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Legal Updates

MNRE grants time-extension in scheduled commissioning date of RE projects considering disruption due to the second surge of COVID-19

The Ministry of New & Renewable Energy (“MNRE”) had vide its office memorandum (“O.M.”) dated 13.08.2020 provided for a blanket time-extension of five months in scheduled commissioning date (“SCOD”) of renewable energy (“RE”) projects on account of COVID-19 and the associated lockdown. Vide subsequent clarifications dated 09.02.2021 and 30.03.2021, it was communicated that further time-extension beyond five months can be granted by implementing agencies in exceptional cases. The MNRE has now, vide O.M. dated 12.05.2021, provided that the total time-extension on account of first wave of COVID-19 shall be restricted to 6 months, including the 5 months’ blanket time-extension already granted by MNRE. No further time-extension shall be considered on this account.

The MNRE has further directed that RE projects, being implemented through implementing agencies designated by the MNRE or under various schemes of the MNRE and having their SCOD on or after 01.04.2021, will be eligible to claim time-extension for completion of their project activities, provided such time-extensions are not used as a ground for claiming termination of power purchase agreement (“PPA”) or for claiming any increase in the project cost (including interest during construction or upward revision of tariff). The actual quantum of time-extension shall be decided in due course depending on the COVID-19 related developments that take place in the coming weeks. On receipt of an application for time-extension, the implementing agency shall not initiate any coercive action on the project for recovery of penalty on delayed commissioning, till the time-extension request is decided upon. Within the extended time provided for commissioning, intermediate milestones of RE projects scheduled for completion on or after 01.04.2021 (after considering the request for time extension), shall also be commensurately extended. Developers shall pass on the benefit of time-extension to other stakeholders down the value chain including EPC contractors, material / equipment suppliers, original equipment manufacturers, etc.

MNRE waives off requirement of submission of physical hard copies of invoices / bills for RE power projects from 01.04.2021 due to the second surge of COVID-19

The MNRE, vide O.M. dated 12.05.2021, has directed that for RE projects being implemented through MNRE designated implementing agencies, the requirement of submission of physical hard copies of invoices / bills for monthly energy supplied by RE power projects is waived off from 01.04.2021 due to the second surge of COVID-19, and the implementing agencies will accept soft copies of invoices. This arrangement shall continue for a period to be decided in due course depending on the COVID-19 related developments that take place in the coming weeks. Within 15 days of the last date of such period, RE power projects shall submit hard copies of invoices for this period for necessary adjustment, if any, in the subsequent bill.

The MNRE has further directed that during this period, in cases involving joint meter reading (“JMR”) where signing of JMR is difficult, soft copies of invoices based upon the self-meter readings by RE power generators, duly substantiated by photographs of the meter reading / downloaded meter data, may be accepted. In cases where such self-meter reading is also not possible, or as an alternative, implementing agencies may choose to pay on the basis of invoice for the same month of the previous year or invoice for the previous month, if it is lower. This shall however be subject to subsequent truing up based on actual meter reading.

MoP requests SERCs to issue tariff orders for FY 2021-22 at the earliest

The Ministry of Power (“MoP”), vide letter dated 03.05.2021, has issued a letter to the State Electricity Regulatory Commissions (“SERCs”) of Arunachal Pradesh, Chhattisgarh, Jharkhand, Karnataka, Madhya Pradesh, Nagaland, Punjab, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Delhi, Jammu and Kashmir and Ladakh to ensure timely issuing of the tariff orders under the Electricity Act, 2003 (“EA 2003”). The MoP requested the SERCs to issue tariff orders for FY 2021-22 at the earliest, in compliance with the provisions of EA 2003 and order dated 11.11.2011 in OP No. 1 of 2011 passed by the Appellate Tribunal for Electricity (“APTEL”) in order to ensure the financial health of distribution companies (“DISCOMs”) in the respective states, and to provide status report to MoP in respect of the same.

MoP extends last date for submission of comments on draft NEP 2021 to 25.05.2021

The MoP had invited suggestions for framing the draft National Electricity Policy (“NEP”) 2021 within 21 days from the date of its communication dated 27.04.2021. Vide communication dated 15.05.2021, the MoP has extended the last date for submitting of comments of the draft NEP 2021 to 25.05.2021.

CERC determines fees and charges for registration and issuance of RECs

The Central Electricity Regulatory Commission (“CERC”) has, vide order dated 30.04.2021, directed that the fees and charges for registration and issuance of renewable energy certificates (“RECs”) payable under the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be as determined vide order dated 28.12.2016 passed by the CERC and shall continue to be applicable till further orders, as follows:

For registration:

- (a) Processing fees (one time): Rs. 1,000
- (b) Registration charges (one time upon registration): Rs. 5,000
- (c) Annual charges: Rs. 1,000
- (d) Revalidation charges at the end of 5 years: Rs. 5,000

For issuance of REC to the eligible entity

Fees per certificate: Rs. 2

CERC determines fees and charges payable under Regulation 12 of the CERC ESCerts Regulations

The CERC has, vide its order dated 30.04.2021, directed that the fees and charges payable by eligible entities under Regulation 12 of the CERC (Terms and Conditions for Dealing in Energy Savings Certificates) Regulations, 2016 (“CERC ESCerts Regulations”) shall be as determined vide order dated 24.03.2017 passed by the CERC and shall continue to be applicable till further orders, as follows:

- (a) One-time registration fee at the rate of Rs 15,000/- per application levied at the time of registration of a Designated Consumer (“DC”);
- (b) Energy Savings Certificate (“ESCert”) fee at the rate of Rs. 5/- per ESCert to be paid by the DCs to whom ESCerts have been issued by the MoP;
- (c) The taxes and duties on fees and charges shall be applicable as per the prevailing norms; and

- (d) The total revenue from ESCert fee and one-time registration fee shall be shared in the ratio of 50:50 between the Registry (i.e. National Load Despatch Centre operating under Power System Operation Corporation Limited) and Administrator (i.e. Bureau of Energy Efficiency).

The Hon'ble Supreme Court has, vide order dated 03.05.2021 in *Bangalore Electricity Supply Company Limited (BESCOM) v. E.S. Solar Power Pvt. Ltd. & Ors.*, upheld the judgment of APTEL by which the order passed by the Karnataka Electricity Regulatory Commission (“KERC”) was reversed wherein the respondent solar developer had contended that its project commenced its operations within 12 months from the date of approval of the PPA by the KEREC and the imposition of damages and reduction of tariff payable by the appellant DISCOM was contrary to the provisions of the PPA. The dispute in the appeals before the Supreme Court was whether the respondents did not commission the solar projects before the expiry of 12 months from 17.10.2016 which was the date of approval of PPA by KEREC. The conflicting views of the parties related to the computation of 12 months for the purpose of determining whether the SCOD is 16.10.2017 or 17.10.2017.

The Supreme Court noted that there is no dispute between the parties that 12 calendar months have to be taken into account for determining the SCOD and that 12 months means 365 days. The interpretation clause contained three provisions, viz. Articles 1.2.1 (k), 1.2.1 (l) and 1.2.1 (m). According to Article 1.2.1 (k), any reference to a ‘month’ would mean a reference to a calendar month as per the Gregorian calendar. Article 1.2.1 (l) provided that references to any date or period would mean and include such date, period as may be extended pursuant to the agreement. As per Article 1.2.1(m), any reference to any period commencing from a specified date and until the specified day shall include both such day or dates. The Supreme Court further noted that the expression ‘month’ in Article 21.1 has been defined to mean a period of 30 days and excluding the date of the event where applicable, else a calendar month.

While disregarding the conclusion of the KEREC that the definition of ‘month’ is with reference only to one month and not more, the Supreme Court held that the KEREC had committed an error in applying Article 1.2.1 (m) when the provision that should be applicable is Article 1.2.1 (k) read with the definition of ‘month’ in Article 21.1. The Supreme Court held that there is a specific mention of ‘twelve months’ in the definition of ‘SCOD’ and Article 1.2.1 (k) categorically provides that any reference to a ‘month’ shall be a calendar month. The applicability of Article 1.2.1 (k) excludes the operation of Article 1.2.1 (m) to the facts of the present case. The crucial expression in the definition of ‘month’ is “excluding the date of the event”. Thus, if the date of the event, i.e. 17.10.2016 (i.e. date of approval of PPAs by KEREC) is excluded, the SCOD would be 17.10.2017.

On the other issue, i.e. whether injection of power is a pre-requisite for deciding the date of commissioning of the projects and whether the ‘Commercial Operation Date’ and ‘Commissioning Date’ are one and the same, the Supreme Court held that in view of the above conclusion relating to the SCOD being 17.10.2017, it is not necessary to adjudicate the point relating to the requirement of actual injection of power into the grid to decide the date of commissioning. The Supreme Court, accordingly, upheld the judgment of the APTEL and granted 4 weeks’ time to the appellant to implement the said judgment.

The Ministry of Corporate Affairs (“MCA”), vide general circular dated 05.05.2021 has further clarified that spending of corporate social responsibility (“CSR”) funds for ‘creating health infrastructure for COVID care’, ‘establishment of medical oxygen generation and storage plants’, ‘manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19’ or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 (“CA 2013”) relating to promotion of health care, including preventive health care, and disaster management respectively. The circular also referred to item no. (ix) of Schedule VII which permits contribution to specified research and development projects as well as contribution to public funded universities and certain organizations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

The companies (including government companies) may undertake the activities / projects / programmes using CSR funds directly by themselves or in collaboration as shared responsibility with

Supreme Court rules on computation of 12 months for the purpose of determining scheduled commissioning date of solar power project

MCA issues clarification on spending of CSR funds for ‘creating health infrastructure for COVID care’ and ‘establishment of medical oxygen generation and storage plants’

other companies, subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by the MCA from time to time.

MCA relaxes time for filing forms related to creation or modification of charges under the CA 2013

The MCA has, vide general circular dated 03.05.2021, allowed relaxation of time and condonation of delay in respect of filing of Form No. CHG-1 and Form No. CHG-9 by a company or a charge holder, where the date of creation /modification of charge: (a) is before 01.04.2021, but the timeline for filing such form has not expired under Section 77 of the CA 2013 as on 01.04.2021; or (b) falls on any date between 01.04.2021 to 31.05.2021 (both dates inclusive).

However, such circular shall not apply in the following cases: (a) Forms CHG-1 and CHG-9 had already been filed before date of issue of circular (i.e. before 03.05.2021); (b) the timeline for filing the form has already expired under Section 77 or 78 of the CA 2013 prior to 01.04.2021; (c) the timeline for filing the form expires at a future date, despite exclusion of time provided in the circular; and (d) in respect of filing of Form CHG-4 for satisfaction of charges.

MCA extends gap between two consecutive board meetings to 180 days for first two quarters of FY 2021-22

The MCA has, vide general circular dated 03.05.2021, decided that the gap between two consecutive meetings of the board of directors of a company may extend to 180 days for the April-June 2021 and July-September, 2021 quarters instead of 120 days as prescribed under Section 173 of the CA 2013 in view of difficulties arising due to resurgence of COVID-19.

MCA relaxes levy of additional fees in filing of certain forms under the CA 2013 and the LLP Act, 2008

The MCA has, vide general circular dated 03.05.2021, decided to grant additional time up to 31.07.2021 for companies and limited liability partnerships (“LLP”) to file forms (other than Form CHG-1, CHG-4 and CHG-9) without any additional fees, in view of difficulties arising due to resurgence of COVID-19. No additional fees shall be levied up to 31.07.2021 for the delayed filing of such forms which were / would be due for filing during 01.04.2021 to 31.05.2021. For such delayed filings up to 31.07.2021, only normal fees shall be payable.

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