

Ministry of Corporate Affairs: Limited Liability Partnership Rules, 2022

Securities and Exchange Board of India: SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011

Securities and Exchange Board of India: Revising Chapter – XIV of Operational Circular

Securities and Exchange Board of India: Regulations 101 of the Listing and Disclosure Requirement, 2015

Case Summary : Sai Wardha Power Generation Limited VS. Maharashtra State Electricity Distribution Company Limited

MINISTRY OF CORPORATE AFFAIRS

In exercise of powers conferred upon by Section 79(1) and Section 79(2) of Limited Liability Partnership Act, 2008 (“**LLP Act 2008**”), the Central Government *vide Notification dated March 04, 2020* (“**Notification**”) further amended the Limited Liability Partnership Rules, 2009 (“**LLP Rules 2009**”). The LLP Rules 2009 shall now be called as Limited Liability Partnership Rules, 2022 (“**LLP Rules 2022**”) and shall come into force with effect from its publication in the Official Gazette. LLP Rules 2022 have been amended as follows:

1. Following amendments have been made to Rule 11 of LLP Rules, 2009:
 - a. in sub-rule (1), the limit for individuals applying for allotment of Designated Partner Identification Number (“**DPIN**”) vide Form FiLLip which was earlier two (2) individuals has now been increased to five (5) individuals;
 - b. sub-rule (3), shall now read as, “*The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16 and shall mention Permanent Account Number and Tax Deduction Account Number issued by Income Tax Department.*”
2. Rule 19 (4) no more requires the person filing application for change of name to prove his/her authority before filing such application. The person making such application shall attach a copy of incorporation certificate of the limited liability partnership or the company or the registration certification of the entity, as the case may be.

3. Rule 24 (6) shall now be read as, *“(6) Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners. Where the corporate insolvency resolution process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) or the LLP Act, 2008 has come under the liquidation under the said code, 2016 or the Said Act, 2008, the said statement of Accounts and Solvency may be signed on behalf of LLP by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator.”*
4. A new proviso has been inserted for Rule 25(2), which states that when a corporate insolvency resolution process has been initiated against a Limited Liability Partnership (“LLP”) under Insolvency and Bankruptcy Code, 2016 (31 of 2016) or the LLP Act, 2008 (06 of 2009) having turnover up to Rs. 5,00,00,000/- (Rupees Five Crore Only) during the corresponding financial year or has contribution up to Rs. 50,00,000/- (Rupees Fifty Lakh Only), then the annual return shall be signed by interim resolution professional or resolution professional, or liquidator or LLP administrator on behalf of LLP and no certificate by a designated partner is required.
5. Following amendments have been made to Rule 34:
 - a) Sub rule 3(ii)(c) now states that if any alteration is made to the principal place of business of foreign LLP in India, the foreign LLP shall file Form 28 for such alterations with the Registrar within thirty (30) days from the date on which the alteration was made or occurred.
 - b) Sub-rule (8) now states that if any foreign LLP ceases to have a place of business in India, it shall give notice to the Registrar in Form 28 within thirty (30) days of its intention to close the place of business and as from the date on which the notice is so given, the obligation of the LLP to file any document to the Registrar shall cease, provided it has no other place of business in India and it has filed all the

documents due for filing as on date of the notice.

6. As per amendment to Rule 36(6) if there are any rectifications to be made in any application or e-form filed by an LLP before the Registrar then such rectifications can be made in Form 32.
7. In Rule 37(1A) (ii) for the words and figures "*enclose along with Form 24*" words and figures "*furnish in form 24*" have been substituted and it now states that the statement of account and affidavit as mentioned in the said rule shall now be filed in Form 24.

SECURITIES EXCHANGE BOARD OF INDIA

The Securities Exchange Board of India (“SEBI”) in exercise of its powers conferred upon it by Section 11(1) of the Securities and Exchange Board Act, 1992 issued a *Circular dated March 07, 2022* (“**Circular**”) for automation of disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, (“**SEBI SAST Regulations 2011**”) by System Driven Disclosures (“**SDD**”) for ease of doing business which shall come into effect from July 01, 2022.

SEBI vide its circulars dated December 01, 2015, December 21, 2016, May 28, 2018 and September 23, 2020 commissioned SDD in different phases. SEBI vide its Notification dated August 13, 2021 has amended SEBI SAST Regulations, 2011 by putting an end to manual filing for most of the transactions with effect from April 01, 2022.

As per the SEBI Circular, transactions undertaken in the depository system under Regulation 29 & Regulation 31 of SEBI SAST Regulations, 2011 do not require manual filing except for the following transactions:

- a. Triggering of disclosure requirement due to acquisition or disposal of the shares, as the case may be, by the acquirer together with persons acting in concert;
- b. Triggering of disclosure requirement in case the shares are held in physical form by the acquirer and/or person acting in concert; and
- c. Listed companies who have not provided PAN of promoter(s) including member(s) of the promoter group to the designated depository or companies which have not appointed any depository as their designated depository.

SEBI has also notified that the Promoters are required to file disclosures on reasons for encumbered shares manually to the stock exchanges as specified in Circulars dated August 05, 2015 and August 07, 2019.

SEBI also mentioned that in terms of Circular dated July 24, 2020 the depositories have put in place the system for the purpose of capturing and recording all types of encumbrances including non-disposal undertaking (NDUs) which are specified in Regulation 28(3) of the SEBI SAST Regulations, 2011.

In order to streamline the capture and dissemination of the information related to encumbrances and bring in more transparency, in consultation with the stock exchanges and depositories, SEBI has taken the following steps:

- (a) all types of encumbrances as specified by Regulation 28(3) of the SEBI SAST Regulations, 2011 must be documented in the depository system;
- (b) the depositories must record the details of the final lender, as well as the name of the trustee operating on their behalf, such as banks, NBFCs, and other financial institutions. In event of the issuance of debentures, the name of the debenture issuer must be recorded in the depository system.
- (c) Depositories must now record the reasons for depository system encumbrances.

Further SEBI also directed the depositories to prepare an appropriate mechanism by June 30, 2022 for recording all types of outstanding encumbrances in the depository system. Also, for the purpose of communicating this information SEBI directed as follows:

- (a) Information regarding the transactions recorded in the depository system should be provided to the stock exchanges by the depositories;
- (b) The stock exchanges shall after receiving the information from the depositories should consolidate and shall publicize the same information on their website as per the formats specified by SEBI;
- (c) The stock exchanges shall also provide an appropriate mechanism for making the disclosures under SDD in a simple readable pdf format; and

- (d) Listed companies, stock exchanges and depositories shall conduct reconciliation of data at least once in a quarter or immediately if any discrepancy is noticed.

Also SEBI advised the stock exchanges, depositories, registrar & share transfer agents to bring to the notice all provisions of this circular to the listed companies, their promoters and also disclose the same on their respective websites and report progress in the matter through monthly development report till its final implementation.

SECURITIES EXCHANGE BOARD OF INDIA

The Securities and Exchange Board of India (“SEBI”) in exercise of its powers conferred upon it by Section 11(1) of the Securities and Exchange Board Act, 1992 (“SEBI Act 1992”) read with Regulation 55 (1) of the SEBI (Issue and listing of Non- Convertible Securities) Regulations, 2021 (“SEBI ILNCS Regulations, 2021”) issued a *Circular dated March 22, 2022 (“Circular”)*, revising Chapter- XIV of Operational Circular for issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper. This Circular shall be applicable to all issuances of debt securities, which have opened on or after April 01, 2022.

SEBI vide its Operational Circular dated August 10, 2021 (“Operational Circular”) in Chapter- XIV stipulated the provisions directing stock exchanges and depositories to jointly create, host and maintain a centralized database of corporate bonds held in demat forms. The Market Data Advisory Committee (“MDAC”) which is a standing committee constituted by SEBI comprising of representatives from stock exchanges, depositories and other market participants, examined the existing industry classification structures, across sectors, and developed a revised harmonised four level industry classification framework for adoption by all stakeholders and for all relevant processes/ purposes in Indian securities market.

The following amendments have been made to Chapter XIV which speaks about centralized database for corporate bonds/ debentures of Operational Circular:

- a. Paragraph 2.2 b) now reads as, *“Post listing of securities, issuer shall submit information in the requisite fields as provided in Annex - XIV-B to any of the stock exchanges where their securities are listed on a periodical basis (within 30 days from the end of the financial year) and/ or ‘as and when’ basis (event based), as applicable. The stock exchange shall indicate the format of filing to the issuers in this regard”;*

- b. Clause 8. *b) (type of Issuer- Based on nature of business)* of paragraph B and Annex-XIV-A (*Issuer/instrument classification*) has been deleted; *and*
 - c. Clause 9 (based on sector of business) of Annex-XIV-A has been replaced with the table regarding the same in annexed with the Circular.
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SECURITIES EXCHANGE BOARD OF INDIA

The Securities and Exchange of Board of India (“SEBI”) in exercise of the powers conferred under Section 11 (1) of the SEBI Act, 1992 read with Regulation 101 of the Listing and Disclosure Requirement, 2015 (“LODR, 2015”) issued a Circular dated March 30, 2022 regarding clarification on applicability of Regulation 23 of SEBI LODR Regulations, 2015 in relation to related party transactions which shall come into effect from April 01, 2022. SEBI vide Notification dated November 09, 2021, amended Regulation 23 of the LODR, 2015 thereby enhancing the scope of related party, related party transactions and the materiality threshold for seeking shareholder approval.

Subsequent to the representations received from listed entities and industry bodies, SEBI has directed as follows to ensure smooth implementation of the amended Regulation 23 of the SEBI LODR Regulations, 2015:

1. For related party transaction that has been approved by the audit committee and shareholders prior to April 1, 2022, there shall be no requirement to seek fresh approval from the shareholders;
2. Regulation 23(8) of the SEBI LODR Regulations, 2015 specifies that all existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first general meeting subsequent to notification of these regulations. In accordance with the said regulation, an RPT that has been approved by the audit committee prior to April 1, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first General Meeting held after April 1, 2022; and
3. It is reiterated that a related party transaction for which the audit committee has granted omnibus approval, shall continue to be placed

before the shareholders if it is material in terms of Regulation 23(1) of the SEBI LODR Regulations, 2015.

SEBI further mentioned that the explanatory statement contained in the notice sent to the shareholders for seeking approval for an related party transaction shall provide relevant information so as to enable the shareholders to take a view whether the terms and conditions of the proposed related party transaction are not unfavourable to the listed entity, The information so provided shall include but not be limited to the information specified in Circular dated November 22, 2021.

CASE SUMMARY

Case Name : Sai Wardha Power Generation Limited Vs. Maharashtra State Electricity Distribution Company Limited and Ors - Case No. 175 of 2017 and Case No. 170 of 2018.
Court Name : Maharashtra Electricity Regulatory Commission ("**MERC**")
Order Dated : March 16, 2022

Facts of the Case:

1. **The Petitioner** i.e., Sai Wardha Power Generation Limited ("**SWPGL**") filed Case No. 175 of 2017 and Case No. 170 of 2018 before Hon'ble Maharashtra State Electricity Commission ("**State Commission**" / "**MERC**") in order to seek declaration of captive status of its 2x135 MW generating units No. 3 and 4 ("**Units**") for F.Y. 2016-17 and F.Y. 2017-18 respectively. Subsequently, a Miscellaneous Application ("**MA**") was filed by Tata Power Company Limited- Distribution ("**TPC-D**") seeking to implead all captive users in the matter.
2. The above-mentioned cases were dismissed by the State Commission vide its Orders dated October 22, 2020 and October 29, 2020 ("**Impugned Orders**") wherein it was held that SWPGL did not satisfy the captive status criteria for FY 2016-17 and FY 2017-18 on the test of proportionality. Further, the State Commission held that the power generation from the said Power Plant shall be treated as if it is a supply of electricity by a generating company as per Rule 3(2) of the Electricity Rules, 2005 ("**Rules 2005**") to the consumers identified by the Petitioner. In view thereof, the State Commission directed distribution licensees to levy Cross Subsidy Surcharge ("**CSS**") and other applicable charges on the captive users / shareholders of SWPGL who have consumed electricity during FY 2016-17 and FY 2017-18 as per the provisions of Rules 2005 and the Electricity Act, 2003 ("**EA, 2003**").
3. SWPGL and its captive users being aggrieved by the Impugned Orders challenged the same before the Hon'ble Appellate Tribunal for Electricity ("**APTEL**") vide Appeal No. 106 of 2018 and batch matters ("**Appeal**"). Subsequently, the Hon'ble APTEL vide its judgment dated November 26, 2021 in the Appeal ("**APTEL Judgment**") passed common judgement wherein it set aside the Impugned Orders. The Hon'ble APTEL vide

its judgment remanded the matter back to the State Commission and ordered the State Commission to pass fresh orders in accordance with the opinion expressed in APTEL Judgment. Further, the State Commission was also directed to decide the matter expeditiously within three (3) months of the pronouncement of the APTEL Judgement.

Issues before the Hon'ble MERC:

1. Administrative enquiry by Maharashtra State Electricity Distribution Company (“**MSEDCL**”), Maharashtra State Load Dispatch Centre (“**MSLDC**”), Tata Power Company Limited (Distribution) (“**TPC-D**”) and State Transmission Utility (“**STU**”) in relation to separate metering for determination of captive status and open access approval.
2. Evaluation of the captive status criteria of Unit No. 3 and 4 for FY 2016-17 and FY 2017-18 as per Rules, 2005.

Held by the Hon'ble MERC:

1. With regards to Issue I, the State Commission vide its Order dated March 16, 2022 (“**Order**”) in the light of the APTEL Judgement, MERC (Distribution Open Access) Regulations, 2016 (“**DOA Regulations**”) and MERC (Transmission Open Access) Regulations, 2016 (“**TOA Regulations**”) held that since neither the nodal agency nor MSLDC raised any objection in respect of appropriate metering infrastructure while granting Open Access (“**OA**”) approval, the enquiry report submitted by MSEDCL, TPC-D and MSLDC merely point out the requirement of unit wise metering for captive status determination and proposed the changes required in the procedure/ commissioning of meter, etc. without considering the fact that had the nodal agency been vigilant enough at the time of grant of OA, such issue would have never arisen.
2. Further, it was held by the State Commission that the requirement for Special Energy Meters (“**SEM**”) is specified in the DOA Regulations and metering was always present at SWPGL’s Units as per required specifications for being considered as captive. The State Commission also acknowledged that there has been lapses on the part of MSETCL and STU in timely commissioning of the appropriate metering arrangement for SWPGL as per the DOA Regulations, and also held that as the unit wise meters are now installed for SWPGL’s generating plant, the requirement as per different provisions of the relevant regulations has been complied with and

distribution licensees were directed to refund deposits or payment made by the captive users of SWPGL, if any, on account of CSS for FY 2016-17 and FY 2017- 18 in accordance with the relevant regulations in twelve (12) equal monthly instalments starting from the billing month of March 2022.

3. With regards to Issue II, the Hon'ble Commission in light of the APTEL judgment dated June 07, 2021 in Appeal No. 131 of 2020 in the matter of *Tamil Nadu Power Producers Association Vs. Tamil Nadu Electricity Commission and Ors.* ("**TNPPA Order**") and after analysing the data submitted by SWPGL and other nodal agencies held that SWPGL meets the twin conditions as laid down in Rule 3 of Rules, 2005 and further held that SWPGL qualifies as a group Captive Generating Plant ("**CGP**") in FY 2016-17 and FY 2017-18 in respect of its Units.
4. Also, it was held by the State Commission that the injection of 24.73 MUs and 53.53 MUs for FY 2016-17 and FY 2017-18 respectively from the non-captive unit shall be treated as unscheduled, deemed to be drawn from relevant distribution licensees and cannot be accounted as consumption for as CGP power. Hence, this unscheduled power should be treated in accordance with the applicable provisions of EA, 2003 and relevant rules and regulations.
5. Hence, the matter was disposed off accordingly.

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Warm Regards,

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