

**Securities Exchange Board of India: Revised SEBI circular of Issue and listing of non-convertible securities**

**Ministry of Corporate Affairs: Clarification regarding holding of pending AGMs for companies**

**Reserve Bank of India: Master Direction on changes to External commercial borrowings, trade credits and structured obligation prescribing benchmark rates**

**Case Summary : SMW 6 Ispat Private Limited (Formerly known as Mahalaxmi TMT Pvt. Ltd.) vs. Maharashtra State Electricity Distribution Company Limited**

**Maharashtra State Electricity Distribution Company Limited Vs. JSW Steel**

\* Private Circulation Only

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## Securities and Exchange Board of India

### Revised SEBI circular of Issue and listing of Non-convertible securities

Securities and Exchange Board of India (“SEBI”) in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 read with Regulation 55(1) of SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021 has issued *Circular dated December 17, 2021* (“**Circular dated December 17, 2021**”) revising *SEBI Circular dated August 10, 2021* bearing no. SEBI/HO/DDHS/P/CIR/2021/613 (“**Circular dated August, 2021**”) relating to issue, listing and trading of Non-Convertible Securities, Securitized Debt Instrument, Security Receipts, Municipal Debt Securities and Commercial Paper.

On the basis of the market review and feedbacks and in order to bring out uniformity in requirements, following amendments have been made to Circular dated August, 2021:

1. Paragraph 4.1 dealing with issue information under Chapter XVII- Listing of Commercial Paper, is modified as follows:

*“4.1 Details of current tranche including ISIN, amount, date of issue, maturity, all credit ratings including unaccepted ratings, date of rating, name of credit rating agency, its validity period, declaration, that rating is valid as at the date of issuance and listing, details of issuing and paying agent and other conditions, if any.”*

2. After paragraph 4.4 under Chapter XVII- Listing of Commercial Paper, a new paragraph 4.5 has been inserted:

*“Where an issue is made by an issuer who has been in existence for less than three years, a disclosure that the issue is open for subscription only to Qualified Institutional Buyers.”*



3. Paragraph 5.1 under Chapter XVII - Listing of Commercial Paper shall now be read as follows:

*“5. Financial Information*

*5.1. a. Audited/ limited review half yearly consolidated (wherever available) and standalone financial information (Profit & Loss statement, Balance Sheet and Cash Flow statement) along with auditor qualifications, if any, for last three years along with latest available financial results, if the issuer has been in existence for a period of three years and above; or,*

*b. Audited/ limited review half yearly consolidated (wherever available) and standalone financial information (Profit & Loss statement, Balance Sheet and Cash Flow statement) along with auditor qualifications, if any, pertaining to the years of existence, if the issuer has been in existence for less than three years.”*



### Ministry of Corporate Affairs

Ministry of Corporate Affairs (“MCA”) vide its General Circular dated December 08, 2021 (“Circular”) bearing reference no. General Circular No. 19/2020 has provided clarification regarding holding of the Annual General Meeting (“AGM”) through Video Conferencing (“VC”) or any Other Audio Visual Means (“OAVM”) for companies with pending AGMs which are due since the year 2021. Herein MCA has permitted such companies to conduct their AGMs on or before June 30, 2022.

MCA provided that the above extension in holding the AGMs will be subject to the requirements as already mentioned its previous *General Circular dated May 5, 2020* bearing reference no. General Circular 20/2020 and also other compliances associated with the provisions relating to general meeting provided in the Companies Act, 2013 and the Articles of Association of the company.

Further, MCA vide this Circular also clarified that this Circular should not be interpreted as granting any extension of time for folding of the AGM by the companies under Companies Act, 2013 and the companies which have not obeyed the relevant timelines shall be liable to legal action under appropriate provisions of the Act.



### Reserve Bank of India

In exercise of powers conferred under Section 10(4) and Section 11(2) of Foreign Exchange Management Act, 1999, Reserve Bank of India has issued Circular dated December 08, 2021 ("**Circular December 2021**") bringing certain changes to paragraph 1.5, Master Direction No. 5 dated March 26, 2019 ("**Master Direction**"), titled 'External Commercial Borrowings, Trade Credits and Structured Obligations' prescribing benchmark rates. In view of imminent discontinuance of London Interbank Offered Rate ("**LIBOR**"), Circular December 2021 has brought certain changes to benchmark rates and maximum spread over benchmark for calculating the all-in-cost for foreign currency ("**FCY**") External Commercial Borrowings ("**EBCs**") and Trade Credits ("**TCs**").

Following changes have been made vide Circular December 2021:

#### 1. Redefining Benchmark Rate for FCY ECBs and TCs:

The benchmark rate defined as 'benchmark rate in case of FCY ECB / TC' at paragraph 1.5 of Master Direction refers to six (6) months LIBOR rate of different currencies or any other six (6) month interbank interest rate applicable to the currency borrowing, for example, Euro Interbank Offer Rate ("**EURIBOR**"). Therefore, from now on benchmark rate in case of FCY ECBs / TCs shall refer to widely accepted interbank rate or Alternative Reference Rate ("**ARR**") of six (6) month tenor, applicable to the currency of borrowing.

Paragraph 1.5 of Master Direction is reproduced below:

*"1.5. Benchmark rate: Benchmark rate in case of FCY ECB/TC refers to 3any widely accepted interbank rate or ARR of 6-month tenor, applicable to the currency of borrowing. Benchmark rate in case of Rupee denominated ECB/TC will be prevailing yield of the Government of India securities of corresponding maturity."*



**2. Change in all-in-cost ceiling for new ECBs / TCs:**

Taking into account differences in credit risk and term premia between LIBOR and the ARRs, the all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 basis points (“bps”) to 500 bps and 300 bps, respectively, over the benchmark rates.

**3. One Time Adjustment in all-in-cost ceiling for existing ECBs / TCs:**

In order to ensure smooth transition of existing ECBs / TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in-cost ceiling has been revised upwards by 100 bps to 500 bps and 350 bps, respectively over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.

It is to be noted that vide Circular December 2021 that there is no change in the all-in-cost benchmark and ceiling for INR ECBs / TCs. All other provisions of ECB / TC policy remain unchanged.



CASE SUMMARY

<b>Case Name</b>	<b>: Case No. 103 of 2021 in the matter of SMW Ispat Private Limited (Formerly known as Mahalaxmi TMT Pvt. Ltd.) vs. Maharashtra State Electricity Distribution Company Limited</b>
<b>Court</b>	<b>: Maharashtra Electricity Regulatory Commission</b>
<b>Order Dated</b>	<b>: December 7, 2021.</b>

**Facts of the Case:**

1. SMW Ispat Private Limited (“**Petitioner**”) has filed the instant case under Regulations 32 and 35 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 (“**DOAR, 2016**”) seeking Power Factor Incentive (“**PFI**”) on Open Access (“**OA**”) consumption for the period from March 2013 to September 2016 along with interest for such delayed period in light of the following orders passed by the Hon’ble Appellate Tribunal for Electricity (“**APTEL**”) (“**APTEL PFI Judgements**”):
  - a. Judgment dated November 14, 2013 in Appeal No. 231 of 2012 in the matter of Jinal Stainless Limited vs. Dakshin Haryana Bijli Vitran Nigam & Anr. (“**Appeal No. 231 of 2012**”);
  - b. Judgement dated October 20, 2020 in Appeal No. 36 of 2018 in the matter of Tata Power Company Limited (Distribution) vs. Maharashtra Electricity Regulatory Commission & Ors.; and
  - c. Judgement dated August 12, 2021 in Appeal No. 70 of 2019 in the matter of Jindal Poly Films Limited vs. Maharashtra Electricity Regulatory Commission (“**Appeal No. 70 of 2019**”).
2. The Petitioner also sought to get Practice Directions issued from Maharashtra Electricity Regulatory Commission (“**State Commission**”) for universal application of PFI to all eligible OA consumers of MSEDCL prior to notification of the Distribution Open Access First Amendment Regulations 2019 (**DOA First Amendment Regulation, 2019**) i.e., prior to June 07, 2019.



**Held by the State Commission:**

1. At the outset, the State Commission drew a parallel of the instant case to Appeal No. 70 of 2019, as the reliefs sought in both the aforementioned cases are similar.
2. The State Commission reaffirmed what was held by the Hon'ble APTEL in the APTEL PFI Judgements wherein PFI/penalty was made applicable to OA consumers for their consumption sourced through OA as well.
3. With respect to the payment of interest on account of such denial of PFI by Maharashtra State Electricity Distribution Company Limited ("MSEDCL"), the State Commission made a reference to Appeal No. 231 of 2012 and Appeal No. 70 of 2019 which emphasised that interest shall be payable on account of PFI/penalty denial by MSEDCL.
4. With respect to the issuance of Practice Directions under Section 35 of the DOAR, 2016, the State Commission noted that since the period under consideration was from March, 2013 to September, 2016 and the DOAR, 2016 had been amended in June, 2019 which now provides that PFI/penalty shall be provided on net energy sourced through MSEDCL and that no separate PFI/penalty shall be applicable for HT Consumers, practice directions for a past period cannot be issued.
5. In view of the above, the State Commission has partly allowed the reliefs sought by the Petitioner and has directed MSEDCL to act in accordance with the directions of the Hon'ble APTEL in Appeal No. 70 of 2019.



CASE SUMMARY

<b>Case Name</b>	<b>: Civil Appeal Nos. 5074-5075 of 2019 in the matter of Maharashtra State Electricity Distribution Company Limited Vs. JSW Steel Limited &amp; Ors.</b>
<b>Court Name</b>	<b>: Supreme Court of India</b>
<b>Order Dated</b>	<b>: December 10, 2021.</b>

**Facts of the Case:**

1. The Maharashtra State Electricity Distribution Company Limited (“**Appellant**”/ “**MSEDCL**”) has filed a petition before the Maharashtra Electricity Regulatory Commission (“**State Commission**”) for Multi Year Tariff (MYT) approval for FY 2014-2015 and for the 3<sup>rd</sup> control period from FY 2016-2017 and FY 2019-2020 vide Case No. 48 of 2016. The State Commission held that additional surcharge shall be applicable to all consumers who have availed open access to receive supply from sources other than the distribution licensee to which they are connected.
2. Further, vide Review Petition in Case No. 195 of 2017 for the final truing up of ARR for FY 2017-2018 and approval for revised forecast of ARR for FY 2018-2019 and 2019-2020 wherein the State Commission held that additional surcharge shall be applicable to captive consumers/captive users.
3. Feeling aggrieved by the order of the State Commission, the captive users/ consumers approached the Appellate Tribunal for Electricity (“**APTEL**”). Vide impugned order dated March 27, 2019, the Hon’ble APTEL set aside the order passed by the State Commission and held that group captive consumers are not liable to pay additional surcharge to MSEDCL.
4. Being dissatisfied with the order of the Hon’ble APTEL, MSEDCL approached the Hon’ble Supreme Court.
5. The main question posed for consideration before the Hon’ble Supreme Court is “*Whether the captive consumers/captive users are liable to pay the additional surcharge leviable under Section 42(4) of the Electricity Act, 2003?*”





**Held by the Hon'ble Supreme Court:**

1. The Hon'ble Supreme Court made an analysis of the relevant Section 9 and Section 42 of the Electricity Act, 2003 and held that right to open access to transmit/carry electricity to the captive user is granted by the Act, and is not subject to and does not require the State Commission's permission.
2. Section 42(4) of the EA, 2003 shall be applicable only in a case where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply and only such consumer shall be liable to pay additional surcharge on the charges of wheeling, as may be specified by the State Commission. Captive user requires no such permission, as he has statutory right by operation of law namely Section 9 of the EA, 2003. Therefore, so far as the captive consumers / captive users are concerned, they are not liable to pay the additional surcharge under Section 42(4) of the EA, 2003.
3. The Hon'ble Supreme Court agreeing with the views of the Hon'ble APTEL, stated as follows:

*"In the case of the captive consumers/captive users, they have also to incur the expenditure and/or invest the money for constructing, maintaining or operating a captive generating plant and dedicated transmission lines. Therefore, as such the Appellate Tribunal has rightly held that so far as the captive consumers/captive users are concerned, the additional surcharge under sub-section (4) of Section 42 of the Act, 2003 shall not be leviable."*

4. Further, the Hon'ble Supreme Court also identified the difference between captive consumers and other consumers defined under Section 2(15) of the EA, 2003, by stating that captive consumers incur a huge expenditure/invest a huge amount for the purpose of construction, maintenance or operation of a captive generating plant and dedicated transmission lines, unlike consumers defined under Section 2(15) of the EA, 2003, which makes it discriminatory to levy additional surcharge on captive consumers.
5. The appeal was accordingly dismissed.



*Direction: Considering the fact that this could lead to huge financial implications on the Appellant in the event they are directed to refund the entire additional surcharge amount to captive consumers, the Hon'ble Supreme Court directed to adjust the additional surcharge amount already recovered in future wheeling charge bills of captive consumers.*

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Warm Regards,

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