



## Kunal Kaul

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### Practice Areas

Disputes

### Sectors

Energy – Power & Hydrocarbon

Financial Services & Insolvency

Construction and Engineering

### About

Kunal is part of JSA's dispute practice with focus on disputes in energy sector. His practice area includes advising clients on setting up of power projects in India, purchase and sale of power, regulatory and commercial litigation, constitutional & administrative law litigation and matters relating to Insolvency and Bankruptcy Code. He also advises clients on public policy and market economics.

Kunal has anchored various precedent setting matters in energy sector, which has contributed in evolving jurisprudence. He advises various stakeholders, including Government Bodies, Banks & Financial Institutions, leading corporates, including those engaged in generation, distribution, transmission and trading of electricity, manufacturing entities, EPC Contractors et al.

He regulatory advises clients regarding bid documents and evaluating the risks associated thereto, advising on power purchase agreements, engineering, procurement and construction (EPC) Contracts, O&M Contracts. He has also been engaged by clients on various issues such as tariff fixation, revision in tariff (including for renewable projects), force majeure, applicability and invocation of change in law clauses, setting up of captive power plants, issues regarding open access, renewable purchase obligations, applicability of cross-subsidy surcharge, additional surcharge, parallel operation charges, transmission charges, electricity duty, challenging sub-ordinate legislations/ bye-laws and other disputes relating to energy sector. He has also been engaged by clients regarding grant of various licenses/ approvals, evaluation of various contractual arrangements to facilitate regulatory compliance and enable risk mitigation steps.

## Experience

Some of the key assignments handled by Kunal includes the following: -

### Generation (Conventional/ Non-Conventional)

- Advising and representing generating companies in compensatory tariff matters before CERC, APTEL and Supreme Court of India. These matters arose due to unforeseen, uncontrollable and unprecedented escalation in the imported coal price because of change in law by Government of Indonesia. The outcome of the litigation resulted in the Supreme Court [*Energy Watchdog v. CERC & Ors.*] upholding the “regulatory powers” of the Regulatory Commission to intervene and grant relief to affected parties, otherwise not available under the contract. The said matter has been recognized as one of the most important matters of the year 2018 by Indian Business Law Journal.
- Advising and representing various renewable power plants situated in the State of Andhra Pradesh and Maharashtra, in proceedings regarding reopening of PPAs, retrospective reduction in tariff and expropriation of fiscal benefits granted by Central Government.
- Successfully defended the Petition against a generating company qua wrongful declaration of Commercial Operation of its Units. There was a claim of INR 70 billion against the generating company by the consumer organisations on account of the alleged misdeclaration.
- Advising and appearing on behalf of a Solar Power Plant, situated in Maharashtra seeking extension of control period on account of occurrence of force majeure events preventing timely commission of the plant.
- Successfully represented solar power plants in a dispute regarding applicability of Safeguard Duty and grant of compensation due to increase in project cost, wherein for the first time a relationship between AC:DC ratio and CUF was recognized by a regulator in India. The issue had arisen since the bids are floated in AC capacity, whereas the Solar Panels available in market are DC capacity. Accordingly, the electricity so generated had to be converted from DC capacity to AC capacity.
- Successfully represented solar power plants regarding applicability and increase in Goods and Services Tax on EPC Contracts and grant of compensation on account of increase in project and O&M cost.
- Advising and representing various renewable power projects in various power purchase relating issues such as cost escalation due to increase in taxes, disruption of supply chain and extension of schedule commissioning date and levy of damages on account of delay in commissioning of the project.
- Successfully represented thermal power plants for seeking approval of capital & operating expenditure for retrofitting of emission control apparatuses to adhere to the revised emission standards notified by GOI.
- Advising generating companies on various issues pertaining to commercial operation, competitive bidding for supply of electricity, evacuation of power and role of RLDC's, termination of PPA, establishment of Payment Security Mechanism, Amendment of PPA, et al.
- Advising renewable energy plants on disputes concerning execution of energy purchase agreements with discoms in terms of State Policies.

- Advising on setting up of power plants, captive power plants and sale of power, including renewable energy to third party consumers.
- Advising and representing the Resolution Professional of Sai Wardha and Sai Regency in corporate insolvency proceedings.
- Advising and representing waste to heat recovery plants in obtaining regulatory recognition that power purchased from such waste to heat recovery plants are at par with purchase of power from a renewable energy plant.
- Advising renewable energy clients on various issues regarding scheduling and forecasting, grant of open access, banking of energy and transmission charges and losses.

### **Distribution, Transmission & Trading of electricity**

- Advising and representing before a company for grant of distribution licence and thereafter defending such grant before the Appellate Tribunal and the Supreme Court of India.
- Advising and representing a parallel distribution licensee in establishing the principles qua laying of parallel network and migration of consumers from one distribution licensee to another and its implementation. The exercise undertaken is a first in the country.
- Advising and appearing before various High Courts and Supreme Court of India qua challenge to the constitutional validity of sub-ordinate legislations made by Regulatory Commissions.
- Advising on various regulatory issues relating to tariff fixation, open access, energy storage, issues relating to renewable purchase obligations, issued regarding deemed distribution licensee, issues regarding dedicated transmission line, levy of transmission charges and losses, relinquishment charges et al.
- Advising clients on various issues relating to cross-border trade of electricity.

### **Others**

- Advising various companies on various issues regarding Open Access, levy of Cross-Subsidy Surcharge, Additional Surcharge, Parallel Operation Charges, applicability of electricity duty, compliance of renewable purchase obligation, scheduling and dispatch of electricity and structuring of CPP models.
- Advisory on risk mitigation and dispute resolution advisory under various commercial contracts executed between the parties, including commercial disputes, arbitration & mediation, initiating proceedings under the Insolvency and Bankruptcy Code.

### **Memberships**

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Bar Council of Maharashtra & Goa

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Bombay Bar Association

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## **Publications**

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Co-Authored an article on “**Impact of coronavirus on India’s solar march**”, published in CNBC TV 18

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Co-Authored an article on “**Quarries Turning Into Quandaries**”, published in BW Legal World

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## **Education**

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BSL LL.B, Symbiosis Law School, Pune

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## **Languages Spoken**

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English

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Hindi

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