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Power Sector

Extension of Renewable Purchase Obligation (RPO) Compliance – Karnataka Electricity Regulatory Commission (KERC)

Considering the prevailing nation because of the lockdown situation caused by the Coronavirus (COVID-19) pandemic, the Karnataka Regulatory Commission vide its *Circular dated May 13, 2020* **("KERC Circular")** extended the time for complying with the Renewable Purchase Obligation **("RPO")** for the Financial Year ("FY") 2020.

The time provided for complying with the RPO for the FY 2020 has been extended by three (3) months. As per the current provisions, the obligated entities have to comply with the RPO for the FY 2020 by May 31, 2020, or by June 30, 2020 without any penalty, with 10% excess Renewable Energy Certificates ("RECs") purchase. However, vide the present KERC Circular all the obligated entities such as, the distribution licensees, grid-connected captive consumers, and open access consumers ("Obligated Entities") will be able to meet their RPO for the FY 2020 by August 31, 2020.

The order of The Commission further added that, if any of the obligated entities fail to meet the RPO or a part of it within the extended prescribed time period of three (3) months, then they will have to purchase the RECs to the extent of 110% of the amount of the RPO shortfall by September 30, 2020. The KERC Circular further provides that any Obligated Entity failing to meet its obligation beyond the date i.e. September 30, 2020 shall be liable under Section 142 of the Electricity Act, 2003 which is reproduced below for your ready reference:

"Section 142 - the Appropriate Commission after being satisfied that any person has contravened any of the provisions of the Electricity Act, 2003 or the rules or regulations made thereunder, or any direction issued by the Commission, may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

Kalika Steel Alloys Private Limited & Ors. vs Maharashtra State Electricity Distribution Company Limited – Case No. 82 of 2020

Background

The Petitioners in the present case are industrial establishments that carry out the business of manufacturing of steel and iron and are high tension **("HT")** consumers classified under category of continuous supply industries and hence require uninterrupted power supply to their plants. As the Petitioners are a power intensive industry, if they do not prudently plan their electricity demand it may cause severe threat to their existence. Further, it is virtually impossible for the Petitioners to perform their normal business activities because of the present lockdown situation due to COVID 19 pandemic. In view of the circumstances, the Petitioners had approached the Hon'ble Maharashtra Electricity Regulatory Commission **("MERC")** seeking appropriate directions by temporarilymodifying Regulation 4.14 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 **("SOP Regulations, 2014")** pertaining to the revision/change in contract demand **("CD")** so that the Petitioners are permitted to revise the CD multiple times in one billing cycle in order to suit their business and survive the present unprecedented circumstances. After hearing both the sides, the Hon'ble MERC observed that in such difficult times, the industry needs to be supported in a manner that to the extent possible and should also balance the interest of Maharashtra State Electricity Distribution Company Limited **("MSEDCL").**

Decision

Hon'ble MERC vide its *Order dated May 21, 2020* considered it a fit case to invoke its power under Regulation 22 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 to issue Practice Direction for allowing revision in CD upto three (3) occasions to HT Industrial and HT Commercial consumers subject to curtailment of load factor Incentive ("LFI") for third revision and upto two (2) occasions to low tension ("LT") Industrial and LT Commercial consumers in a billing cycle for a limited period upto July 31, 2020. The Hon'ble MERC directed its Secretarial to prepare and issue Practice Direction to that effect.

Practice Direction

In compliance of the Order, Practice Direction dated May 21, 2020 ("**Practice Direction**") was issued with respect to revision of CD in a billing cycle and the same shall remain valid till July 31, 2020. The Practice Direction provided as below:

1. HT Industrial and HT Commercial consumers shall be allowed to revise their CD upto three (3) times in a billing cycle. However, subsequent to third change in CD in a billing cycle by HT consumers, for the remaining period of that particular billing cycle, maximum possible LFI shall be restricted to 10% of energy charges as against 15% provided in Tariff Order dated March 30, 2020 passed by Hon'ble MERC in Case No. 322 of 2019. For subsequent billing cycle, maximum limit of LFI shall be restored to 15% till consumer does not exercise its option of changing CD for the third time in that billing cycle.
2. LT Industrial and LT Commercial consumers having demand based tariff shall be allowed to revise their CD upto two (2) times in a billing cycle.
3. Consumers shall apply to the concerned Distribution Licensee at least three (3) days in advance for revision in CD and the Distribution Licensee shall grant such revision in CD after receipt of completed application from requested date subject to technical feasibility.
4. Components of electricity bill which are linked to demand such as demand charges, penalty for exceeding CD and LFI shall be computed by applying proportionate rates to the respective billing demand corresponding to time intervals between revision in CD whereas all other electricity bill components shall be computed for the period of billing cycle.
5. In case Automatic Meter Reading ("**AMR**") is not available, Distribution Licensee needs to arrange for Meter Reading Instrument ("**MRI**") data at least for consumers who have opted for revision of CD. Concerned consumers should facilitate Distribution Licensee in taking MRI data. Further, in case AMR/ MRI data is not available, Distribution Licensee has to resort to average billing which can be reconciled with last/ available meter data when the lockdown gets lifted and normalcy is restored.

Reserve Bank of India

Owing to the COVID-19 pandemic situation and the prevailing lockdown throughout the country, the Monetary Policy Committee (MPC) on vide a *Notification dated May 22, 2020* attempted to inject more liquidity into the financial system and thereby boosting the financial position of the economy.

The Monetary Policy Committee (MPC) made the following changes in the policy Repo rates and Reverse Repo rates:

1. Under the Liquidity Adjustment Facility (LAF) it has been decided that the Repo rate be reduced by 40 basis points. Thus, now the Repo rate has been reduced to 4.00 per cent from 4.40 per cent. The reduced Repo rate shall encourage the banks to borrow more and pass on its benefits to the public at large, by giving away more loans at a reduced rate of interest.

2. Consequently the Reverse Repo rate under the Liquidity Adjustment Facility ("LAF") stands adjusted to 3.35 per cent with immediate effect.

All other terms and conditions of the extant LAF Scheme shall remain unchanged.

COVID-19 Regulatory Package

Rescheduling of Term Loans payments

The Reserve bank of India ("**RBI**") vide its *Circular dated May 23, 2020* granted permission to all the commercial banks, financial institutions, and Non-Banking Financial Companies (NBFCs) to extend the moratorium on term loan installments for a further period of three (3) months from June 01, 2020 to August 31, 2020. Earlier, *vide a Circular dated March 27, 2020*, the RBI had permitted lending institutions to grant a moratorium of three (3) months on the payment of the dues falling between March 01, 2020 and May 31, 2020. The total moratorium extension granted by the Reserve Bank of India on payment of loan installments is for six (6) months starting from March 01, 2020. The repayment schedule for such loans as also the residual tenor will be shifted across the board. However, interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Further, the lending institutions have been permitted, at their discretion, to convert the accumulated interest for the deferment period up to August 31, 2020 into a funded interest term loan ("**FITL**") which shall be repayable not later than March 31, 2021 ("**Interest Accrual Direction**").

Working Capital Financing

The working capital facilities which have been sanctioned in the form of cash credit / overdraft ("**CC/ OD**"), by the lending institutions, are permitted to allow a deferment of another three months, from June 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities. The above provision of Interest Accrual Direction also apply to such Working Capital Financing

Classification of Asset

The conversion of accumulated interest into funded interest term loan (FITL), as pointed out above, and the changes in the credit terms permitted to the borrowers to specifically tide over economic fallout from COVID-19, will not be treated as concessions granted due to financial difficulty of the borrower, under Paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 ('**Prudential Framework'**), and consequently, will not result in classifying the asset downgrade. The RBI vide another *Circular dated May 23, 2020* has provided detailed directions related to review of Resolution Timelines under the Prudential Framework on Resolution of Stressed Assets.

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

The Ministry of Environment, Forest and Climate Change **("Environment Ministry")** has vide a *Notification dated May 21, 2020* amended the Environment (Protection) Amendment Rules, 2020.

The Environment Ministry is of the view that the requirement of maintaining an average ash content of thirty-four per cent (34%) prompts industries to import, resulting in an outflow of foreign exchange. The Environment Ministry has thus proposed a policy asking the thermal power sector to source coal domestically.

The Ministry of Coal has represented that in view of the existing unprecedented COVID-19 pandemic and the resultant immediate requirement of utilization of domestic coal by stimulating coal sector demand for power generation in the country, it is desirable to issue the notification at the earliest.

Therefore, in exercise of the powers conferred by Section 3, Section 6 and Section 25 of the Environment Protection Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, has notified the following rules to further amend the Environment (Protection) Rules, 1986 which would be called the Environment (Protection) Amendment Rules, 2020 ("Rules, 2020"). The amended Rules,2020 have been provided below:

1. Use of coal by Thermal Power Plants, without stipulations as regards ash content or distance, shall be permitted subject to following conditions:
   a. **<u>Setting up Technology Solution for emission norms</u>**
      (i) Compliance of specified emission norms for Particulate Matter, should be as per extant notifications and instructions of Central Pollution Control Board, issued from time to time.
      (ii) In case of washeries, Middling and rejects to be utilized in Fluidized Bed Combustion (FBC) technology based thermal power plants. Washery to have linkage for middling and rejects in Fluidized Bed Combustion plants

b. Management of Ash Ponds:

(i) The thermal powers plants shall comply with conditions, as notified in the Fly Ash notification issued from time to time, without being entitled to additional capacity of fly ash pond (for existing power generation capacity) on ground of switching from washed coal to unwashed coal.

(ii) Appropriate Technology solutions shall be applied to optimize water consumption for Ash management;

(iii) The segregation of ash may be done at the Electro-Static Precipitator stage, if required, based on site specific conditions, to ensure maximum utilization of fly ash;

(iv) Subject to 2(i) above, the thermal power plants to dispose fly ash in abandoned or working mines (to be facilitated by mine owner) with environmental safeguards.

c. Transportation:

(i) Coal transportation may be undertaken by covered Railway wagon (railway wagons covered by tarpaulin or other means) and/or covered conveyer beyond the mine area. However, till such time enabling Rail transport/conveyer infrastructure is not available, road transportation may be undertaken in trucks, covered by tarpaulin or other means.

(ii) It shall be ensured by the thermal power plant that

- Rail siding facility or conveyor facility is set up at or near the power plant, for transportation by rail or conveyor; and
- If transportation by rail or conveyor facility is not available, ensure that the coal is transported out from the Delivery Point of the respective mine in covered trucks (by tarpaulin or other means), or any mechanized closed trucks by road.

It was directed that his shall also be deemed to be additional conditions of the relevant Environmental Clearances for respective projects for financial year 2020-21 and onwards. The existing Environmental Clearances shall stand modified so as to make the above conditions operative for relevant sectors. The Consent to Operate shall be issued by respective State Pollution Control Boards accordingly.

Interim Relaxation on Payment of Wages – Supreme Court

The Ministry of Home Affairs (MHA) vide its *Order dated March 29, 2020* had by exercising the powers, conferred under Section 10(2)(I) of the Disaster Management Actdirected "full payment" of wages / salary to the worker employed in any industry, shop or commercial establishment, i.e. without making any deductions for the period, the establishments were under closure during the lockdown.

Aggrieved by this order of the Ministry of Home Affairs ("MHA"), various writ petitions have been filed with the Supreme Court of India, alleging that the impugned direction was beyond the scope of powers conferred under the Disaster Management Act, 2005.

The Government of Maharashtra on similar base passed an order dated March 31, 2020 which "compelled" the owners of industries to pay full salaries to staff, workers, contract workers and casual workers for the period of the lockdown. The notification dated March 20, 2020 issued by the Secretary (Labour & Employment) also compelled the payment of full wages to workers and employees during the period of lockdown.

Various such orders have been challenged through various Writ Petitions with the Supreme Court of India. In ***Writ Petition (Civil) Diary No. 11193/2020 - Hand Tools Manufacturers Association Vs. Union of India & Ors., and Writ Petition (Civil) Diary No. 11281/2020 - Indian Jute Mills Association & Anr. Vs. Union of India & Ors.,*** it is purported that, the order passed by the MHA is unreasonable and arbitrary and is violative of the Fundamental Rights of the employers, conferred to them by Article 14, 19(1)(g), and 300A of the Constitution of India. It has been submitted that since, all operations are completely shut down due to the lockdown, it has become impossible for the employers to keep bearing the burden of full wages / salaries of its employees.

The Hon'ble Supreme Court of India vide its Interim *Order dated May 15, 2020* in the above mentioned two (2) writ petitions, issued an interim order, restraining any coercive action to be taken against the employers who are not able to make the payment of wages, as per the directions laid down in the order issued by the Ministry of Home Affairs. The aforementioned writ petitions are likely to be listed on June 4, 2020.

Supreme Court

Special Leave Petition (C) Nos.3584-85 OF 2020

Patel Engineering Limited ("Petitioner") versus North Eastern Electric Power Corporation Limited (NEEPCO Limited) ("**Respondent**")

The Supreme Court *vide its Order dated May 22, 2020* in the above mentioned matter held that the High Court has the power to set aside domestic arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 if it is patently illegal or perverse.

Background:

The Petitioner in the present case has challenged the order passed by the High Court of Meghalaya ("**High Court**") at Shillong in which the High Court dismissed the Review Petition on the basis that no ground is made for out. The Respondent, filed three applications under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the three arbitral awards dated March 29, 2016 before the Additional Deputy Commissioner (Judicial). The abovementioned applications were rejected by a common Order dated April 27, 2018 and upheld all the three arbitral awards. Pursuant to this, the Respondent filed three appeals under Section 37 of the Act before the High Court. Vide a common order dated February 26, 2019, the Respondent's appeal were allowed and the common judgement dated April 27, 2018 by the Additional Deputy Commissioner (Judicial) was set aside.

The Petitioner then filed Special Leave Petitions before the Supreme Court after being aggrieved with the High Court Order dated February 26, 2019. In this case, the Special Leave Petitions were dismissed by the Supreme Court with the reason that the Supreme Court is not inclined to interfere in such matters.

Pursuant to this, the Petitioner filed review petitions with the High Court contending that the judgement passed by the High Court faces an error apparent on the face of the record on account of not taking the amendments made to the Arbitration and Conciliation Act, 1996. In view of this, the High Court dismissed the petitions vide the impugned orders.

Judgement:

The Hon'ble Supreme Could held that the ground of "patent illegality" for setting aside a domestic award has been given statutory force in Section 34(2A) of the 1996 Act and is reproduced below for ready reference:

> *"(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award;*
>
> *Provided that, an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence".*

The matter in consideration in between two domestic entities and thus, the abovementioned section is invoked. Further, while dealing with Section 37 of the Arbitration and Conciliation Act, 1996, the High Court held that is has considered the matter at length and did not find any error apparent on the face of the record. No person could have arrived at a different conclusion, stated the Hon'ble Supreme Court and that the awards passed by the arbitrator suffer from the vice of irrationality and perversity. In view of the above, the Special Leave Petitions are dismissed.

MINISTRY OF CORPORATE AFFAIRS

The Ministry of Corporate Affairs ("**MCA**") vide its *General Circular dated April 21, 2020* had already allowed the companies whose financial year ended on December 31, 2019, to hold their AGM by 30th September, 2020.

On account of need for continuous adherence to the social distancing norms and restrictions placed on movement of persons, it has become necessary and hence it has been decided to allow companies to hold their Annual General Meeting ("**AGM**") by Video Conferencing ("**VC**") or other audio visual means ("**OAVM**") during the calendar year 2020. Accordingly, the *General Circular dated May 05, 2020* has been issued for this purpose.

The framework provided in the earlier Circulars for holding of extraordinary general meeting ("**EGM**") would be applicable mutatis mutandis for conduct of AGMs during 2020, based on the classification of companies which are required to:

(i) provide the facility of e-voting or have opted for the same, and

(ii) Those companies which are not required to provide such a facility.

Owing to the difficulties in sending physical copies of the financial statements, the Circular allows the companies to send the financial statements, along with Board's reports, Auditor's reports and other documents required to be attached therewith, only through email. The companies are also required to provide a window to the shareholders for registering their mandate for transferring dividends electronically to them through the Electronic Clearing Service ("**ECS**") or any other means.

The measure has been taken to facilitate Companies to conduct their Ordinary & Special business through AGMs conducted by leveraging the Digital India platforms. The detailed directions can be found in the following link:

Clarification on holding of Annual General Meetings through Video Conferencing or other visual means (OAVM)

Ministry of Labour and Employment

The Ministry of Labour and Employment ("**Ministry**") and the Employee's Provident Fund Organization ("**EPFO**") took into consideration the difficulties faced by both the employees and employers during the period of lockdown implemented by the Government to curb the pandemic of COVID-19 and issued notifications and circulars to help reduce the difficulties faced due to the lockdown. Whilst the MOLE addressed the problem of liquidity and the need to infuse the same within the hands of the employees and employers, EPFO took stock of the practical difficulties faced by the employers in making timely contributions during the period of lockdown and waived off any penalty that could otherwise be incurred by the employer for delay in payment of its contribution under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**").

The EPFO vide its web *Circular dated May 15, 2020* took into consideration the difficulties and the hurdles caused due to the implementation of the lockdown, due to which establishments under the EPF Act were unable to function normally. The EPFO also took into consideration the difficulties faced by establishments in depositing the contributions during the lockdown period in a timely manner. It observed that the delays were devoid of *mens rea* on part of the employer to wilfully delay in paying the contributions (which is an essential component required on part of the employer to attract penalty under Section 14B of the EPF Act as held by the Hon'ble Supreme Court in ***Mcleod Russel India Limited Vs RPFC (2014) 15 SCC 263***) and in view thereof stated that the delays in depositing the contributions by the employers will not attract penalties under Section 14B of the EPF Act. The relevant portion of Section 14B of the EPF Act is reproduced herein below:

> *14B. Power to recover damages. - Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under*

or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme

Thereafter, Ministry vide *Notification dated May 18, 2020* took in account the need to infuse liquidity in the hands of the employers and employees during the period of the COVID-19 pandemic and the lockdown implemented in view thereof. In view of the aforesaid observation the Government vide the aforesaid notification exercised its powers conferred unto it under the first proviso to Section 6 of the EPF Act and amended the Notification Number S.O. 320 (E) dated April 9, 1997. As a result of the aforesaid amendment the statutory rate of contributions was reduced from 12% to 10% for wages for the months of May, 2020, June, 2020 and July, 2020 for all class of establishments covered under the EPF Act. The Aforesaid reduction will be applicable to any establishment other than the Central Public Sector Enterprises and State Public Sector Enterprises and other establishments owned by or under the control of the Central or State Government. It is pertinent to note that the aforesaid amendment will be applicable to wages payable only for the months of May, June and July 2020. Furthermore, the aforesaid reduction will not be applicable to establishments eligible for relief under the Pradhan Mantri Garib Kalayan Yojana guidelines issued by the EPFO vide its Office Memorandum dated April 9, 2020.

APTEL

Century Rayon versus Maharashtra Electricity Regulatory Commission & Ors.

The present appeal was filed against the Impugned Order April 25, 2018 in Case No. 99 of 2017 by Maharashtra Electricity Regulatory Commission ("**MERC**"), Order dated September 12, 2018 in Case No. 195 of 2017 and Order dated December 24, 2018 in Review Petition No. 246 of 2018 with the following reliefs sought/prayed:

The facts of the case are briefly mentioned as follows:

1. The Appellant is a HT Consumer under Respondent No. 2- Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**"). It is not disputed that the Appellant was receiving power supply at the rate of 22 kV voltage level due to lack of infrastructure of 33kV in the area.
2. According to the Appellant, the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 ("**SOP Regulations**") further amended in 2014, that voltage terms in Regulation 5.3 are primarily to ensure good supply and minimum losses and since the Contract Demand was mostly above 10MVA, the appellant is eligible for supply of power at 33kV whose responsibility falls on MSEDCL.
3. MERC vide its Multi-Year Tariff Order ("**MYT Order**") dated November 03, 2016 determined, for the first time, energy component and wheeling component separately according to the voltage level to which consumers are connected and unbundled the tariff. In spite of the MYT order, the Appellant continued to receive power at a lower voltage than prescribed in the SOP Regulations.
4. Under this circumstances, the Appellant filed a M.A No. 18 of 2017 in case no. 99 of 2017 seeking directions to treat the Appellant as connected to the power supply at 33kV voltage level amongst other things. Since the Order was vague, the Appellant sought for implementation of the impugned order in a retrospective effect which was dismissed by MERC.
5. Meanwhile, Case No. 195 of 2017 was filed by MSEDCL for Mid-Term Review of Aggregate Revenue Requirements ("**ARR**") of various financial years from 2015-16 to 2019-20. In an order dated September 12, 2018, MERC provided dispensation for levy of wheeling charges. The Appellant contends that the Respondents cannot rely upon Regulation 15 of the SOP Regulations since it is misplaced.

Granting exemption to MSEDCL should not affect the Appellant's entitlement under SOP Regulations.

6. The Appellant, prayed for, allowing the present appeal and modifying the impugned order and Order dated September 12, 2018 to allow levy of wheeling charges as per 33kV either from the date of the MYT Order or the day Petition No. 99 of 2017 was filed retrospectively and also hold the Appellant to levy charges as per 33kV.

7. MERC contends that proper reasons were given for providing prospective application or benefit of lower wheeling charges as an interim measure had stated that in case the consumer is connected to 22kV level but records billing demand of 33kV, then in that month the consumer would get the benefit of lower wheeling charges. It was done only to remove difficulties under SOP Regulations so as to not amend the MYT Order and thus, the Review Petition was rejected.

8. According to MERC, since laying of infrastructure would impact other HT consumers, which again has to be recovered from consumers including expenses in the ARR of MSEDCL, as it was an interim arrangement, cannot be with retrospective effect. Further, the Appellant had only challenged the Order only to the extent that the Appellant is entitled to be charged wheeling charges from November 03, 2016 but the same is not possible as the Appellant never sought such claims by filing any substantive MYT Order Petitions.

Judgement:

After further correspondence between the parties along the same lines, the Appellate Tribunal for Electricity ("**APTEL**") pronounced an Order as stated briefly below:

1. The Appellant has challenged three orders out of which Order dated December 24, 2018 was a review petition and was not allowed, the appeal to the review is not maintainable either. In view of that, appeal to Impugned Order is allowed.

2.When the MYT Order was pronounced, no one, including the Appellant, had approached MERC seeking extension of benefit of unbundling the tariff by the Commission in the MYT Order and therefore, the relief sought by the Appellant that he is entitled to benefits from November 03, 2016 cannot be entertained.

3. In view of the above, the Appellant is entitled to reliefs of benefit granted to him from the date of filing Case No. 99 of 2017 before MERC i.e. November 18, 2017. Thus, the appeal was allowed in part.

Delhi High Court

Ramanand & Ors. Vs Girish Soni & Anr.

Due to the ongoing situation and lockdown surrounding the COVID-19 pandemic, all kinds of activities, including businesses, have come to a halt since the past two months. Consequently, the commercial lease agreements have been affected, too. Pursuant to that, the Delhi High Court vide order May 21, 2020, made a decision on the Appellant's ("**Tenant**") application for suspension of rent during the ongoing COVID-19 lockdown.

Background of the case:

The Respondent ("**Landlord**") leased a property to the Tenant on rent for commercial purposes vide a lease deed at Rupees Three Hundred per month.

Thereafter, the Respondent filed a petition for eviction under Section 14 (1)(e) of the Delhi Rent Control Act, 1958. The decree of eviction was granted to the Landlord vide Order dated March 18, 2017 ("**Impugned order**") after which the Tenants filed an appeal against the impugned order which was dismissed for reason of non-maintenance.

Subsequent to the dismissal, the present petition was filed by the Tenant challenging the decree of eviction passed in the impugned order by way of a Revision Petition. The first hearing which happened on September 25, 2017, stated that the decree of eviction would be stayed barring certain conditions.

However, in view of the current COVID-19 crises, an Urgent Application was filed by the Appellant, praying for suspension of rent during the lockdown period. It is pleaded by the tenants that the situation is force majeure and beyond their control of the tenants. Their prayers included (a) waiver of the monthly rent fixed in terms of the order and; (b) partial relief in terms of suspension, postponement or part-payment of rent.

Analysis of Delhi High Court:

The High Court stated that the relationship between a landlord and a Tenant can be multifarious and can either be governed by contract or by law.

In case the relationship is governed by law, the following clauses are relevant:

Section 32 of the Indian Contract Act, 1872 ("**ICA**") which talks about Contingent Contracts and;

Section 56 of the Indian Contract Act, 1872 which talks about the Doctrine of Frustration.

The High Court of Delhi, in this instant case, relied on Energy Watchdog versus CERC & Ors., wherein it was held that if there is a clear and explicit term in the contract relating to the Force Majeure condition, only then the Contract would be governed by Section 32 of the ICA and the tenant could claim the same. However, if the Tenant wishes to retain the premises and there is no clause giving any respite to the tenant, the rent or the monthly charges would be payable.

In relation to Section 56 of the ICA, the High Court referred to the decision taken in Raja Dhruv Dev Chand Vs Raja Harmohinder Singh & Anr., wherein the Supreme Court categorically held that Section 56 of ICA is inapplicable to lease agreements and drew a distinction between a 'completed conveyance' and an 'executory contract'. A lease is a completed conveyance though it requires a monthly payment and hence Section 56 cannot be made applicable in the instant case.

The High Court of Delhi also elucidated the doctrine of Force Majeure in the Transfer of Property Act, 1882. ("**TPA**") wherein it is recognized in Section 108(B)(e) of the TPA. The Court observed that Section 108 (B)(e) would be applicable only in absence of any contractual stipulations between the parties and that the lease would be void if, due to fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, 'any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes of which it was let'.

In view of the above, the High Court held that in the instant case, the temporary non-use of property due to COVID-19 lockdown, does not make a case for rendering the lease void under TPA and thus, payment cannot be avoided.

In relation to the suspension of rent, the High Court, relying on Surendra Nath Bibran vs Stephen Court, held that, it depends on the facts and circumstances of each case.

Conclusion:

The High Court of Delhi has cleared the air on applicability of Section 32 and Section 56 of the ICA along with Section 108 (B)(e) of the TPA on lease agreements.

It must be noted that while the High Court ultimately rejected the petition, it allowed for postponement of payment of rent.

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