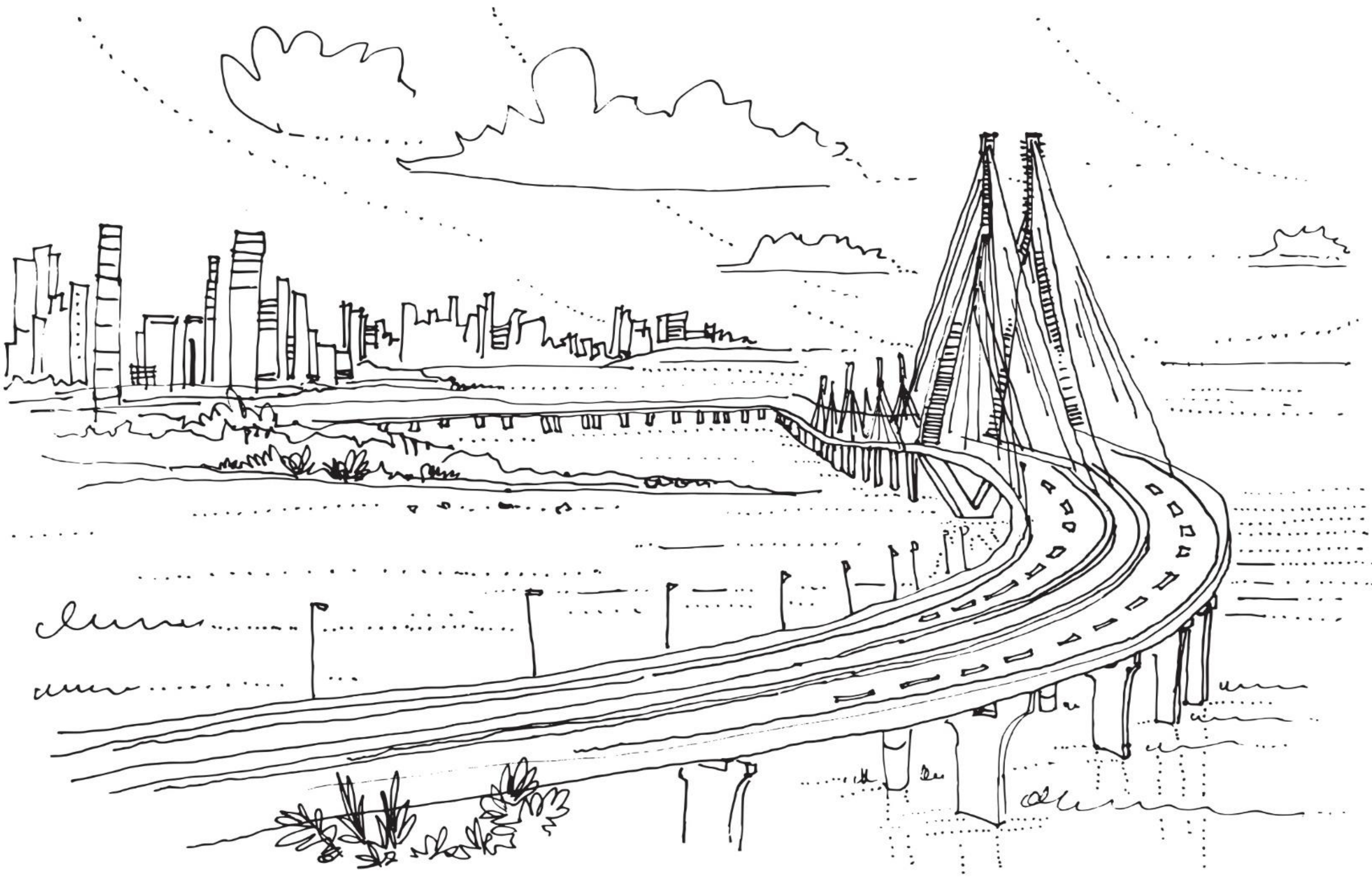
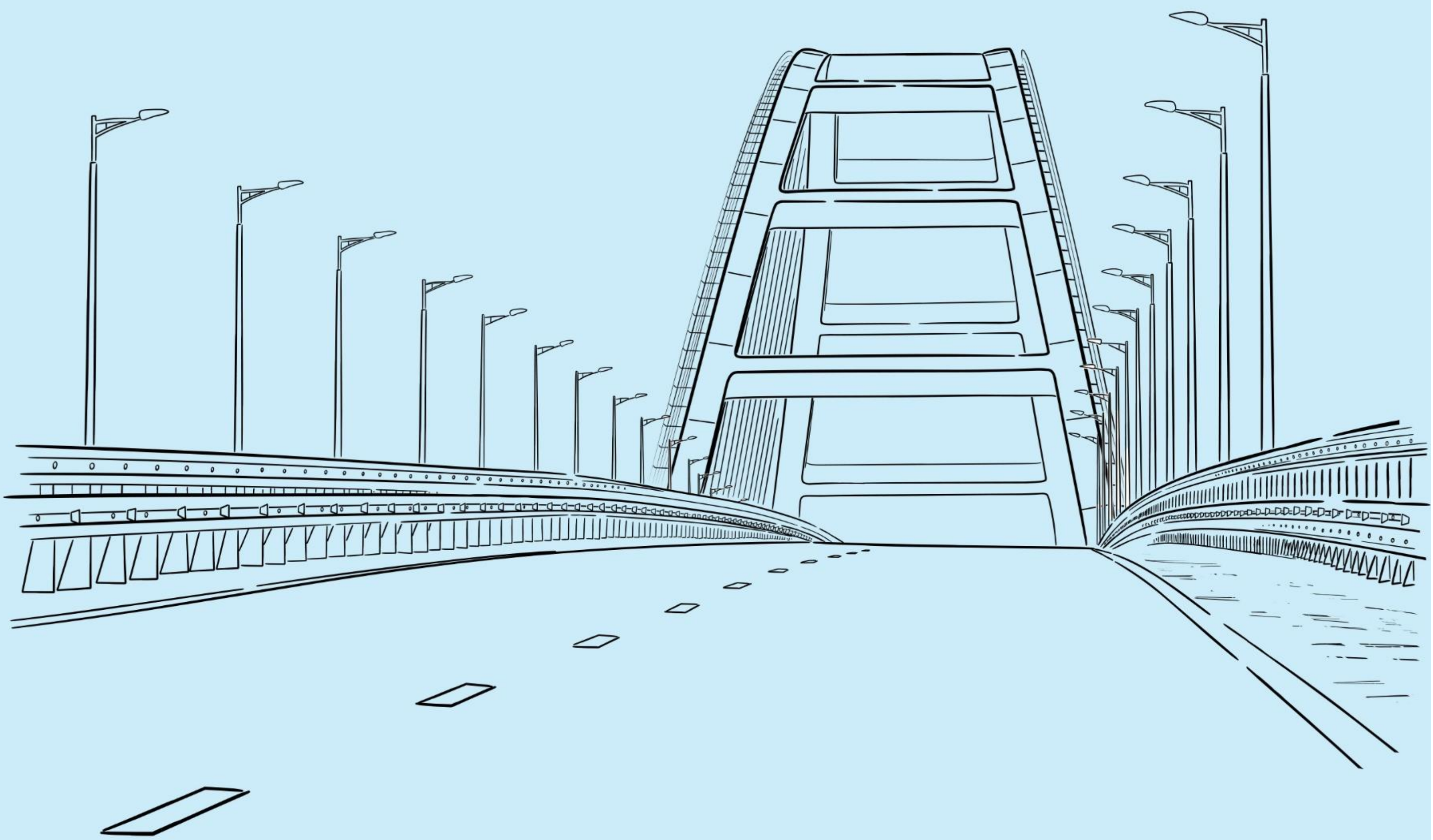


Infrastructure and Energy Digest

Overview of Legal and Regulatory Developments

January 2020

INFRASTRUCTURE



Union Cabinet Approves MOU signed between Indian Railways and DFID

Brief Background

On January 8, 2020, the Union Cabinet approved the Memorandum of Understanding signed on December 2, 2019 between the Indian Railways and the Department for International Development (**DFID**) for enabling energy self-sufficiency for the Indian Railways. This MoU is part of the Technical Assistance program – Supporting Structural Reforms in the Indian Power Sector (**PSR Program**) that was launched by the UK Government in partnership with the Ministry of Power in 2016. The PSR Program intends to support market reforms and integration of renewable energy into the electrical grid and is to be implemented until March 2022.

What are the highlights of the MoU?

In October 2017, the Government of India launched the Bharatmala Pariyojana, the flagship highway development program of the Government of India for development of 24,800 km of roads for a total investment of INR 5,35,000 crore. Given the magnitude of this program, the Nation Highways Authority of India (**NHAI**) would need adequate funds to complete the projects within the prescribed timelines. Accordingly, the Union Cabinet proposed that national highway assets be monetized to unlock their value and attractive schemes be offered for investment by private players in construction of National Highways.

Areas of co-operation:

In order to enable energy efficiency and energy self-sufficiency for the Indian Railways, the DFID has agreed to support the Indian Railways on areas that include:

- Energy planning in line with the Indian Government's policies and including 100% greener sources of energy supply. This also includes renewable energy planning and deployment of offshore wind and solar energy; energy storage and new energy technologies; and off-grid renewable energy services
- Promoting energy sustainability initiatives like adopting energy efficiency practices and enabling fuel efficiency
- Electric vehicle charging infrastructure deployment
- Battery operated Shunting Locomotives *(a small locomotive that is used for the assembly and disassembly of trains and for moving around parts in the railway yard etc.)*
- Capacity development programs, industrial visits, field visits etc.

Forms of co-operation:

The forms of co-operation are to include:

- Facilitation of links and collaboration between experts, technical institutions and organizations
- Project-specific MoUs which may be developed from time to time
- Provision of technical assistance including assessments, tools, models, reports, thought leadership
- Facilitating dialogue through organization of conferences, seminars, workshops, and other meetings on agreed topics
- Exchange of publicly available scientific and technical information

Steering Committee:

A 'Project Implementation Group' is to be formed at both Railway Boards and Zonal Railways' levels. It is to be represented through the Electrical Energy Management Directorate by an Executive Director at the Railway Board level and through the Electrical Department by a Principal Chief Engineer at the Zonal Railways/production units. The Railways Energy Management Company Limited (which is the energy management company of the Indian Railways) is also to be a part of this Project Implementation Group.

Financial Arrangements:

Technical assistance is to be provided by the DFID under the PSR Program and there is no financial commitment envisaged from the Indian Railways under this MoU.

Our view: The electrification and self-sufficiency of the Indian Railways, albeit an ambitious project, could be one of the most significant efforts undertaken by the Indian government to reduce carbon emissions and is part of the larger effort to reduce vehicular pollution. Along with the adoption of electric vehicles and the supporting infrastructure, the MoU with the DFID is another progressive step toward greener public transport in the country.

Delhi Government Approves Delhi Electric Vehicle Policy

Brief Background

On December 23, 2019, the AAP Government in Delhi reportedly approved the Draft Electric Vehicle Policy 2018 (**EV Policy**). The EV Policy has been formulated to complement the Scheme for Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles in India (**FAME India**) launched in March, 2015 and to work towards India's commitments as part of its membership to the Electric Vehicles Initiative (**EVI**) *(a multi-governmental policy forum that is dedicated to accelerating the deployment of EVs)*. Campaigns under the EVI set a collective goal for its members to have EVs contribute to 30% of all vehicle sales by the year 2030. The Department of Transport, Government of the National Capital Territory of Delhi (**GNCTD**) is to be the nodal department for the implementation of the EV Policy. The EV Policy is to remain valid for a period of 5 years from the date of notification by the GNCTD.

What are the objectives of the EV Policy?

The EV Policy is aimed at addressing the air pollution concerns in Delhi by reducing emissions from the transport sector. It exclusively pertains to Battery Electric Vehicles (**BEVs**) and aims to promote BEVs in a manner such that they contribute 25% of all new vehicle registrations by 2023. It identifies two key sectors to be addressed in terms of their contribution to air pollution– two-wheelers, as they constitute two-thirds of the new vehicle registrations in Delhi; and public and shared transport vehicles (i.e. buses, cabs, and auto-rickshaws). Therefore, in order to promote the large scale adoption of EVs and maximize the reduction of vehicle emissions, the EV Policy focuses on:

- Incentivizing the purchase of electric two-wheelers; and
- Supporting the electrification of public/shared transport

What are the key incentives offered?

Two-wheelers:

- Eligibility criteria: Vehicles listed as eligible under FAME India or notified to be eligible by the Department of Transport, GNCTD; and should be 'High Power' two-*wheelers (whose max power exceeds 250 watts and consumes less than 8 kWh/100km)* with an 'Advance Battery' *(new generation batteries that do not use lead)*
- 'Purchase Incentive' which is equivalent to 50% of the demand based incentive under FAME India
- 'Top – up Incentive' of up to 50% of the FAME India incentive will be provided to vehicles with swappable batteries for a period of 3 years from the date of notification of the EV Policy
- Waiver of road tax, registration fees, one time parking fee, for all electric two-wheelers with an Advance Battery
- Scrapping and de-registration incentive of up to INR 15,000 per vehicle for scrapping two-wheelers that are not BS [IV] certified. This incentive is to be applicable for a period of 2 years from the date of notification of the EV Policy

Three-seater autorickshaws (TSR):

- Eligibility criteria: Vehicles listed to be eligible by the Department of Transport, GNCTD and with swappable Advance Battery.
- There is to be an open permit that will apply to e-autos, with no limit placed on the number of permits that can be issued. Road tax, registration fees, one-time parking fee, and Auto Rickshaw Permit fees are to be waived for e-autos. Fleet owners will also be allowed to hold e-auto permits and these permits can be transferred to individual drivers pursuant to a hire-purchase, lease, or loan agreement.
- Finance providers are to be empaneled by the Delhi Financial Corporation (DFC) on the basis of applications from Scheduled Banks and NBFCs. 5% of the purchase price of the e-auto (inclusive of any FAME India subsidy) is to be provided as down payment subsidy to an empaneled finance provider subject to a maximum of INR 12,500. 5% interest subvention will be provided subject to the loan amount being capped at INR2,50,000 and a maximum loan tenor of 3 years.
- Existing TSR permit holders are to get an incentive of up to INR15,000 per vehicle if they de-register and scrap vehicles that are more than seven years old provided, they also surrender their permits.

App based e-autos and e-cabs:

- The GNCTD is to offer 'cash back' rebates for short first and last mile connectivity trips taken through all e-cab/e-auto through an App-based aggregator. These rebates will be capped at a maximum of 20% of trip cost and an absolute value of INR10 per ride. The objective of the rebate will be to make an e-cab/e-auto ride at least 10-20% cheaper than an equivalent ride in a conventional cab/auto.

Buses:

- The GNCTD is to introduce 1000 purely electric buses with the target of making 50% of the public transport bus fleet zero emission by 2023. The GNCTD will also offer incentives to operators of private stage carriage vehicles of all sizes in furtherance of this target.

Public and private EV Infrastructure:

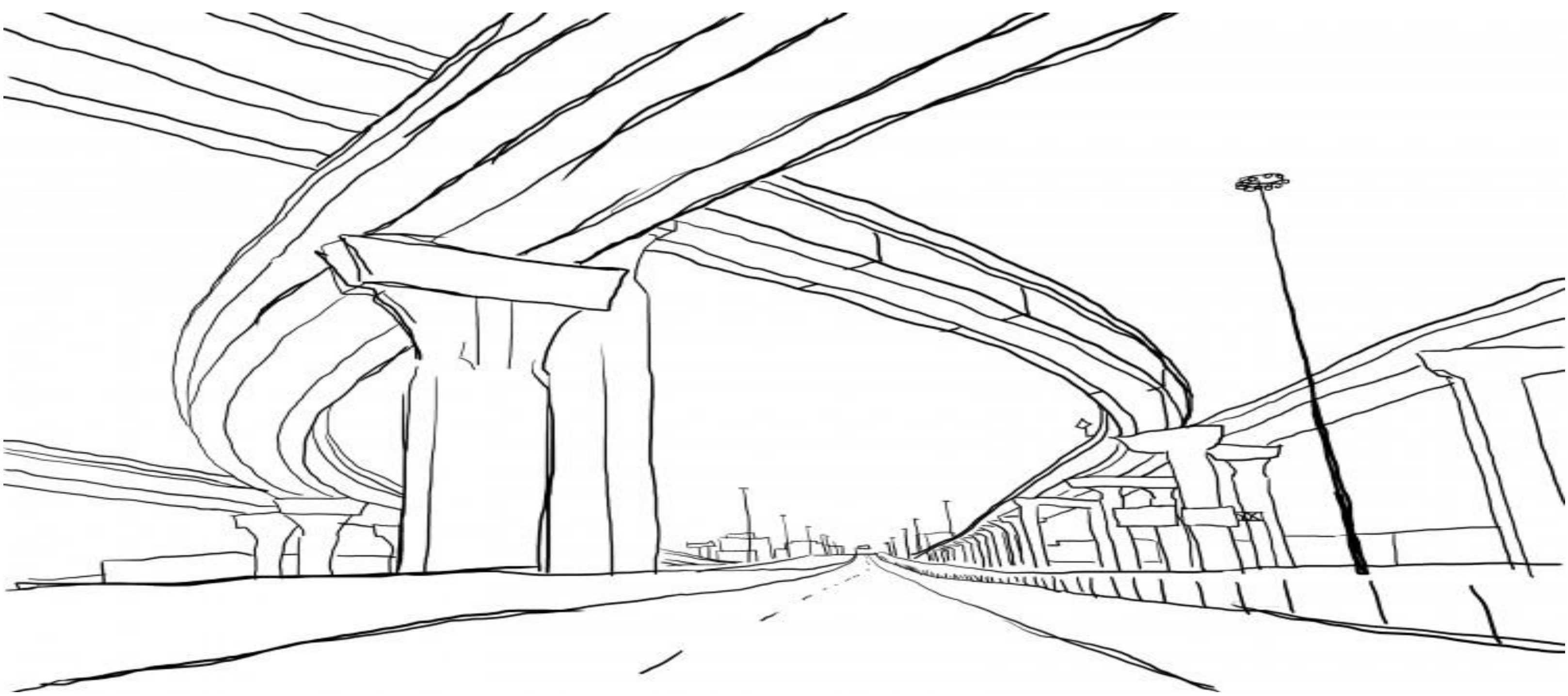
- Private: Changes are to be made to building bye-laws so as to ensure that 20% and 100% of equivalent car spaces of all renovated non-residential and residential buildings respectively are EV ready. This change will be applicable to non-residential and residential buildings that have parking of over 10 car spaces. The GNCTD is to subsidize the cost of the purchase and installation of these charging points. Power distribution companies are to work with the owners of these non-residential and residential buildings to ensure that the requisite infrastructure is made available for these charging points.
- Public: The city is to be divided into 11 'travel districts' and 'Energy Operators' are to be invited to set up charging stations in these districts. The GNCTD is to provide concessional locations in these districts at minimum lease rentals to Energy Operators whose bids have been successful along with capital subsidy covering cost of chargers and installation expenses. Additionally, the Energy Operators will also be allowed to operate retail kiosks on up to 20% of the concessional area or sublet the same. Along with the above, the GNCTD is to incentivize battery manufacturers and other interested parties to set up battery-swapping stations. There is also to be a favorable electricity tariff to be notified by the Delhi Electricity Regulatory Commission in addition to open access and power banking for charging stations for e-vehicles on single point delivery.

Other incentives:

- The EV Policy also provides for the recycling, replacement, and reuse of EV batteries once they have come to the end of their usable life. The GNCTD is to fund most of the incentives described above through a 'feebate' concept – surcharges 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. The proceeds of the surcharges levied on polluting vehicles are to constitute a 'State EV fund'. The EV fund is to be utilized for the purposes of developing the EV infrastructure.
- Finally, the EV Policy provides for vocational training of personnel to be employed in the EV infrastructure as it is envisaged that the new infrastructure will also provide new employment opportunities.

- <u>Public:</u> The city is to be divided into 11 'travel districts' and 'Energy Operators' are to be invited to set up charging stations in these districts. The GNCTD is to provide concessional locations in these districts at minimum lease rentals to Energy Operators whose bids have been successful along with capital subsidy covering cost of chargers and installation expenses. Additionally, the Energy Operators will also be allowed to operate retail kiosks on up to 20% of the concessional area or sublet the same. Along with the above, the GNCTD is to incentivize battery manufacturers and other interested parties to set up battery-swapping stations. There is also to be a favorable electricity tariff to be notified by the Delhi Electricity Regulatory Commission in addition to open access and power banking for charging stations for e-vehicles on single point delivery.

Our view: The Delhi EV Policy is a welcome step aimed toward addressing Delhi's pollution concerns. It appears to be holistic in its approach with due consideration given to the various facets of developing an effect EV ecosystem. As recognized by the EV Policy, variations of the feebate model of fund utilization have been implemented effectively in various countries. The feebate concept to be introduced by the EV Policy could simultaneously discourage the use and purchase of polluting and inefficient vehicles – one of the largest contributors to air pollution and especially, provides a source of much needed funds for the development of the EV infrastructure.



Dismissal of PIL in Respect of Issue at a Duty Free Shop

What were the facts of the case?

- On June 17, 2019, Rajeev Agarwal (**Petitioner**) arrived at the Indira Gandhi International Airport (**IGIA**) in Delhi and visited a duty-free shop to purchase wine
- The cost of the wine was INR 9,740 and change of INR 360 was to be given to the Petitioner by the wine shop owner
- The wine shop owner gave the Petitioner chocolates in lieu of the change amount
- Hence, the Petitioner filed the writ petition

What were the prayers in the writ petition that the petitioner was seeking?

The Petitioner prayed for the following reliefs:

- Issuance of a writ of mandamus and/or any other appropriate writ so as to order an investigation with respect to the functioning of the duty-free shops being run at the IGIA
- Issuance of a direction for cancellation/suspension of the license of the owner of the duty-free shop

What were the findings of the High Court?

- The High Court of Delhi (**High Court**) observed that the writ petition was a private interest litigation and not a public interest litigation (**PIL**)
- The High Court observed that the PIL was filed only for a sum of INR 360 and noted that there may be a private interest for the Petitioner in the PIL, as several grievances had been ventilated about the nature of the wine shop occupier
- The writ petition was dismissed and costs of INR 10,000 was awarded

Our view: The High Court order should serve as a much-needed deterrent for unnecessary litigation such as the aforesaid PIL. However, the High Court did not delve into the question as to whether the DIAL would be a state or not. The issue was agitated in the Bombay High Court in the matter of the Flemingo Duty Free case, wherein the High Court held that MIAL would be considered as a State as it was undertaking a public duty. The High Court's decision has been stayed and the Supreme Court is required to hear the matter to resolve this issue. This would have a far-reaching impact on the PPP model as it would be likely that concessionaires established with private investment and performing public duties, would be treated on part with Government entities. This could lead to increased scrutiny and less flexibility.

ENERGY

The Mineral Laws (Amendment) Ordinance, 2020

Brief Background

The President of India *vide* a gazette notification dated January 10, 2020 promulgated the Mineral Laws (Amendment) Ordinance, 2020 (**Ordinance**). The Ordinance amends the existing provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (**MMDR Act**) and the Coal Mines (Special Provisions) Act, 2015 (**CMSP Act**).

What are the key amendments to the MMDR Act?

- In the interest of maintaining sustained production of minerals in the country, the Central Government has been empowered to prescribe necessary conditions for commencement and continuation of production by the holders of mining leases who have acquired rights, approvals and clearances under the MMDR Act
- The requirement of obtaining the previous approval of the Central Government for granting reconnaissance permit, prospecting license or mining lease in respect of coal and lignite has been done away with if:
- An allocation order has been issued by the Central Government; or
- A notification of reservation of area has been issued by the Central or State Government; or
- A vesting order or an allotment order has been issued by the Central Government under the provisions of the CMSP Act
- State Governments have been empowered to take an advance action for auction of the mining lease before the expiry of the lease period
- Importantly, a successful bidder of mining leases (except in respect of coal, lignite and other atomic minerals) selected through an auction under the MMDR Act would now be deemed to have acquired all valid rights, approvals, clearances, licenses and the like vested with the previous lessee for a period of 2 years. Within this period of 2 years, the bidder would be required to apply for and obtain all relevant licenses
- A holder of a non-exclusive reconnaissance permit is now entitled to apply for any prospecting license-cum-mining lease, if such holder carries on the prescribed level of exploration in respect of 'deep seated minerals' or other notified minerals. This has been done with a view to increase of reconnaissance and prospecting operations of such minerals
- The Central Government has now been empowered to grant a prospecting license-cum-mining lease in respect of coal and lignite. Earlier State Governments could do so, with the approval of the Central Government

What are the key amendments to the CMSP Act?

- The CMSP Act now enables the Central Government to also grant a prospecting license-cum-mining lease for coal
- By amending the eligibility criteria for participating in auctions, the amendment now enables any company selected through an auction by competitive bidding to carry on coal reconnaissance or prospecting or mining operations, for its own consumption, sale or any other prescribed purposes. Previously, apart from Government companies, only such companies as were engaged in coal mining operations could participate in the coal auction process. Additional conditions such as requirement for a coal linkage, minimum investment and specified end-use have been done away with in respect of mines specified under Schedule II and Schedule III
- A vesting order or allotment order can now be terminated by the nominated authority in the prescribed manner. Upon such termination, the nominated authority can either auction the coal mine or allot the coal mine under the CMSP Act. The successful bidder or allottee of the coal mine whose vesting or allotment order is terminated, would be treated as the prior allottee for the next auction or allotment, thereby providing clarity on the rights and obligations of such a bidder or allottee
- In addition to its own plants, a successful bidder or allottee is now entitled to use the mined coal in plants of its subsidiary or holding company engaged in the same specified end-uses in the prescribed manner

Our view: The amendments follow a series of reforms undertaken by the Government to end the state monopoly in the coal sector. By allowing companies with no experience in coal mining to participate in the auction process, the amendments aim to attract private sector participation and foreign investment in the sector. Additionally, the removal of the Central Government's approval under specified circumstances coupled with a provision for a composite prospecting license-cum-mining lease are in line with the Government's ease of doing business initiative. It remains to be seen, what impact the amendments would have on the state owned Coal India Limited.

Grant of Relief by CERC for Project Delay Caused by Drought as a Force Majeure Eventuality

Introduction

The Central Electricity Regulatory Commission (**CERC**) has vide its order dated January 10, 2020 (**Order**), directed NTPC Vidyut Vyapar Nigam Limited (**Respondent**) to grant relief to a generating company (**Petitioner**) whose 50 MW solar thermal power project situated in Anantapur district of Andhra Pradesh (**Project**) suffered delay on account of a force majeure event.

What was the background of the petition?

- The Petitioner executed a power purchase agreement (**PPA**) with the Respondent for the Project
- The Scheduled Commercial Operation Date (**SCOD**) of the Project was revised from May 9, 2013 to March 9, 2014 vide a general extension granted by the Ministry of New and Renewable Energy (**MNRE**)
- The Petitioner achieved commissioning of the Project on November 4, 2014, with a delay of approximately 240 days. Consequently, the Petitioner requested an extension of the SCOD on account of the drought which had affected the project site in Andhra Pradesh
- The CERC vide its order dated October 11, 2017 (**CERC Order**) *inter alia* allowed the prayer of the Petitioner for extension of the SCOD for the period during which the drought continued to affect the project site

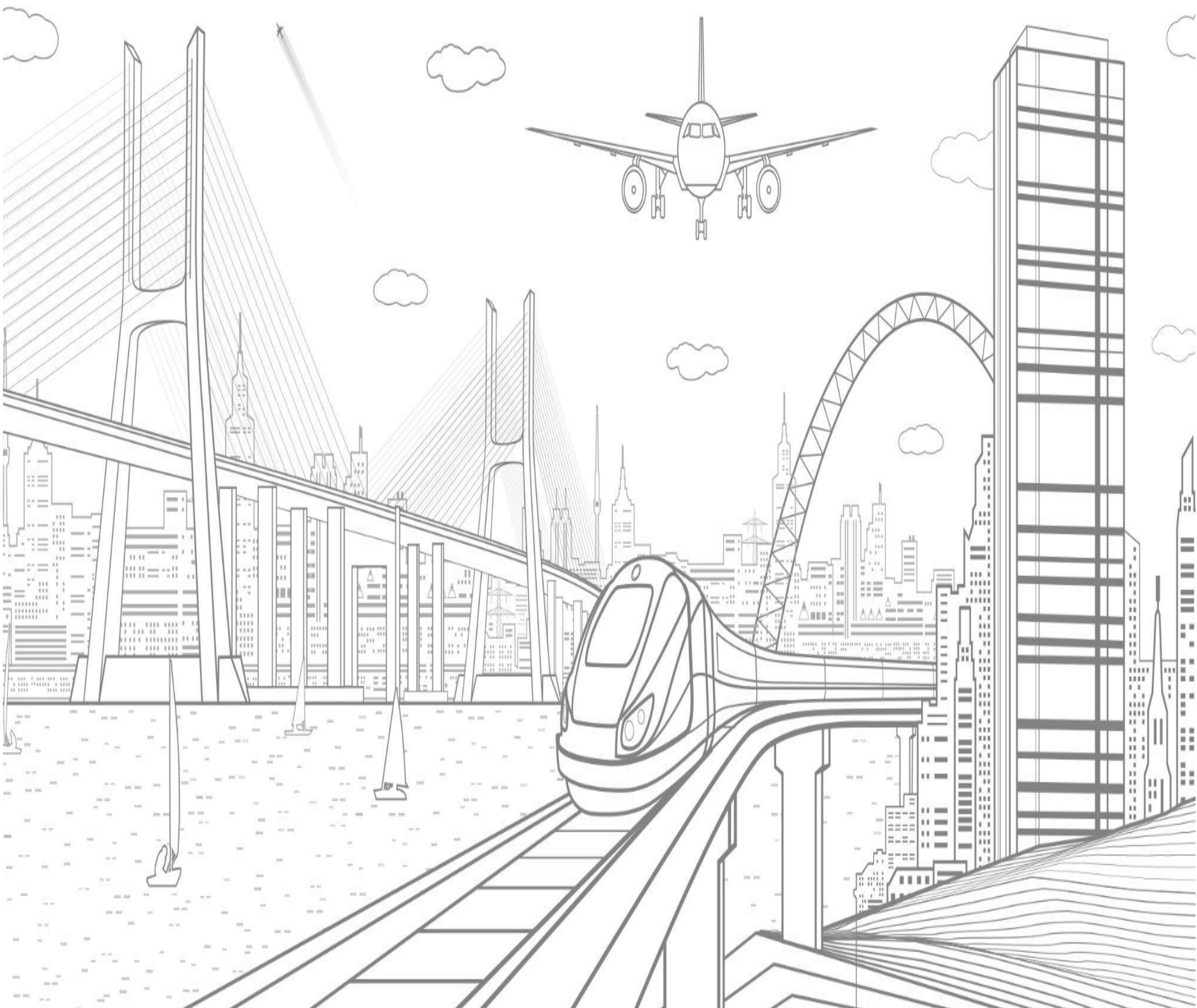
What were the prayers of the petitioner?

- Issuing of directions to the Respondent to:
  - compute the delay suffered by the Project due to the force majeure event (as per the drought notifications issued by the State of Andhra Pradesh)
  - refrain from taking any coercive measures against the Petitioner till ascertainment of the period of the force majeure event
  - comply with the CERC Order
  - revise the SCOD
- Passing of other orders as deemed fit by the CERC

What was the decision of the CERC?

- Taking into consideration the notification (dated January 9, 2013) issued by the State of Andhra Pradesh, the CERC extended the SCOD of the Project by 4 months, i.e. upto July 9, 2014
- As implementation of the CERC Order was being sought, the CERC opined that no additional grounds or documents were required to be considered
- Pending adjudication of the petition filed by the Petitioner on December 3, 2019, the CERC restrained the Respondent from encashing the performance guarantee and the Petitioner was directed to keep the performance bank guarantee valid

Our view: The order of the CERC may offer relief to solar power developers whose projects suffer huge financial losses due to drought. It may be noted however that relief on the grounds of a force majeure eventuality is not guaranteed. In most cases, prior to grant of any relief in cases of force majeure, careful consideration is accorded by adjudicating authorities to the facts, circumstances and relevant notifications, circulars etc. if any, of regulatory or other authorities accompanying the act of force majeure. Further, the manner in which force majeure is contractually defined would be crucial in determining whether relief is warranted.



RENEWABLE ENERGY

Draft Scheme issued for Supply of Round- The- Clock Power from RE Power Projects, complemented with Power from Thermal Power Projects

When and by whom was the draft scheme issued?

On January 2, 2020, the Draft Scheme for Supply of Round- The- Clock Power from RE Power Projects, complemented with Power from Thermal Power Projects was issued by the Ministry of New & Renewable Energy (**MNRE**).

What caused MNRE to issue the draft scheme?

- In order to facilitate development of grid connected solar power, the first phase of the Jawaharlal Nehru National Solar Mission (**JNNSM**) made provisions for a "bundling" scheme
- The Government of India along with the MNRE, through various means reduced the risks associated with the solar and wind power sector
- Due to the measures taken, the tariffs of solar and wind power were brought below INR 3 per unit levels. This was seen to be lower than the cost of power from the contemporary thermal power plants and hence aided in the rapid deployment of solar and wind capacity
- The intermittent and unpredictable nature of renewable energy along with low capacity utilization of transmission system, had created issues in the renewable energy sector. Large-scale renewal capacity added to the already existing issues
- In order to manage the infirm nature of power, DISCOMs were procuring balancing power to provide grid stability and to meet its requirements in non-RE hours

What are the objectives of the scheme?

- To provide RTC power to the DISCOMs though bundling
- To scale up renewable capacity additions and achieve economies of scale
- To facilitate fulfilment of RPO requirement of the obligated entities

What is 'Reverse Bundling' and what are the benefits?

- When high cost thermal power is bundled with cheaper renewable energy and is provided Round the Clock (**RTC**) to the Distribution Company (**DISCOM**) it is known as Reverse Bundling
- It brings down the overall cost of power supplied to buying utilities, results in further penetration of renewable energy, overcomes the intermittency of renewable energy power and meets the RTC requirements of DISCOMs

What are the benefits of the Scheme?

- DISCOMs will meet their RPO Obligations
- DISCOMs can purchase firm power at competitive rates
- The responsibility of giving firm power will be with the Generator and not the DISCOMs
- Optimum scheduling of power among sources helps the DISCOMS to save costs

What should be the Energy Mix, Renewable Energy Power and Non-Renewable Energy Power?

- **Energy Mix-** The Generator must keep at least 80% availability on an annual basis and must ensure that 51% of the annual energy supplied is to correspond to renewable energy power and the balance from thermal sources. Storage can be combined in order to achieve the availability of 80%, however, minimum 51% of energy can also include dispatch from the storage system provided that the renewable energy sources were used to store energy in the storage system

- **Renewable Energy Power-** The Generator will select the type and mix of renewable energy sources and the usage of Energy Storage System (**ESS**)
- **Non- Renewable Energy Power-** The estimated life for solar/wind plants is 25 years for which Power Purchase Agreements (**PPAs**) are signed accordingly. Hence, power from the coal based thermal power plants meet the bundling requirements. The tariffs for thermal power are indexed with the prices of cola and gas. As the bid evaluation is based on the combined first year tariff, only a single thermal source must be chosen to supply the bundled power and must be made a part of the RFS documents by the procurer. Thermal power plants that have already been commissioned or are under commission can come under this scheme, as long as they have spare generation capacity that can be made available for long-term supply of power

How will the Tariff be determined?

- A composite single tariff for renewable energy, complemented with thermal energy is required to be quoted by the bidders at the delivery point, which is deemed to be at the central transmission utility (**CTU**) interconnection point
- Thermal tariff must be adjusted to cover the possible increase/ecrease in coal price as per index which will be notified by the Regulatory Commission.

How is the process carried out?

- The scheme bidding process will be carried out by Solar Energy Corporation of India Ltd. (**SECI**) or National Thermal Power Corporation (**NTPC**) or any other intermediary procurer as authorized by the Government
- The basis of selection of the successful bidder for renewable and thermal energy would be through a transparent bidding process and the bids are to be invited for renewable energy power combined with one single thermal fuel source i.e. coal
- The tariff is to be quoted by the bidders as stated above and will act as the bidding parameter
- SECI or NTPC or any other intermediary procurer as authorized by the Government must sign PPAs with Generators at the discovered composite tariff, through transparent open competitive bidding process and must sign Power Supply/ Sale Agreements with buying DISCOMs/ State Utilities/ Bulk Consumers. Further, they are allowed to charge a trading margin

What happens if there is a shortfall in generation?

- Total generation from combine sources are to be given priority for dispatch and scheduling
- Any deviation from the schedule, the Deviation Settlement Mechanism (**DSM**) will be applicable as per renewable energy or thermal regulations in force. The DSM will be settled by the Generator and States as per the applicable regulations
- A penalty of 25% of the PPA tariff will be charged for any shortfall - either below the 80% availability on an annual basis or in supply of renewable energy power below the 51% of the total power supplied in a contract year. In cases in which both shortfalls occur, the maximum of the two penalties will be applicable

CERC Order on Carrying Costs and O&M Expenses after GST Law

Brief Background

The Central Electricity Regulatory Commission (**CERC**) vide its order dated December 30, 2019 resolved issues of 'Carrying Costs' and 'O&M' expenses post enactment of the Goods and Services Tax (**GST**) laws.

What were the facts of the case?

- Parampujya Solar Energy Private Limited and Wardha Solar (Maharashtra) Private Limited (collectively, **Petitioners**) are companies engaged in the business of setting up of solar power plants and generation of electricity
- The Petitioners had entered into power purchase agreements (**PPA**) with Solar Energy Corporation of India Limited (**SECI**) for development of solar power plants in the state of Karnataka and Maharashtra
- The Petitioners asserted that enactment of the GST laws constituted a 'Change in Law' under the PPAs and sought to claim the additional costs incurred by them due to such change in law

What were the issues framed by CERC?

- Whether the enactment of GST laws was covered under the scope of 'Change in Law' under the PPAs and whether there would be an incremental impact on the cost of construction on account of promulgation of the GST laws?
- Whether there would be an incremental impact in operations and maintenance (**O&M**) expenses on account of promulgation of the GST Laws and if there was a need to evolve a suitable mechanism to compensate the Petitioners for the increase in recurring and non-recurring expenditure incurred by them on account of 'Change in Law'?
- Whether the claim of 'Carrying Cost' for delay in reimbursement by SECI was sustainable?

What was the decision of CERC?

- The CERC, in consonance with its earlier decision on the same issue, held that the enactment of GST laws is covered as 'Change in Law' under Article 12 of the PPAs. Additionally, it held that liability of payment on account of impact of GST on procuring of solar PV panels and associated equipment by the Petitioners would lie with SECI till the commercial operations date only. As regards claim during construction period, the CERC held that there must be a clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services
- As regards the O&M expenses, the CERC held that GST would apply only if the O&M services were outsourced to third parties. Since the concept of outsourcing is neither included implicitly or expressly in the PPAs, the claim for additional O&M expenses was held not to maintainable as it was a commercial decision of the Petitioners to outsource such services
- Finally, the CERC held that since the PPAs did not contain provisions for restoration of the Petitioners to the same economic position as if no 'Change in Law' event has occurred, the claims of 'Carrying Cost' and 'interest on working capital' would not be allowed

Our view: The order resonates with the earlier orders of CERC, which have held the enactment of GST laws as being covered under 'Change in Law' under the PPAs. Having provided clarity on the kind of claims that developers may be entitled to on account of such a 'Change in Law', the order may prevent similar claims in future, thereby avoiding unnecessary litigation, while clearly recognizing certain valid claims in this regard.

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