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INSIDE THIS ISSUE:

SEBI AMENDS LISTING AGREEMENT REGARDING CORPORATE GORVERNANCE NORMS

Securities and Exchange Board of India (**"SEBI"**) has notified the decision to approve certain proposals to amend the Listing Agreement with respect to Corporate Governance Norms in India for listed companies, vide its Press Release No. 12/2014 dated February 13, 2014. Further SEBI decided to approve a Long Term Policy for Mutual Funds in India and certain amendments to the SEBI (Know Your Client (**"KYC"**) Registration Agency) Regulations, 2011.

Regarding the Listing Agreement, the proposed amendments align the Listing Agreement with the Companies Act, 2013 along with certain additional requirements to further strengthen the corporate governance framework. SEBI approved proposals including a compulsory whistle blower mechanism; relating to definition, tenure, prohibition on stock options of Independent Directors; the constitution of Stakeholders Relationship Committee and Nomination and Remuneration Committee; enhanced disclosure of remuneration policies; and relating to various aspects of Related Party Transactions (**"RPTs"**). The Board also approved the proposal to put in place principles of Corporate Governance, policy on dealing with RPTs, divestment of material subsidiaries, disclosure of letter of appointment of Independent Directors and the letter of resignation of all directors, risk management, providing training to Independent Directors, E-voting facility by top 500 companies by market capitalization for all shareholder resolutions and Boards of companies to satisfy themselves that plans are in place for orderly succession for appointments to the Board and senior management. The amendments shall be made applicable to all listed companies in India, with effect from October 1, 2014.

Regarding the Long Term Policy for Mutual Funds, SEBI bifurcated the recommendations in to two buckets – Tax incentive related and Non-tax related proposals. Herein the tax benefits are given to incentivize the investment in long term products such as Mutual Fund Linked Retirement Plan (**"MFLRP"**), Equity Linked Savings Scheme (**"ELSS"**) etc. Further the consolidation of equity of mutual funds is exempted from capital gain tax as it was held not to amount to transfer. In order to promote financial inclusion while enhancing the transparency, SEBI decided to - increase the Capital Adequacy and introduced the concept seed capital for Asset Management Companies (**"AMCs"**); disclosures of Assets Under Management (**"AUMs"**) from different categories of schemes; disclosure of voting data with rationale; enhance the distribution network for Mutual Fund schemes etc.

Regarding the KRA, SEBI has done away with the taking fresh KYC once the same has been with any SEBI registered intermediary, however an intermediary can undertake enhanced KYC measures commensurate to the risk profiles of its clients. This is done with hopes to further facilitate the KYC process for the clients.

SEBI AMENDS ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS REGULATION, 2009

The Securities and Exchange Board of India (**"SEBI"**) on February 4, 2014 issued **a** Notification No. LAD-NRO/GN/2013-14/44/226, whereby it brought forth the amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 (**"ICDR Regulations"**).

The amendment as notified, has made the grading of the initial public offer (**"IPO"**) by one or more credit rating agencies a voluntary fulfilment by a company. Further, SEBI has also altered the format of the Statements of Assets and Liabilities that are required to be disclosed by the companies in their offer document.

The provision especially relating to the eligibility requirements applicable to public issue are enumerated in the Chapter III of the ICDR Regulations.

Before the amendment, Sub-regulation 7 Regulation 26 therein stated as follows:

"(7) No issuer shall make an initial public offer, unless as on the date of registering prospectus or red herring prospectus with the Registrar of Companies, the issuer has obtained grading for the initial public offer from at least one credit rating agency registered with the Board."

This meant that the Company prior to making an IPO had to mandatorily get it graded from atleast one credit rating agency recognised and registered with SEBI. Such grading had to be disclosed by the companies in their prospectus or red herring prospectus of the IPO.

The aforementioned sub – regulation 7 of Regulation 26 has been substituted with the following:

"(7) An issuer making an initial public offer may obtain grading for such offer from one or more credit rating agencies registered with the Board."

CONSOLIDATED FDI POLICY (AMENDMENT)

The Department of Industrial Policy and Promotion (**"DIPP"**), has vide its **Press note 2 of 2014 dated February 4, 2014**, amended paragraph 6.2.17.7 of the Consolidated FDI Policy pertaining to Foreign Investment in the Insurance Sector.

As per the amendment, the reviewed position of the Consolidated FDI Policy stands as follows:

S. no	***Sector/Activity***	***% of FDI Cap/Equity***	***Entry Route***
6.2.17.7	*Insurance*		
6.2.14.7.1	*(i) Insurance Companies* *(ii) Insurance Brokers* *(iii) Third Party Administrators* *(iv) Surveyors and Loss Assessors*	*26% (FDI+FII+NRI)*	*Automatic*
6.2.17.7.2	*Other Conditions*		
	1. FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route. *2. This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities.* *3. The provisions of paragraph 6.2.17.2.2(4)(i), (c) and (e) relating to Banking- Private Sector, shall be applicable in respect of bank promoted insurance companies.* *Other conditions shall remain the same.*		

As per the Press Note, the abovementioned amendment is to come into immediate effect.

For further information and details please refer to the press release linked herein above.

INTELLECTUAL PROPERTY JUDGEMENT

Schering Corporation Vs. Assistant Controller of Patents & Designs

In **Order No. 08/2014** - Schering Corporation vs. Asst. Controller of Patents & Designs before the Hon'ble Intellectual Property Appellate Board (**"IPAB"**)

The Schering Corporation (now Merck) had filed a patent application in 2006, claiming a particular crystalline form of thrombin receptor antagonist named Vorapaxar. The Assistant Controller of Patents & Designs rejected the said application under Section 15 of the Patents Act 1970, vide its Order dated June 18, 2009 on the grounds of lacking an inventive step (Section 2(1)(ja)) and lack of therapeutic efficacy in the crystalline form (Section 3(d)).

The Schering Corporation filed an appeal before the Hon'ble Intellectual Property Appellate Board (IPAB), challenging the order. The Hon'ble IPAB vide its Order No.08/2014 dated January 23, 2014 criticised the order of the Assistant Controller of Patents and Designs, finding it a "*cryptic and a non-speaking order*". The Hon'ble IPAB opined that the impugned application was not considered in its entirety by the Learned Controller. Further it was reasoned that the Section 15 under which the rejection was ordered, affords an opportunity to the Applicant to make an amendment and to refuse the application if they fail to do so. Thus, the mechanical refusal was held contrary to natural justice embodied in the statute.

The relevant extract of the order is as follows:

"7. The reading of the above said provisions makes it abundantly clear that the learned Controller ought not to have mechanically refused the application and on the other hand he could have exercised discretion to give opportunity to the applicant/ appellant by making amendments in the application. As submitted by the learned counsel for the appellant to the effect that there is no data to be provided, the appel-

lant could have given opportunity to make his submission by clearly stating that there is no question of providing any data and on the other hand, he could have given the opportunity to substantiate his claim on the basis of the documents produced by the applicant."

The Hon'ble IPAB has ordered the Assistant Controller of Patents and Designs to dispose of the matter within 3 months from the date of receipt of the amended claim by the Applicant.

RESTRICTION ON REGISTRATION OF COMPANIES AND LLP WITH THE WORD "NATIONAL"

The Ministry of Corporate Affairs vide **Circular no. 2/2014, dated February 11, 2014**, after taking cognisance of the fact that Companies and Limited Liability Partnerships (**"LLP"**) are being registered with the word "**National**" in their names, has intimated that no company should be allowed to be registered with the word "**National"** as part of its title unless it is a Government company and the Central / State Government (s) has a stake in it. This Circular has directed Registrar of Companies (**"ROCs"**) to enforce the same stringently.

Further, the Circular also permits the use of the word **"Bank"** in the name of an entity provided such entity produces a 'No Objection Certificate' from the Reserve Bank of India.

Lastly, applying the same analogy, the word "**Exchange**" or "**Stock Exchange**" is also permitted in the name of a Company provided a 'No Objection Certificate' is produced from SEBI by the promoters of the said Company.

ELECTRICITY SEGMENT

CONCESSION IN ELECTRICITY TARIFF BY GOVERNMENT OF MAHARASHTRA

Maharashtra State Electricity Distribution Company Limited (**"MSEDCL"**) has been permitted by the Maharashtra Electricity Regulatory Commission (**"MERC"**) vide its Orders dated September 3, 2013, September 4, 2013 and September 5, 2013, to recover Additional Energy Charges (**"AEC"**) from all category consumers w.e.f. September 2013 for a further period of 6 months on account of validated increased expenditure on various project of Maharashtra State Power Generation Company Limited (**"MSPGCL"**) & Maharashtra State Electricity Transmission Company Limited (**"MSETCL"**) circulated vide Commercial Circular No. 209 dated September 7, 2013.

The revised Tariff Order by the Hon'ble MERC is underway, pursuant to a True-up Petition for 2011-12 & 2012-13 before the Hon'ble MERC filed by MSEDCL vide letter No. 4199 dated February 6, 2014. Therefore, in order to reduce the present and impending impact of hike in electricity tariff, Government of Maharashtra has, vide **Commercial Circular no. 218 of 2014, dated February 18, 2014** decided to give concession in electricity rates to the consumers under the jurisdiction of MSEDCL.

A brief of the concession in electricity rates given by the Government of Maharashtra to the consumers is as follows:

A) The rise in tariff in September 2013 for Residential (up to 0 to 300 units), Commercial, Industrial and Agricultural consumers is reduced as per **Annexure "A"**. These concessions are limited to Energy Charges as per Annexure "A".

B) These concessions are not applicable to Public Services, Public Water Works, Street Light, Railway tariff category which are not included in Annexure "A".

C) The Financial burden of MSEDCL on account of concession in electricity tariff as above will be compensated by Government of Maharashtra on a monthly basis in advance every month starting from February 2014 and the same will be reconciled on quarterly basis.

D) The concessional tariffs (As per Annexure "A") are to be applicable from 1st February 2014 till such time the Government of Maharashtra covers the difference by way of direct subsidy under section 65 of Electricity Act, 2003 and also as envisage in the Government Resolution.

GUIDELINES FOR CONVERTING SINGLE POINT SUPPLY CONSUMERS TO DISTRIBUTION FRANCHISEE

The Maharashtra State Electricity Distribution Company Limited (**"MSEDCL"**), vide Commercial Circular no. 219 of 2014 dated February 28, 2014 has laid down guidelines for converting Single Point Supply consumers to Distribution Franchisee through MOU route.

MSEDCL has laid down these guidelines pursuant to and in consonance with an array of Orders passed by the Maharashtra Electricity Regulatory Commission (**"MERC"**), which elucidated on the practice of owners/developers of large buildings/complexes, being High Tension (HT) industrial/commercial or other consumers supplying electricity to a number of occupiers of such buildings/complexes in an unauthorised manner and additionally, arbitrarily billing such occupants after installing separate meters for them. Simply put, it is an illegal practice of commercial buildings/towers, multiplexes, IT Parks etc. sourcing power at single point supply and reselling or sub-distributing the same to end users residing in such complexes etc. and also collecting consumption charges from them. This act is liable for action under section 126 of the Electricity Act, 2003.

The current position, pursuant to various Orders of the Hon'ble MERC in this respect is that it has become mandatory for single point consumers distributing energy to different individuals to follow one of the following courses:

a. Either operate through Distribution Franchisee/MOU Route, or

b. Take separate connections in the relevant category for different individuals

Consequently, MSEDCL has laid down the eligibility criteria for Distribution Franchisee through MOU route under the following head points:

1. **Minimum Contract Demand:** The applicant should be a HT Consumer with Minimum Sanctioned Contract Demand of 2MVA for application for Distribution Franchisee through MOU route with 50% utilization of Contract demand.
2. **Infrastructure:** Only the Developers who have fully developed the Electrical Infra-

structure at their own cost and undertake to develop additional infrastructure are eligible. They must also be in conformity with the Electricity Act, 2003, various Regulations as amended by MERC from time to time and Orders issued by APTEL and MERC and are subject to other condition.

3. **DF Network:** Along with other conditions, the Distribution Franchisee should have its own feasible and capable Distribution Franchisee Network within the DF Area.
4. **Voltage Level:** MSEDCL shall provide power supply to Distribution Franchisee only at HV/EHV level as a single point supply. It shall meet the statutory requirements and obligations under applicable legislation, rules and regulations.
5. **Open Access:** Consumers within the Distribution Franchisee area shall be consumers of MSEDCL where the latter shall have overriding powers with regards to decision making for power supply. Additionally, along with other conditions, Open Access applications shall be in the prescribed format by eligible consumers in the Distribution Franchisee area.
6. **Standards:** The Distribution Franchisee should have its own distribution system to meet the standards that may be prescribed by MERC and MSEDCL. The distribution system should be as per relevant provisions of Electricity Act and Electricity Rules.

7. **General Responsibilities of Distribution Franchisee:** The Distribution Franchisee shall be responsible for carrying out various activities such as undertaking liabilities and meeting obligations of MSEDCL, discharging all duties and responsibilities, complying with all other directives issued by the MSEDCL etc.
8. **General Terms and Conditions:** It includes the losses beyond allowable losses to be recovered from the Distribution Franchisee at tariff rate etc., meters and metering equipment to be as per MSEDCL norms etc.
9. **Other Terms and Conditions:** These shall be dependent upon the Distribution Franchisee agreement as prescribed by MSEDCL and other guidelines issued by MSEDCL.

ELECTRICITY JUDGEMENTS

Gujarat Urja Vikas Nigam Limited & Ors. Vs. Union of India (through Ministry of Power) & Ors.

In **Petition No. 128/MP/2013** - Gujarat Urja Vikas Nigam Ltd. & Ors. Vs. Union of India, before the Hon'ble Central Electricity Regulatory Commission (**"CERC"**).

In the instant Petition filed by Gujarat Urja Vikas Nigam Limited and the Distribution Licensees of the State of Gujarat, the petitioners seek issuance of solar Renewable Energy Certificate (RECs) in respect of solar power purchased in excess of quantum of solar purchase obligation.

The object of this petition was to declare that the distribution licensees shall also be included under the purview of 'Eligible Entities' for the Renewable Energy Certificate under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable energy Generation) Regulations, 2010 (**"REC Regulations"**), in respect of the purchase of solar power by them on promotional tariff in excess of the stipulated Renewable Purchase Obligation (RPO). According to the Petitioner, the underlying purpose of this petition is to enable the distribution licensees to meet their RPO and also encourage them to buy solar power in excess of the RPO.

The basis of this petition arises from the fact that while the petitioners have been paying promotional tariff in respect of solar power purchases including in excess of the quantum of the RPO, they are not getting any benefit of solar power purchased in excess of the quantum specified as RPO.

As per the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable energy Generation) Regulations, 2010 (**"REC Regulations"**), the eligibility for REC does not

extend to the distribution licensees procuring solar power from the solar power developers at the promotional tariff for the quantum in excess of the Renewable Purchase Obligations of such distribution licensees specified by the State Commission.

The Hon'ble Commission, without getting into the merits of the issues of this case, clarified that the action to make, amend and repeal the regulations, as vested in the Commission under Section 178 of the Electricity Act, 2003, (the **"Act"**), shall only be initiated if the Commission is satisfied that there is a need to do so.

Therefore, in a broader perspective, the Hon'ble Commission has taken a progressive step in the developing field of Renewable Energy Certificate by directing the staff to examine the issues and submit a proposal to address the problems, if any, for consideration of the Commission.

ADANI POWER MAHARASHTRA LIMITED VS. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED

In **Case no. 51 of 2013** - **Adani Power Maharashtra Limited vs. Maharashtra Electricity Distribution Company Ltd. (**"**MSEDCL**"**)** before the Hon'ble Maharashtra Electricity Regulatory Commission (**"MERC"**) vide Order dated February 3, 2014.

Adani Power Maharashtra Limited, the Petitioner, is a generating company in the process of setting up a 3300 MW (5 X 660 MW) thermal power project in Maharashtra. The Petitioner executed a Power Purchase Agreement (**"PPA"**) with MSEDCL, the Respondent for the supply of 1320 MW power. The Petitioner applied for start-up connection of 50 MVA at 400 kV level and the same was sanctioned by MSEDCL with a condition of levying commercial tariff for the said energy consumption. The grievance arose when the Petitioner received its first bill dated September 21, 2012, regarding start-up power connection at 400 kV which included demand charges corresponding to billing demand of 171 MVA as against the contract demand of 50 MVA and penalty for low power factor. The Petitioner, by a subsequent letter to MSEDCL, requested the revision of the bill excluding the de-

mand recorded on account of 2 X 80 MVA bus reactors.

Hence, the two points of consideration that arose before the Hon'ble MERC are as follows:

a. Quantum of energy to be billed (whether the energy consumed by the bus reactors is to be charged on the Petitioner or not)

b. Which Tariff to be made applicable for Start-up connection of Power Plant (or to be net out with the energy generated)

The Hon'ble MERC, on perusal of the study report submitted by Dr. S.A. Soman of IIT Bombay, who was appointed by the Commission itself, held that the bus reactors which are part of intra-state transmission system and being operated as per instructions from SLDC for controlling the system voltages are assisting the State Transmission Utility (**"STU"**) / State Load Dispatch Centre (**"SLDC"**) to maintain the grid voltage. Therefore, the reactive energy drawn by such bus reactor for the purpose of controlling transmission system should not be charged to the Petitioner. The Hon'ble MERC subsequently directed MSEDCL not to recover any charges for energy drawn by the bus reactor for the purpose of controlling the transmission system voltages and accordingly revise its energy bills issued to the Petitioner.

As regards the second issue, the Hon'ble MERC held that the power plant is an industrial premise and are the basic elements of the electricity supply chain where electricity is generated. Thus, the start-up power consumption by such power plants used for starting of the power plant auxiliaries so that the electricity generation can be started should be treated as Industrial purpose only. Therefore, the Hon'ble MERC, on perusal of Article 11.9 of the executed PPA, directed MSEDCL to apply the tariff of Industrial category to the start-up power consumption of the Petitioner's generating plant and also revise the earlier energy bills to that effect and credit the excess collected amount in the upcoming bills of the Petitioner.

ADANI POWER MAHARASHTRA LIMITED VS. UTTAR HARYANA BIJLI VIDYUT NIGAM LIMITED & OTHERS.

In Petition No. **155/MP/2012** - Adani Power Limited vs. Uttar Haryana Bijli Vidyut Nigam Limited before the Hon'ble Central Electricity Regulatory Commission (**"CERC"**).

The Hon'ble CERC, vide its Order dated February 21, 2014, between Adani Power Limited ("the Petitioner") and Uttar Haryana Bijli Vidyut Nigam Ltd, Dakshin Haryana Bijli Vidyut Nigam Ltd., and Gujarat Urja Vikas Nigam Ltd. ("the Respondents") gave its long awaited judgement with respect to evolving a mechanism for dealing with amendments in tariff on account of frustration and/or of occurrence of force majeure, change in law, events under the PPAs due to change in circumstances for the allotment of domestic coal.

The petitioner has set up a generating station, Mundra Power Project, at Mundra in the State of Gujarat. The petitioner had entered into two Power Purchase Agreements ("PPAs") dated February 2, 2007 and February 6, 2007 for supply of power to Gujarat Urja Vikas Nigam Limited ("GUVNL") from Phase I, II & III and PPA dated August 7, 2008 with Uttar Haryana Bijli Vidyut Nigam Ltd. and Dakshin Haryana Bijli Vidyut Nigam Ltd. (Haryana Utilities) for supply of power from Phase IV of the generating station. The present petition is concerned with the sale of power through PPA dated February 2, 2007 to GUVNL and PPA dated August 7, 2008 to the Haryana Utilities. The petitioner, on account of non-availability of domestic coal linkage, imported coal from Indonesia to meet the entire requirement of coal for supply of power. Pursuant to this, the Minister of Energy and Mineral Resources, Republic of Indonesia, promulgated "Regulation of Ministry of Energy and Mineral Resources No.17 of 2010" ("Indonesian Regulations") which aligned the price of coal with international benchmark price.

As a result of the promulgation of the Indonesian Regulations, the cost of production of electricity from the Mundra Power Plant increased tremendously, thus making it commercially unviable for the petitioner to supply power to the respondents at the PPA price. Therefore, dependence of the petitioner on the imported coal on account of absence or partial availability of domestic coal and subsequent change in the price of im-

ported coal as a result of Indonesian Regulations, coupled with unparalleled devaluation of Indian Rupee are the main reasons that led the petitioner to file the current petition before the Hon'ble Commission for relief.

It was highlighted in the course of this Order that utilities in India are unable to charge more because of the low-tariff regimes governing the state-run electricity distributors. Thus, the Hon'ble Commission after a long and detailed analysis and on consideration of a Report submitted by a Committee appointed by them has decided to grant compensatory tariff for the hardship suffered by the petitioner. Furthermore, it held that in order to mitigate the financial hardships of the Petitioner, the petitioner shall be entitled for a provisional lump sum compensation in respect of Gujarat PPA for an amount of ₹420.24 Crore and in respect of Haryana PPA for an amount of ₹409.51 Crore for the period from Scheduled Commercial Operation Date (**"SCOD"**) till March 31, 2013.

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