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INSIDE THIS ISSUE:

THE SECURITIES AND EXCHANGE BOARD OF INDIA

Disclosures under SEBI (Prohibition of Insider Trading) Regulations,

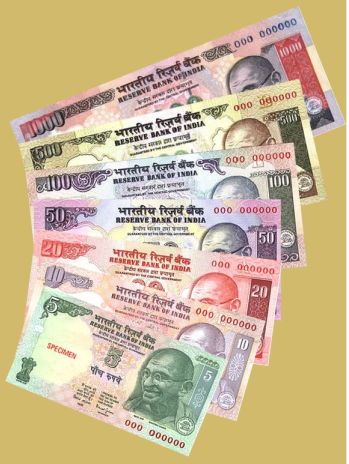
The Securities and Exchange Board of India ("**SEBI**") vide its Circular No. CIR/ ISD/01/2015 dated May 11, 2015 provides disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015.

With reference to the requirements of Regulation 6 of SEBI (Prohibition of Insider Trading) Regulations, 2015, formats for disclosures are as annexed in the circular and may be maintained by the company in physical/electronic mode.

With reference to the requirements of Regulation 8 (Code of Fair Disclosure) & Regulation 9 (Code of Conduct), the companies shall ensure that the codes of practices and fair procedures for fair disclosure of Unpublished Price Sensitive Information ("**UPSI**") as well as the formulated code of conduct are confirmed to the stock exchanges immediately.

For further information, please visit the link provided herein.

THE RESEVE BANK OF INDIA



External commercial borrowings denominated in Indian Rupees (INR)—Mobilisation of INR

The Reserve Bank of India ("**RBI**") vide Circular No. 103 provides for External Commercial Borrowings ("**ECB**") denominated in Indian Rupees ("**INR**")– Mobilisation of INR.

RBI states that non-resident ECB lenders can extend Loan in Indian Rupees through a swap undertaken with AD Category-1 Bank in India. Further to facilitate ECB lending in INR by overseas lender, it is decided that lenders may swap transactions with overseas banks ("**Bank**"), who in return shall enter into back-to-back swap transactions with AD Category-1 Bank as per the following procedures:-

1. The non-resident lender approaches Bank with documentation as evidence of ECB denominated in INR for a swap rate for mobilising INR for lending to the Indian Borrower
2. The Bank further approaches AD Category-I bank for a swap rate with the documents provided, to satisfy itself that there is an underlying ECB in INR
3. A Know Your Customer ("**KYC**") certification shall also be taken by the AD bank in India as a one-time document from the Bank
4. After receiving the documents from the Bank and after being satisfied about the existence of ECB, the AD Category 1 Bank shall offer am swap rate to bank, who will offer the same non-resident lender on a back –to back basis

5. The swap shall be continued subject to the existence of the underlying ECB at all times

6. On the due date, settlement may be done through the Vostro account of the Bank maintained with its counterparty bank in India

7. The concerned AD Category-I bank shall keep on record all related documentation for verification by Reserve Bank

8. Exchange Board of India (Foreign Portfolio Investors) Regulations

For further information, please visit the link provided herein

DEPARTMENT OF INDUSTRIAL POLICY &PROMOTION

Consolidated Foreign Direct Investment (FDI) Policy Circular 2015 on Investment sector

The Department of Industrial Policy & Promotion ("**DIPP**"), Ministry of Commerce and Industry, Government of India issued 'Consolidated FDI Circular on May 12, 2105', compiling all the information on FDI policy at one place. The present consolidation Circular subsumes and supersedes all the earlier Press Notes/ Press Releases/ Clarifications/ Circulars issued by DIPP, which were in force on May 11, 2015 and reflects the FDI Policy as on May 12, 2015. However, Press Note No. 4 of 2015, dated April 24, 2015, regarding policy on foreign investment in pension sector, will remain effective and in force unless superseded in totality or part thereof. This circular will be effective from May 12, 2015.

The Consolidated FDI policy, 2015 comprises of the following:-

1. Intent & Objective
2. Definitions
3. General Conditions on FDI
4. Calculation of Foreign Investment
5. Foreign Investment Promotion Board ("**FIPB**")
6. Sector Specific Conditions on FDI
    a. Agriculture

b. Mining and Petroleum & Natural Gas

c. Manufacturing

d. Service Sector

e. Financial Services

f. Others

7. Remittance, Reporting and Violations

For further information, please visit the link provided herein

SUPREME COURT JUDGEMENT

Madras Bar Association v/s Union of India— Writ Petition (c) No. 1072 of 2013

Vide the order dated May 14, 2015 in Writ Petition (C) No. 1072 of 2013 of Madras Bar Association ("**MBA**") v/s Union of India ("**UOI**") , the Hon'ble Supreme Court of India ("**Hon'ble SC**") was pleased to allow the Writ Petition partly.

Hon'ble SC vide its judgement dated May 14, 2015 observed that this entire writ petition takes umbrage under the Hon'ble SC earlier judgement, Appeal No. 3067 of 2004 which was pronounced on 11th May 2010 ("**2010 judgement**") . Therefore, it is necessary to briefly consider the 2010 judgement to appreciate outcome of 2015 judgement. MBA had earlier filed Writ petition No.2198 of 2003 in Madras High Court ("**Madras HC**") challenging constitutional validity of creation of National Company Law Tribunal ("**NCLT**") and National Company Law Appellate Tribunal ("**NCLAT**") which were incorporated by the Legislature in Parts 1B and 1C of the Companies Act, 1956. Further the Madras HC pronounced Order dated March 30, 2004 wherein it was held that creation of NCLT and vesting the powers hitherto exercised by the High Court and the Company Law Board ("**CLB**'") in the said Tribunal was not unconstitutional. However, at the same time, the High Court pointed out certain defects in various provisions of Part 1B and Part 1C of the Act, 1956 and, in particular, in Sections 10FD(3)(f)(g)(h), 10FE, 10FF, 10FL(2), 10FR(3), 10FT and it was held that unless these provisions are appropriately amended by removing the defects, it would be unconstitutional to constitute NCLT and NCLAT to exercise the jurisdiction which is being exercised by the High Court or the CLB.

MBA felt aggrieved by that part of the judgment vide which establishments of NCLT and NCLAT was held to be constitutional. On the other hand, UOI felt dissatisfied with the other part of the judgment whereby aforesaid provisions contained in Parts 1B and 1C of the Act, 1956 were perceived as suffering from various legal and constitutional infirmities. Thus, both Union of India as well as the petitioner therein filed appeals before the Hon'ble SC against that judgment of the Madras High Court. The Hon'ble SC vide the said 2010 judgment put its stamp of approval insofar as constitutional validity of NCLT and NCLAT is concerned. It also undertook the exercise of going through the aforesaid provisions contained in Parts 1B and 1C of the Act, 1956 and in substantial measure agreed with the Madras HC in finding various defects in these provisions.

In the present Writ Petition the following three main issues were raised before the Hon'ble SC:-

1. **Challenge to the validity of the constitution of NCLT and NCLAT**;

   It was held by the Hon'ble SC that the validity of NCLT and NCLAT was not unconstitutional and is valid.

2. **Challenge to the prescription of qualifications including term of their office and salary allowances etc. of President and Members of the NCLT (section 409 (3)(a) of the Companies Act, 2013 ("CA 2013") and as well as Chairman and Members of the NCLAT (Section 411 (3) of CA 2013)**

   It was held by the Hon'ble SC that there was no issue on the qualifications of Judicial Members of the NCLT and NCLAT. The main objection was on qualifications of Technical Members. It was held that section 409(3)(a) and (c) and 411 (3) of Act,2013 are invalid. The Hon'ble SC further stated that for appointment of technical members, the directions given in the 2010 judgement will have to be followed.

3. Challenge to the structure of the Selection Committee for appointment of Members of the NCLT and NCLAT (Section 412 of the CA 2013)

The Hon'ble SC held Section 412 of CA 2013 to be invalid and further directed to remove the defect. It was held that Chief Justice of India or his nominee is to act as Chairperson of Selection Committee, with the power of a casting vote. Casting vote is not covered under section 412 (2) (a) of 2013 Act and hence held invalid.

The SC further stated that the main step for functioning of NCLT & NCLAT is to appoint President and Members of NCLT and Chairperson and Members of NCLAT. The SC further stated that NCLT & NCLAT should start functioning in the near future. The Writ Petition thereafter stand disposed off.

For further information, please visit the link provided herein

Ministry of Corporate Affairs

Amendment to the Companies Incorporation (Rules), 2014

The Ministry of Corporate Affairs ("**MCA**") vide its Notification dated May 01, 2015 has made the amendments to the Companies Incorporation (Rules), 2014 for simplifying the filing of forms for incorporation of a company.

The integrated process shall apply with effect from May 01, 2015.

For the purposes of the process, the application for allotment of Director Identification Number upto three directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-29, for One Person Company, Private Company, Public Company and Producer Company, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fee of Rs. 2000 (Rupees Two Thousand Only) in addition to the registration fee as specified in the Companies (Registration of Offices & Fees) Rules, 2014.

For further information, please visit the link provided herein

The Companies (Amendment) Act, 2015

The Ministry of Law and Justice ("**MLJ**") on May 26, 2015 published in the Official Gazette several amendments to the Companies Act, 2013 ("**The Principle Act**") by enacting The Companies (Amendment) Act, 2015 ("**Act**")

The following amendments were made to the sections mentioned below:-

Section 1*: In Section 2(68) of the Principle Act, which defines Private Company in clause (68), the words "*of one lakh rupees or such higher paid-up share capital*" have been omitted. Pursuant to such amendment, the requirement of minimum paid-up capital is done away.

Section 2*: In Section 2(71) (b) of the Principle Act which defines Public Company, the words "*of five lakh rupees or such higher paid-up capital,*" have been omitted. Pursuant to such amendment, the requirement of minimum paid-up capital is done away .

Section 3* : As per the amendment the requirement of common seal is not mandatory and has been done away with under the following sections of the Principle Act, Section 9 which deals with Effects of Registration; Section 12(3) which deals with Registered office of the Company; Section 46 which deals with provisions pertaining to certificate of shares; Section 223 which deals with Inspector's report ; and Section 22(2)(a) which deals about execution of bills of exchange.

Further, a new provision has been inserted under Section 22(2)(b) which states that in case a company does not have a common seal, the authorisation under this sub– section shall be

made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

The requirement of common seal has been done away with pursuant to amendment under notification issued by Ministry of Corporate Affairs dated May 29, 2015 to the following rules:

- Companies (Registration of Charges) Rules, 2014 which shall now be called Companies (Registration of Charges) Rules, 2015 the said rules have been amended and above mentioned provision is inserted under Rule 3(4)(a) of the said Rules;
- Companies (Share Capital and Debenture Rules), 2014 has been amended with Companies (Share Capital and Debenture Rules), 2015 wherein in Rule 5 (3) the requirement of common seal has been done away with and under Rule 5(3)(b) it is stated that in case the Company does not have common seal the same shall be signed by two directors and the Company Secretary, and also if Board permits atleast one of the two directors shall be person other than managing director or whole time director.
- A new provision has been inserted in the said rule which states that in case of issuance of share certificate in case of One person Company ("**OPC**") the certificate shall be issued under seal if any and the same should be affixed in presence of and signed by one director or a person authorised by the Board and the Company Secretary, or any other person authorised by the Board and if OPC does not have a common

seal the same shall be signed by persons in presence of whom the seal is required to be affixed as stated above in the provision.

Section 4* : Section 11 of the Principle Act which is pertaining to the commencement of business has been omitted. Pursuant to such amendment the public companies no longer require the certificate of commencement of business for commencing business like private companies .

Section 5* : A new Section 76A has been inserted in the Principle Act, in addition to Section 76 which is pertaining to acceptance of deposits from public by certain companies. The new Section 76A determines the punishment in case the company or any officer in defaults and contravenes with Section 73 which deals with prohibition on acceptance of deposits from public or Section 76 which deals with Acceptance of deposits from public by certain companies. Section 76A provides for punishment in case the company accepts allows or invites or cause any other person to accept, invite deposits or fails to pay interest on such amount or any default is made in respect of repayment of deposit in full or part thereof within such time as prescribed under section 73 or further any such time as allowed by the Tribunal for offence, the company would in addition to amount of deposits or part thereof be punishable with fine of not less than Rs. 1,00,00,000/- (Rupees One Crore Only) which may extend upto Rs.10,00,00,000/-(Rupees Ten Crores Only) and every officer in default shall be punishable with imprisonment which may

extend upto seven years or with a fine of Rs.25,00,000/-(Rupees Twenty Five Lakh Only) which may extend upto Rs. 2,00,00,000/-(Rupees Two Crores Only) or with both, it is also to be noted that in case the officer has contravened with the provisions knowingly or wilfully with intention to deceive shareholders, creditors or tax authorities then such officer in default shall be liable to be charged with section 447 of the Principle Act which is pertaining to Punishment for fraud.

Section 6* : Section 117 of the Principle Act which states about Resolutions and agreements to be filed by the Company, pursuant to the amendment the word ''*and*'' occurring at the end of Section 117 of the Principle Act has been omitted; and after sub-section (3) clause (g) of section 117 of the Principle Act, new provision has been inserted which states "*that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions*". The same provision has also been inserted vide notification dated May 29, 2015 in rule 15 of Companies (Registration Offices and Fees) Rules, 2015.

Section 7* : Under section 123(1) of the Principle Act, which deals with declaration of dividend new provision has been inserted which states *that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.* The Ministry of Corporate Affairs vide notification dated May 29, 2015 amended Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2014 to Companies (Declaration and Payment of Dividend) Second Amendment

Rules, 2015 vide which the above provision that was stated in rule 3(5) of the said rules has been omitted.

Section 8* : Under section 124(6) of the Principle Act which is pertaining to Unpaid Dividend Account , for the words, brackets and figure "*unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be"*, have been substituted with the words "*dividend has not been paid or claimed for seven consecutive years or more shall be*". Further, a provision has been inserted in the section which states that "*in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the shares shall not be transferred to Investor Education and Protection Fund.*''

Section 9 * : After section 134(3)(c) of the Principle Act, which deals with Financial Statement and Board's Report a new clause 134(3)(ca) has been inserted which states about the details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.

Section 10* : Section 143(12)of the Principle Act, which states the powers and duties of auditors and auditing standards have been amended and it states that if an auditor of a company while performing his duties as auditor, has reasons to believe that an offence of fraud involving amount or amounts as prescribed, is being or has been committed in the company by its officers or employees, then auditor shall report the matter to the Central Government within such time and in such manner as prescribed, and if

fraud so detected does not exceed amount as prescribed the auditor shall then report the matter to audit committee of the company or to the Board within time as prescribed, and in case if auditors have reported frauds to the audit committee or Board and not reported to Central Government details of the same shall be disclosed in its Board report.

Section 11*: In section 177(4)(iv) of the Principle Act, which deals with the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

Section 12*: Under section 185(1)of the Principle Act, which deals with Loan to Directors new clauses have been inserted which are as follows:

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

Further, a new provision inserted which states that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

This is a very important amendment as it clarifies the position regarding provisions of Loans to Directors such clarification was earlier included only in Rule 10 of the Companies (Meetings &

Power of Board) Rules, 2014

Section 13 : Under section 188 of the Principle Act, which deals with related party transactions amendment has been made in section 188(1) in which the requirement of special resolution has been done away with and substituted with ordinary resolution A new provision has been inserted which states that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. Further, under section 188 (3) of the Principle Act the words special resolution has been substituted with resolution.

Section 14 : Under section 212 of the Principle Act, which states about Investigation into affairs of the company by Serious Fraud Investigation Office in the following sections, under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub -section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 for the words "*offences covered under and which attracts the punishment for fraud provided in section 447*", the words "*offence covered under section 447*" have been substituted.

Section 15*: Under section 248(1) (a) of the Principle Act, which deals with Power of Registrar to remove name of company from register of Companies after the word 'incorporation', the word 'or' has been inserted. Further, section 248(1) (b) of The Principle Act has been omitted.

Section 16*: Section 419(4) of the Principle Act, which deals with the Benches of Tribunal pursuant to the amendment the words "or winding up" have been omitted from such section.

Section 17*: Under section 435(1) of the Principle Act, which deals with Establishment of Special Courts for the words "*trial of offences under this Act*", the words "*trial of offences punishable under this Act with imprisonment of two years or more*" have been substituted. In addition, a proviso has been inserted which states that "*all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law*".

Section 18*: Under section 436(1) (a) of the Principle Act, which deals with Offences triable by Special Courts for the words all offences under this Act, "*all offences specified under sub-section (1) of section 435*" have been substituted.

Section 19*: Under 462(2) of the Principle Act, which pertains with the power to exempt class or classes of companies with the provisions of the Principle Act has been substituted in the following manner "*A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or*

both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses; In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days."

**The said sections of the Act have been notified to be effective by MCA from May 29, 2015 vide Notification dated May 29, 2015*

For further information, please visit the link provided herein

Amendment to Companies (Incorporation) Second Amendment Rules, 2015

The Ministry of Corporate Affairs vide its Notification dated May 29, 2015 amended the Companies (Incorporation) Second Amendment Rules, 2014 ("**Rules, 2014**"). The said rules shall be called as the Companies (Incorporation) Second Amendment Rules, 2015("**Rules, 2015**") which shall come into force from the date of their publication in the Official Gazette.

The following are the Amendments made in Rules, 2014;

1. Under Rule 12 of the Rules, 2014 viz. Application for incorporation of Companies of the Rules, 2014 the following provision will be inserted:

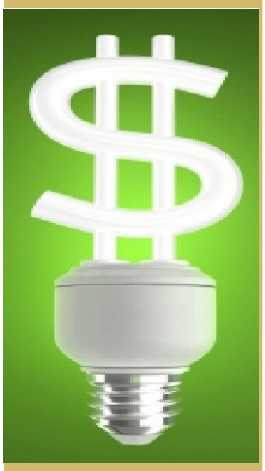
   "*Provided that in case pursuing of any of the objects of a company requires registration or approval form sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, form such regulator shall be obtained by the Company before pursing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the Company*."

2. Rule 24 of Rules 2014 viz. Declaration at the time of commencement of business is omitted and;

3. In the Annexures Form No. INC – 13 viz. Memorandum of Association and Form No. INC – 16 Memorandum of Association shall be replaced with the forms provided in Rules 2015.

For further information, please visit the link provided herein

ELECTRICITY



Maharashtra State Electricity Distribution Co. Ltd. - Revision in the rate of tax payable on sale by consumer.

Maharashtra State Electricity Distribution Co. Ltd ("**MSEDCL**") vide its Circular No. 217 dated May 02, 2015 and with exercise of powers conferred by Section 3 of the Maharashtra Tax on Sale of Electricity Act, 1963, provides revised rates at which the tax shall be levied per unit of electricity sold by the power utility to the consumers in the areas mentioned below with effect from April 01, 2015.

Area	**Earlier Rates**	**Revised Rates**
Areas covered under the license granted to Tata Power Company. Reliance Energy Limited & Brihan Mumbai Electricity Supply Transport undertaking- • Sale of electricity to industrial or commercial consumers • Sale of electricity to consumers other than industrial or commercial consumers	23 paise/ unit 15 paise/ unit	24.04 pasie/ unit 16.04 paise/ unit
City areas covered under the license granted to the MSEDCL, in respect of sale of electricity to industrial or commercial consumers.	8 paise/ unit	9.04 paise/unit

Area	Earlier Rates	Revised Rates
In any other area in the state: • Sale of electricity to industrial or commercial consumers • Sale of electricity to consumers other than industrial or commercial consumers	8 paise/ unit Nil	8 paise/unit Nil

As per the above, the Tax on Sale of Electricity is to be charged on the consumers as per the revised rate, and will be in effect from April 2015.

For further information, please visit the link provided herein

Punjab State Electricity Regulatory Commission - Amendment of the Punjab State Electricity Commission (Renewable Purchase Obligation & its Compliance) Regulations, 2011

Vide the Notification No. PSERC/Secy./Reg./100 dated May 06, 2015 the Punjab State Electricity Regulatory Commission ("**PSERC**") has made regulations to amend the PSERC (Renewable Purchase Obligation & its compliance) Regulations, 2011 ("**RPO, 2011**") namely-

1. Short title, commencement and extent of application

   "These Regulations may be called the PSERC (Renewable Purchase Obligation & its Compliance) (Amendment 1) Regulations, 2015 and will come into force from their date of publication in the official gazette."

2. Amendment of Regulation 2 of the Principal Regulations

The definition of '*obligated entity*' shall be substituted as per the amendment as follows:-

'*obligated entity*' means the *'distribution licensee(s)', 'captive user(s)'* of the electricity generated in a Captive Generating Plant and *'Open access customer(s)'* which are mandated under clause (e) of sub-section (1) of Section 86 of the Act to fulfil the renewable purchase obligation

3. Amendment of Regulation 3 of the Principal Regulations

.Table-1 in Regulation 3 of the Principal Regulations shall be substituted as per the amendment.

Year	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**
Non-Solar RPO (%)	2.37	2.83	3.37	3.81	3.9	4.1	4.2	4.3	4.5
Solar RPO (%)	0.03	0.07	0.13	0.19	1.0	1.3	1.8	2.2	2.5
Total	2.4	2.9	3.5	4.0	4.9	5.4	6.0	6.5	7.0

For further information, please visit the link provided herein

Amendment Order of the Telangana State Electricity Regulatory Commission in O.P. No. 77 of 2015 and O.P. No. 76 of 2015 filed by the Northern Power Distribution Company of Telangana Limited (TSNPDCL) and Southern Power Distribution Company of Telangana Limited (TSSPDCL) in the determination of Cross Subsidy Surcharge for FY 2015—16

Vide the Amendment Order dated May 07, 2015 in O.P. No. 77 of 2015 and O.P. No. 76 of 2015 filed by the Northern Power Distribution Company of Telangana Limited ("**TSNPDCL"**) and Southern Power Distribution Company of Telangana Limited ("**TSSPDCL"**) Telangana State Electricity Regulatory Commission ("**TSERC**") had determined to cross subsidy surcharge by order dated March 27, 2015 to be levied by the licensees on the open access consumers in the state of Telangana. The Hon'ble TSERC made it applicable from April 01, 2015.

The Hon'ble TSERC has fixed the cross subsidy surcharge by suo-moto amending the order dated March 27, 2015 as follows.

1. For the paragraph mentioned at 3.2.10 which reads as follows,

   "3.*2.10. The Cross Subsidy Surcharge rates determined in this order are effective from 1st April, 2015 to 31st March, 2016*."

2. The following may be read which is substituted as follows:

   "3.*2.10. The Cross Subsidy Surcharge rates determined in this order are effective from 1st May, 2015 to 31st March, 2016.*"

For further information, please visit the link provided herein

Order of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 241 of 2014 of M/s. Classic Citi Investments Private Limited v/s Maharashtra Electricity Regulatory Commission & Anr.

Vide the Order dated May 29, 2015 in Appeal No. 241 of 2014 of M/s. Classic Citi Investments Private Limited v/s Maharashtra Electricity Regulatory Commission & Anr, the Hon'ble Appellate Tribunal for Electricity ("**APTEL**") was pleased to partly allow the Appeal which was filed challenging the Order dated August 7, 2014 pronounced by the Hon'ble Maharashtra Electricity Regulatory Commission ("**MERC**") wherein the Hon'ble MERC stated that the low voltage surcharge as mandated by the Hon'ble MERC in the Interim Order dated March 5, 2010 against Petition No.71 of 2009 and which also applicable to the open access consumers connected at voltage level lower than specified in the Standard of Performance Regulations Standard of Performance Regulations ("**SOP Regulations**").

The issues before the Hon'ble APTEL were whether the Hon'ble MERC erred in approving the proposal of the Distribution Company viz; MSEDCL towards levying the voltage surcharge in the Impugned Order dated August 7, 2014 to the Appellant for energy sourced under open access from a wind generator. And whether the Distribution Company viz; MSEDCL is right in levying the voltage surcharge of 2% on the total units of power consumed by the Appellant including energy wheeled from M/s. Ajanta Limited (third party seller of wind energy under open access) utilizing the infrastructure of the MSEDCL .

Under the said Petition filed before the Hon'ble MERC the Respondent distribution Company released supply at 22 KV instead of at 33 KV as per the SOP Regulations due to the field constrains in establishing the infrastructure in

the vicinity of the Appellant's Industrial area. Further, as per the Interim relief granted by the Hon'ble MERC in the Order dated March 5, 2010 against Petition No.71 of 2009, started levying 2% low voltage surcharge to all the consumers who are connected at lower voltage against the specified voltage level mentioned in the SOP Regulations. Appellant started consuming power from the distribution licensee and also energy wheeled from the third party. The distribution licensee as per the Order dated March 5, 2010 levied the 2% low voltage surcharge on the total units consumed by the Appellant including energy purchased from third party also stating that the consumer is connected at lower voltage than at specified voltage.

Aggrieved with the Impugned Order of the Hon'ble MERC, the Appellant has filed this Appeal before Hon'ble APTEL. The Hon'ble APTEL held that as per the Open Access Regulations of the Hon'ble MERC and as per Section 42 of the Electricity Act, 2003, the applicability of levying of 2% low voltage surcharge on the energy wheeled by the open access consumers specified in the Impugned Order dated August 7, 2014 was disallowed. Further the Respondent viz; MSEDCL was directed to refund the 2% low voltage surcharge claimed on the energy wheeled by the Appellant from the Wind Generator under Open Access from April, 2010 to February, 2013. Hence, the Appeal was partly allowed and the Hon'ble MERC was directed to pass consequential orders within three months from the date of receipt of the copy of the said judgment.

For further information, please visit the link provided herein

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Warm Regards,

Dipali Sarvaiya Sheth

Founder

Eternity Legal

ETERNITY LEGAL
Advocates & Solicitor
Patent & Trademark Attorneys

1207, Dalamal Tower, Free Press Journal Road,

Nariman Point, Mumbai– 400 021

Email: contact@eternitylegal.com | Tel no.: +91 22 67479001

Website: www.eternitylegal.com