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MINISTRY OF CORPORATE AFFAIRS

General Circular no. 33/2014: Clarification on Applicability of Provisions of Section 139(5) and 139(7) of the Companies Act,2013

This General Circular no. 33/2014 issued by the Ministry of Corporate Affairs (**"MCA"**) dated July 31, 2014 clarifies the ambiguity as regards the applicability of Section 139(5) and Section 139(7) of the Companies Act, 2013 (**"2013 Act"**)

Section 139 of the 2013 Act provides for the appointment of auditors. Sub-sections (5) and (7) of Section 139 deal with the appointment of auditors by the Comptroller and Auditor General of India (**"CAG"**) to companies whose control or ownership lies with two or more government companies or corporations etc. as provided by Section 619B of the Companies Act, 1956 (**"1956 Act"**)

This circular clarifies that the 2013 Act does not alter the position with regard to audit of such deemed Government companies through CAG and thus, such companies are covered under subsections (5) and (7) of section 139 of the 2013 Act.

It further clarifies that documents like articles of association and shareholders agreements etc. envisaging control under Section 2(27) of the 2013 Act are to be taken into account while deciding whether an individual company, other than those referred above are covered under Section 139(5) and 139(7) of the 2013 Act.

Lastly, this circular makes additional clarifications about the manner in which information about incorporation of a company, subject to audit by an auditor appointed by the CAG, is to be communicated to the CAG for the purpose of appointment of first auditors under Section 139(7) of the 2013 Act. It will be the primary responsibility of the concerned company to

intimate the CAG about its incorporation along with name, location of registered office, capital structure of such a company, on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the CAG.

For further information, please visit the link provided herein.

Circular no. 34/2014: Company Law Settlement Scheme, 2014

MCA vide this General Circular no. 34/2014 dated August 12, 2014 provides for Company Law Settlement Scheme, 2014 (**"Scheme"**). This Scheme provides as follows:-

1. Companies are required to file Annual Returns and financial statements electronically on MCA21 electronic registry within the prescribed time limit. It was noticed that many companies on account of failure to file their statutory documents, are liable for penalties and prosecution for non-compliance.

2. The 2013 Act has also provided for a stricter regime for defaulting companies with higher additional fees along with an enhanced quantum of punishment. Specific provisions have also been made for payment of enhanced fines in case of repeated defaulters as well as disqualification of directors in the event that a company has failed to file financial statements or annual returns for a continuous period of three financial years, vide Sections 451 and 164(2) of the 2013 Act, respectively.

3. As an exercise to enable defaulting companies to make their defaults good, the Central Government vide Sections 403 and 460 of the 2013 Act, has introduced this Scheme for condoning the delay in filing of statutory documents with the Registrar. Section 455 of the 2013 Act gives an opportunity to inactive companies to be declared as dormant company, enabling inactive companies to remain on the Register of Companies with minimal requirements to comply with.

4. This Scheme, *inter alia*, provides for the following:

   a. This Scheme shall commence from August 15, 2014 to October 15, 2014.

   b. Defaulting companies are permitted to file belated documents due to be filed till June 30, 2014 by paying the prescribed fees under the Company (Registration Offices & Fee) Rules, 2014 with additional fees of 25% of the actual additional fee payable on date of filing the belated document.

   c. Defaulting companies must withdraw appeals, if any, made before a competent court against any notice issued or complaints made for the violation of the provisions of the 1956 Act or 2013 Act, before filing an application for the issue of Immunity Certificate (**"IC"**).

   d. Application for IC for the belated documents under the Scheme has to be made electronically in e-form CLSS-2014 commencing from September 1, 2014 and has to be filed within three months and not later.

   e. This Scheme shall not apply to the filing of Belated Documents other than the following mentioned below:

      - Form 20B – Form for filing annual return by a company having share capital
      - Form 21A – Particulars of Annual Return for the company not having share capital.
      - Form 23AC. 23ACA, 23AC-XBRL and 23ACA- XBRL- Forms for filing Balance Sheet and profit & Loss account.
      - Form 66 – Form for submission of Compliance Certificate with the Registrar.
      - Form 23B – Form for intimation for Appointment of Auditors

   f. This Scheme shall not apply:

      - To companies against which action for striking action has already been initiated under the provisions of the 1956 Act.
      - Where application has been filed by companies for strike off.
      - Where application has been filed to obtain Dormant status of

companies under Section 455.

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g. The defaulting inactive companies while filing documents under CLSS-2014 can either apply to get the status of Dormant Company or apply for striking off name by filing e-form FTE at 25 % of the fee payable on form FTE.

5. In conclusion of the Scheme, Registrar shall take necessary action under the 1956 and 2013 Acts against Companies who have not availed of the Scheme and are in default in filing the belated documents in a timely manner.

For further information, please visit the link provided herein.

DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

Press Note no. 7 of 2014: Policy on FDI in Defence Sector

The Department of Industrial Policy & Promotion (**"DIPP"**) has issued a Circular dated August 26, 2014 on Policy on Foreign Direct Investment (**"FDI Circular"**) in Defence Sector – amendment to 'Consolidated FDI Policy Circular 2014' (**"2014 Consolidated FDI Policy"**)

1. Paragraphs 4.1.3(v)(d) and 6.2.6 of the 2014 Consolidated FDI Policy have been amended vide this FDI Circular as follows:
    a. Para 4.1.3(v)(d) - In the I & B Sector the sectoral cap being less than 49%, the company would be 'owned and controlled' by resident Indian citizens.
    b. Para 6.2.6 – This paragraph pertaining to the Defence Industry which subject to Industrial License under the Industries (Development & Regulation) Act, 1951 has been modified with equity and Government route going up to 49% from 26%.
    c. Para 6.2.6.2 relating to other conditions has been modified to include the following:
        i. Licence application & licences to be given by DIPP and Ministry of Commerce & Industry in consultation with Ministry of Defence (**"MOD"**) and External Affairs.
        ii. Only Indian companies having Indian management can seek permission of Government for Foreign Direct Investment ("**FDI**") upto 49%.
        iii. Government verifies the antecedents of the foreign collaborators and promoters and preference is given to original equipment manufacturers and companies having a good track record.
        iv. No minimum capitalization for FDI
        v. Norms for production will be provided in the license by MOD
        vi. Equipment to be imported for pre-production

vii. Safety & security measures by licensee once license is granted

viii. Testing procedure for equipment under license to be provided by Licensee to the Government.

ix. Purchase & price preference to be given to public sector

x. Arms & ammunition provided by private manufacturers to be sold to MOD and other entities under control of Ministry of Home Affairs

xi. Applications for seeking permissions of the Government for FDI to be made to Secretariat of Foreign Investment Promotion Board ("**FIPB**")

xii. FDI application upto 49% will follow the existing procedure and proposals beyond 49% with inflow in excess of ₹.1200 crore, are to be approved by the Cabinet Committee Security

xiii. Government decision on FDI to be communicated within 10 weeks from the date of acknowledgement

xiv. For foreign investment beyond 49% Government's approval will be taken only by Indian companies

These amendments shall come into immediate effect.

For further information, please visit the link provided herein.

Press Note no. 8 of 2014 : Policy for Private Investment in Rail Infrastructure through Domestic and Foreign Direct Investment

1. The Government of India vide its Notification dated August 22, 2014, reviewed its policy for private investment in rail infrastructure and amended a specified list of industries. Consequently, FDI has been permitted in the construction, operation and maintenance of, *inter alia*, activities such as Suburban Corridor Projects through PPP, High speed train projects, dedicated freight lines, Railway Electrification, Mass Rapid Transport System etc.

2. Certain provisions of the 2014 Consolidated FDI Policy have also been amended as follows:

   a. Para 6.1 of Prohibited Sectors has been revised to include:

      i. activities/sectors not open to private sector investment, e.g. Atomic Energy and Railway operations (other than permitted activities mentioned in Para 6.2 therein)

      ii. Further, Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract has also been prohibited for Lottery Business and Gambling and Betting activities.

   b. Para 6.2.12 of the 2014 Consolidated FDI Policy has been amended to alter the definition of the following:

      i. 'Infrastructure', so as to include "railway line/sidings including electrified railway lines and connectives to the main railway line"

      ii. 'Common Facilities', so as to include railway line/sidings including electrified railway lines and connectives to the main railway line.

   c. Further provisions in relation to Railway Infrastructure has also been added.

This press note shall come into immediate effect.

For further information, please visit the link provided herein.

THE RESERVE BANK OF INDIA

Circular no. 186 of 2014 : NBFC's Lending against Shares

The Reserve Bank of India (**"RBI"**) vide Circular bearing no. RBI/2014-15/186 DNBS (PD). CC. No. 408 /03.10.001/2014-15 dated August 21, 2014, has introduced a new set of guidelines for Lending against Shares for Non-Banking Financial Companies (**"NBFC"**) with asset size of ₹100 crore and above.

The current *modus operandi* of lending against shares by NBFCs is undertaken by way of pledge of shares in favour of these NBFCs, transfer of shares or obtaining a power of attorney on the demat accounts of borrowers, in addition to an internal control mechanism including loan to value (**"LTV"**) ratio. This format has eventually led to the creation of a volatile market.

In the light of the above, RBI has issued this Circular providing for guidelines, ensuring that they do not result in unnecessary constraints to the requirements of genuine borrowers. According to this Circular, NBFCs lending against collateral of shares shall:

1. Maintain an LTV ratio of 50%, and
2. Accept only Group 1 securities (specified in SMD/Policy/Cir-9/2003 dated March 11, 2003 as amended from time to time, issued by SEBI) as collateral for loans of value more than ₹5 lakh, subject to review by the Bank.
3. Further, all NBFCs with asset size of ₹100 crore and above, must report information of shares pledged in their favour by borrowers for availing loans, to the stock exchanges by online reports.

For further information, please visit the link provided herein.

SECURITIES AND EXCHANGE BOARD OF INDIA

Monitoring of Compliance by Stock Exchanges

The Securities and Exchange Board of India (**"SEBI"**) vide this Circular No. CIR/CFD/DIL/4/2014 dated August 1, 2014 has provided for monitoring of compliance by stock exchanges in exercise of the powers conferred under Section 11 read with Section 11A of the SEBI Act, 1992. The Circular states as under:

1. SEBI vide its earlier circulars viz; CIR/MRD/DSA/31/2013 dated September 30, 2013 and CIR/CFD/POLICYCELL/13/2013 dated November 18, 2013 advised the stock exchanges to monitor and review that the listing compliances are adhered to by all the listed companies. Similarly, vide clause 5.2 of the circular dated November 18, 2013, stock exchanges were advised to design a framework to monitor and check any non-compliances or violation of any applicable laws.

2. SEBI issued a circular dated April 17, 2014 providing amendments in the Clause 49 of the Listing Agreement by providing for the principles of Corporate Governance as mandatory compliance for all the listed companies. The Listing Agreement provides for the principles of corporate governance to be followed by all the listed companies. These principles have been amended to make provision for effective participation of the shareholders at general meetings and also to make the entire procedure simple and inexpensive for the shareholders to cast their votes by allowing effective participation and exercise of ownership rights.

3. It was further observed that a few listed companies belonging to a common group, held Annual General Meetings ("**AGM**") at a gap of 15 minutes from each other. These companies formed were mainly out of demergers and also had 80% shareholding in common. It was also observed that time period of 15 minutes for con-

ducting AGM of a listed company having more than one lakh shareholders is not sufficient for transacting business on various matters. This practice is prejudicial to the interest of the investors.

4. Also, in view of the above, clause 5.2 of the circular dated November 18, 2013 and other provisions of the revised clause 49, all the stock exchanges were advised to have a proper monitoring framework to ensure that all the principles of Corporate Governance in revised clause 49 of the Listing Agreement are complied with in letter and spirit.

For further information, please visit the link provided herein.

Expanding the Framework of Offer for Sale

SEBI vide this **Circular No. CIR/MRD/DP/24/2014** dated August 8, 2014 provides for expanding the framework of Offer for Sale ("**OFS**") of shares through stock exchange mechanism. The earlier circular dated July 18, 2012 laid comprehensive guidelines on OFS and later the guidelines were revised vide circular dated January 25, 2013 and May 30, 2013.

The OFS mechanism though was successful in divesting promoter stake, there was a need to have retail participation and also have large shareholders to use the OFS mechanism. Save and except the conditions notified in the circular, the rest remain unchanged.

For further information, please visit the link provided herein.

MINISTRY OF LABOUR

Inspection of establishments for splitting wages reducing Provident Fund liability.

The Ministry of Labour (Employees' Provident Fund Organisation), vide Circular no. CIII/110001/4/3(72)14/Circular/Hqrs./6693 dated August 6, 2014, provided for inspection of establishments for splitting wages to reduce Provident Fund liability.

The current scenario of the contribution payable by employers under the Employees Provident Fund Scheme, 1952, (**"the EPF Scheme"**) involves employers splitting the wages payable to their employees so as to avoid Provident Fund (**"PF"**) payments.

This contribution payable by employers under the EPF Scheme is calculated on basic wages, dearness allowance, and any retaining applicable allowance payable to each employee to whom the EPF Scheme applies. The meaning of basic wages is provided in Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**"the Act"**). However, it has come to light that many employers split the total wages payable to their employees into several allowances in such a way that the said allowance are covered by the exclusions to Section 2(b) of the said Act, thereby dodging PF liability upto 50% of the total wages.

In the above circumstances, it has been provided, vide this Circular, to inspect all those establishments where employers have reduced PF contribution on 50% or less of total wages payable to employees. All Officers in charge of field offices have been directed to have such establishments inspected by August 31, 2014 and submit a report of the same to the Head Office by September 7, 2014.

For further information, please visit the link provided herein.

JUDGEMENTS

Bombay High Court: PIL No. 99 of 2014

The Division Bench of the Bombay High Court - Aurangabad Bench in the Public Interest Litigation (**"PIL"**) filed by Hemant Arunchandra Kapadia And Others (PIL no. 99 of 2014), has vide notice dated August 19, 2014 directed that the recruitment of any Member or Chairman at the Hon'ble Maharashtra Electricity Regulatory Commission (**"MERC"**) shall be decided on the basis of the final outcome of the Litigation.

For further information, please visit the link provided herein.

APTEL: Steel Furnace Association of India vs. Punjab State Electricity Regulatory Commission & Ors

In the matter of Steel Furnace Association of India (**"Appellants"**) vs. Punjab State Electricity Regulatory Commission and Ors. dated August 1, 2014 in Appeal no. 38 of 2013 before the Hon'ble Appellate Tribunal for Electricity (**"APTEL"**).

This Appeal was filed by the Appellants against the impugned order of the Punjab State Electricity Regulatory Commission (**"Commission"**) dated August 8, 2012. The Appellants are an association of high intensity consumers in Punjab. The question posed in this case was whether consumers were liable to pay Cross Subsidy Surcharge (**"CSS"**) to the Distribution Licensee in the event of power cuts being imposed on the consumers. By the impugned order pronounced by the Hon'ble Commission, the Appellants were directed to pay CSS despite availing power through Open Access.

In the present Appeal, Hon'ble APTEL placed reliance on the decision of the Hon'ble Supreme Court in its judgment dated April 25, 2014 in Civil Appeal No. 5479 of 2013 in the matter of Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Commission & Ors. which

held that the CSS is a compensation that a consumer pays to the Distribution Licensee in case the power is procured through other sources. But, in the case of Open Access consumers the tariff applicable consists of an element of cross subsidy. Thus, the CSS to be paid shall be as determined by the Hon'ble Commission. The Appellants herein have obtained power from short term market forcefully due to the power cuts by the Distribution Licensee. The Hon'ble APTEL also stated that as the Appellants procured power from the short term markets implying that there was power available even to the Distribution Licensee. Hence, imposing CSS on the consumers who have obtained power from Open Access would amount to rewarding the Distribution Licensee for failure to meet its obligations to supply power.

The power cut imposed by the Distribution Licensee compelling the consumers to procure power from short markets through Open Access is against the objectives of the National Electricity Policy and Tariff Policy and the direction of the Hon'ble APTEL and the Hon'ble Supreme Court. Furthermore, Hon'ble APTEL directed the Hon'ble Commission not to impose CSS on the consumers who procure power through Open Access due to the power cuts imposed on them by the Distribution Licensee.

For further information, please visit the link provided herein.

APTEL: Gujarat Urja Vikas Nigam Ltd. vs. Gujarat Electricity Regulatory Commission & Ors

The Hon'ble APTEL vide its Order dated August 22, 2014, in Appeal no. 279 of 2013, has upheld the Order dated August 8, 2013 in Petition No. 1320 of 2013 of the Hon'ble Gujarat Electricity Regulatory Commission (**"GERC"**), whereby Gujarat Urja Vikas Nigam Limited's (**"GUVNL"**) petition seeking initiating proceedings for the re-determination of the appropriate Capital Cost and the tariff for procurement of Power from the Solar Energy Developers by the Distribution Licensees and others, which was fixed in the earlier Order dated January 29, 2010 (**"Solar Tariff Order"**) was dismissed by the Hon'ble GERC.

The Hon'ble GERC determined the Tariff under the Solar Tariff Order, in the light of the

Solar Power Policy, 2009 (**"Power Policy 2009"**) for development of Solar Power Projects in the State of Gujarat and after engaging in a consultative process in exercise of the powers u/s 61(h), 62 and 86 of the Electricity Act, 2003. Further, the Solar Tariff Order was the result of a public hearing held on December 3, 2009. Most of the Solar Power Projects were commissioned during the period from December, 2011 to January, 2012 and Power Purchase Agreements were entered into between the developers and the Distribution Companies (**"DISCOMs"**) on the strengths of the same Order. Vide the Petition No. 1320 of 2013, GUVNL sought to initiate a proceeding to re-determine the capital cost to be allowed to the project developers; re-determination of the tariff and to revisit other norms and parameters of the Solar Tariff Order. Hon'ble GERC vide its Order dated August 8, 2013 dismissed the Petition No. 1320 of 2013 challenging the Solar Tariff Order, on the grounds of maintainability by reason that the Petition sought review of the Solar Tariff Order after considerable lapse of limitation. Challenging the said dismissal, GUVNL filed the Appeal No. 279 of 2013.

The issues framed and considered by the Hon'ble APTEL in the subject Appeal were as follows:

1. Whether the Hon'ble GERC, at the admission stage could decide the maintainability of the Petition as a Preliminary Issue on the basis of the contents of the Petition alone or on the basis of the reply and defence pleaded by the other side also?

2. Whether the claim made by the GUVNL in the Petition for re-determination of tariff on account of subsequent development would amount to Review of the earlier tariff Order dated 29.1.2010 as held by the Hon'ble GERC?

3. Whether the GERC is right in rejecting the Petition on various other grounds such as lack of Regulatory Power to revise the tariff, principles of Res-judicata, Promissory Estoppels and Legitimate Expectations, etc ?

With respect to the first issue, the Hon'ble APTEL held that strict rules of Civil Procedure Code (**"CPC"**) do not apply to a State Commission like GERC as it is created under the auspices of the Electricity Act, 2003 which is not bound by the CPC. Hence, the GERC is free to decide on its own procedure which satisfies two aspects, viz. the Principles of Natural Justice and Transparency. Further, the Hon'ble APTEL upheld that Regulation 39 of the

GERC (Conduct of Business Regulations), 2004 would also provide for such a procedure by which a State Commission has got the powers to dismiss the Petition at the admission stage on the basis of the contents of the Petition as well as the preliminary objections raised by the other party. Such a procedure cannot be deemed illegal just because it does not follow the procedure contemplated under CPC. The Hon'ble APTEL also observed that GERC considered the said question on the basis of the averments of the Petition filed by the Appellant as well as the reply raising the preliminary objection filed by the Respondent in the original petition and rejected the Petition at the admission stage as not maintainable by giving its reasoning, and hence pronounced that the Hon'ble GERC was well within its rights to decide about the maintainability of the Petition not only on considering the contents of the Petition but also the contents of the objections raised by other side through their reply and to reject the Petition at the admission stage itself.

With respect to the second issue, the Hon'ble APTEL after weighing the submissions of both the parties observed that the Petitioner i.e. the Appellant before it, had pointed out to GERC that there is a significant reduction in the capital cost which has been on account of the Notifications issued by the Central Government exempting the excise and custom duty on the equipment of Solar Power Projects. These Notifications were subsequent to the tariff determination process in the Solar Tariff Order and when there are materials available on record to show that the Capital cost assumed by GERC of ₹16.50 Crores in the tariff Order has been considerably reduced subsequent to the Solar Tariff Order, the GERC has got regulatory powers to revise the tariff decided by the GERC in the earlier Order dated January 29, 2010 in the light of the subsequent developments. Thus, it was the finding of Hon'ble APTEL that the Petition filed by the Appellant should not be construed to be a Review Petition especially due to averments in their Petition which show that the Appellant has not challenged the Solar Tariff Order.

It is however expressly maintained by the Hon'ble APTEL that the question whether the Hon'ble GERC has the power to revise the tariff by exercising the regulatory powers or the powers to re-open the power purchase agreement due to subsequent developments in the present case, is entirely different from the question as to whether the Petition filed before Hon'ble GERC would amount to Review for revisiting or re-determination of the

tariff earlier determined in the Solar Tariff Order. The Hon'ble APTEL threw light upon the decisions of a plethora of cases which upheld the view that in exercise of the regulatory powers the appropriate Commission can revisit the tariff and re-open PPAs especially where public interest is involved and the interest of consumers so requires. Thus, the Hon'ble APTEL held that since the Appellant sought no review, the question of Limitation does not arise.

With respect to the third issue, the Hon'ble APTEL observed that all the Developers entered into PPAs with the Appellant based on the policy issued by the Government of Gujarat based on the tariff Order and also on the basis of the PPAs. Further, the Respondents as well as other developers had altered its position to develop the project on the basis of the PPAs signed with the Appellants and the said PPAs provided a generic tariff determined as per the tariff Order on normative principles. The PPA executed by these parties and their conduct of acting upon such agreements over a longer period would bind them to the rights and obligations stated in the agreements. Since the parties cannot deny the facts as they existed at the relevant time, they would have to abide by the existing facts, the correctness of which they cannot deny. Hence, it was held by the Hon'ble APTEL that the Doctrine of Promissory Estoppel and Legitimate Expectations are applicable in the present case and GERC was right to reject the complaints because based on the policy of the Government, the Appellant as a State entity made an unequivocal promise relying on which the Developers in turn altered their position and thus they had a legitimate expectation to be dealt with regularity, predictability and certainty. Moreover, the principles of Res-judicata would squarely apply to the present case because the determination of tariff has attained finality by the Solar Tariff Order and no appeal has been preferred by any of the parties.

For further information, please visit the link provided herein.

APTEL: Tata Motors Limited vs Maharashtra Electricity Regulatory Commission & Ors

The Hon'ble APTEL vide its Order in Appeal no. 295 of 2013 dated August 22, 2014 (**"Order"**) set aside the Order dated September 5, 2013 (**"Impugned Order"**) pronounced by the Hon'ble MERC wherein the Hon'ble MERC, *suo motu*, determined the supplemental charges that are payable by the consumer of the Maharashtra State Electricity Distribution Company Limited (**"MSEDCL"**) by revising the retail supply tariff. The Petitioner, Tata Motors Limited filed an appeal against the Impugned Order of the MERC.

The Hon'ble APTEL pronounced an Order stating that the Impugned Order was pronounced in contravention to Sections 62, 64 and 86(3) of the Electricity Act, 2003 (**"the EA Act"**). The Hon'ble APTEL ruled that the Hon'ble MERC is obligated to follow mandatory procedures under Sections 64 and 86(3) of the Act by issuing public notice and invite suggestions/objections of the consumers on the retail supply tariff and hence determine tariff. Additionally, as per Section 62(4) of the Act, the tariff may not be amended more than once except in the event of change in the fuel surcharge formula as specified by the Hon'ble MERC. It was also observed that the Hon'ble APTEL that it has held, by virtue of prior orders, that the tariff can be revised without following the procedure as laid down in Section 64 of the Act, provided revision in tariff is in terms of the specified Fuel Surcharge Formula. In the present appeal, the Impugned Order was not an amendment in the tariff as per the Fuel Surcharge Formula.

In the light of the above observations, the Hon'ble APTEL set aside the Impugned Order and remanded the same to the Hon'ble MERC so as to give all the parties an opportunity in accordance with Section 64 of the Act. Not opining on the merits of the matter, the Hon'ble APTEL directed the matter to be heard and settled in an expeditious, transparent and unbiased manner without being influenced by the earlier findings.

For further information, please visit the link provided herein.

MERC : Global Energy Ltd. vs. Ushdev International Ltd & Ors.

Order in Case no. 22 of 2014, dated August 5, 2014, in the matter of Global Energy Ltd. vs. Ushdev International Ltd. & Dhariwal Industries Pvt Ltd, before the Hon'ble MERC.

The present petition was filed by Global Energy Ltd (**"the Petitioner"**) before the Hon'ble MERC for rectifying/amending Order dated September 28, 2007 in Case no. 28 of 2006, with respect to term of Intra-State Trading License (**"License"**).

The Petitioner is a Trading Licensee engaged in the business of trading of electricity that was granted the License by the Hon'ble MERC vide Order no. 28 of 2006 dated September 28, 2007. The License was valid for a period of five years as per the terms and conditions. Conversely, the EA Act and MERC (Trading License Conditions) Regulations, 2004 (**"the Regulations"**) provided that the validity of the License shall be for a period of twenty five years.

Further, the Hon'ble MERC paid heed to its Order dated September 28, 2007. As per the said Order the Petitioner was granted a five year Intra-State Trading License subject to certain conditions such as conviction any partner/directors etc. of the Petitioner Company, charges proved against the two directors of the Petitioner Company as framed by the CBI, insolvency, bankruptcy etc., or any other reason making it uncertain for the Petitioner to perform its duties and obligations under the Act. On the happening of the above-mentioned conditional events, the license would be liable for revocation and the trading activity granted under the license would cease and the Petitioner ought to be liable to settle its then existing liabilities arisen out of previously carried out trading activity.

Another reason stated by the Hon'ble MERC for the grant of the five year license was that the plan submitted by the Petitioner was to undertake trading upto 100MU per year in the five successive years. Hence, it is apparent from the Order of the Hon'ble MERC that the License granted to the Licensee was based on certain conditions and stipulations.

In the abovementioned circumstances, the Hon'ble MERC is of the view that there are no grounds for the Hon'ble MERC to invoke Regulation 92 and 93 of MERC (Conduct of Business) Regulations, 2004 (**"2004 Regulations"**) that empower the Hon'ble MERC to issue any Orders for amending / rectifying any Order. Further, the Hon'ble MERC noted that neither had the Petitioner applied for review of its Order within 45 days, which is stipulated under Regulation 85 of the 2004 Regulations, nor did the Petitioner appeal against such Order to the Hon'ble APTEL, during the subsistence of the Licence, or even approached the Hon'ble MERC for grant of fresh license.

Lastly, the Hon'ble MERC in this Order pointed out that the Petitioner was granted an Inter-State Trading Licence by the Central Electricity Regulatory Commission vide Order dated November 28, 2008. The same, being within its validity period, enables the Petitioner to undertake Intra-State trading transactions.

Hence, in the light of the above observations, the present petition was disposed of by the Hon'ble MERC.

For further information, please visit the link provided herein.

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