to be taken into consideration. The Tribunal also noted that contracts containing provisions for extension of time or payment of penalty on default dilute the obligation of timely performance and render ineffective the clauses which state time as essence of contract.
- The Tribunal noted that generally, under construction contracts, time is not the essence. In respect of the instance case, the Tribunal observed that the supply of material was not for any specific purpose or urgent requirement; the tender was a global tender for general requirement. Further, liquidated damages, which are pre-estimated damages, cannot be granted as there was no breach of contract due to the fact that time was not the essence (on account of extensions granted by ONGC).
- The Tribunal held that ONGC would not be entitled to claim any damage for losses incurred during the extended period of delivery where liquidated damages were expressly waived. Aggrieved by the award, ONGC filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) before the District Court. The District Court held that the Tribunal was correct in holding that time was not the essence of the contract and only losses

[2] Please see our July 2021 Infrastructure and Energy Digest wherein we had analyzed the High Court of Delhi's decision to strike down certain arbitrary conditions in an Airports Authority of India tender.

[3] Civil Appeal Nos. 2826-2827 of 2016 with Civil Appeal No. 6834 of 2021 (arising out of SLP (C) No. 19203 of 2012)

actually suffered could be granted. However, it modified the costs of arbitration.

- Both parties appealed before the High Court of Uttarakhand under Section 37 of the Arbitration Act. The High Court held that both the arbitral award and order of the District Court were incorrect with regards to whether time was the essence or not, and erroneous in concluding that ONGC had to prove loss suffered before recovering any damages. Review petitions were filed, which were disposed of. Aggrieved by such disposal, both parties approached the SC.

SC Decision:

- The SC observed that the Tribunal's determination about time not being the essence of the contract was beyond reproach. It noted that contractual conditions and conduct of parties to conclude that existence of extension clause dilutes time being the essence of the contract, was in accordance with rules of contractual interpretation.
- The SC cited certain basic principles on the relevance of time conditioned obligations:
  - Subject to the nature of contract, the general rule is that the promisor is bound to complete the obligation by the date stated in the contract for completion.
  - That is subject to the exception that the promisee is not entitled to liquidated damages - if by his act or omissions - he has prevented the promisor from completing the work by the completion date.
  - These general principles may be amended by the express terms of the contract as stipulated in this case.
- The SC observed that 'whether time is of the essence in a contract' has to be ascertained from the reading of the entire contract as well as the surrounding circumstances. Merely having an explicit clause may not be sufficient to make it so. As the contract was spread over a long tenure, the intention of the parties to provide for extensions showed that timely performance was necessary and the fact that such extensions were granted indicated ONGC's effort to uphold the integrity of the contract instead of repudiating the same.
- The SC observed that the Tribunal interpretation of 'loss' to mean actual tangible loss provable by evidence, instead of pre-estimated loss, could be held to be a reasonable interpretation. When a standard form of a contract is utilized, ONGC is assumed in law to have the larger bargaining power to enter into a contract, unless a clear intention is shown to the contrary.
- ONGC had waived liquidated damages twice before granting extension with pre-estimated damages. Hence, the Supreme Court observed that liquidated damages could not be imposed, unless such imposition was clearly accepted by the parties.
- The SC therefore upheld the Tribunal's award.

Our view: The SC has re-iterated the settled position under law that 'whether time is of the essence in a contract' must be gleaned from not only the reading of the entire contract but also the surrounding circumstances. Most conglomerates have standard contractual arrangements for procurement of goods and services. *In light of this and the principles outlined by the SC in the aforesaid decision, it may be prudent to re-examine such standard form agreements/orders to ascertain if there exist clauses which may dilute the 'time is of essence' obligations.*

ENERGY

APTEL sets aside CERC order on REC price revision

Background:

In its order dated November 9, 2021, the Appellate Tribunal for Electricity (**APTEL**), in the case of *Indian Wind Power Association vs. Central Electricity Regulatory Commission and Others*[4], set aside the Central Electricity Regulatory Commission (**CERC**) order which had revised the floor and forbearance prices of solar and non-solar Renewable Energy Certificates (**RECs**) to zero and INR 1000/MWh respectively.

Factual Matrix:

- Regulation 9 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (**REC Regulations**) stipulates that the price of REC would be as discovered in the power exchange. However, the CERC is entitled to, from time to time provide for the floor price and forbearance price for solar and non-solar RECs after consulting the Central Agency i.e. the Power System Operation Corporation Limited and the Forum of Regulators (**FOR**).
- In the impugned order of June 17, 2020 (**CERC Order**), CERC revised the floor and forbearance prices of solar and non-solar RECs to zero and INR 1000/MWh respectively, with retrospective application from April 1, 2017. The prices were to be effective from July 1, 2020, till June 30, 2021, or until further orders.
- Appellants challenged the CERC Order contending that (i) the retrospective revision of the floor and forbearance prices was contrary to the Electricity Act, 2003 (**Electricity Act**); (ii) as the impugned order was passed without conducting a prior public hearing, it violated the principles of natural justice; (iii) by reducing floor and forbearance prices, the CERC had prejudiced the interests of renewable generators, since the RECs would be purchased at lower prices; and (iv) the mandatory consultation with FOR was not done.
- CERC defended the CERC Order and submitted that the changes in forbearance and floor prices were necessitated by market changes, as renewable energy tariff of solar and wind projects had declined substantially. If the RECs were unreasonably priced, the obligated entities would become disinterested in the REC markets. CERC further argued that floor price of zero did not indicate a loss to the seller of the REC, but merely indicated that the REC generator was already earning enough profit (through PPA tariff). Such determination did not mean that trading will take place at zero. Trading could take place at any price between floor and forbearance price. CERC also contended that public hearing was not obligatory.

APTEL's Judgement:

- The APTEL rejected the contention that the determination of REC Prices cannot be termed to be a tariff determination.
- The APTEL observed that the fundamental error lies in the fact that there is no determination of "cost of generation" or expected RE generation capacity or variations therein to justify a fresh determination. The "cost of procurement" may be an indicator of the "cost of generation" but cannot fully reflect the same if the data respecting to the former is gathered from a category that cannot be treated as truly representative of all RE generators. The APTEL observed that the very premise - to go solely by competitive bid-discovered tariff - on the grounds that CERC and some SERCs have discontinued determining generic tariff for wind and solar RE seemed erroneous.
- The CERC may no longer be determining generic tariff, but it was still determining project specific tariff, which would be under Section 62. Therefore, sufficient normative data for determining the cost of generation across the country could still be gathered. The APTEL indicated that the option to access the requisite normative data from the Central Agency or the FOR could have been explored. The CERC had the

[4] Appeal Nos. 113 of 2020, 117 of 2020, 118 of 2020, 123 of 2020, 137 of 2020 and 138 of 2020

resources to undertake a market study, collect and get collated empirical data or details to substantiate the impressions (or assumptions) on market 'reality' on which the proposal was put out and later adopted.

- The APTEL observed that in its reading of the REC Regulations, the general rule is that the price of REC is to be discovered by trading in a power exchange, the determination by CERC of the floor and forbearance price being by way of an exception. For such an exception to be applied, the CERC must reach a satisfaction that there is a case made out for its intervention in terms of proviso to Regulation 9(1) of the REC Regulations. As a natural corollary, every time the CERC decides to change the floor and forbearance prices, it must base its determination on market study and pick up the methodology suitable to the prevailing market conditions.
- The APTEL held that 'competitive bid tariff' adopted by various SERCs could not be blindly and mechanically taken as a benchmark to accurately determine the variation in the cost of generation of different RE sources of electricity, across the country. Competitive bidding-tariff-based determination of REC prices would lead to an unjust treatment to REC based projects which have foregone the benefits of concessional charges on the basis of REC eligibility criterion established by the Commission. The REC based project would get the Floor and Forbearance prices on the basis of projects which are getting such concessional treatment. This leads to a discriminatory situation wherein unequals will be treated as equals. The APTEL held that this breaches the rule against discrimination and arbitrariness.
- The APTEL held that the use of the word "and" between "floor price" and "forbearance price" leaves no scope for the CERC to choose to fix only one of them. If the CERC is satisfied that it must intervene in the market forces, it must do so on both fronts. Fixing the forbearance price but declining to do so for floor price would amount to pandering to the cause of only one side but not the other. The APTEL held this to be neither fair nor just.
- The APTEL also noted the submission of the CERC, that fixing the floor price at zero, does not mean that the RE generators would not get any return on the RECs by trading in the power exchange. It held that the data shown demonstrates that the trading of the RECs has generally taken place at the floor price, possibly because there has been more supply of the RECs than demand.
- It was observed that the CERC's application of the new dispensation retrospectively only to the non-solar RECs and not to the solar RECs makes the exercise even more arbitrary particularly as cogent rationale for such distinct treatment must be discernible. The APTEL also held that revising the REC prices retrospectively was unreasonable.
- As there was an element of prejudice to the cause of RE generators by exclusion of FOR, CERC ought to have substantially complied with the provisions of the REC Regulations and consulted FOR.
- In light of the above, the APTEL set aside the CERC Order and directed that the orders governing the subject immediately prior to the passing of the CERC Order would stand revived and continue to prevail to regulate the pricing and trading of RECs till fresh order is issued.
- The APTEL ordered that the RECs which were still valid for trading at the power exchange under REC Regulations as on date of the CERC Order and which have remained unsold till date, shall continue to be valid for the remainder period of their validity, computed with reference to the date of the CERC Order. Purchase of such RECs by the obligated entities would be considered as compliance toward RPOs.

Our view: The APTEL decision is extremely significant in the context of determination of floor and forbearance price of RECs by the CERC and will impact the trading of RECs. Pursuant to the APTEL decision, CERC issued an order dated November 18, 2021, clarifying that the RECs which were still valid for trading at the power exchange as on date of the CERC Order and which have remained unsold till date, would continue to be valid for the remainder period of their validity. The APTEL and CERC orders will pave the way for resumption of trading of RECs after a gap of nearly 1.5 years. The aforesaid orders would provide much needed impetus to the RE sector and boost India's ambitious RE commitments.

Punjab passes Electricity Bills to renegotiate PPAs

Background:

The Punjab legislative assembly on November 11, 2021, passed two bills relating to the electricity sector. These bills aim to provide legislative backing to the efforts of the Punjab government in renegotiating the tariffs that were agreed to in long-term power purchase agreements (**PPAs**). These PPAs were signed by the Punjab distribution company (**DISCOM**) and the Punjab State Power Corporation Limited (**PSPCL**) with thermal power plants and independent renewable energy power producers. These PPAs were signed under the Bidding Route i.e., under Section 63 of the Electricity Act and followed the relevant Ministry of Power guidelines.

Objective of the Bills:

- The Punjab Energy Security, Reform Termination and Re-determination of Power Tariff Bill, 2021 seeks to terminate the tariff clauses in the PPAs that the PSPCL entered into with two thermal power plants, i.e., Nabha Power Limited (**NPL**) and Talwandi Sabo Power Limited (**TSPL**). NPL is a wholly owned subsidiary of L&T Power Development Limited whose tariff rate was approved by the Punjab State Electricity Regulatory Commission (**PSERC**) via an order dated July 14, 2010. TSPL, on the other hand is owned by Vedanta Limited and whose tariff rate was approved by the PSERC via an order dated January 14, 2009.

- The Punjab Renewable Energy Security Reform, Termination and Re-determination of Power Tariff Bill, 2021 terminates the tariff clauses in more than 80 PPAs that PSPCL had entered into with various independent renewable power producers.

- The statement of reasons and objects of the Bills state that high tariff of these power generators beyond the optimum and affordable level is leading to an ever increasing and cascading burden on PSPCL. Thus, the Bills aim to review the binding financial obligations and the cost implications of the PPAs.

Important Provisions:

- Clause 4 of these Bills terminates the tariff clauses in the PPAs. These clauses could impact the tariff either directly or indirectly.

- Clause 5 states that the tariff clauses will be referred to the PSERC for renegotiation. The PSERC is required to consider all the relevant cost parameters involved in power generation. Further, to ensure continuity in electricity supply and the energy security of the state, Clause 5 states that the PSERC will determine a temporary tariff rate till the tariff is finally re-determined.

The Bills may be unlikely to stand the test of judicial scrutiny as they could be read to be contrary to the intent of the Electricity Act, 2003. In its judgments in *Energy Watchdog and Others vs. Central Electricity Regulatory Commission and Others*[5] and *Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Others*[6], the Supreme Court has examined the limited role of state electricity regulatory commissions (SERC) in approving tariffs under Section 63 of the Electricity Act. Further, State Government may also not be entitled to pass a law to grant powers of renegotiation of power tariff to a SERC. Whether the laws stand the test of judicial scrutiny or not, they are certainly to dampen the investor outlook towards the sector.

[5] [(2017) 14 SCC 80]
[6] 2017 (9) SC J 407

Scheme for Flexibility

Background:

- On April 5, 2018, the Ministry of Power (**MoP**) had introduced a detailed mechanism for allowing Flexibility in Generation and Scheduling of Thermal Power Stations (**Scheme**).
- The aim of the Scheme was to promote bundling of cheaper Renewable Energy (**RE**) with costlier thermal power and for meeting the Renewable Purchase Obligation (**RPO**) of distribution licensees.
- The MoP has issued a notification dated November 15, 2021 (**Notification**), to revise the Scheme.

Revisions to the Scheme:

- The MoP indicated that the Scheme was being revised to comprehensively cover replacement of thermal and hydro power with RE power or RE combined with battery energy storage systems. The intent of the Scheme was to enable distribution licensees to meet their RPO within the existing contracted capacity and without facing any additional financial burden.
- Under the existing regulations, the balancing power is to be arranged by DISCOMs. However, pursuant to the Notification, the MoP has shifted the responsibility of arranging balancing power requirement to the generators. Due to large scale integration of grid connected renewable, which inherently has huge variability of generation, there was a need to balance power to maintain security and stability of grid. The flexibility provided vide the Notification is intended to provide the power generators an opportunity to optimally utilize generation from RE sources, help in reducing emissions and facilitate further RE capacity addition.
- Any generating company having a Generating Station(s)[7] may establish or procure renewable energy from a RE power plant which is either co-located within the premises or at new locations within the vicinity of an existing Generating Station.
- The Generating Companies would be allowed to utilise such RE for supplying power against existing commitments i.e. replacement of Thermal/ Hydro power to procurers anywhere in India. Further, the RE procured by the Distribution Licensee will be considered towards the RPO of the Distribution Licensee.
- The following will be eligible under the 'Renewable Energy Power Bundling and Flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations' policy:
  - RE power plant co-located within the premises of a Generating Station
  - RE power plant located in the vicinity i.e. within 100 kms of a Generating Station
  - RE power plant co-located within the premises or located in the vicinity of a Generating Station supplying RE power to procurers of another Generating Station, located at a different location and owned by the same Generating Company.
- 'RE Power Plant' may be established on a standalone basis or in combination with Battery Energy Storage System (**BESS**) in the cases stated above. As such, RE Power will mean either standalone RE power or RE power with BESS.
- Bundling under the Scheme will be permissible in those cases where the RE power is injected through the existing electrical switchyard of the Generating Station.
- Determination of Tariff:
  - For a RE power plant co-located within the premises of a Generating Station under Section 63 of the Electricity Act, 2003, the-Appropriate Commission will determine tariff of RE supplied[8].

[7] All new and existing coal/ lignite/ gas based thermal generating stations or hydro power stations for the purpose of the Scheme would be considered to be a 'Generating Station'.
[8] The RE power plant should be established through a competitive EPC tendering.

  - For a RE power plant located within in the vicinity of a Generating Station, the RE is required to be procured on a competitive basis.
  - A generating Company under Section 62 of the Electricity Act or its subsidiary would be allowed to establish a RE power plant within its vicinity through a tariff based competitive biding process under Section 63 of the Electricity Act and provided the bids are called by a government of India third party.
  - Any BESS to be established with a RE power plant ought to be established through a competitive bid process under Section 63 of the Electricity Act.
- No additional transmission charges would be levied for bundling RE power with Thermal/ Hydro power when RE power plant is co-located within or located in the vicinity of a Generating Station. Further, no Inter-State Transmission System (**ISTS**) charges will be levied where RE power from an RE power plant situated at one Generating Station is supplying to procurers of another Generating Station located at a different location and owned by the same Generating Company. The waiver of transmission charges for sale through power exchange or to any third party will be as per the extant policy of the Central Government.
- Declared Capacity must be given by a Generating Station as per the extant regulations. The RE power, wherever found feasible is to replace the Thermal/ Hydro power of any of the Generating Stations of the Generating Company. The Declared Capacity will be based on the Power Purchase Agreement and not the availability.
- For the purpose of flexible scheduling and operation of Thermal/ Hydro Stations, while giving the DC of a Generating Station, the generator will not take into account the forecast of generation from renewables. Once the schedule has been received, then depending on the forecast available for renewables, that Generating Station is required to meet the schedule from Thermal/ Hydro power and replacement RE power. The deviation, if any, must be made applicable to the scheduled generation from Thermal/ Hydro stations and sum of actual generation from Thermal/ Hydro and RE power sources. No deviation settlement mechanism charges would be payable/ receivable by the Generating Station if it is able to meet its scheduled generation by supplying Thermal/ Hydro and RE power in any ratio.
- RE procured by the beneficiaries will qualify towards meeting their RPO.
- The Distribution Licensee will have the flexibility to procure RE power within the existing PPA to meet their RPO.
- During certain periods, the replacement of Thermal/ Hydro power may not be feasible on account of technical minimum schedule, forced/ planned shut down of a Generating Station. To avoid stranding of RE power, the Generating Station will be permitted to sell such RE power to third parties/ power exchanges and no clearance is required from beneficiaries of the station. However, the right to schedule power from the Generating Stations will first rest with the PPA holders and in case, they do not schedule the power, the Generating Stations will have the right to sell the unscheduled RE power in the market.

Our view: The Notification is a major step towards the Government's mission to achieve 500 GW of non-fossil fuel capacity by 2030 and should foster a faster energy transition. The replacement of fossil fuel based energy by renewable energy would be beneficial for both the generators and the DISCOMs. DISCOMs will not be required to acquire any separate capacity for balancing of renewable energy since the renewable energy will be balanced with thermal energy. DISCOMs would be able to meet their RPO targets by counting the RE supplied under the scheme, without the financial burden of a separate PPA.

Government to give purchase preference to Local Manufacturers in the Power Sector

Background:

On November 16, 2021, the Ministry of Power issued an order (**2021 Order**) to provide purchase preference for local suppliers in the power sector for encouraging Make in India.

Salient features of the 2021 Order:

- When procuring goods, services, or works with sufficient local capacity and competition, only Class-I local suppliers[9] would be eligible to bid, regardless of the purchase value.
- In respect of procurement of all other goods, services and works only Class-I and Class-II local suppliers would be entitled to bid, except when a global tender is issued. Non-local suppliers would be allowed to participate in the bidding process for global tenders along with Class-I and Class-II local suppliers. Where the estimated value for purchase is more than INR 200 crores, global tenders cannot be issued without the approval of the authority designated by the Department of Expenditure.
- The 2021 Order indicated that the eligibility of suppliers, procedure for the purchase preference to the Class-I supplier, exemption to small purchases and margin of purchase would be the same as indicated by the Department of Promotion of Industry and Internal Trade (**DPIIT**) vide notification number P-45021/2/2017-PP (BE-II) dated September 16, 2020 (**DPIIT Order**).
- The 2021 Order lists down the items in respect of which local capacity with sufficient competition exists. This list would be reviewed at regular intervals with a view to increase number of items and also to increase the minimum local content for each item where it is less than 100%.
- Committee would be constituted for: (i) independent verification of self-declaration and auditor's / accountant certificate on random basis and in case of complaints; (ii) examining the grievances in consultation with stakeholders, and recommend appropriate actions to competent authority in the Ministry of Power.
- A complaint fee of INR 2 lacs or 1% of the value of the local item being procured (subject to maximum of INR 5 lacs), whichever is higher, is to be paid in the form of demand draft in favour of PAO, CEA, New Delhi.
- In case the compliant is found to be incorrect, the compliant fee would be forfeited. However, if the complaint is found to be substantially correct, the deposited fee of the complaint would be refunded without any interest.
- The 2021 Order would be applicable in respect of the procurement made by all attached or subordinate offices or autonomous bodies under the Government of India including Government Companies defined under the Companies Act, 2013, and / or the states and local bodies making procurement under all central schemes / central sector schemes. The 2021 Order would also be applicable wherein work is undertaken by Power Finance Corporation / Rural Electrification Corporation and any Financial Institution in which Government of India / State Government share exists.
- All tenders for procurement by Central Agencies, State Agencies and Local Bodies, as the case may be, have to be certified for compliance of the 2021 Order by the concerned procurement officer of the Government Organization before uploading the same on the portal.

[9] Class-I local supplier is a supplier or service provider whose goods, services or works offered for procurement meets the minimum local content as stated in the DPIIT Order.

Our view: The 2021 Order furthers the Government's Make in India initiative. Through the 2021 Order, the Government aims to increase the items with minimum local content and also to increase the minimum local content for each item. This would ensure promotion of manufacturing and production of goods in India and provide local employment opportunities.

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