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PROJECTS, ENERGY & INFRASTRUCTURE

MONTHLY NEWSLETTER

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LEGAL & POLICY UPDATES

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Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) (First Amendment) Regulations, 2023

- The Central Electricity Regulatory Commission (**CERC**) has notified the first amendment to the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022 (**GNA Regulations**).
- **Key aspects:**
  - The First Amendment Regulations shall come into force with effect from April 05, 2023 except amended provisions of certain Regulations concerning use of GNA by other GNA grantees, relinquishment of GNA, transmission charges for T-GNA, and new provisions concerning application for T-GNA.
  - Provisions regarding fresh applications for Connectivity and GNA and their processing and grant shall be made effective from April 05, 2023.
  - Scheduling and Dispatch of electricity shall continue to be based on the quantum of Long-Term Access (**LTA**), Medium-Term Open Access (**MTOA**) and Short-Term Open Access (**STOA**) of each of the Designated ISTS Customers (**DICs**) and other users of the grid in accordance with the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, as amended from time to time, till further notification.
  - STOA shall continue to be granted under the Central Electricity Regulatory Commission (Open Access in Inter-State transmission) Regulations, 2008, as amended from time to time and the Detailed Procedures issued thereunder, till further notification.
  - Billing, collection and disbursement of the inter-State Transmission Charges and Losses shall continue to be based on the quantum of LTA, MTOA and STOA of each of the DICs and other users of the grid in accordance with the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 till further notification.

Notification on fair distribution of domestic coal

- The Ministry of Power (**MoP**) by way of notification dated March 24, 2023 issued directions to all States/UTs for fair distribution of available domestic coal, stating that in the meeting dated March 07, 2023 it was decided that the available domestic coal shall be distributed amongst the GENCOs (central, State & IPPs), in a fair and transparent manner.

- The principles developed by Ministry of Power for fair distribution are as follows:
  - Domestic coal would be allocated in the ratio of the fortnightly average generation of generating stations.
  - While implementing above, coal required by all the pithead stations (taking coal through MGR/Conveyor, other dedicated means) of respective GENCOs would be excluded since it does not use the railway network.
  - Similarly, all plants off taking coal through 'Read Only' mode as per their requirement would also be excluded.
  - Further, coal to be made available from captive mines would be excluded for allocation of rail rakes from CIL/SCCL. The availability from captive Mines will be taken at the level of availability in March, 2023, plus 5%.
- Some of the key aspects of the notification are stated below:
  - If the States are found to be selling power generated from domestic coal at notified price in significant amount in the power exchange, their rakes will be reduced accordingly. The Ministry advised that surplus power may be made available to other DISCOMs of the country through PuShP Portal, developed by the CEA.
  - This operation would be operationalized from April 01, 2023.
  - In view of the above, all the States are directed to immediately plan and make arrangements of any shortfall in Domestic Coal at their level so that power demand is fully met.
  - This issues with the approval of the Minister of Power & NRE.

Amendment in guidelines for enlistment under Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019

- The Ministry of New and Renewable Energy (MNRE) through an amendment dated March 23, 2023 has modified paragraphs 4&5 of the guidelines for enlistment under Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019.
- The modifications made in paragraphs 4&5 are provided below:
  - **Para 4.3:** In case the applicant has multiple manufacturing sites, or the applicant is sourcing his finished product from some other manufacturer(s) and selling the same under his own brand name, then all manufacturing sites including the applicant's own manufacturing site(s) shall be subjected to inspection. However, inspection may not be required in certain conditions that are as follows:
    - An ALMM enlisted model of a manufacturer (Brand Owner) is manufactured under co-branding arrangement in the ALMM enlisted manufacturing facility of another manufacturer (Original Equipment Manufacturer (OEM)) using the same 'Manufacturing Process' and 'Bill of Materials'.
    - An ALMM enlisted model of a manufacturer (OEM) is manufactured under co-branding arrangement in the ALMM enlisted manufacturing facility of the said manufacturer (OEM), using the same 'Manufacturing Process' and 'Bill of Materials', but bears 'Brand Name' of another ALMM enlisted manufacturer (Brand Owner).
  - **Para 4.2:** The inspection fee for one site shall be as per para 4.2 above and for each additional site, the inspection fee shall be 50% of that mentioned in para 4.2 above for all such sites in the same country. In case the additional site(s) are in different countries, then the inspection fee for such sites shall be as per para 4.2 above, for each site to be inspected.
  - **Para 5.14:**
    - Additional provisions pertaining specifically to enlistment of co-branded products under ALMM.
    - Enlistment of co-branded models.
    - Validity for ALMM enlistment of co-branded models.

Guidelines to promote development of Pump Storage Projects

- Ministry of Power (**MOP**) on April 10, 2023 issued guidelines to promote development of Pump Storage Projects (**PSPs**).
- **Key aspects:**
  - **Allotment of project sites:** The State Governments may allot project sites to developers in the following manner:
    - On nomination basis to CPSUs and State PSUs

  - Allotment through competitive bidding
  - Allotment through TBCB (Tariff Based Competitive Bidding)
  - Self-identified off-stream Pumped Storage Projects
- **Timelines for start of construction work after award of project:** Developers shall start construction work within a period of 2 years from the date of allotment of the project, failing which allotment of the project site shall be cancelled by the State. However, relaxation of one year may be granted if the delay is due to pending Environment Clearance (**EC**) and Forest Clearance on the submission of application to concerned authorities.
- **No upfront premium for project allocation:** In order to ensure the viability of the PSPs, States shall ensure that no upfront premium is charged for project allocation.
- **Market reforms:** The comparison of PSPs with other conventional and VRE sources purely based on financial aspects is undervaluing and de-emphasizing the economic benefits extended by these projects. The monetization of ancillary services provided by PSPs will give a much-needed boost to the sector.
- **Financial viability:** To ensure that only viable PSPs are taken up for construction, the Central Government may notify a benchmark tariff of storage for investment decisions of developers considering 6-8 hours of operation of the PSP. This will be based on the prevailing and anticipated difference between peaking and non-peaking rates. Financial institutions like PFC, REC, and IREDA shall treat PSPs at par with other renewable energy projects while extending long term loans of 20-25 years tenure.
- **Taxes and duties:** To reap long-term benefits and socio-economic development of states due to PSP projects, State Government shall consider reimbursement of SGST on PSP project components. States may exempt land to be acquired by off-the-river PSPs from payment towards stamp duty and registration fees. Electric Duty (**ED**) and Cross Subsidy Surcharge (**CSS**) may only be levied on the final consumption of electricity. Government of India from time to time has stated that no Water Cess should be levied on hydro power projects since there is no consumptive use of water. Similarly, no water cess shall be levied on PSPs.
- **Exemption from Free Power Obligation:** PSPs are energy storage schemes. They do not produce energy, and are net consumers of energy. Hence, the PSPs would be kept out of the liability of Free Power Obligation.
- **Local Area Development Fund:** PSPs have a minimal environmental impact and have no R&R (Rest & Relaxation) issues. Therefore, there will be no requirement of creation of a Local Area Development Fund.
- **Utilization of exhausted mines to develop PSPs:** The discarded mines including coal mines in different parts of the country could be used as hydro storage and thereby become natural enablers for development of Hydro PSPs.

Notification of levellized generic tariff for FY 2022-23

- The Central Electricity Regulatory Commission (**CERC**) has initiated the process of review of RE Tariff Regulations for the next Control Period and the revised Regulations shall be notified after undertaking due regulatory process.
- On March 27, 2023, the Commission has extended the period of RE Tariff Regulations, 2020 for a period of 6 months up to 30th September, 2023.
- The parameters enunciated in the aforesaid Regulations shall continue to be applicable till the notification of Regulations for the new Control Period.

Directions in the interest of Grid Security, in pursuance of the provisions of the Electricity Act, 2003 and the provisions of the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022

- Central Electricity Regulatory Commission (**CERC**) on April 9, 2023 relaxed Regulation 7 of the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 (**DSM Regulations, 2022**).
- The relaxation provides that the Normal Rate of Charges for Deviations for a time block as specified in Regulation 7 of the DSM Regulations, 2022 shall be equal to the higher of the weighted average ACP of the Day Ahead Market segments of all the Power Exchanges and the weighted average ACP of the Real Time Market segments of all the Power Exchanges, for that time block.
- Provided that for a seller whose bid is cleared in the HP-DAM, the Normal Rate of Charges for Deviation by way of 'under-injection' for a time block shall be equal to the highest of [the

weighted average ACP of the HP-DAM Market segments of all the Power Exchanges, or the weighted average ACP of the Day Ahead Market segments of all the Power Exchanges, or the weighted average ACP of the Real Time Market segments of all the Power Exchanges, for that time block.

Power exchanges registered under Power Market Regulations, 2021 to redesign their software

- In exercise of its powers under Regulation 51(1) of the Power Market Regulations, 2021 (**PMR 2021**) and in view of the prevalent power scenario and likely high increase in demand going forward, the Commission directed all the Power Exchanges to re-design their bidding software for the period from April 04, 2023 until further orders, in such a way that the members can quote the price in the range of INR 0/kWh to INR 10/kWh for all contracts.
- The Power Exchanges were further directed to submit the compliance of the direction within two days from the date of issue of the order.

RECENT JUDGMENTS

In this Section

BSES Rajdhani Power Ltd v. Delhi Electricity Regulatory Commission
And
BSES Yamuna Power Ltd v. Delhi Electricity Regulatory Commission

Amplus Green Power Pvt Ltd v. Director (Commercial), Uttar Pradesh Power Corporation Ltd & Ors

Uttar Haryana Bijli Vitran Nigam Ltd & Anr v. Adani Power (Mundra) Ltd & Anr

Keshavlal Fulabhai Vyas v. Deputy Engineer (O&M)

BSES Rajdhani Power Ltd v. Delhi Electricity Regulatory Commission
And
BSES Yamuna Power Ltd v. Delhi Electricity Regulatory Commission

Supreme Court of India | Civil Appeal No(s). 4323 of 2015 & Civil Appeal No(s). 4324 of 2015

Background facts

- The Appeals were filed by BSES Rajdhani Power Ltd (CA No. 4324 of 2015) and BSES Yamuna Power Ltd (CA No. 4323 of 2015) (**Appellants**) challenging the findings of Appellate Tribunal for Electricity (**APTEL**) in the common judgment and order dated November 28, 2014 (**Impugned Order**) passed in Appeal Nos. 61 and 62 of 2012 (**Tariff Appeals**).
- The Tariff Appeals were filed by the Appellants before APTEL challenging certain findings of the Delhi Electricity Regulatory Commission (**DERC**) in the Tariff Order dated August 26, 2012 for Truing Up of financials for FY 2008-09 and FY 2009-10 and Aggregate Revenue Requirement (**ARR**) for FY 2011-12.
- The Appellants stated that since privatization the ARR determined by DERC was not even sufficient to meet the actual power purchase cost which led to a creation of a huge revenue gap. The Appellants also stated that DERC in repeated disregard to its statutory regulations and its own statutory advice has refused to make periodic increase in the tariff rate.
- The actions of DERC have resulted in a situation where the Appellants are deeply indebted and have been forced to borrow/take loans to fund their day-to-day operations which, in turn, have also dried up leaving the Appellants without adequate monies to pay their suppliers.

Issues at hand

- The Appellants challenged the findings of APTEL in the Impugned Order on the following issues:
  - Change in methodology in computation of Aggregate Technical and Commercial (AT&C) losses
  - Change in methodology for computation of Depreciation:
  - Disallowance of salary for Fundamental Rules and Supplementary Rules (FR/SR) structure (this issued raised only by BSES Rajdhani Power Ltd
  - Disallowance of interest incurred on Consumer Security Deposit by DPCL
  - Disallowance of Fringe Benefit Tax
  - Reduction in Million Units (Mus) in relation to Enforcement sale for the purpose of calculation of AT&C Loss

Decision of the Court

- In view of the submissions made by the parties, Supreme Court, while allowing the Acquisition Price as a Change in Law, determined the first issue under:
  - While truing up for the year in question, the DERC has retrospectively sought to take away part of the LPSC revenue by deducting the Financing Cost on LPSC in comparing the actual Collection Efficiency with the projected Collection Efficiency.
  - Allowing the Financing Costs on LPSC revenue and then deducting it from the LPSC revenue would be tantamount to giving by one hand and taking it away by the other. This order of the DERC is contrary to the original MYT determination.
- On the second issue, the Supreme Court reiterated that it is not permissible to amend the tariff order during true up exercise. On the pretext of prudence check and truing up, DERC could not have amended the tariff order.
- On the third issue, the Supreme Court has held that DERC in Tariff Order dated August 26, 2011 has erroneously changed its own methodology at the stage of truing up, by not allowing employee expenses of FR/SR employees as per actuals. The DERC, at the stage of truing up, has changed the methodology and disallowed the actual salary of FR&SR employees, which is impermissible. The DERC in the Tariff Order dated August 26, 2011 has acted contrary to its own undertaking of truing up the impact of employee expenses on account of the Sixth Central Pay Commission Report.
- On the fourth issue, the Supreme Court has held as under:
  - Disallowing interest paid by the Appellants towards Consumers Security Deposit held by DPCL in the ARR of the Appellants is wholly misconstrued. Interest on consumers' deposit which is being paid by the Appellants is a legitimate expense. It is not in dispute that the security deposit was not transferred by the DPCL to the Appellants. However, the Appellants were required to bear the costs of the same. In case, the principal sum on Consumers Security Deposit held by DPCL is transferred to the Appellants with interest, the Appellants would, subject to their legitimate expenditures, retain such interest and benefit of any balance of excess interest received by the Appellants would be passed on to the consumers in tariff. Therefore, there is no merit in the contention of the Respondents that if the interest burden is passed on to the consumers presently, the Appellants would, in effect, receive a double benefit in case they succeed in the writ petition pending before the Court.
  - Appellants are entitled to recover interest on Consumers Security Deposit as held by the DPCL. The Supreme Court directed the DERC to allow the interest on Consumers Security Deposit held by the DPCL and impact thereof to the Appellants.
- On the fifth issue, the Supreme Court reiterated that DERC cannot re-open the basis of determination of tariff at the stage of truing up. Revision or redetermination of the tariff already determined by DERC on the pretext of prudence check and truing up would amount to amendment of tariff order, which is not permissible in law. Truing up stage is not an opportunity for DERC to re-think de novo the basic principles, premised and issues involved in the initial projection of the revenue requirements of the licensee.
- On the sixth issue, the Supreme Court has held that the methodology adopted by DERC is contrary to the settled principles of law that when the law deems a certain imaginary state of affairs as real, DERC would not let its imagination boggle at treating the 100 units as sales. That such imaginary state of affairs must be taken to its logical end and commend the treatment of 100 units as 'sales'. The assessed energy has to be considered as supply by the Appellants in enforcement cases.

HSA
Viewpoint

The Supreme Court has reaffirmed that State Commissions cannot re-open the basis of determination of tariff at the stage of truing up and that truing up stage is not an opportunity for DERC to re-think the basic principles and issues involved in the initial projection of the revenue requirements of the licensees.

Amplus Green Power Pvt Ltd v. Director (Commercial), Uttar Pradesh Power Corporation Ltd & Ors

Uttar Pradesh Electricity Regulatory Commission (UPERC) | Petition No. 1832 of 2022

Background facts

- The present Petition was filed by Amplus Green Power Pvt Ltd (**Amplus**), seeking issuance of directions to the Respondent, Uttar Pradesh Power Corporation Ltd (**UPPCL**), that Amplus be allowed to utilize the banking facility for 100% of the power generated from its 50 MW round

mounted Captive Solar Power Project in Mirzapur, Uttar Pradesh (**Project**), in accordance with the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 (**CRE Regulations**).

- Further, directions were sought by Amplus to offset its auxiliary power consumption from its banked energy.
- Any excess energy generated by the Project is banked with UPPCL and is withdrawn by Amplus upon payment of banking charges as per the provisions of CRE Regulations for its own use and/or supplied to its Captive users upon payment of open access charges.

Issues at hand

- Whether the Petitioner can be allowed to utilize banking facility for 100% of the power generated?
- Entitlement of the Petitioner to offset the auxiliary consumption from its banked energy.

Decision of the Commission

- UPERC has observed that besides the mandatory nature of promoting renewable energy through Renewable Purchase Obligation and Must Run status, Regulation 31 (a)(ii) and 31 (b)(ii) of CRE Regulations also lay down the provisions of banking for RE Captive and Non-RE Captive.
- Regulation 31 (a) (ii) of the CRE Regulations allows banking of energy up to 100% as agreed between RE Captive power project developers and distribution licensees/procurers, subject to technical feasibility. Further, Regulations 31 (b) (ii) allows up to 100% banking of energy for Non-RE Captive projects, subject to technical feasibility.
- It has been observed that although for Non-RE Captive, SLDC/distribution licensees never objected to 100% banking, they have raised objections towards similar treatment for RE Captive projects. The CRE Regulations allow 100% banking of energy, as long as there are no technical constraints with regard to banking.
- It has been clarified that there is no distinction between RE and Non-RE Captive Generating Plant based on the source of generation. The only difference in terms of the CRE Regulations is that the banking charges on solar-based Captive Generating Plant is 6% whereas for Non-RE Captive plant, it is 12%.
- All other provisions including those in the Electricity Rules, 2005 are equally applicable on both RE and Non-RE Captive arrangements.
- In terms of the above observation, UPERC has allowed the facility of banking up to 100% in accordance with CRE Regulations.
- UPERC has observed that in so far as transmission constraints are concerned, it is the responsibility of the State Transmission Utility (**STU**) to appropriately plan for upcoming renewable capacity, and the State Load Despatch Centre (**SLDC**) is to manage adherence of generation schedule for ensuring grid stability.
- However, UPERC has held that it would be gross misrepresentation if auxiliary consumption is included in the term 'Own Use'. The definition given in Section 9(2) of the Electricity Act, 2003 (**Electricity Act**), clearly indicates that energy, post auxiliary consumption is being carried to the captive consumer (destination) for his own use, thus, auxiliary consumption and 'own use' are happening at two separate and distinct points and are not malleable with each other.

HSA
Viewpoint

UPERC's findings set an important precedent for RE Captive power projects. The findings are in line with the settled position of law that both RE and Non-RE captive power projects are to be in compliance with the specific mandate under the Electricity Rules, 2005. Further, there cannot be any differential treatment given to RE and Non-RE Captive projects.

Uttar Haryana Bijli Vitran Nigam Ltd & Anr v. Adani Power (Mundra) Ltd & Anr

Supreme Court of India | Civil Appeal No. 7129 of 2021.

Background facts

- The present appeal has been filed by Uttar Haryana Bijili Vitran Nigam Ltd (**UHBVNL**) against the order dated August 12, 2021 passed by APTEL. The scope of the present appeal is restricted to the decision of the APTEL of granting Carrying Cost interest on compounding basis in favour of the Respondent No. 1 i.e. Adani Power (Mundra) limited (**APML**) from the date on which the Change in Law event took place i.e. January 29, 2014, till the date of actual payment of the amount determined by the Central Electricity regulatory Commission (**CERC**).

- The grievance of UHBVNL is that APTEL has not just permitted Carrying Cost on simple interest basis but has imposed interest on Carrying Cost.
- APML is a power generating company that has set up a 4620 MW (comprising of four units of 330 MW and five units of 660 MW), coal fired power plant in Mundra, Gujarat. UHBVNL entered into a PPA with APML dated August 7, 2008 procurement of contracted capacity of 1424 MW from the generating units 7, 8 and 9 established at Mundra, Gujarat. In the year 2010, on account of Environment Clearance dated May 20, 2010, given by the Ministry of Environment and Forest (**MoEF**), a CIL event took place as APML had to incur additional costs on installing Flue Gas Desulfurization unit (**FGD**). APML filed a petition on July 17, 2014, for adjudication of compensation on account of COL events including installation of FGD.
- CERC vide order dated February 6,2017 allowed compensation for CIL events but disallowed claim for Carrying Cost raised by APML. Aggrieved by the order of CERC APML filed an appeal before APTEL challenging the CERC order July 17,2014. The limited grievance raised therein was w.r.t the issue pertaining to the claim of APML in respect of levy of customs duty on electricity removed from Special Economic Zone (**SEZ**) to Domestic Tariff Area (**DTA**). Notably, on March 28, 2018, CERC passed an order on the separate petition preferred by APML allowing compensation on account of the Change in Law event pertaining to installation of the FGD and at the same time, disallowing its claim for Carrying Cost.
- By the impugned judgment dated August 12, 2021, APTEL has not only held that APML is entitled for Carrying Cost in respect of compensation for CIL events towards FGD installation, but it has also held that APML would be entitled for interest on Carrying Cost.

Issue at hand

- Whether the Appellants are liable to pay simple interest or compound interest on the Carrying Cost?

Decision of the Court

- The Supreme Court upheld the decision of APTEL and observed that the restitutionary principles encapsulated in the PPA would take effect for computing the impact of CIL.
- The Court further stated that once Carrying Cost has been granted in favour of APML, it cannot be urged by the UHBVNL that interest on Carrying Cost should be calculated on simple interest basis instead of compound interest basis. The idea behind granting interest on Carrying Cost is aimed at restituting a party that is adversely affected by a Change in Law event and restore it to its original economic position as if such a COL event had not taken place.
- The Court took note of the fact that APML had to incur expenses to purchase the FGD and install it in view of the terms and conditions of the environment clearance given by the MoEF in the year 2010. For this, it had to arrange finances by borrowing from banks. The interest rate framework followed by Scheduled Commercial banks and regulated by the Reserve Bank of India mandates that interest shall be charged on all advances at monthly rests.
- Supreme Court held that interest on Carrying Cost is nothing but time value for money. Further it was observed that CERC was not justified to have excluded the period between 2014 and 2018 and grant relief from the date of the passing of the order i.e., from March 28, 2018 to 2021.
- The Court further held that the principle that governs compensating a party for the time value for money, is the very same principle that would be invoked and applied for grant of interest on Carrying Cost on account of a CIL events.

HSA
Viewpoint

The Supreme Court's decision will provide a much-needed relief to the generators as they suffered financially on account of Change of Law events. This order of the Apex court will pave the way for Generators to recover their dues along with interest compounded annually on the occasion of wilful default of the Discom(s).

Keshavlal Fulabhai Vyas v. Deputy Engineer (O&M)

High Court of Gujarat | R/Special Civil Application No. 20295 of 2021

Background facts

- Keshavlal Fulabhai Vyas (**Petitioner**) had filed the captioned petition under Article 226 of the Constitution of India challenging the communication dated September 27, 2021, by which, APTEL refused to entertain an appeal filed by the Petitioner under Section 127 of the Electricity Act, 2003.

- APTEL opined that there is no provision to condone the delay in a appeal filed under Section 127 of the Electricity Act, 2003, and therefore, the appeal filed beyond the period of 30 days cannot be entertained.

Issue at hand

- Whether APTEL can condone delay beyond the period of 30 days in an appeal filed under Section 127 of Electricity Act, 2003?

Decision of the Court

- The High Court of Gujarat dismissed the petition basis the decision of the High Court of Calcutta in the case of ***Sudipta Koley v. Smt. M Bhowmick & Anr***[1] wherein the issue of condonation of delay beyond 30 days under Section 127 of the Electricity Act, 2003 was considered. The High Court of Calcutta had taken the view that an appeal filed under Section 127 of the Electricity Act, 2003 beyond 30 days cannot be condoned.
- In the said case the High Court of Calcutta held that the language of the particular Section has to be seen in juxtaposition to the language in which the other Sections are couched. The language of Section 125 permits condonation of delay beyond 60 days but limited to 120 days' delay, whereas Section 127 does not permit condonation of delay at all. The proviso to Section 125 cannot be read in a manner so as to clothe an Appellate Authority under Section 127 to condone the delay. Resultantly, delay in an appeal under Section 125 beyond 120 days and under Section 127 beyond 30 days cannot be condoned.
- The High Court of Calcutta also dealt with the observations in other cases that a writ court should not by invoking jurisdiction under Article 226 of the Constitution of India revive a barred remedy, is the settled law. As per the High Court of Calcutta such an approach narrows down the amplitude of Article 226 of the Constitution of India.
- The High Court of Calcutta also stated that it is conscious that the delay in preferring an appeal under Section 127 within 30 days could result in the person, against whom an adverse order under Section 126 has been passed, being left without the statutory appellate remedy; however, such a person would not find himself totally without any remedy. The High Court of Calcutta stated that a final order of assessment under Section 126 could be a subject of judicial review, if any of the conditions for entertainment of a writ petition (existence of an efficacious alternative remedy notwithstanding) is satisfied. If indeed the writ Petitioner satisfies the writ court that for genuine reasons, he could not avail the remedy of an appeal and seeks a writ of certiorari to have the impugned order quashed, the writ court may in its discretion entertain the writ petition and judicially review the decision-making process. However, if the writ court is approached long after the final order of assessment under Section 126 is made and proper explanation for the belated approach is either not shown or the court is not satisfied that the Petitioner disabled himself to pursue the appellate remedy for his own fault, the court may not entertain the writ petition at all.

HSA

Viewpoint

The High Court has correctly given its affirmation to the interpretation given by the High Court of Calcutta that a delay beyond 30 days cannot be condoned by APTEL in an appeal filed under Section 127 of the Electricity Act, 2003. The High Courts have further taken the correct approach in stating that such a person shall not be left remedy less and shall have the recourse to a writ of certiorari in appropriate cases.

[1] WP No. 84 of 2019

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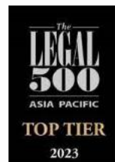
GLOBAL RECOGNITION



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