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-LAW IN ACTION



Legal Updates

Delhi High Court lays down twin test for exercising power of Attachment before passing Arbitral Award

The Delhi High Court vide judgment dated 11.04.2023 in appeals under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (“**A&C Act, 1996**”) titled *M/s Tahal Consulting Engineers India Pvt. Ltd. vs. M/s Promax Power Ltd.* bearing Arb. A. (Comm.) 89/2022 and *M/s Promax Power Ltd. vs. M/s Tahal Consulting Engineers India Pvt. Ltd.* bearing Arb. A. (Comm.) 92/2022, has held that though the power to pass an attachment order before an award is rendered by the Arbitral Tribunal may not have been specifically enshrined under Section 9 and 17 of the A&C Act, 1996, however, the Tribunal can pass such an order depending on the facts and circumstances of the case. The twin test laid down by the Court is that the Claimant has to establish that it has a prima facie case and that the defendant is indulging in activities aimed at dissipation of assets or is seeking to remove the assets with an intent to defeat the arbitral award that may be passed.

The facts leading to the present appeals are that the Arbitral Tribunal had rejected the claimant’s application for interim measures under Section 17 of the A&C Act, 1996 seeking securitizing of its claim amount. The Claimant asserted that the Respondent had seen drastic reduction in cash reserves and revenues from operations as well as in its tangible assets. The High Court observed that though the Arbitral Tribunal may not be strictly bound by the principles of Order 38 Rule 5 of CPC, 1908 (Attachment of a property before judgement), however, it could adopt principles analogous to Order 38 Rule 5.

The Central Electricity Regulatory Commission (“**CERC**”), vide its notification dated 01.04.2023 (“**Notification**”), has prescribed the timeline of commencement of various regulations of the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (“**GNA Regulations**”) by partially modifying its previous notification dated 14.10.2022. Regulation 1.2 of the GNA Regulations provides that the regulations shall come into force from the date to be notified by the CERC and different dates may be appointed for commencement of different regulations. Therefore, in view of Regulation 1.2 of the GNA Regulations, the CERC has notified as following:

CERC partially modifies its previous notification dated 14.10.2022

1. The CERC (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023 ('**First Amendment Regulations**') issued on 01.04.2022 shall come into force with effect from 05.04.2023 except amended provisions of Regulations 23.1, 24.2, 24.3, 34.2, 34.3 and 34.4 and Regulations 26.4, 26.5 and 26.6 of GNA Regulations.
2. Regulations 40.2 to 40.4, sub-clauses (a) and (b) of Regulation 43.1 shall come into force with effect from 05.04.2023.
3. The provisions regarding fresh applications for Connectivity and GNA and their processing and grant shall be made effective from 05.04.2023.
4. The effective date of Regulation 37.1 to Regulation 37.8 shall be 05.04.2023 and options shall be exercised by the concerned entities afresh in accordance with these regulations on the basis of their status as on 05.04.2023.
5. Scheduling and Despatch of electricity shall continue to be based on the quantum of Long-Term Access ("**LTA**"), Medium-Term Open Access ("**MTOA**") and Short-Term Open Access ("**STOA**") of each of the Designated Interstate Transmission System ("**ISTS**") Customers ("**DICs**") and other users of the grid in accordance with the provisions of the CERC (Indian Electricity Grid Code) Regulations, 2010.
6. STOA shall continue to be granted under the CERC (Open Access in inter-State transmission) Regulations, 2008.
7. Billing, Collection and Disbursement of the inter-State Transmission Charges and Losses shall continue to be based on the quantum of LTA, MTOA and STOA of each of the DICs and other users of the grid in accordance with the provisions of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020.

CERC vide its earlier order dated 29.03.2023, had directed the Generating / Transmission companies to furnish information related to operational data and O&M expenses by 15.04.2023. Pursuant to representations from the Generating / Transmission companies seeking extension of timeline, the CERC has allowed an extension to the date of submission up to 15.05.2023.

CERC vide judgment dated 09.04.2023 in Petition No. 05/SM/2023 modified their earlier order dated 06.02.2023 in Petition No. 01/SM/2023 to align the Normal Rate of Charge for Deviation with that of High Price Day Ahead ("**HP-DAM**").

CERC in view of introduction of HP-DAM in the Power Exchange and the revision in the price ceiling in various market segments in Power Exchanges, considered it necessary to align the Normal Rate of Charge for Deviation with that of HP-DAM, to avoid any possibility of arbitrage between HP-DAM and Deviation Settlement Mechanism ("**DSM**").

Therefore, the Commission made partial modification of the Order dated 06.02.2023 in Petition No. 01/SM/2023. Thereby para 26 of the said order stands substituted as follows:

"26. Relaxation of Regulation 7 of the DSM Regulations, 2022:

*The Commission hereby relaxes Regulation 7 of the DSM Regulations, 2022 to provide that the Normal Rate of Charges for Deviations for a time block as specified in Regulation 7 of the DSM Regulations, 2022 shall be equal to the higher of [the weighted average Area Cleaning Price ("**ACP**") of the Day Ahead Market segments of all the Power Exchanges; and the weighted average ACP of the Real Time Market segments of all the Power Exchanges, for that time block].*

Provided that for a Seller whose bid is cleared in the HP-DAM, the Normal Rate of Charges for Deviation by way of 'under-injection' for a time block shall be equal to the highest of [the weighted average ACP of the HP-DAM Market segments of all the Power Exchanges; or the weighted average ACP of the Day Ahead Market segments of all the Power Exchanges; or the weighted average ACP of the Real Time Market segments of all the Power Exchanges, for that time block] for the quantum of power sold through HPDAM."

Para 27 of the order dated 06.02.2023 further clarifies that for a seller whose bids are cleared in the HP-DAM, 'reference charge rate' specified for deviation by way of 'under-injection' shall be equal to [the weighted average ACP of the HP-DAM segments of all Power Exchanges, for that time block] for the quantum of power sold through HP-DAM. The above directions of the Commissions shall come into effect from 00.00 hours of 10.04.2023.

CERC extends the date for submission of operational data and O&M information by Generating / Transmission companies

CERC passes order to align Normal Rate of Charge for Deviation with that of High Price Day Ahead

**MOP issues
guidelines to promote
development of
Pump Storage
Projects**

The Ministry of Power (“**MOP**”), vide notification dated 10.04.2023, has issued Guidelines to promote development of Pump Storage Projects (“**PSP**”). The MOP observed that amongst the various technologies available for addressing this requirement of storage and ancillary services, PSPs are clean, green, safe, MW scale, domestically available, time tested and internationally accepted. The Guidelines *inter alia* stipulate as under:

1. States may award projects directly to hydro Central Public Service Undertakings (“**PSUs**”) or State PSUs on a nomination basis after giving due consideration to their experience and financial strength. The projects may also be allotted to Joint Ventures (“**JVs**”) between Central PSUs and/or State PSUs for development of such PSPs.
2. PSP project may also be awarded to private developers by following a two-stage competitive bidding process.
3. PSPs may also be awarded on a tariff-based competitive bidding (“**TCBC**”) basis to developers. For this purpose, a Detailed Project Report prepared by the Special Purpose Vehicle (“**SPV**”) may be subsequently bid out for construction and SPV transferred to the successful bidder on the basis of:
 - a. Composite tariff (including the cost of input power) in case input power is arranged by the developer, or
 - b. Tariff for storage on a per Megawatt Hour basis if the input power is to be arranged by the procurer of the storage capacity.The appropriate Commission shall adopt the above tariff under Section 63 of the Electricity Act, 2003.
4. Developers may also self-identify potential off-stream sites where PSPs can be constructed without requirement of allotment from State Government for such sites.
5. Developers shall start construction work within a period of 2 years from the date of allotment, failing which the allotment shall be cancelled by the State. Relaxation of 1 year may be granted in case of pending Environment Clearance (“**EC**”) and Forest Clearance (“**FC**”), upon receipt of the applications to concerned authorities within agreed timelines.
6. States shall ensure that no Upfront Premium is charged for project allocation to ensure the viability of the PSP.
7. The appropriate Commission shall ensure that services like spinning reserves, reactive support, black start, peaking supply, tertiary and ramping support, faster start-up and shutdown, which help in supporting grid stability are suitably monetized.
8. Appropriate Commission shall notify Peak and Off-Peak tariffs for Generation to provide appropriate pricing signal to Peak and Base Load Generating Plants.
9. PSPs and other storage projects shall be allowed to participate in all market segments of the power exchange, including the high price segment of the Day Ahead Market (HP-DAM) so that they can take suitable advantage of the price differential between Peak and Off-Peak tariffs.
10. 80% power generated when PSPs operate as conventional hydro power stations during monsoon period would be offered to the Home State at the rate of secondary energy fixed by the Central Electricity Regulatory Commission. The developer shall be allowed to sell the remaining energy to cover their Operation & Maintenance costs and other expenses.
11. In the event of capacity contracted not being fully utilized by the contracting agency, the developer would be free to transfer the usage of the capacity to other interested entities so that resources do not remain idle. The gains made shall be shared with the original beneficiary in the ratio of 50:50.
12. The Central Government may notify a benchmark tariff of storage for investment decisions of developers considering 6-8 hours of operation of the PSP. Efforts would be made to ensure that only those PSP projects are taken up for development whose levelized cost of storage is within the benchmark cost of storage.
13. State Government shall consider reimbursement of State GST on PSP and provide exemptions from Stamp Duty, Registration Fee, Electricity Duty, Cross Subsidy Surcharge and Water Cess etc,
14. The discarded mines including coal mines could be used as Hydro Storage for development of PSP.
15. As per draft notification issued by MoEF&CC on 11.10.2022, PSPS which meet the following criteria would be appraised under B2 category for grant of EC irrespective of power generation capacity:
 - a. Projects which do not attract FC and/or Wildlife Clearance.
 - b. Projects wherein no new Reservoir is created, or existing reservoir(s) (are) expanded / structurally modified.
16. Sovereign green bonds issued for mobilizing resources for green infrastructure as a part of the Government's overall market borrowings may be deployed in the development of PSPs which utilize renewable energy for charging.

MOP approves CERC as the authority for verification of captive status for inter-state sale of power

MOP, vide letter dated 11.04.2023, has approved the CERC as the competent authority for verification of captive status of Captive generating plants (“CGPs”) who are involved in inter-state sale of power. The Central Electricity Authority (“CEA”) shall be empowered to take necessary steps for verification of the captive status of the CGPs which are supplying power to its users in other states involving inter-state flow of power.

The Petroleum and Natural Gas Regulatory Board (“PNGRB”), vide Notification dated 03.04.2023, issued the PNGRB (Technical Standards and Specifications including Safety Standards for Petroleum Refineries and Gas Processing Plants) Regulations, 2023 (“**2023 Regulations**”). The 2023 Regulations have been introduced to ensure uniform application of design principles in layout and to guide in selection and application of material and components, equipment and systems and uniform operation and maintenance of the Refineries and Gas Processing Plants (“GPPs”). Some of the salient features of the 2023 Regulations are as under:

1. The 2023 Regulations shall be applicable to all entities engaged in the operation of Petroleum Refineries and GPPs to ensure safe and reliable operations through the complete lifecycle of the project.
2. The mandatory requirements of these 2023 Regulations are not applicable to the common facilities constructed outside the Inside Battery Limit (“ISBL”) of an entity where no processing of hydrocarbon is carried out.
3. The 2023 Regulations lay down minimum requirements of layout within the plant boundary for unloading or loading, storage, processing, transfer and handling of hydrocarbons or other hazardous substances or chemicals in Refineries and Gas Processing Plants. The 2023 Regulations shall not apply to onshore or offshore upstream facilities, mini refineries with total petroleum class A, class B, class C inventory up to 2000 MT. The term “General Classification of Petroleum Products” has been defined to mean petroleum products which are classified according to their closed cup FLASH POINTS as given below:
Class-A Petroleum: Liquids which have flash point below 23 °C;
Class-B Petroleum: Liquids which have flash point of 23 °C and above but below 65 °C;
Class-C Petroleum: Liquids which have flash point of 65 °C and above but below 93 °C;
Excluded Petroleum: Liquids which have flash point of 93 °C and above;
Liquefied gases including Liquefied Petroleum Gas (“LPG”) do not fall under this classification but form separate category.
4. Technical standards and specifications including safety standards for Refineries and GPPs shall be as specified in Schedules which cover design and layout, electrical systems, process system, maintenance, inspection, competency assessment, fire prevention, leak detection, firefighting system, and safety management system.
5. The 2023 Regulations provide for establishment of a Board which shall monitor the compliance to these regulations either directly or under its supervision through an accredited third party as per separate provisions on third party conformity assessment. Any entity intending to set up Refineries shall make available its detailed plan including design consideration conforming to these regulations to Petroleum and Explosives Safety Organization (“PESO”) for their approval.
6. The 2023 Regulations envisage for a system for ensuring compliance to the provision of these Regulations through conduct of technical and safety audits during the construction, pre-commissioning, and operation phase. In case of any deviation or shortfall including any of the defaults, the entity shall be given reasonable time limit for rectification of such deviation, shortfall, default and in case of non-compliance, the entity shall be liable for any penal action under the provisions of the PNGRB Act or termination of operation.
7. If any dispute arises about the interpretation of any of the provisions of these Regulations, the decision of the Board shall be final.

The 2023 Regulations may be accessed vide the link [here](#).

PNGRB, vide Notification dated 06.04.2023, issued the PNGRB (Technical Standards and Specifications including Safety Standards for Petroleum Installations) Amendment Regulations, 2023 (“**Amendment Regulations 2023**”) amending the PNGRB (Technical Standards and Specifications including Safety

PNGRB issues PNGRB (Technical Standards and Specifications including Safety Standards for Petroleum Refineries and Gas Processing Plants) Regulations, 2023.

Standards for Petroleum Installations) Regulations, 2020 (“**2020 Regulations**”). Some of the salient features of the Amendment Regulations 2023 are as below:

1. The Amendment Regulations 2023 have been introduced to ensure uniform applicability of 2020 Regulations to Aviation Fueling Stations (“**AFS**”) and Lube manufacturing and filling plants. The amendment is brought in effect with an objective to further strengthen the safety of Petroleum Installations including AFS and lube manufacturing and filling plants.
2. The scope of 2020 Regulations dealing with “*maintenance and safety of Petroleum Installations*” has been extended to include “*AFS and Lube manufacturing and filling plant*” under its purview specified in Schedule-1 of the 2020 Regulations, which are as under, namely: –
 - (a) **Part - A to Part - I** which covers layout, design, standard operating procedures, maintenance, inspection, competence assurance, fire protection, safety management plan and vehicle management system;
 - (b) **Part - J** for AFS or Aviation Service Facilities (“**ASF**”) which covers layout design, design considerations, safe operating practices in storage and handling of bulk aviation fuels, fire protection facilities and vehicle management system;
 - (c) **Part- K** for lube manufacturing and filling plants which covers lube manufacturing and filling plant layout design, design considerations, safe operating and handling practices in lube manufacturing and filling plant operations, fire protection facilities, maintenance and inspection of equipment, and vehicle management system.”;
3. The Amendment Regulations 2023 have inserted Part J which lays down the minimum safety requirements in layout, design, fire protection system, hydrant refueling system and supply and handling of aviation product in barrels or packed conditions, keeping in view specific requirements for AFS and availability of a reliable fire-fighting support from the airport operator.
4. The Amendment Regulations 2023 have inserted Part K which has been inserted which lays down minimum safety requirements in design, layout, automation, storage, loading or unloading, packaging, inspection and maintenance, fire protection of lube manufacturing and filling plants including standalone packing and filling units with or without blending facilities. Part K shall be applicable for the lube manufacturing and filling plants across the country falling under the scope of the Regulations.
5. The Amendment Regulations 2023 has incorporated provisions to deal with the safe operating practices and provisions applying to loading, unloading and storage of bulk Petroleum Products at installations. It mandates for strict compliance of the said provisions with respect to selection, deployment of proper skilled manpower for effective operation and maintenance.

The Amendment Regulations, 2023 can be accessed vide the link [here](#).

The Telecom Regulatory Authority of India (“**TRAI**”), vide press release dated 03.04.2023, issued a consultation paper on “Assignment of Spectrum for Space-based Communication Services” (“**Consultation Paper**”).

The Department of Telecommunications (“**DoT**”), through its letter dated 13.09.2021, had requested TRAI to provide recommendations on “Auction of spectrum in the frequencies identified for International Mobile Telecommunications 5G”. TRAI was also requested to provide recommendations, on appropriate frequency bands, band plan, block size, applicable reserve price, the quantum of spectrum to be auctioned, and associated conditions for the auction of spectrum for space-based communication services.

The Consultation Paper has been issued for soliciting comments from the stakeholders on the issues relating to assignment of spectrum for space-based communication services. TRAI after assessing the demand for space-based communication services will provide recommendations on the quantum of spectrum in each band required to be put to auction. It is envisaged to auction the Space Spectrum on exclusive basis, TRAI may explore feasibility and procedure of sharing auctioned spectrum among multiple service licensees. TRAI may also make suggestions on how satellite networks and terrestrial networks should share frequency bands that were auctioned off, along with the guidelines for sharing and the best ways to prevent interference when doing so.

Since the service providers may require spectrum both in user link as well as in feeder link, TRAI may take inputs from the stakeholders and recommend the appropriate auction methodology so that the successful

**PNGRB notifies
PNGRB (Technical
Standards and
Specifications
including Safety
Standards for
Petroleum
Installations)
Amendment
Regulations, 2023**

**TRAI issues
consultation paper
on spectrum for
space-based
communication
services**

bidder gets appropriate spectrum. In the present consultation paper, TRAI has considered all the spectrum bands relevant for space-based communication services as indicated by DoT.

The TRAI has sought comments from the stakeholders by 04.05.2023, and counter-comments by 18.05.2023.

TRAI vide notification dated 03.04.2023, has released draft TRAI Repealing Regulations, 2023 (“**Repealing Regulations**”), inviting comments of stakeholders on repeal of Regulation on Quality of Service of Dial-Up and Leased Line Internet Access Service, 2001 (“**2001 Regulations**”).

The 2001 Regulations are applicable to all the Basic Service Operators and Internet Service Providers, including the incumbent operators viz. BSNL, MTNL and VSNL. The 2001 Regulations were notified with the primary aim of specifying the quality-of-service benchmarks to be achieved by the service providers, ensure customer’s satisfaction with the network performance and to protect the interests of the subscribers of the internet service. Under these regulations, no performance report submission by the service provider is prescribed.

In view of the existence of no dial up subscribers, availability of high-speed broadband services in wireline as well as wireless segment and leased line service being service level agreement-based service between two contracting parties, the 2001 Regulations appear to be no more relevant in the present context. Hence, TRAI decided to repeal the 2001 Regulation with effect from date of its notification in Official Gazette.

The Repealing Regulations shall be open for comments of the stakeholders up to 17.04.2023.

The Uttar Pradesh Electricity Regulatory Commission has issued Guidelines for Peer-to-Peer Solar Energy Transaction through Blockchain Based Platform (“**Guidelines**”) on 05.04.2023. The UPERC framed the said Guidelines to promote rooftop solar, efficient utilization of existing assets and to implement innovative technologies by initiating transaction of rooftop solar energy through blockchain based P2P platform. The Guidelines details the procedure for registration, transactions, metering, billing along with other guiding principles.

The Guidelines can be accessed vide the attached [link](#).

The Maharashtra Electricity Regulatory Commission (“**MERC**”), vide its order date 06.04.2023 in Case No. 192/2022 titled *Avaada Sunce Energy Private Limited v. Maharashtra State Electricity Distribution Co. Ltd.* has held that even though the DISCOM is aware of the Change in Law (“**CIL**”) event, if the generator is affected by it and wishes to claim compensation, then CIL notice has to be served as per the PPA.

The Petition was filed by M/s Avaada Sunce Energy Private Limited (“**ASEPL**”) seeking compensation on account of CIL under the power purchase agreement (“**PPA**”) executed with Maharashtra State Electricity Distribution Co. Ltd. (“**MSEDCL**”) on account of an increase in Safeguard Duty on imports of solar cells / modules and an increase in Goods and Services Tax (“**GST**”) on solar panels / modules.

The MERC observed that the CIL provisions of PPA requires that if ASEPL wishes to claim CIL, it shall give notice to MSEDCL of such CIL within 7 days after becoming aware of the same or should reasonably have known of CIL. In the instant case, the CIL event occurred on 29.06.2020 and 30.08.2021. However, ASEPL issued the notice claiming CIL on 20.09.2022 and 21.09.2022, which was beyond the stipulated time. While rejecting the contention of ASEPL that MSEDCL was aware of the CIL event as it was approached by other renewable energy generators, the MERC held that the CIL provision of the PPA can be invoked only if the generator abides by the procedure stipulated in the PPA i.e., issue notice within 7 days in this case. Accordingly, the MERC observed that mandatory condition of issuing notice within 7 days cannot be ignored by the Commission. As ASEPL has failed to comply with this mandatory condition of PPA, it is not eligible to claim CIL compensation on this account.

The Madhya Pradesh Electricity Regulatory Commission (“**MPERC**”) vide notification dated 05.04.2023 has issued the second amendment to the MPERC (Terms and Conditions for intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations 2021 (“**Principal Regulations**”). Vide the said amendment the Commission has issued the following changes in the Principal Regulations:

1. In regulation 2 of the Principal Regulation the following changes have been made:

TRAI invites comments on repeal of Regulation on Quality of Service of Dial-Up and Leased Line Internet Access Service, 2001

UPERC issues Guidelines for peer-to-peer solar energy transaction through blockchain based platform.

MERC holds that the Change in Law notice as provided in the PPA is a mandatory condition for claiming Change in Law

The Madhya Pradesh Electricity Regulatory Commission (“**MPERC**”) vide notification dated 05.04.2023 has issued the second amendment to the MPERC (Terms and Conditions for intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations 2021 (“**Principal Regulations**”). Vide the said amendment the Commission has issued the following changes in the Principal Regulations:

1. In regulation 2 of the Principal Regulation the following changes have been made:

1.1. Sub-Clause (ix)(a) of clause 2.1 of the Principal Regulations stand deleted and the following sub-clauses are added:

"(ix)(a) - 'Day Ahead Market (DAM)' shall have the same meaning as defined in MPERC (Methodology for determination of Open Access charges and Banking charges for Green Energy Open Access consumers) Regulations 2023 (G-46 of 2023) as amended from time to time;

(ix)(b)- 'Fossil Fuel' shall have the same meaning as defined MPERC (Methodology for determination of Open Access charges and Banking charges for Green Energy Open Access consumers) Regulations 2023 (G-46 of 2023) as amended from time to time;

(ix)(c)-'Green Energy' shall have the same meaning as defined in MPERC (Methodology for determination of Open Access charges and Banking charges for Green Energy Open Access consumers) Regulations 2023 (G-46 of 2023) as amended from time to time;

(ix)(d)- 'Green Energy Open Access Consumer' shall have the same meaning as defined in MPERC (Methodology for determination of Open Access charges and Banking charges for Green Energy Open Access consumers) Regulations 2023 (G-46 of 2023) as amended from time to time;"

2. In Regulation 3 the following amendments have been made:

2.1. After sub clause 13.1 (vi) of Clause 13A of Refulation13 the following proviso has been added:

"Provided that the cross-subsidy surcharge shall not exceed 20% of average cost of supply."

2.2. After sub clause 13.1 (vii) of Clause 13A of Refulation13 the following proviso has been added:

"Provided that such additional surcharge shall not be levied in case a person is availing power from the plant established as captive generation plant for his own use."

2.3. Sub-Clause (i) of clause 13B of Regulation 13 shall be substituted by the following sub-clause:

"(i)- The charges on Green Energy Open Access consumers shall be as follows:

Transmission Charges;

1.1. Wheeling Charges;

1.2. Cross Subsidy Surcharge;

1.3. Additional Surcharge;

1.4. Standby charges wherever applicable;

1.5. Banking Charge; wherever applicable; an

1.6. Applicable Scheduling Fees/Charges of SLDC/RLDC and Deviation charges as per the relevant regulations of the Appropriate Commission.

2.4. The 3rd proviso to sub-clause (iii) of clause 13B of Regulation 13 is substituted as follows:

"Provided also that cross subsidy surcharge and additional surcharge shall not be applicable in case power procured from a non-fossil fuel- based Waste-to- Energy plant is supplied to the Open Access Consumer:"

2.5. A 5th proviso shall be inserted after 4th proviso to sub-clause (ii) of clause 13B of Regulation 13:

"Provided also that additional surcharge shall not be applicable in case of electricity produced from offshore wind projects, which are commissioned up to December 2025 and supplied to Open Access Consumer:"

2.6. A 6th proviso shall be inserted after 5th proviso to sub-clause (ii) of clause 13B of Regulation 13:

"Provided also that such additional surcharge shall not be levied in case a person is availing green power from the plant established as captive generation plant for his own use:"

2.7. A new proviso shall be inserted, after sub-clause (iii) of clause 13B of Regulation 13 of the Principal Regulation:

"Provided that the cross-subsidy surcharge shall not exceed 20% of average cost of supply:"

2.8. Sub clause (vi) of Clause 13B of Regulation 13 stands substituted:

"(iv)-The standby charges, wherever applicable, shall be specified by the State Commission and such charges shall not be applicable, if the Green Energy Open Access Consumers have given notice, at least a day in advance before gate closure time of the Day Ahead Market on D-(minus) 1 day, 'D' being the day of delivery of power, for standby arrangement by the Distribution Licensee."

2.9. The 1st proviso to sub-clause (iv) of clause 13B of Regulation 13 shall be substituted by the following 1st proviso, namely:

"Provided that the applicable standby charges shall not be more than twenty-five per cent of the tariff applicable to consumer category:"

2.10. The 2nd proviso to sub-clause (iv) of clause 13B of Regulation 13 shall be substituted by the following 1st proviso, namely:

"Provided further that the standby charges shall be in addition to the applicable tariff on standby energy supplied by the Distribution Licensee to the Green Energy Open Access Consumer."

3. Regulation 15 of the Principal Regulations shall be substituted by the following:

"15. PRIORITY FOR ADJUSTMENT OF ENERGY CREDIT

The priority for adjustment of energy drawl by an open access customer from different sources shall be as per the following sequence of reducing priority and shall be implemented for each time block, upon adjustment of applicable losses:

- (a) Renewable Energy Generators;*
- (b) Captive Generating Plant;*
- (c) Banked Energy;*
- (d) Long-term Bilateral purchase;*
- (e) Medium-term open access;*
- (f) Short-term inter-State open access including Power Exchange transactions;*
- (g) Short-term intra-State Open access;*
- (h) Standby energy from Distribution Licensee under Green Energy Open Access, if any; and*
- (i) Distribution Licensee.*

Provided that energy credit from more than one source from the similar category shall be adjusted on pro-rata basis of the contracted generation capacity from such source."

The MPERC vide its regulation dated 31.03.2023 has issued the second amendment to the MPERC (Co-Generation and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations 2021 ("**Principal Regulations**"). Vide the said amendment the Commission has made the following changes:

1. Regulation 2 of the Principal Regulation.

1.1. Sub-Clause (ii)(a) has been inserted after sub-clause 2 of the Principal Regulation:

"(ii)(a)- "Banking Cycle" shall have the same meaning as defined in MPERC (Methodology for determination of Open Access charges and Banking charges for Green Energy Open Access consumers) Regulations 2023 (G-46 of 2023) as amended from time to time;"

2. Regulation 3 of the Principal Regulation:

2.1. Sub-clause (i) of clause (c) of Regulation 3.8(A) has been substituted:

"(i) Any consumer may elect to purchase green energy either up to a certain percentage of the consumption or its entire consumption and he may place a requisition for this with their Distribution Licensee, which shall procure such quantity of green energy and supply it and the consumer shall have the flexibility to give separate requisition for Wind, Hydro and Other Categories;"

3. Regulation 10 of the Principal Regulation:

3.1. Proviso to sub-clause (ii) of Regulation 10.1 of the Principal Regulation has been substituted:

MPERC issues second amendment to the MPERC (Co-Generation and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations 2021

"Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent banking cycles and shall be adjusted during the same banking cycle as per the energy injected in the off-peak period and peak period. The off-peak period and peak period shall be determined by the Commission in its Retail Supply Tariff order from time to time:"

3.2. Another proviso has been added to sub-clause (ii) of Regulation 10.1 of the Principal Regulation:

"Provided further that, the energy banked during peak period shall be permitted to be drawn during peak as well as off-peak period in 15 minutes time block and the energy banked during off-peak period shall be permitted to be drawn only during off-peak period in 15 minutes time block by paying the banking charges determined as per the provisions of MPERC (Methodology for determination of Open Access charges and Banking charges for Green Energy Open Access consumers) Regulations 2023 (G-46 of 2023):

Provided also that the Licensee shall reconcile the banking charges recovered as mentioned in above proviso at the end of each financial year on the basis of actual cost of power purchase arranged by the Licensee to return banked energy and claim additional expenses, if any, through a separate petition along with truing up petition of Retail Supply Tariff of subsequent financial year:

Provided also that the un-utilised surplus banked energy shall be considered as lapsed at the end of each banking cycle and the Renewable Energy generating station shall be entitled to get Renewable Energy Certificates to the extent of the lapsed banked energy."

MPERC vide its Notification dated 09.03.2023 has notified new Regulations on Methodology for Calculation of Open Access Charges and Banking Charges for Green Energy Open Access Consumers Regulations, 2023 ("**GEOA Regulations**"). These Regulations will extend to the State of Madhya Pradesh and will be applicable for allowing Open Access to electricity generated from Renewable Energy Sources ("**RES**") as defined under Clause (1) Regulation 3(1) of the Regulations. The salient features of the GEOA Regulations, are as follows:

1. The GEOA Regulation defines Green Energy as the electrical energy from renewable sources of energy including hydro and storage (if the storage uses renewable energy) or any other technology as may be notified by the Government of India from time to time and shall also include any mechanism that utilises green energy to replace fossil fuels including production of green hydrogen or green ammonia as per provision of clause G of sub-rule (2) of rule 4 of Green Energy Open Access Rules, 2022;
2. Green Energy Open Access Consumer ("**GEOAC**") means any person who has contracted demand or sanctioned load of 100 kW or more or such other limit as may be specified by MPERC from time to time with the distribution licensee, except for captive consumers, who are supplied with electricity from green energy sources for their own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving green energy with the works of a licensee, the Government or such person, as the case may be;
3. Standby Charges means charges as applicable to GEOAC against the standby arrangement provided by the distribution licensee, in case such GEOAC is unable to procure/schedule power from the generating sources with whom they have the agreements to procure power due to outages of generator, transmission systems and the like.
4. The charges on GEOAC shall be as follows:
 - a) Transmission Charges;
 - b) Wheeling Charges;
 - c) Cross Subsidy Surcharge;
 - d) Additional Surcharge;
 - e) Standby Charges; wherever applicable;
 - f) Banking Charges; wherever applicable; and
 - g) Applicable Scheduling Fees/ Charges of State Load Dispatch Centre ("**SLDC**") / Regional Load Dispatch Centre ("**RLDC**") and Deviation charges as per the relevant regulations of the Appropriate Commission.

**MPERC notifies
Methodology for
Calculation of Open
Access Charges and
Banking Charges for
Green Energy Open
Access Consumers
Regulations, 2023**

5. For use of inter-State transmission system, transmission charges shall be as specified by the Central Electricity Regulatory Commission from time to time. For use of intra-State transmission system: As specified by MPERC in MYT Transmission Tariff Orders of MPERC as amended from time to time.
6. In case of Wheeling Charges, Cross Subsidy Surcharge, and additional surcharge will be applicable as specified by MPERC in Retail Supply Tariff order issued from time to time.
7. Standby facility shall be provided to the GEOAC on payment of Standby Charges as determined by MPERC in its Retail Supply Tariff order from time to time. Furthermore, Standby Charges shall not be more than 25% of the tariff applicable to the consumer category. However, Standby Charges shall not be included if GEOAC has given notice, at least a day in advance before gate closure in Day Ahead Market (DAM) on 'D-1' day, 'D' being the day of delivery of power, for standby arrangement to the Distribution Licensee.
8. Banking Facility shall be provided to the consumers availing Green Energy Open Access. The surplus energy of a GEOAC, from a 'Green Energy' Generating Station, after own consumption in its premises, may be banked with the Distribution Licensee. The Banking Facility including injection of surplus energy and drawal of banked energy shall be subject to scheduling. The Banking Charges shall be adjusted in kind @ 8% (eight percent) of the total energy banked. The permitted quantum of banked energy by the GEOAC shall be at least 30 % (thirty percent) of the total monthly consumption of electricity from the distribution licensee by the GEOAC.
9. In addition to above charges, the consumer availing Green Energy Open Access shall also pay the following charges determined by the MPERC as per the provisions of the relevant regulations of the Appropriate Commission:
 - a) Applicable SLDC fees and charges including scheduling charges;
 - b) RE Deviation Settlement Charges (RE-DSM).

The GEOA Regulations can be accessed vide this [link](#)

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