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APTEL REAFFIRMS REGULATORY SUPREMACY OVER PPAS IN RENEWABLE ENERGY TARIFF DETERMINATION

Case Name: Amplus Sun Solutions Private Limited vs. Haryan Electricity Regulatory Commission & Ors.

Case No.: Appeal No. 362 of 2025

Court: Appellate Tribunal for Electricity, New Delhi

Date of Judgment: February 13, 2026

Introduction

In a significant ruling, the Hon'ble Appellate Tribunal for Electricity ("**APTEL**" / "**Tribunal**") decided Appeal No. 362 of 2025, filed by Amplus Sun Solutions Private Limited ("**Amplus**" / "**Appellant**") against the Ld. Haryana Electricity Regulatory Commission ("**HERC**" / "**Respondent No. 1**") and other respondents. The appeal related to the tariff fixed for a 50 MW solar power project in Bhiwani, Haryana. The case highlighted ongoing disputes between renewable energy developers and regulators over the approval of project costs while determining tariffs. It also emphasized the need for fair regulatory discretion, cost transparency, and certainty in tariff determination for renewable energy projects.

Facts of the Case

Amplus developed a 50 MW (AC) solar power project by installing 75 MW (DC) solar modules to achieve a higher Capacity Utilisation Factor ("**CUF**") of 25.91%. The project was commissioned in 2019 under a Power Purchase Agreement ("**PPA**") with the Haryana Power Purchase Centre ("**HPPC**" / "**Respondent No. 2**"). In its order dated August 12, 2025, the Ld. HERC, while re-determining the tariff after remand, fixed the levelized tariff at Rs. 2.58 per kWh. However, Ld. HERC restricted the DC:AC ratio to 1.4:1 (70 MW DC) and disallowed Rs. 13.13 crore towards additional solar modules and related civil works. The Ld. HERC also excluded Rs. 11.29 crore incurred on transmission and evacuation infrastructure. As a result, Amplus suffered significant financial impact, including an estimated revenue loss exceeding Rs. 14.10 crore and the cancellation of an Rs. 81 crore loan facility, placing the project under financial stress.

Regulatory Context

The dispute was examined under Section 62 of the Electricity Act, 2003 ("**EA, 2003**"), which requires tariffs to be determined on a project-specific basis, taking into account the actual costs incurred, subject to prudence checks. The Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Sources) Regulations, 2017 ("**HERC Regulations, 2017**") permit transmission and evacuation costs to be included as part of the project's capital cost. However, the PPA placed the responsibility for transmission infrastructure on the developer, giving rise to a regulatory conflict that was examined by the Hon'ble Tribunal. While determining the tariff, Ld. HERC relied on benchmarking with other solar projects in the same district, including the LR Energy project. This approach was challenged by the Hon'ble Tribunal on the ground that benchmarking is unsuitable where the law mandates project-specific tariff determination based on actual costs.

Issues

1. Whether Ld. HERC arbitrarily reduced the DC capacity from 75 MW to 70 MW, without adequately considering the technical requirements necessary to achieve an optimal CUF.
2. Whether the exclusion of transmission and evacuation costs was justified, despite specific regulatory provisions permitting such costs to be included as part of the project's capital expenditure
3. Whether principles of natural justice were violated by benchmarking the project against the LR Energy project without prior notice or an opportunity of hearing being granted to the developer.
4. Whether the prudence check carried out on the capital cost was inadequate, resulting in a reduced tariff that adversely affected the financial viability of the project.
5. Whether the defence of HPPC that benchmarking was permissible in the absence of specific guidelines, and that the terms of the PPA barred any pass-through of additional costs, was sustainable in law.

Findings and Analysis of the Hon'ble Tribunal

The Hon'ble Tribunal found the methodology adopted by the Ld. HERC to be legally and technically flawed, particularly its reliance on benchmarking the project against a single comparable solar project. The Hon'ble Tribunal held that such benchmarking defeats the statutory requirement of project-specific tariff determination under Section 62 of the EA, 2003. The Hon'ble Tribunal further ruled that the DC:AC ratio adopted by Ld. HERC required fresh examination. It observed that the restriction of the ratio to 1.4:1 lacked adequate technical justification and appeared arbitrary. The Hon'ble Tribunal directed that the issue be reconsidered, if necessary, through an independent expert-led simulation study to assess the optimal DC capacity required to achieve the declared CUF.

On the issue of transmission and evacuation costs, the Hon'ble Tribunal held that the applicable HERC Regulations, 2017 prevail over contractual provisions in the PPA. Accordingly, such costs must be included in the capital cost for tariff determination, subject to a proper prudence check, notwithstanding the PPA placing responsibility on the developer. The Hon'ble Tribunal also observed that project management expenses are intrinsically linked to the overall capital cost and directed that these expenses be revised proportionately if the approved capital cost increases upon re-determination.

While Hon'ble Tribunal declined the request of Amplus for an interim tariff of Rs. 2.78 per kWh, it granted a provisional tariff of Rs. 2.68 per kWh. This relief was granted after noting that Ld. HERC had failed to adequately analyze the inter-relationship between capital costs, DC capacity, and achievable CUF while determining the tariff. The Hon'ble Tribunal emphasized that tariff determination must strike a careful balance between ensuring project viability for developers and protecting consumer interests, which can only be achieved through a thorough, transparent, and technically reasoned prudence review.

Conclusion

The Hon'ble Tribunal partly allowed the appeal and remanded the matter to the Ld. HERC for fresh tariff determination, with specific directions relating to the re-examination of DC capacity, inclusion of transmission and evacuation costs after a proper prudence check, and a comprehensive review of the project's capital costs. The Hon'ble Tribunal fixed an interim tariff of Rs. 2.68 per kWh, to remain applicable until final determination, and directed that carrying costs be applied on any tariff differential arising thereafter. The ruling highlights the importance of rigorous, evidence-based, and project-specific tariff assessment in renewable energy projects and is likely to influence similar regulatory disputes across India.

PROTECTING THE RIGHTS OF REGISTERED TRADEMARKS THROUGH THE GRANT OF INTERIM INJUNCTIONS

Case Name: Lotus Herbals Private Limited vs. DPKA Universal Consumer Ventures Private Limited & Ors.

Case No.: IA No. 12308 of 2023 in FAO(OS)(COMM) No. 45 of 2024

Court: The High Court of Delhi, New Delhi

Date of Judgment: February 16, 2026

Introduction

In an important trademark ruling in the cosmetics sector, the Hon'ble Delhi High Court ("**Court**"), through its Division Bench judgment dated February 16, 2026 in FAO(OS)(COMM) 45/2024, set aside the earlier order passed by a Single Judge and granted an interim injunction in favour of Lotus Herbals Private Limited ("**LHPL**" / "**Appellant**") against DPKA Universal Consumer Ventures Private Limited ("**DPKA**" / "**Respondent No. 1**"), the company associated with Deepika Padukone's skincare brand 82°E. The dispute arose from the use of the name '***Lotus Splash***' for a face cleanser, which Lotus Herbals alleged infringed its well-known '***LOTUS***' trademark. The appeal brought into focus the balance courts must strike between allowing descriptive use of common words and protecting established trademarks from the risk of consumer confusion.

Facts of the Case

LHPL, incorporated in 1993, has been using the '***LOTUS***' trademark for cosmetic products since 1996. It owns fifty-five (55) trademark registrations in Classes 3 and 5 and also holds copyright over its logo. In the financial year 2022–23, the company reported sales of over Rs. 695 crores and has built strong brand visibility through sponsorships, including major Indian Premier League ("**IPL**") teams.

DPKA, incorporated in 2021, sells skincare products under the brand "82°E." One (1) of its products is a face cleanser called '***Lotus Splash***', described as a 'conditioning cleanser with lotus and bioflavonoids'. The product is sold both online and through physical stores. Importantly, invoices issued for the product refer to it simply as '***Lotus Splash***', without prominently showing the 82°E brand name.

In February 2023, LHPL sent a cease-and-desist notice to DPKA, alleging trademark infringement. While DPKA applied for trademark registration of other product names such as '***Ashwagandha Bounce***', it did not apply to register '***Lotus Splash***', claiming that the term was only descriptive. Further, online searches for "Lotus face wash" showed results for both LHPL's products and DPKA's Lotus Splash, with DPKA also using sponsored advertisements, strengthening LHPL's claim that the term was being used as a brand name rather than merely as a description.

Regulatory Context

The dispute is governed by the Trade Marks Act, 1999 ("**Trade Marks Act**"), especially Section 29, which deals with infringement of registered trademarks, Section 30(2)(a), which allows the use of words describing the nature or characteristics of goods, and Section 35, which protects honest and bona fide descriptive use.

The Hon'ble Court also referred to Section 9(1)(b) of the Trade Marks Act, which does not permit registration of marks that are purely descriptive unless such marks have acquired distinctiveness through long and extensive use. In analyzing the issue, the Hon'ble Court relied on established principles from international trademark law, including the Degree of Imagination Test and the Competitors' Need Test, as explained in McCarthy on Trademarks. These tests help determine whether a term is merely descriptive or functions as a trademark. The Hon'ble Court also drew guidance from Indian decisions such as ***Moroccanoil Israel Limited. vs. M/s Moroccanoil Inc.*** and ***Pernod Ricard India Private Limited vs. Karamveer Singh Chhabra***. These judgments emphasize that trademarks must be assessed from the viewpoint of an average consumer, that marks should be considered as a whole rather than broken into parts (anti-dissection rule), and that infringement claims must be decided strictly within the framework of the Trade Marks Act, which is a self-contained code.

Issues

1. Whether '***Lotus Splash***' is deceptively similar to the registered '***LOTUS***' trademark under Section 29 of the Trade Marks Act, and is likely to cause consumer confusion in relation to identical goods.
2. Whether DPKA's use of '***Lotus Splash***' qualified for exemption under Section 30(2)(a) of Trade Marks Act as a descriptive reference to lotus extracts used in the product.
3. Whether '***Lotus Splash***' functioned as a sub-brand rather than a mere descriptive term, particularly in light of DPKA's trademark applications for similar product names.
4. Whether DPKA had concealed or suppressed material facts from the Hon'ble Court.
5. Whether LHPL had established a prima facie case, balance of convenience, and irreparable harm warranting the grant of an interim injunction.

Findings and Analysis of the Hon'ble Court

The Division Bench of the Hon'ble Court, comprising Justice V. Kameswar Rao and Justice Vinod Kumar, held that LHPL had successfully established a prima facie case of trademark infringement. The Hon'ble Court observed that the word '***Lotus***' constituted the dominant and essential element of the impugned mark '***Lotus Splash***', and since both parties were dealing in identical cosmetic products, the likelihood of consumer confusion was evident.

The Hon'ble Court categorically rejected DPKA's defence of descriptive use under Section 30 (2)(a) of the Trade Marks Act. It held that '***Lotus Splash***' was not merely descriptive, but suggestive in nature, and was being used as a source identifier rather than as an indication of the product's characteristics. The Bench noted that the product packaging already contained a separate descriptive phrase explaining the ingredients and qualities of the cleanser, making it clear that '***Lotus Splash***' was intended to function as a mark. In this context, the Hon'ble Court observed that *"The words 'Lotus Splash' are being used as a mark and as such cannot be construed as indicative of the quality or characteristic of the product."*

The Hon'ble Court further held that DPKA's conduct lacked bona fides. It took note of the non-disclosure of DPKA's trademark applications for similarly styled product names, which undermined its claim that '***Lotus Splash***' was only descriptive. Additionally, the manner in which the product was marketed, including prominent display of the words '***Lotus Splash***' on packaging, the manner of invoicing, and the use of sponsored online advertisements, clearly demonstrated trademark use rather than descriptive use.

Applying settled principles of trademark law, the Hon'ble Court assessed deceptive similarity based on overall commercial impression, the perspective of an average consumer with imperfect recollection, and the doctrine of initial interest confusion, holding that even temporary or initial confusion was sufficient to establish infringement at the interim stage. The Bench distinguished precedents where marks were found to be purely generic or descriptive, noting that those cases involved terms directly naming the product itself. In contrast, it relied on prior authority recognizing that use of a registered trademark as part of a sub-brand can amount to infringement when the dominant mark is appropriated. On the question of interim relief, the Hon'ble Court found that the balance of convenience decisively favoured LHPL, given its prior adoption and registration of the '***LOTUS***' mark since 1996, its extensive goodwill, and long-standing market presence. The Hon'ble Court held that continued use of the impugned mark by DPKA would result in irreparable harm, particularly through dilution of a well-established trademark, which the law presumes in the case of reputed marks.

Conclusion

The Hon'ble Court accordingly allowed the appeal and granted an interim injunction, restraining DPKA from using the mark '***Lotus Splash***' or any other deceptively similar mark pending the final disposal of the suit. The Hon'ble Court clarified that its findings were prima facie in nature and would not prejudice the merits of the case at trial. The ruling affirms that the rights of a prior user and registered proprietor merit protection at the interlocutory stage and that suggestive sub-brands cannot escape infringement scrutiny by invoking the defence of descriptive use. By drawing a clear distinction between descriptive references and trademark use, the judgment reinforces the integrity of trademark protection in highly competitive consumer markets such as cosmetics. The decision is likely to have a significant bearing on future trademark disputes, particularly those involving the fine line between descriptive terminology and distinctive brand identifiers, and strengthens judicial guidance on the misuse of common words as sub-brands.

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Warm Regards,

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