Knowledge Management

Semi-Annual Climate Change, Power and Energy Laws Compendium 2024

July – December 2024

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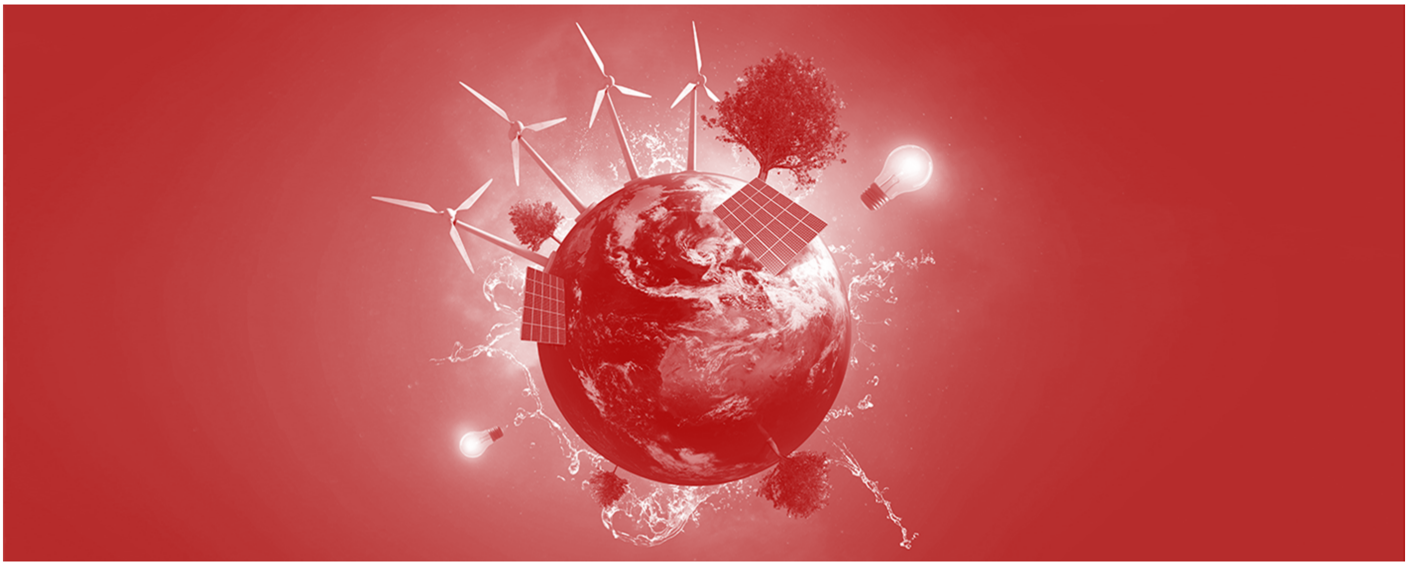


Introduction

This compendium consolidates all the key regulatory developments, notifications, orders, judicial precedents and other updates in the climate change, power and energy sector in India, which were circulated as JSA Prisms and Newsletters during the calendar period from July till December 2024.

Please *click here* to access the Semi-Annual Climate Change, Power and Energy Sector Compendium – January 2024 to June 2024.

Climate change

Scheme guidelines for implementation of 'Strategic Interventions for Green Hydrogen Transition Programme' and Incentive Scheme for Green Hydrogen Production

In January 2023, the Union Cabinet approved the National Green Hydrogen Mission ("**Mission**"), with an initial outlay of INR 19,744 crore (Indian Rupees nineteen thousand seven hundred and forty-four crore), allocating funds for various components including the Strategic Interventions for Green Hydrogen Transition ("**SIGHT**") Programme ("**SIGHT Programme**"), pilot projects, research and development, and other mission components. The SIGHT Programme proposes 2 (two) distinct financial incentive mechanisms to support domestic manufacturing of electrolysers and production of Green Hydrogen.

Building on this, Ministry of New and Renewable Energy ("**MNRE**"), on July 3, 2024, issued the 'Scheme Guidelines for implementation of SIGHT Programme – Component II: Incentive Scheme for Green Hydrogen Production (under Mode 1) Tranche – II' ("**Scheme**"). The objectives of the Scheme include maximizing production of green hydrogen and its derivatives, enhancing cost-competitiveness, and encouraging large scale utilization of green hydrogen and it derivatives.

Salient Features

1. **Budget allocation**: The Scheme, allocated a total outlay of INR 13,050 crore (Indian Rupees thirteen thousand and fifty crore).
2. **Implementing agency**: MNRE will oversee the Scheme's execution through the Solar Energy

Corporation of India Limited ("**SECI**"). SECI's responsibilities encompass administrative, managerial, and implementation support, including application evaluation, issuance of acknowledgments and letters of award, verification of incentive claims, and quarterly progress reporting to MNRE. SECI is entitled to 0.5% of the disbursed incentive amount as administrative charges and holds authority to conduct physical inspections and enlist third-party agencies for technical verification.

3. **Guiding principles**: The Scheme adheres to specific guiding principles:

    a) direct incentives in terms of INR/kg (Indian Rupees per kilogram) of green hydrogen production will be provided for a period of 3 (three) years from the date of commencement of green hydrogen production;

    b) beneficiaries will be selected through a competitive selection process; and

    c) incentives will be capped at INR 50/kg (Indian Rupee fifty per kilogram) in the first year of production, INR 40/kg (Indian Rupees forty per kilogram) during second year of production and INR 30/kg (Indian Rupees thirty per kilogram) during the third year of production.

4. **Penalties**: Bidders participating in the Scheme are mandated to submit Earnest Money Deposit ("**EMD**") as specified in the tender document. Non-compliance with the tender terms may lead to forfeiture of EMD. Successful bidders, upon acceptance of the award, must furnish performance bank guarantees or analogous instruments, as stipulated in the tender document. Failure to adhere to project commissioning timelines or default in project execution may result in forfeiture of the commensurate bank guarantees or similar performance guarantee instruments by SECI. Detailed modalities regarding penalties, including encashment of EMD, bank guarantees, accrued interest, or other penalties collected by SECI, will be outlined in the tender documents.

5. **Monitoring**: Oversight will be conducted by a Scheme Monitoring Committee ("**SMC**") chaired by the Secretary of MNRE. The SMC, comprising representatives from MNRE, SECI, and relevant experts, will periodically review the implementation status and performance of electrolyser manufacturing capacities awarded under the scheme, facilitating resolutions for any encountered difficulties.

Implementation methodology

1. The scheme is designed to promote the manufacturing of efficient and top-tier electrolysers within India. MNRE, through SECI will invite bids for competitive selection. The bidders will be required to quote the following:

    a) annual production capacity of green hydrogen and/or its derivatives;

    b) incentive demanded in INR/kg (Indian Rupees per kilogram) for each of the first 3 (three) years of production with the upper cap of INR 50/kg (Indian Rupee fifty per kilogram), INR 40/kg (Indian Rupee forty per kilogram) and INR 30/kg (Indian Rupee thirty per kilogram) for green hydrogen for the first, second and third year of production respectively.

    Additionally, verification of local value addition will be conducted annually to ensure compliance with the Scheme requirements.

2. **Eligibility**: The Scheme imposes stringent eligibility criteria, requiring bidders to meet financial stability and manufacturing capability standards. Bidders, whether single companies or joint ventures/consortiums, must demonstrate a net worth under "Technology Agnostic Pathways" equal to or exceeding INR 15,00,00,000 (Indian Rupees fifteen crore) per 1,000 MT (thousand metric tonne) per annum of the quoted production capacity of green hydrogen, and under 'Biomass Based Pathways' equal to or exceeding INR 1,50,00,000 (Indian Rupees one crore and fifty lakh) per 1,000 MT (thousand metric tonne) per annum of quoted production capacity of green hydrogen. Though the bidder can be a single company or a joint venture/ consortium of more than 1 (one) company.

3. Capacity available for bidding during Tranche II, is 4,10,000 MT (four lakh ten thousand metric tonne) per annum of green hydrogen under 'Technology Agnostic Pathways (Bucket I) and 40,000 MT (forty thousand mega tonne) per annum of green

hydrogen under 'Biomass Based Pathways (Bucket II)'.

4. **Payment incentives for the selected bidders as follows:** Incentive payout in a given year = Incentive quoted for that year in INR/kg (Indian Rupees per kilogram) * Allocated capacity or Actual Production in the year, in kilogram, whichever is lower

Conclusion

This mission represents a promising opportunity to engage in and benefit from the burgeoning green hydrogen market. The guidelines, selection processes, and financial incentives provide a stable framework for investment. Additionally, the oversight by the SMC ensures accountability and continuous improvement, aligning with global best practices. From an industry perspective, the incentives and competitive selection process create a conducive environment for innovation and investment in green hydrogen technologies. Companies stand to benefit from direct incentives, ensuring economic feasibility and encouraging the adoption of advanced electrolyser manufacturing within India.

New scheme guidelines for funding of testing facilities and support for standards development for green hydrogen

MNRE, Government of India ("**GoI**") had launched the Mission in January 2023. One of the important components of the Mission is to provide support for the development of quality and performance testing facilities and infrastructure to validate and certify technology used in the green hydrogen value chain.

In line with this initiative, the MNRE on July 4, 2024, notified scheme guidelines for funding of testing facilities, infrastructure and institutional support for development of standards and regulatory framework ("**Scheme Guidelines**") with a budgetary outlay of INR 200,00,00,000 (Indian Rupees two hundred crore) till Financial Year ("**FY**") 2025-2026 ("**Total Financial Support**"). The objective of the Scheme Guidelines is, *inter alia*, to create new facilities to test, validate and certify the components, technologies and processes being used in the green hydrogen value chain as well as identify gaps in the existing testing facilities.

Funding support and focus of the Scheme Guidelines

Under the Scheme Guidelines, financial support will be provided for setting up new testing facilities/infrastructure as well as upgradation of existing testing facilities.

The Scheme Guidelines also intends to create and disseminate technology knowledge and experience. The Scheme Guidelines is available to both public and private players. Further, necessary guidelines will be introduced to protect any intellectual property rights such as publications, patents, registered designs or trademarks, arising from the projects funded under the Scheme Guidelines.

Implementation of the Scheme Guidelines

1. The National Institute of Solar Energy is the Scheme Implementing Agency ("**SIA**") for the Scheme Guidelines. Additionally, a Steering Committee ("**SC**"), set up under the chairpersonship of the Secretary, MNRE and a Project Appraisal Committee ("**PAC**") will be set up to oversee the projects allowed to avail the benefits under the Scheme Guidelines.

2. For extending the benefits of the Scheme Guidelines, the SIA will invite/call for proposals ("**CfP**") for the testing facilities in consultation with MNRE.

Funding and disbursement

1. The following financial support will be made available under the Scheme Guidelines:

a) For Government entities: MNRE will fund 100% of the capital cost for equipment, as well as commissioning and installation of equipment.

b) For non-Government entities: MNRE will fund upto 70% of the capital cost for testing equipment, as well as commissioning and installation of equipment.

2. Support for operational expenses: Upto 15% of the Total Financial Support has been allotted for providing support for operational expenses spread over up to a period of 4 (four) years, from the date of completion of the project.

3. The funds for the project will be released in 3 (three) installments in the following manner:

   a) 20% at the time of selection;

   b) 70% as per the Project milestones specified in the CfP; and

   c) 10% upon completion of the Project.

4. SIA or MNRE may inspect and verify the project before the release of the installments. MNRE will monitor the expenditure of funds and for this SIA will be responsible for issuing utilisation certificates as per the provisions of the General Finance Rules, 2017.

Project timelines

1. **Project timeline:** New facilities should be completed in 18 (eighteen) months from the date of sanction provided by MNRE. In cases where testing and certification projects are required to be upgraded, the project is to be completed within 12 (twelve) months. SIA may provide an extension of upto 6 (six) months, with the approval of the SC, without imposing any penalty. However, in case of any delay in completion beyond the extension period is subject to the approval of MNRE, and suitable penalties will be imposed as specified in the CfP.

2. **Project completion:** Upon completion of the project, SIA will issue a Project Completion Report ("**PCR**") to MNRE through PAC, in the prescribed format. The PCR is required to contain technical aspects of the project, challenges encountered during the implementation and the outcome of the project. It should also contain recommendations for future projects.

Conclusion

The Scheme Guidelines and the funding support proposed is a lucrative step towards fostering and enhancing participation from the private and Government entities for setting up test facilities in the green hydrogen sector. Such financial support will help in faster adoption of green hydrogen and will further the development and standardisation of green hydrogen value chain components and processes. Moreover, the Scheme Guidelines will also help in developing a data repository which will help in the development of future policy and testing standards.

Draft framework for trading of Carbon Credit Certificates through power exchange

On November 13, 2024, the Central Electricity Regulatory Commission ("**CERC**") notified the draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024 ("**CCC Regulations**"). The CCC Regulations aim to provide a structured framework for the trading of Carbon Credit Certificates ("**CCCs**") through power exchanges, enhancing the efficiency and transparency of India's emerging carbon market. CERC invited comments /suggestions/objections on the draft CCC Regulations, which were to be submitted by December 15, 2024.

Purpose

The primary aim of the CCC Regulations is to establish a robust market mechanism for trading CCCs on power exchanges. This framework caters to both industries with specific environmental obligations ("**Obligated**

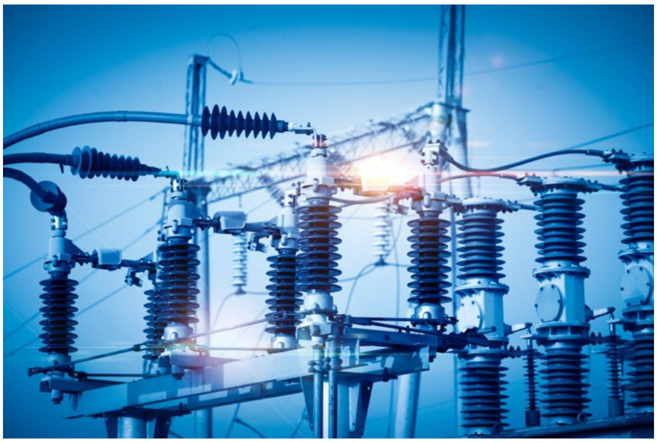
Entities") and voluntary participants ("**Non-Obligated Entities**").

Salient features

1. **Scope**: The CCC Regulations specifically govern the purchase, sale, and exchange of CCCs in accordance with the Carbon Credit Trading Scheme, 2023 ("**CC Scheme**"). They apply to CCCs that are offered for transactions on power exchanges, including contracts in CCCs that have received approval from CERC as per the provisions outlined in the CERC (Power Market) Regulations, 2021.
2. **Registry**: The Grid Controller of India has been designated as the 'Registry' for CCCs, responsible for creating and maintaining the necessary infrastructure to facilitate trading.
3. **Administrator**: The Bureau of Energy Efficiency ("**BEE**") will act as the administrator, responsible for formulating detailed procedures for trading, transfer, and compliance mechanisms. BEE *inter alia* will also be responsible to:
   a) formulate detailed procedure after public consultation and seeking approval of CERC for:
      i) interface between the power exchange, registry, etc;
      ii) registration of obligated and non-obligated entities; and
      iii) dealing, transfer and other residual matters related to CCCs;
   b) assist CERC in monitoring market activities;
   c) disseminate relevant information;
   d) ensure adherence to environmental laws; and
   e) report instances of non-compliance to CERC for appropriate action;
4. **Value and validity of CCCs**: Each CCC represents 1 (one) ton of carbon dioxide equivalent emissions. The validity of these certificates will depend on the detailed procedure for compliance and offset mechanisms to be developed under the CC Scheme.
5. **Category of certificates**: CCCs will be categorised for Obligated Entities and Non-Obligated Entities by the BBE. The power exchanges may propose additional categories for approval by CERC.
6. **Trading of certificates**:
   a) CCCs can only be traded through power exchanges, and separate market segments will exist for 'Compliance Markets' (for Obligated Entities) and 'Offset Markets' (for Non-Obligated Entities);
   b) trading sessions will be conducted monthly, adhering to strict rules to prevent defaults;
   c) the registry will monitor bids and transactions to ensure compliance and maintain market integrity;
   d) entities with more than 3 (three) defaults in a quarter will be barred from trading CCCs for 6 (six) months, and their details will be published monthly; and
   e) Power Exchanges must report transaction details to entities and update the Registry accounts post successful trades;
7. **Banking and extinguishment of CCCs**: The provisions for banking (saving) and extinguishment (retirement) of CCCs will follow detailed procedures under the compliance and offset mechanisms outlined in the CC Scheme.
8. **Pricing of certificate**: The price of CCCs will be determined through bidding on power exchanges. The transactions must occur within the floor price and forbearance price, as approved by CERC. CERC reserves the right to intervene in cases of abnormal price fluctuations or trading irregularities.
9. **Fee and charges**: The fees for registry management and the software platform will be determined by CERC in consultation with the BBE. These fees will be levied on Obligated Entities and Non-Obligated Entities participating in the market.
10. **Market oversight**: CERC, with the support of the BEE, will oversee market operations to ensure transparency, fairness, and compliance with regulations. Any irregularities or issues will be addressed promptly to maintain market integrity.

Conclusion

CERC's draft CCC Regulations provide a structured framework for the trading of CCCs. By defining roles, procedures, and compliance mechanisms, the CCC Regulations aim to streamline the carbon credit market and ensure effective implementation of the CC Scheme. The provisions for oversight, pricing, and management are designed to facilitate a clear process for both obligated and non-obligated entities, supporting the broader goals of emission reduction and market development.



Power

Supreme Court of India upholds the restrictive scope of its appellate jurisdiction under Section 125 of the Electricity Act, 2003

On August 27, 2024, the Hon'ble Supreme Court of India ("**Supreme Court**") has rendered its final Judgment in ***Bangalore Electricity Supply Company Limited and Ors. vs. Hirehalli Solar Power Project LLP and Ors.* & Batch**[1] ("**Judgment**"), wherein it has, *inter alia*:

1. reiterated that the scope of its jurisdiction under Section 125 of the Electricity Act, 2003 ("**Electricity Act**") is restricted only to deciding *"substantial questions of law"*;
2. reiterated that force majeure provisions in contracts are governed by Section 32 of the Indian Contract Act, 1872 ("**Contract Act**")[2] and not Section 56 of the Contract Act[3]; and
3. directed that Late Payment Surcharge ("**LPS**") is explicitly rooted in the Power Purchase Agreements ("**PPAs**"), and hence, is in furtherance of the intention of the parties. Therefore, direction for payment of LPS need not be separately pleaded.

In doing so, the Supreme Court dismissed the civil appeals[4] and upheld an order passed by the Appellate Tribunal for Electricity ("**APTEL**") grating extension of the Scheduled Commissioning Date ("**SCD**") of the Solar Power Project ("**Project**"). Consequently, the tariff payable to Solar Power Developers ("**SPDs**") was restored to INR 8.40 (Indian Rupees eight Paise forty) per unit.

Brief facts

1. On August 26, 2014, the State of Karnataka introduced a policy to identify and promote solar energy projects of land-owning farmers. In terms of the policy, Solar Power Plants ("**Solar Component**") would generate and sell power to state electricity distribution companies at a tariff determined by the Karnataka Electricity Regulatory Commission ("**KERC**").
2. Pursuant to a Letter of Award, on August 29, 2015, the Bangalore Electricity Supply Company Limited ("**BESCOM**') entered into a PPA with one of the SPDs ("**BESCOM PPA**"). Similar PPAs were executed between other SPDs and electricity distribution companies. In terms of the BESCOM PPA, the Project ought to have been commissioned within 18 (eighteen) months from the 'effective date', hence, the SCD of the Project was February 28, 2017.
3. Pursuant to the execution of the PPAs, SPDs raised concerns regarding delays in the execution of the Project, on account of delay in approvals for conversion of land for industrial purposes, delay in getting evacuation approvals, grid connectivity and demonetisation. Petitions[5] were filed by SPDs before KERC seeking an extension of six months for the commercial operation of the Project while invoking the *force majeure* clause in terms of the PPAs. During the pendency of proceedings before KERC, the Project was commissioned, within the extended period of 24 (twenty-four) months.
4. KERC *vide* Order dated September 18, 2018 ("**KERC's Order**"), in the petitions, *inter alia*, rejected the various causes of delay put forth by

[1] 2024 INSC 631
[2] *Section 32, Indian Contract Act, 1872: Enforcement of contracts contingent on an event happening.*
[3] *Section 56, Indian Contract Act, 1872: Agreement to do Impossible Act.*
[4] C.A. Nos. 7595, 7608 and 6386 of 2021
[5] O.P. Nos. 70, 71, 72, 73 and 96 of 2017

SPDs**,** imposed liquidated damages and reduced the tariff payable in terms of the PPAs.

5. Aggrieved by KERC's Order, SPDs appealed before APTEL, which, while overruling KERC's Order, *inter alia*, held that the delay in execution of the Project was not attributable to SPDs as the time taken by government authorities to provide approvals was not within their control and they had taken all the measures that they could; SPDs are entitled to the benefit of the *force majeure* provisions and an extension of time, as has also been previously approved by KERC; SPDs were able to commission the Project within the extended period of 24 (twenty-four) months; APTEL directed SPDs to pay the difference per unit tariff along with LPS in terms of the PPAs; and (e) set aside imposition of liquidated damages (Impugned Order).

Issue

Civil Appeals were filed before the Supreme Court raising the question of whether extension of SCD was occasioned in terms of the *force majeure* provisions of the PPAs and consequently, whether the reduction in tariff was justified.

Findings and analysis

1. Section 125 of the Electricity Act provides for an appeal to be filed before the Supreme Court on any one or more of the grounds specified in Section 100 of the Civil Procedure Code, 1908[6] ("**CPC**'"). The Supreme Court held that Section 100 of the CPC restricts High Courts' jurisdiction in second appeals to cases that involve a 'substantial question of law'. The Supreme Court in SEBI vs. MEGA Corporation Limited[7] has analysed the term 'question of law' to hold that the said term is 'open textured' and must be interpreted by looking at the words in light of their context. The Electricity Act envisages the establishment of SERCs as specialised bodies that discharge advisory, regulatory and adjudicatory functions and APTEL to hear appeals against orders of SERCs.

2. In respect of whether the delay in commissioning the project is covered by the *force majeure* provisions of the PPAs, the Supreme Court held as follows:

    a) there have been no 'substantial questions of law' raised before the Supreme Court;

    b) the Supreme Court, has, in several orders dismissed appeals arising out of similar facts;

    c) the delay in commissioning the project falls within the purview of *force majeure* provisions stipulated in Article 8 of the PPAs;

    d) SPDs are entitled to benefit under *force majeure* provisions as they are unable to secure necessary approvals, licenses etc. (provided that there is no negligence or intentional act or omission);

    e) the dispute before KERC and APTEL revolves around questions of fact. APTEL has rightly reappreciated evidence to find that the delay in the project was not attributable to SPDs but to government bodies and relevant authorities. SPDs have acted diligently and with care and caution to secure approvals, hence their claims cannot be rejected;

    f) APTEL has correctly noted that a large number of SPDs have raised similar issues, and the government has responded to the same by requiring electricity distribution companies to set up committees to look into these cases. The large number of cases that raise similar grounds and the government's response show that the delay was not faced by the SPDs alone, and hence cannot be entirely attributed to them;

    g) the extension provided was warranted and the commissioning of the project was within the extended period. Therefore, there is no occasion for reduction in tariff or for imposition of liquidated damages; and

    h) since the levy of LPS on the tariff amount is explicitly rooted in the PPA, it need not be separately pleaded.

Conclusion

The Judgment reiterates that the scope of the Supreme Court's jurisdiction under Section 125 of the Electricity

[6] *Section 100, Civil Procedure Code, 1908 – Second Appeal.*

[7] (2022) SCC OnLine SC 361

Act is restricted only to deciding '*substantial questions of law*' and *force majeure* provisions in contracts are governed by Section 32 of the Contract Act and not Section 56 of the Contract Act. In such instances, courts ought to interpret *force majeure* events as contractually agreed amongst the parties. Further, if payment of LPS is explicitly rooted in PPAs, it need not be separately pleaded. Delays in commissioning projects which are beyond the reasonably foreseeable control of parties fall under the purview of *force majeure* events.

The Judgment recognises the importance of freedom accorded to the sectoral regulator, to subserve the regulatory regime as envisaged in terms of the Electricity Act. It is also in tandem with Supreme Court's judgment in BSES *Rajdhani Power Ltd. vs. Delhi Electricity Regulatory Commission*[8], which laid down tests to determine whether a case involves a 'substantial question of law'. The findings and observations of the Judgment bolster and justify that a court sitting in second appellate jurisdiction is to frame a 'substantial question of law' and ought not to interfere in questions of fact.

Further, this Judgment recognises the supremacy of the contractual agreements between parties while interpreting contingency and penal provisions, thus bolstering the sanctity of such long-term contracts.

Supreme Court holds that a simplicitor press release does not amount to 'law' for the purposes of change in law compensation

The Supreme Court on November 5, 2024, rendered its judgment in ***Nabha Power Ltd. and Anr. vs. Punjab State Power Corporation Ltd. and Anr.***[9] holding that a press release which by itself does not *proprio vigore* (by its own force) operate as law, cannot constitute 'law' for the purposes of 'change in law' compensation.

Brief facts

1. On March 1, 2002, a notification was issued under Section 25[10] of the Customs Act, 1962 granting certain exemptions from customs duty, on goods imported for setting up a Mega Power Project ("**2002 Notification**")[11]. Subsequently, in 2006, the Ministry of Power ("**MoP**"), GoI issued the Mega Power Project Policy, ("**2006 Policy**"). In terms of the 2006 Policy, a 'Mega Power Project' had to be an inter-State project to avail of certain exemptions.
2. On June 10, 2009, the Punjab State Power Corporation Ltd. ("**Procurer**") issued a Request for Proposal ("**RFP**") under Section 63 of the Electricity Act, for developing and procuring power. L&T Power Development Limited emerged as the successful bidder ("**Successful Bidder**").
3. In terms of the RFP, the cut-off date for consideration of an event as a 'change in law' event, was October 2, 2009 ("**Cut-Off Date**") and the last date for seeking clarifications was September 25, 2009.
4. On October 1, 2009, the Union Cabinet decided to extend the benefits of the 2006 Policy to even intra-state thermal power projects of 1,000 (one thousand) Mega Watt or above. This decision was published by the Press Information Bureau, GoI ("**Press Release**").
5. On October 1, 2009, the Successful Bidder issued a letter to Nabha Power Limited ("**NPL**") (then owned by Punjab State Power Corporation Ltd. ("**PSPCL**") requesting for an extension of the bid deadline, to enable it to ascertain the impact of the Press Release on the bid. On October 6, 2009, the Successful Bidder issued another letter stating that it had taken into consideration the Press Release while submitting the bid.
6. On December 11, 2009, the Ministry of Finance, GoI, amended the 2002 Notification ("**2009 Amended Notification**"). Thereafter, on December 14, 2009, GoI issued an office

[8] (2023) 4 SCC 788
[9] 2024 INSC 833

[10] *Section 25: Power to grant exemption from duty.*
[11] Customs Notification No. 21 / 2002 dated March 1, 2002.

memorandum[12] titled 'Revised Mega Power Policy' ("**2009 Policy**") in line with the decision announced by way of the Press Release. In terms of the 2009 Policy, *inter alia*, the mandatory conditions of inter-State sale of power for getting 'mega power project' status, was removed. On January 18, 2010, NPL and PSPCL signed a PPA.

7. On May 22, 2012, the appellant approached the Punjab State Electricity Regulatory Commission[13] contending that it was the Press Release which was the 'change in law' event; and accordingly, the legal regime had been altered on October 1, 2009, itself. This was challenged before the APTEL, which dismissed the appeal. The Successful Bidder then approached the Supreme Court[14].

Submissions before the Supreme Court

1. Successful Bidder contended that with the issuance of the Press Release, a new legal regime commenced and that they had factored in this altered position in their bid.
2. Procurer contended that the Press Release only proposed a modification in 2006 Policy. However, this was implemented only by the 2009 Amended Notification and 2009 Policy. Therefore, the 'change in law' occurred on December 11, 2009/December 14, 2009, i.e., post the Cut-Off Date. Hence, any benefits that have accrued to the Successful Bidder, ought to be passed on to the Procurer.

Issue

The issue framed for consideration was whether the Press Release would amount to 'law' as defined in terms of article 1.1 of the RFP/PPA, and, if so, whether the extant regime underwent a change from the date of issuance of the Press Release?

Findings and analysis

The Supreme Court dismissed the civil appeal holding that:

1. the Press Release does not fulfil the meaning of the word 'order' as understood in legal parlance and is only in the nature of a 'proposal' and not 'law' within the meaning of article 1.1. of the PPA;
2. there was no repeal of the 2002 Notification or supersession of the 2006 Policy. The Press Release clearly mentioned as to what was envisaged and conditions that were to be replaced and removed. The Press Release did not alter/amend/repeal the existing law as on October 1, 2009, and was at best an announcement of a proposal, which had to be given shape after fulfilment of certain conditions. The Customs Act, 1962 requires that grant of an exemption would only be through a notification. It is only by way of the 2009 Amended Notification that the Press Release was implemented;
3. with regards to the appellants' contention that no notice for 'change in law' was issued, in terms of the PPA, article 13.3 of the PPA requires only the seller to issue a notice if it is beneficially affected by 'change in law', not the Procurer. Further, post the 'change in law' i.e., on December 11, 2009/December 14, 2009, there is a reduction in the customs duty which will inure to the benefit of the appellant-seller and in terms of article 13.1.1 of the PPA, such benefit ought to be passed on to the respondents;
4. interpreting article 1.1 and article 13 of the PPA, it is clear that the Press Release does not fall within the definition of the term 'law' for the purposes of 'change in law' compensation. Since the terms of the PPA are clear, there is no need to apply the test of 'business efficacy' in order to interpret the PPA; and
5. the doctrine of promissory estoppel is irrelevant since the Procurer is not a 'promisor'. Further, the Press Release is, at best, a promise by the Union of India and not any alteration of the law. Even if it is assumed that the Press Release is a promise, the Union of India has not been arrayed in any litigation to enforce the promise.

Conclusion

The Supreme Court has reiterated that PPAs, being commercial contracts agreed between parties, ought to be interpreted strictly. Further, it was clarified that press releases/cabinet decisions do not have the force

[12] Office Memorandum No. A – 118 / 2003 – IPC dated December 14, 2009.

[13] Petition No. 30 of 2012

[14] C.A. No. 8478 of 2014

of 'law', unless they have been implemented in terms of the prescribed procedure under applicable law. While the aspect of promissory estoppel regarding a press release was touched upon, it noted that the Procurer was not the promisor, and hence no 'change in law' against the Procurer is made out.

The Hon'ble High Court of Punjab and Haryana dismissed challenges to process of privatisation of electricity distribution in Union Territory of Chandigarh

The Hon'ble High Court of Punjab and Haryana at Chandigarh ("**P&H HC**") in the case of ***U.T. Powermen Union, Chandigarh vs. Union of India and Ors.***[15], dismissed the challenge to the process of privatisation of electricity distribution in the Union Territory of Chandigarh.

Brief facts

1. Under Section 4 and 67 of the Punjab Reorganisation Act, 1966, the electricity supply and the assets of the Board located in the area of Union Territory of Chandigarh, vested in the Chandigarh Administration which did not form its own Electricity Board ("**Electricity Board**") but continued to manage the distribution of electricity.
2. Pursuant to a proposal to corporatise/privatise the electricity wing, a draft standard bidding document for the selection of bidders for the purchase of majority shares was issued on September 20, 2020, for comments. This provided for privatisation of the distribution licenses comprising the draft RFP with the drafts of employee transfer scheme, shareholder agreement, shareholder acquisition agreement for the sale of 100% stake, policy directions by the Union Territory, Chandigarh and bulk supply agreement.
3. Thereafter, on November 10, 2020, a notice was issued inviting the bids for purchase of the distribution business from the interested entities fulfilling the qualification requirements and other conditions set out in the RFP.
4. The said notice along with the decision to proceed with privatisation was challenged by the U.T. Powermen Union *vide* CWP No. 20439 of 2020 and CWP (PIL) No. 54 of 2022.

Issues

The issues framed by the P&H HC:

1. while interpreting the statutory provisions, whether the court is bound by the stand adopted by parties? and
2. whether the setting up of the Electricity Board is mandatory prior to finalisation of the scheme envisaged under Section 131 of the Electricity Act and before inviting bids for privatisation of the electricity supply?

Findings and analysis

Section 131 of the Electricity Act

1. Section 131 of the Electricity Act provides for vesting of the property of the Electricity Board in the State Government. It is in that context a transfer scheme is envisaged. In the Union Territory of Chandigarh, the Electricity Board was never created and therefore Section 131(1) of the Electricity Act is not applicable. Section 131(2) of the Electricity Act is dependent upon sub-section (1) because it provides that the property which has vested in the State Government under sub-Section (1) will be re-vested by the State Government in a government company or in a company or companies in accordance with the transfer scheme. Hence, Section 131(2) of the Electricity Act is also not applicable.
2. Section 132 of the Electricity Act provides for the use of proceeds of sale or transfer of the Electricity Board etc. Section 133 of the Electricity Act is a

[15] CWP No. 20439 of 2020 and CWP (PIL) No. 54 of 2022 (judgment dated November 6, 2024)

provision related to the officers and employees in the transfer scheme. Section 134 of the Electricity Act starts with a *non obstante* clause which overrides the provisions of the Industrial Disputes Act, 1947, or any other law in the matters related to the transfer of the employment of the officers/employees. Thus, it is evident that Part-XIII of the Electricity Act is not applicable in the present case.

3. Furthermore, the statement of objects and reasons of the Electricity Act states that private sector's participation in generation, transmission and distribution must be encouraged.
4. Section 131 of the Electricity Act does not envisage existence of a transfer scheme before inviting bids. In fact, the transfer scheme is required to be drawn up under Section 131(4), after identifying a transferee. As per Section 131(5), the transfer scheme is required to include the various provisions as enlisted in Sub Section (5). While interpreting a statutory provision, the court is not expected to draw inferences based on assumptions and presumptions. Unless there is a categorical provision explicitly requiring the existence of a transfer scheme before the bids to identify the transferee, the court would not interfere. The courts will avoid filling in perceived gaps or adding meaning that is not explicitly provided by the statute, as this could lead to unintended legal outcomes.
5. Section 131(2) of the Electricity Act is not a standalone provision. On reading of Section 131(2) of the Electricity Act it is evident that sub-Section (2) is intrinsically linked to sub-Section (1) as is evident from the first sentence of Section 131 (2) of the Electricity Act.
6. In any case, scope of judicial review in a policy decision is extremely narrow.

Court being bound by the stand taken by parties

A Constitutional Court, while interpreting the statutory provisions, is not bound by the pleadings or the stand taken by the respective parties. Once the statute is capable of its literal interpretation, the court is expected to follow the same irrespective of the stand taken by the parties.

Conclusion

The P&H HC dismissed a challenge to the process of privatisation of electricity distribution in Chandigarh. It rightly refrained from a pedantic interpretation of Section 131 of the Electricity Act as was argued by the petitioner that since there is no Electricity Board in existence, there can be no invitation for bids for privatisation. This encourages efforts to reform distribution sector in India, which is the need of the hour.

Consumption test for Captive Generating Plant is 'power plant/generating plant' centric and not 'ownership centric'

The APTEL on November 18, 2024, rendered its judgment in ***Tamil Nadu Generating and Distribution Corporation Ltd. vs. Tamil Nadu Electricity Regulatory Commission and Ors.***[16] holding that, consumption from each Captive Generating Plant ("**CGP**") must be considered separately for compliance of 'consumption test' under Rule 3 of the Electricity Rules, 2005 ("**Electricity Rules**").

Brief facts

1. Chettinad Cement Corporation Private Limited, respondent No. 2, has 3 (three) cement manufacturing units in the State of Tamil Nadu ("**CCCPL**"). CCCPL had set-up co-located power plant inside the premises of its cement

[16] Judgment dated November 18, 2024, in Appeal No. 76 of 2024

manufacturing plants for captive consumption of power.

2. As per the data submitted by CCCPL, 2 (two) out of 3 (three) power plant failed to meet the minimum consumption test of 51%. Accordingly, on September 23, 2020, the appellant herein issued a show cause notice and raised a demand of INR 95,02,09,269 (Indian Rupees ninety-five crore two lakh nine thousand two hundred and sixty-nine) towards payment of cross subsidy surcharge. The demand raised by the appellant was disputed. Consequently, the appellant filed a petition[17] before the Tamil Nadu Electricity Regulatory Commission ("**TNERC**").

3. On July 13, 2023, TNERC passed an order (impugned in the aforementioned appeal) in MP No. 36 of 2020 holding that, the captive user is a single entity, hence, the energy generated by all the 3 (three) generating plants be aggregated for the purpose of compliance of consumption test under Rule 3 of the Electricity Rules. Consequently, TNERC held that CCCPL has met the consumption test and no cross subsidy surcharge is payable.

4. Aggrieved by the decision of TNERC, the appellant preferred an appeal before the APTEL.

Issue

The issues framed by the APTEL are as under:

1. whether generation and consumption from different power plants, set up for captive use by the same user, can be aggregated for the purpose of ascertaining compliance with Rule 3 of the Electricity Rules? and

2. whether the petition, filed by the appellant before TNERC claiming payment of cross-subsidy surcharge from CCCPL was time-barred?

Submissions before the APTEL

1. The appellant contended that the eligibility criteria for a CGP, as provided in the Electricity Act read with Electricity Rules, is plant centric. Hence, the ownership and consumption criteria ought to be met by each generating plant/ unit.

2. CCCPL contended that the Appellant's contention is not only contrary to the object and scheme of the Electricity Act but the same is only contrary to the Supreme Court's decision in the case of *CSPDCL vs. CSERC*[18], and APTEL's judgment in the case of *Prism Cement Limited vs. MPERC*[19].

Findings and analysis

The APTEL allowed the appeal holding that:

1. Section 2 of the Electricity Act commences with the words "*In this Act, unless the context otherwise requires*". The definitions of various words and expressions, in sub-section (1) to (77) of Section 2 (which includes the definition of CGP), must be given the meaning in terms of the definition, unless a meaning contrary thereto arises in the context of the provision under consideration;

2. Section 2(8) of the Electricity Act defines CGP to mean a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of the members of such co-operative society or association. There are 2 (two) limbs to the definition of CGP under Section 2(8) of the Electricity Act. use of the word 'means', in the first limb of Section 2(8) of the Electricity Act, suggests that the definition of CGP is intended to cover only those CGPs specified therein. Further, Section 2(48) of the Electricity Act defines a 'person' to include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person. In order to fall within the first limb of Section 2(8), and to be held to be a CGP, the power plant should be set up, among others, by a company to generate electricity primarily for its own use. The second limb of Section 2(8) of the Electricity Act, by use of the word 'includes', conveys an extensive meaning. Thus, power plants set up by any person, company, association of persons and cooperative society would also fall within the definition of captive power plants;

3. use of the word 'primarily', both in the first and second limbs of Section 2(8) of the Electricity Act,

[17] MP No. 36 of 2020
[18] 2022 SCC OnLine SC 604
[19] Judgement in Appeal No. 2 of 2018 dated May 17, 2019

is not without significance. The said word means 'mainly'. As long as the power plant is set up by a person to generate electricity mainly for his own use, it would satisfy the requirement of a CGP. In other words, it is not necessary that the power plant should be set up by a company exclusively for its own use, and it would suffice if it is set up primarily or mainly by a company for its own use;

4. Rule 3 of the Electricity Rules provides for the requirements of CGP. Rule 3(1)(a) stipulates that no power plant will qualify as a CGP under Section 9 read with Section 2 (8) of the Electricity Act unless in case of a power plant not less than 26% of the ownership is held by the captive user(s); and not less than 50% of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use. Explanation (1) below Rule 3(1) states that the electricity required to be consumed by captive users will be determined with reference to such generating unit or units in aggregate identified for captive use, and not with reference to the generating station as a whole;
5. the usage of the words 'no power plant shall qualify' and 'such' used in Rule 3(1) of the Electricity Rules clearly suggests that the minimum consumption requirement of 51% is to be met by each power plant. Further, 'Explanation' is not an exhaustive provision but the same only explains the provision, to clear its meaning. In other words, the test is 'power plant centric' and not 'ownership centric';
6. in view of the aforesaid, the order passed by the TNERC was set-aside; and
7. as regards the issue of limitation in recovering cross-subsidy surcharge, since the said issue was not decided by TNERC, the said issue is remanded to TNERC to decide.

Conclusion

The APTEL has applied the principle of 'strict interpretation' to the scheme of the captive power plant and held that the compliance of 'consumption test' is 'power plant/generating plant' centric and not 'ownership centric'. The judgment brings clarity regarding captive compliance where a single captive user owns multiple captive power plants and captively consumes power at various locations. The judgment further balances the interest of captive power plants and distribution licensees since genuine structures created for self-consumption is promoted. The APTEL has also not interfered with the earlier orders passed by TNERC, where aggregation of power generation from wind power plants were permitted.

Energy

Draft regulations for verification of captive status of generating plants/consumers

TNERC, *vide* notification dated June 24, 2024, had issued the 'Draft TNERC (Verification of Captive Status of Generating Plants /Consumers) Regulations, 2024' ("**Draft Verification Procedure**") for seeking views/comments/suggestions from the public. The Draft Verification Procedure, proposed under the Electricity Act, aims to specify the methodology for verification of status of CGPs and captive users located within the State.

Key highlights of the Draft Verification Procedure

1. **Scope and extent**: The Draft Verification Procedure will apply to all CGPs and captive users throughout the State of Tamil Nadu.
2. **Determination of captive status of CGP**:
   a) Annual monitoring – The distribution licensee authorised by the TNERC will monitor CGPs annually, after the end of the FY, for compliance with consumption and equity share-holding criteria. For newly commissioned plants, for the first year, the start date is the latter of the open access date, receipt of the wheeling agreement, or commissioning date. For the subsequent years, generation from April 1st to March 31st of a FY

will be considered for determining captive status.

b) Role of distribution licensee and TNERC - TNERC has authorised the distribution licensees in Tamil Nadu to annually collect documentation from generator(s) and user(s) to assess their captive status based on 'criteria' of consumption and equity shareholding. Furthermore, in instances where consumers do not meet the criteria for captive status, the distribution licensees are empowered to issue demand notices that include detailed calculations demonstrating the consumers' non-compliance with the captive status requirements. If any CGP fails to satisfy the eligibility criteria for CGP status, the distribution licensee will, after due reconciliation with the CGPs, submit the pertinent documents in their entirety to TNERC for final determination regarding the CGP status of the plant.

c) Accounting for captive use - For generating stations/pooling stations with units identified for captive use, the 'aggregate' energy generated, allocated, and consumed will determine captive status. For wind energy with multiple units under separate energy wheeling agreements but the same ownership structure, aggregate energy of all units is accounted for.

d) Multi-State CGPs - For CGPs and users in more than one State, captive status verification will be done by the Central Electricity Authority ("**CEA**") according to approved procedures.

e) Security deposit - By April 30th each year, captive users must deposit a bank guarantee equivalent to cross-subsidy surcharge and additional surcharge for 51% of captive consumption from the previous year (or an estimate for new plants), as payment security to the distribution licensee.

3. **Verification of ownership and consumption criteria**:

a) Verification of consumption criteria -

i) as per the Draft Verification Procedure, the criteria for consumption will be verified based on the aggregate net electricity generated from the generating unit(s) designated for captive use. This is calculated as gross electricity generated minus auxiliary consumption and other relevant consumptions such as banked energy and startup energy (including self-consumption). The detailed accounting mechanism is set out in the Draft Verification Procedure;

ii) further, the aggregate net electricity will be determined annually at the end of the year; and

iii) the verification of consumption criteria for different types of captive users will be as per the criteria set out in the Draft Verification Procedure.

b) Verification of equity share holding criteria -

i) the Draft Verification Procedure outlines the specific shareholding criteria and the necessary supporting documentation (including articles of association, memorandum of association, shareholding certificates, etc) required for verifying the different categories of captive users;

ii) the generators/consumers must provide equity shareholding details as of March 31st, annual consumption, and electricity generation details in prescribed formats;

iii) further, any change in shareholding or ownership during the year must be reported within 15 (fifteen) days and weighted average shareholding percentage will be used if shareholding changes during the year; and

iv) technical losses in the electrical network, as determined by the TNERC in its tariff orders, and those in the energy storage system will be added to the energy consumption of captive users for the purpose of verifying consumption criteria.

c) **Meeting and reporting**: As per the Draft Verification Procedure, separate energy meters with automated meter reading facilities are required for each generating unit. Further, data on generation and consumption must be reported regularly to the distribution licensee.

d) **Non-Compliance consequences**: CGPs or users failing to meet the criteria will lose captive status for that year, resulting in cross-subsidy surcharges and additional charges. Defaulting entities must pay these charges within a month of the invoice.

e) **Dispute resolution**: Disputes between distribution licensees and captive power producers/users regarding captive status and related charges can be petitioned before TNERC.

Conclusion

TNERC's release of the Draft Verification Procedure establishes a framework for verifying CGP status based on the consumption and ownership criteria set out in the Electricity Rules. This is intended to create a more predictable regulatory environment for captive power users. For the industry, the draft regulation introduces detailed reporting and monitoring mechanisms designed to streamline operations and address disputes. A key aspect of the Draft Verification Procedure which is noteworthy is the requirement for captive users to deposit a bank guarantee equivalent to cross-subsidy surcharge and additional surcharge for 51% of captive consumption as payment security to the distribution licensee, which can have an impact on the financials of the CGP.

Draft regulations for implementation of rooftop aero turbine with Solar Component

The Government of Karnataka ("**GoK**"), through its Karnataka Renewable Energy Policy 2022-2027 ("**Renewable Energy Policy**"), are committed to promote and adopt new and emerging renewable technologies within the energy sector, including the integration of Rooftop Aero Turbines ("**RAT**") with Solar Component[20].

RATs are small-scale wind energy systems designed for rooftop installation to generate electricity by harnessing wind power. These systems are particularly suited for urban and suburban environments, where wind speeds tend to be lower and more turbulent compared to open areas. RATs provide an efficient solution for residential power generation, either as standalone systems or in combination with solar energy[21].

In exercise of the powers conferred under the Electricity Act, the KERC has issued the Draft (Implementation of Rooftop Aero Turbines with Solar or Without Solar) Regulations, 2024 ("**Draft Regulations**"), to regulate and facilitate the implementation of RATs in Karnataka.

Conditions for Installation of RATs[22]

Eligible Consumers[23] ("**Consumers**") within the supply area of a Distribution Licensee ("**Distribution Licensee**") may install a RAT plant with or without accompanying Solar Component, subject to the following conditions:

1. **Installation of RAT with Solar Component**:

   a) the RAT's capacity must be at least 1 (one) kilo watts ("**kW**"); and

   b) the total installed capacity, including both RAT and the Solar Component, must not exceed 1.25 x (one point two-five times) the Consumer's sanctioned load.

   Provided that 1 (one) resource, either the RAT or the Solar Component may be installed up to 100% of the sanctioned load, while the other is capped at 25% of the sanctioned load.

   Illustration: For a Consumer with a sanctioned load of 10 (ten) kW, the Consumer may install either the RAT or Solar Component up to 10 (ten) kW, along with an additional 25% (i.e., 2.5 kW) of the alternate resource, resulting in a total installed capacity of 12.5 kW.

2. **Installation of RAT without Solar Component**: The RAT's capacity must be at least 1 (one) kW and must not exceed the Consumer's sanctioned load.

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[20] Paragraph 5.2.10 (a) of the Karnataka Renewable Energy Policy, 2022-2027.
[21] Paragraph 3, Preamble, Draft Regulations.
[22] Regulation 4, Draft Regulations
[23] The Term 'Eligible Consumer' has been defined to mean "*a consumer of electricity in the area of supply of a distribution licensee, who has installed or proposes to install RAT plant with solar or without solar for generation of electricity and supply to such distribution licensee on gross/net metering basis and who satisfies such other conditions as may be specified by the Commission for this purpose.*"

Procedure for implementation and reporting[24]

The distribution licensees are required to implement a transparent and standardised procedure for allowing Consumers to install and connect RAT plants with or without Solar Component ("**Plant**"), on a first-come, first-served basis.

Upon receiving an application for Plant installation, the Distribution Licensee are required to provide approval to the installation of the Plant based on a field report and technical feasibility, as per the timelines established by the KERC. Once approved, the Consumer is required to enter into a PPA with the Distribution Licensee.

The Consumer will be required to commission the Plant within 180 (one hundred and eighty) days from the PPA approval date. If the Plant is not commissioned within this period, the applicable tariff will be the lower of either:

1. the prevailing tariff at the time of commissioning; or
2. 90% of the agreed PPA tariff.

Every Distribution licensee is required to monitor the process of installation of the Plants by the Consumers, and submit quarterly reports to KERC in such formats, as may be specified by KERC.

Technical parameters[25]

The Draft Regulations require the Plant to comply with, *inter alia*, the following technical parameters:

1. **Interconnection with the Distribution System**: The Plant must connect at specific voltage levels based on the capacity, with costs borne by the Consumer up to the interconnection point. Plants under 150 (one hundred fifty) kW connect to the existing distribution transformer without exceeding 80% of its rated capacity, while those over 150 (one hundred fifty) connect to the existing 11 (eleven) kV distribution system and must ensure that the current does not exceed 80% of the line's rated capacity.
2. **Technical Standards**: The Plants must follow various technical and operational standards, including those set by KERC and CEA.
3. **Safety Aspect**: Consumers are responsible for the safety of the Plant up to the interconnection point and are liable for any accidents caused by back-feeding. Distribution Licensees can disconnect the Plant in emergencies or if hazardous conditions arise, and all Plants must have anti-islanding protection and manual isolating switches.

Filing of application and proceedings for determination of tariff[26]

KERC will determine the generic tariff for Plants at the beginning of each control period. However, if significant changes in tariff parameters occur during a control period, the KERC may revise the tariffs either *suo motu* or based on review petitions filed before it.

Nevertheless, the Plants that have signed PPAs and are commissioned within a control period will maintain the generic tariff determined for that control period.

Metering system[27]

The metering system for Plants must comply with the CEA (Installation and Operation of Meters) Regulations, 2006. For gross metering, a bi-directional (net) meter is required at the interconnection point, while for net metering, the existing meter is replaced by a bi-directional meter capable of downloading readings via meter reading instrument. The cost of new or additional meter is borne by the Consumer, and the meters must be jointly inspected and sealed by both the Consumer and the Distribution Licensee. For Consumers on a Time of Day (TOD) tariff, meters must record time-specific consumption and generation.

Energy accounting and settlement[28]

The Draft Regulations mandate that the meter readings must be taken on a monthly basis or according to the billing cycle set out in the electricity supply code.

1. **For gross metering**: The Distribution Licensee is required to display the amount of electricity

[24] Regulation 5, Draft Regulations.
[25] Regulation 6, Draft Regulations.
[26] Regulation 7, Draft Regulations.
[27] Regulation 9, Draft Regulations.
[28] Regulation 10, Draft Regulations.

exported by the Consumer during each billing period. If the event any import of energy is recorded in the bi-directional meter during a billing period, such imported energy will be charged at the higher of:

a) the tariff agreed upon in the PPA; or

b) the prevailing retail supply tariff applicable to the Consumer's category.

2. **For net metering**: The Distribution Licensee is required to display the amount of electricity injected by the Consumer, the amount of electricity supplied by the Distribution Licensee, and the net electricity billed for payment during each billing period. Further:

a) if the electricity generated by the Plant exceeds the consumption of electricity by the Consumer during a billing period, the Distribution Licensee will be required to pay for the excess electricity at the PPA tariff rate; or

b) if the electricity consumed by the Consumer exceeds the electricity generated by the Plant during a billing period, the Distribution Licensee will bill the Consumer for the net consumption at the tariff applicable to such Consumer.

Conclusion

The integration of RATs with or without solar, as envisioned in the Draft Regulations, signals a transformative shift in Karnataka's Renewable Energy ("**RE**") strategy. By pioneering the regulation and deployment of RATs, the state not only bolsters urban energy resilience but also sets the stage for a broader decentralization of power generation. This regulatory framework enhances consumer participation in RE adoption, empowering residential and commercial users alike to actively contribute to grid stability and sustainability. Furthermore, the potential combination of RATs with solar power systems exemplifies an innovative approach to overcoming the challenges posed by urban wind dynamics, effectively utilizing hybrid energy solutions to maximize efficiency and energy yield.

This initiative is poised to accelerate the adoption of cutting-edge renewable technologies, particularly in densely populated regions where space and resource constraints are prevalent. These Draft Regulations could serve as a model for other states across India to adopt, creating an ecosystem where RATs become a commonplace feature of rooftop infrastructure nationwide. Additionally, this move aligns with India's broader goals of reducing carbon emissions, diversifying its RE mix, and advancing toward its international climate commitments. The successful implementation of this framework could inspire global cities and regions to integrate similar technologies.

MNRE issues clarification on Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019

MNRE, *vide* Office Memorandum ("**OM**") dated October 14, 2024[29], issued clarification on 'Approved Models & Manufacturers of Solar Photovoltaic Modules (Requirement for Compulsory Registration) Order, 2019' dated January 2, 2019 ("**ALMM Order**"). Notably, MNRE has reiterated its earlier clarification that ALMM Order will not be applicable for open access and net-metering RE projects where the first application has been made before October 1, 2022, to any relevant entities, for grant of:

1. in-principle approval; or
2. no objection certificate; or
3. Government order; or
4. any other approvals, as may be required for open access and net-metering of RE projects.

The OM clarifies the following:

[29] O.M. No. 283/54/2018-GRID SOLAR-Part(2).

1. under the ALMM Order, MNRE *inter alia* provided that:
   a) models and manufacturers of Solar Photovoltaic ("**Solar PV**") cells and modules will be enlisted, after due inspection of manufacturing facilities. A list namely Approved List of Models and Manufacturers ("**ALMM**") will be published and will consist of:
      i) LIST-I specifying models and manufacturers of Solar PV modules; and
      ii) LIST-II specifying models and manufacturers of Solar PV cells;
   b) models and manufacturers included in ALMM will be eligible for use in the Government/Government assisted projects/projects under Government schemes and programs, installed in the country;
2. MNRE had issued a similar clarification earlier *vide* an order[30] dated October 7, 2022, in response to representations received for further clarity on MNRE's earlier OMs[31] dated January 13, 2022[32] and March 28, 2022[33]. In this regard, MNRE had *inter alia* clarified that amendments to ALMM Order, vide the OMs dated January 13, 2022, and March 28, 2022, will not be applicable for open access and net-metering RE projects where the first application has been made before October 01, 2022, to any relevant entities.
3. the term 'relevant entities' includes distribution licensee(s)/State transmission utility/Central Transmission Utility of India Limited/State Load Despatch Centre/National Load Despatch Centre/Regional Load Despatch Centre/Grid Controller of India Limited/State Nodal Agency for RE (power/energy/RE department of the State/Union Territory).

Conclusion

MNRE by issuing the said clarification has emphasised on the cut-off date (i.e., October 1, 2022) for the applicability of the ALMM Order and subsequent amendments on RE projects which have applied for open access and net metering facility. Such clarification by MNRE is crucial since this will:

1. not only ensure that there is a proper compliance of the ALMM Order by the Project Developers who have submitted their bid after the cut-off date;
2. but also provide clarity for project developers who have initiated their projects prior to the ALMM Order with respect to applicability of the ALMM Order and subsequent amendments on their respective projects.

Mines and Minerals (Development and Regulation) Act, 1957

A 9 (nine) judge constitution bench of the Supreme Court rules that royalty under the Mines and Minerals (Development and Regulation) Act, 1957 is not 'tax'

On July 25, 2024, a 9 (nine) judge Constitution Bench of the Supreme Court in the case of ***Mineral Area Development Authority and Anr vs. M/s Steel Authority of India and Anr Etc.***[34], by way of the majority opinion[35] endorsed the power of States to

[30] O.M. No: 283/54/2018-GRID SOLAR-Part (5).
[31] O.M. No. 283/54/2018-GRID SOLAR-Part(2) dated January 13, 2022, and O.M. No. 283/54/2018-GRID SOLAR-Part(2) dated March 28, 2022.
[32] MNRE *vide* OM dated January 13, 2022, had *inter alia* amended ALMM Order to include 'net metering' and 'open access' projects and provided that the amendment shall be applicable to RE projects which have applied for open access and net metering facility from April 1, 2022.
[33] MNRE *vide* OM dated March 28, 2022, had *inter alia* extended the applicability of amendment dated January 13, 2022, from April 1, 2022, to October 1, 2022.
[34] Civil Appeal Nos. 4056-4064 of 1999
[35] Majority Opinion of Chief Justice Dr Dhananjaya Y Chandrachud, Justices Hrishikesh Roy, Abhay Oka, JB Pardiwala, Manoj Misra, Ujjal Bhuyan, SC Sharma and AG Masih.

levy tax and cesses on mining and mineral use activities. In a nutshell, it held that:

1. royalty under the Mines and Minerals (Development and Regulation) Act, 1957 ("**MMDR Act**") is not in the nature of 'tax'. It is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights;
2. the liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;
3. the legislative power to tax mineral rights lies with the State legislatures. However, this right may be limited by the Parliament; and
4. States can adopt the mineral value of land as basis for levying tax on land and buildings, since this is an independent taxing power of States.

Brief Facts

Several States such as Rajasthan and Uttar Pradesh sought to impose taxes on mineral bearing land in pursuance of Entry 49 of List II of the Constitution of India ("**Constitution**") by applying mineral value or royalty as the measure of tax. These levies were challenged on the ground that they were beyond legislative competence of State legislatures.

Issues

The questions of law framed by the Supreme Court were:

1. What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax?
2. What is the scope of Entry 50 of List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 of List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect to the field in Entry 50 of List II?
3. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 of List II pro tanto subjects the entry to Entry 54 of List I, which is a non-taxing general entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in M P V Sundararamier (1958 1 SCR 1422)?
4. What is the scope of Entry 49 of List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different qua mining land on account of Entry 50 of List II read with Entry 54 of List I?
5. Whether Entry 50 of List II is a specific entry in relation to Entry 49 of List II, and would consequently subtract mining land from the scope of Entry 49 of List II?"

Findings and analysis

Whether royalty is tax

1. Royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. The marginal note to Section 9 of the MMDR Act[36] states that royalties are 'in respect of mining leases'. The liability to pay royalty arises out of the contractual conditions of the mining lease. The failure of the lessee to pay royalty is considered to be a breach of the terms of the contract, allowing the lessor to determine the lease and initiate proceedings for recovery against the lessee.
2. Section 9 of the MMDR Act statutorily regulates the right of a lessor to receive consideration in the form of royalty from the lessee for removing or carrying away minerals from the leased area. The object of empowering the Central Government to specify rates of royalty for major minerals was to ensure a certain level of uniformity in mineral prices in view of the domestic and international market.
3. The fact that the rates of royalty are prescribed under Section 9 of the MMDR Act does not make it a 'compulsory exaction by public authority for public purposes' because the compulsion stems

[36] Section 9 deals with royalties in respect of mining leases, to be paid by the holder of a mining lease.

from the contractual conditions of the mining lease agreed between the lessor and lessee; the demand is not made by a public authority, but the lessor (which can either be the State Government or a private party); and the payment is not for public purposes, but a consideration paid to the lessor for parting with their exclusive privileges in the minerals. Moreover, the fact that Section 25 of the MMDR Act allows recovery of royalty due to the Government under the MMDR Act or 'under the terms of the contract' as arrears of land does not make royalty 'an impost enforceable by law'. Section 25 of the MMDR Act is a standard recovery provision allowing the government to recover any dues payable to it, flowing from statute or the terms of a contract. Pertinently, contractual payments due to the government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears.

4. There are major conceptual differences between royalty and a tax the proprietor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign; royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law; and royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.

5. Under the MMDR Act, the Central Government fixes the rates of royalty, but it is still paid to the proprietor by virtue of a mining lease. In case the minerals vest in the government, the mining lease is signed between the State Government (as lessor) and the lessee in pursuance of Article 299 of the Constitution. Through the mining lease, the Government parts with its exclusive privilege over mineral rights. A consideration paid under a contract to the State Government for acquiring exclusive privileges cannot be termed as an impost. Since royalty is a consideration paid by the lessee to the lessor under a mining lease, it cannot be termed as an impost. Royalty is not a tax as held several times.

6. The principles applicable to royalty apply to dead rent because: (a) dead rent is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the lessee works the mine, and does not keep it idle, and in a situation where the lessee keeps the mine idle, it ensures a constant flow of income to the proprietor; (b) the liability to pay dead rent flows from the terms of the mining lease; (c) dead rent is an alternate to royalty; if the rates of royalty are higher than dead rent, the lessee is required to pay the former and not the latter; and (d) the Central Government prescribes the dead rent not in the exercise of its sovereign right, but as a regulatory measure to ensure uniformity of rates.

Relationship between Entry 50 of List II and Entry 54 of List I of the Constitution

1. Royalty is not a tax. Therefore, royalty would not be comprehended within the meaning of the expression 'taxes on mineral rights'. The scope of taxes on mineral rights includes taxes on the right to extract minerals. Taxes on mineral rights also take within their fold other aspects relating to the exercise of mineral rights such as working the mines and dispatching minerals from the leased area. However, the legislature must ensure that the exercise of the taxing powers relatable to the field under Entry 50 of List II of the Constitution does not foray into a duty of excise or a tax on the sale of minerals.

2. Entry 50 of List II of the constitution is unique because though it is a taxing entry, it is made subject to 'any limitations imposed by Parliament by law relating to mineral development'. Thus, the taxing power of the State is capable of being controlled by a non-fiscal enactment by Parliament relating to the development of minerals.

3. Entry 54 of List I of the Constitution is a regulatory entry dealing with the regulation of mines and mineral development. The regulatory entries in Lists I and II of the Seventh Schedule are distinct from taxing entries. Though the power to levy taxes is an incident of sovereignty, it is subject to constitutional limitations. Since Entry 54 of List I of the Constitution is a general entry, it will not include the power of taxation.

Tax under Entry 49 of List II of the Constitution

1. The owner of a land can be divested of sub-soil rights in minerals only through a valid process of

law, which has generally taken the shape of land reform legislation enacted by State legislatures. The MMDR Act does not vest the ownership of minerals or mineral rights in the State. It regulates the exercise of rights to minerals which may be owned either by the Government, private persons, or by both the Government and private persons.

2. The legislative declaration under the MMDR Act will only affect the legislative power of the State with respect to Entry 23 of List II of the Constitution to the extent the Parliamentary legislation covers the subject-matter. The legislative powers of the State with respect to other subjects under List II of the Constitution, including taxes on lands and buildings, will not be affected or controlled by the MMDR Act. Therefore, the legislative powers of the States to levy a tax falling under Entry 49 of List II of the Constitution remains unaffected.
3. The specification of rates of royalty with respect to major minerals under the MMDR Act limits the powers of the State Government in terms of Entry 54 of List I read with Entry 23 of List II of the Constitution. However, Entry 49 of List II of the Constitution is not restricted or subjected in its operation by any other entry – the State legislature can tax any lands including mineral bearing lands. Reading any implied limitation or restriction on the legislative power of the State legislature to tax mineral bearing land under Entry 49 of List II of the Constitution will be against the grain of the Constitution.
4. The fact that mineral value or mineral produced is used as a measure under Entry 50 of List II of the Constitution does not preclude the legislature from using the same measure for taxing mineral bearing land under Entry 49 of List II of the Constitution.

Retrospective applicability of the judgment

After the judgment was pronounced on July 25, 2024, arguments were advanced on whether said Judgment is to apply only prospectively. Accordingly, by way of a separate Judgment on August 14, 2024, it was clarified that:

1. the present Judgment would have retrospective applicability;
2. however, demands of tax will not operate on transactions made prior to April 1, 2005;
3. further, the time for payment of the demand of tax will be staggered in instalments over a period of 12 (twelve) years commencing from April 1, 2026; and
4. the levy of interest and penalty on demands made for the period before July 25, 2024, will stand waived for all the assesses.

Conclusion

Supreme Court's 9 (nine) Judge Constitution Bench Judgment settles many issues of constitutional importance bearing fiscal significance – such as interpretation of taxing entries and regulatory entries under the Seventh Schedule of the Constitution, powers of taxation by the Union and States, as also restrictions thereon on important subjects such as minerals and land generally. It is bound to be read as protecting States' powers of revenue over minerals etc. in context of a tight balancing act between fiscal powers of Centre and States under the Constitution.

Ministry of Environment, Forest and Climate Change

Ministry of Environment, Forest and Climate Change of India notifies the Ecomark Rules, 2024

On September 26, 2024, Ministry of Environment, Forest and Climate Change of India, notified the Ecomark Rules 2024 ("**Ecomark Rules**"). This initiative is part of a broader effort to promote environmentally friendly products that minimise adverse environmental impacts. The Ecomark Rules align with the principles of 'lifestyle for environment', aiming to foster lower energy consumption, resource efficiency, and a circular economy while preventing misleading claims regarding the environmental attributes of products.

Purpose

The primary purpose of the Ecomark Rules is to encourage the production and consumption of eco-friendly products. By implementing the Ecomark Rules, the Government seeks to:

1. empower consumers to make informed purchasing decisions based on clear environmental criteria;
2. encourage manufacturers to transition to production of environmentally friendly products leading to promotion of green industries; and
3. establish a standardised eco-labeling system that enhances transparency in product environmental claims.

Salient features

1. **Eligibility criteria**: To be granted an ecomark under the Ecomark Rules, products must have a licence or certificate from the Bureau of Indian Standards and meet specific environmental standards, including:
    a) reduction of pollution through waste minimisation;
    b) recyclability or use of recycled materials;
    c) decrease in reliance on non-renewable resources; and
    d) avoidance of environmentally harmful materials.
2. **Application and verification procedure**: The procedure for granting Ecomark involves several key steps:
    a) applicants must submit their application using form 1 to the Central Pollution Control Board ("**CPCB**"), which will verify compliance with the necessary conditions either directly or through a registered verifier (entities registered under the Ecomark Rules, having qualification and experience in the field of environment and matters relating to ecomark);
    b) following verification, a report must be prepared within 60 (sixty) days;
    c) if CPCB is satisfied with the findings, it will grant ecomark, which will be valid for 3 (three) years or until any changes in the criteria occur; and
    d) renewal applications can be submitted upon expiry, adhering to the same procedures.
3. **Monitoring and compliance**: Ecomark holders are required to submit annual reports by May 31 each year. CPCB has the authority to suspend or revoke certifications if false information is provided.
4. **Cancellation of ecomark**: If CPCB determines that an Ecomark holder has provided false information or intentionally concealed required information, it may suspend or cancel the ecomark after allowing the holder an opportunity to present their case.
5. **SC**: SC will oversee implementation, while a technical committee will assist in developing criteria and verification processes. Both committees will include representatives from various government ministries and industry experts.
6. **Web portal**: As per the Ecomark Rules, CPCB will create a web portal for ecomark applications, annual report submissions by holders, verifiers, and registered agencies, and for managing verifier registrations. Ecomark holders must submit annual reports online by May 31 for the period from April 1 of the previous year to March 31 of the current year. CPCB will also publish information on the portal, including details of ecomark holders and their products, lists of certified products, justification reports, research findings on environmental impacts, and benefits of ecomark-certified products.

Conclusion

In conclusion, the Ecomark Rules represent a significant step towards promoting environmentally friendly products in India. By establishing clear criteria for certification, the rules not only empower consumers to make informed choices but also encourage manufacturers to adopt sustainable practices. With the implementation of a dedicated web portal for applications and reporting, along with rigorous compliance mechanisms, the ecomark framework aims to enhance transparency and accountability in eco-labeling. For businesses, understanding and complying with these regulations will be essential for leveraging the benefits of ecomark certification and meeting the growing consumer demand for green products.

Electric Vehicle

MoP introduces revised guidelines for Electric Vehicles charging infrastructure

MoP on September 17, 2024, issued the guidelines for installation and operation of Electric Vehicles ("**EV**") charging infrastructure with the aim to make installation of public charging stations more financially viable by introducing a new revenue-sharing model. The guidelines apply to various EV charging locations, including private parking spaces, commercial complexes, railway stations, airports and highways. The GoI will provide land at subsidised rates to private operators, who will then share revenue based on electricity consumption over a 10 (ten) year period.

The aim is that by 2030, at least 1 (one) charging station should be available within every 1 km x 1 km urban grid, and stations will be positioned every 20 (twenty) km along highways for regular EVs and every 100 (one hundred) km for heavy duty vehicles. Further, the electricity cost at charging stations will not exceed the average cost of supply until March 2028, with lower tariffs during solar hours to encourage RE use.

The MoP will maintain a national database of public charging stations, enabling users to locate charging points easily *via* mobile apps or online platforms.

The Union Cabinet approves Prime Minister Electric Drive Revolution in Innovative Vehicle Enhancement scheme; a major push for electric mobility and sustainable transportation

On September 11, 2024, the Union Cabinet, chaired by Prime Minister Narendra Modi, approved the PM Electric Drive Revolution in Innovative Vehicle Enhancement ("**PM E-DRIVE**") scheme, with an outlay of INR 10,900 crore (Indian Rupees ten thousand nine hundred crore) over 2 (two) years. The scheme aims to promote electric mobility in India by providing subsidies and incentives worth INR 3,679 crore (Indian Rupees three thousand six hundred seventy-nine crore) for EVs, including e-2 (two) wheelers, e-3 (three) wheelers, e-ambulances and e-trucks. A key feature is the introduction of e-vouchers, making the EV purchase process easier by allowing buyers to claim demand incentives digitally. Additionally, INR 500,00,00,000 (INR five hundred crore) was allocated for the deployment of e-ambulances, INR 4,391 crore (Indian Rupees four thousand three hundred ninety-one crore) for procuring 14,028 (fourteen thousand and twenty-eight) e-buses in major cities and intercity routes.

The scheme also tackles infrastructure development by allocating INR 2,000 crore (Indian Rupees two thousand crore) for the installation of public EV charging stations, including 22,100 (twenty-two thousand one hundred) fast chargers for e-four wheelers, 1,800 (one thousand eight hundred) for e-buses and 48,400 (forty-eight thousand four hundred) for e-2 (two) wheelers/3 (three) wheelers. With a dedicated INR 780,00,00,000 (Indian Rupees seven hundred eighty crore) fund for enhancing vehicle testing infrastructure, the scheme promotes domestic EV manufacturing, supports the scrapping of old vehicles and encourages the deployment of e-trucks. Overall, the PM E-DRIVE scheme is set to reduce environmental pollution, improve air quality and boost India's EV ecosystem while creating employment opportunities and driving sustainable transportation solutions.

PM E-Drive Scheme

Given India's commitments concerning emission reduction, and acheivment of net zero emissions by 2070, adoption of EV would play a crucial role in the years to come. To this end, the GoI has been taking various steps to promote adoption and manufacturing of EV in India and setting up of charging infrastructure to promote e-mobility in India including the following:

1. **FAME I**: In 2015, GoI had launched Phase I of 'Faster Adoption and Manufacturing of (Hybrid &) EVs in India' for a period of 2 (two) years with an initial outlay of INR 795,00,00,000 (Indian Rupees seven hundred and ninety-five crore), which was subsequently extended upto 2019 with increased outlay of INR 895,00,00,000 (Indian Rupees eight hundred and ninety-five crore);
2. **FAME II**: In 2019, the Department of Heavy Industries further formulated the Phase II of 'Faster Adoption and Manufacturing of (Hybrid &) EVs in India ("**FAME II**") with an outlay of INR 10,000 crore (Indian Rupees ten thousand crore) in 2019, which was extended upto March 2024 with enhanced outlay of INR 11,500 crore (Indian Rupees eleven thousand five hundred crore); and
3. **Electric Mobility Promotion Scheme 2024** ("**EMPS**"): As between April and September 2024, the Ministry of Heavy Industries ("**MHI**") launched the EMPS to continue supporting e-2 (two) wheelers ("**e-2W**") and e-3 (three) ("**e-3W**") wheelers. The outlay for EMPS was initially INR 500,00,00,000 (Indian Rupees five hundred crore) which was enhanced to INR 778 (Indian Rupees seven hundred and seventy-eight crore).

Pursuant to the review of FAME II and EMPS, MHI, on September 29, 2024, has notified the **PM E-DRIVE** Scheme ("**PM E-DRIVE Scheme**" or "**Scheme**"), which is valid for a period commencing from October 1, 2024, to March 31, 2026. With a substantial outlay of INR 10,900 crore (Indian Rupees ten thousand nine hundred crore), the Scheme aims to strengthen and build on the previous FAME schemes for faster adoption of EVs, setting up of charging infrastructure and development of EV manufacturing eco-system in the country.[37]

Key highlights of the PM E-DRIVE Scheme

Components, outlay and parameters

The PM E-DRIVE Scheme with an outlay of INR 10,900 crore (Indian Rupees ten thousand nine hundred crore) subsumes the EMPS and is proposed to be implemented through the following categories:

Demand incentives/subsidies	Grant for creation of capital assets	Admin expenses
Outlay - INR 3,679 crore 1. Incentives for e-2W, e-3W, e-ambulances, e-trucks and other new emerging EV categories, available to buyers/ end users. 2. Incentives linked to battery capacity with a vehicle segment wise cap and limited to 15% of the ex-factory price. **3.** While the Scheme is mainly applicable to vehicles used for public transport or registered for commercial purposes in e-3W, e- trucks and other new emerging EV categories, it also covers privately or corporate owned and registered e-2Ws.	**Outlay - INR 7,171 crore** 1. Allocation for e-buses (INR 4,391 crore), establishment of network of charging stations (INR 2,000 crore) and upgradation of testing agencies (INR 780 crore). 2. For charging infrastructure, flexibility of funding upto 100% of project cost.	**Outlay - INR 50 crore** Allocation for administration of the Scheme including information, education and communication activities and fee for Project Management Agency ("**PMA**").

[37] Paragraph 5, the PM Electric Drive Revolution in Innovative Vehicle Enhancement (PM E-DRIVE) scheme, Ministry of Heavy Industries, https://pmedrive.heavyindustries.gov.in/docs/policy_document/257594.pdf.

Conditions for vehicle manufacturers

With regard to the demand incentives, the following conditions have to be complied with:

1. Localization requirements: The EVs should be manufactured in India and meet the prescribed requirements for local manufacturing and assembly. The Scheme also details out the Phased Manufacturing Programme for EVs as well as charging infrastructure/public charging stations.
2. Registration: For availing incentives, Original Equipment Manufacturer ("OEMs") are required to be registered with MHI and have the EV models approved by MHI.
3. Advanced batteries and technical criteria: Vehicles should be fitted with advanced batteries as prescribed under the Scheme (which includes new generation batteries such as lithium polymer, lithium iron phosphate, lithium cobalt, etc.). Further, the vehicle models are required to satisfy the prescribed technical eligibility criteria as regards the performance and efficiency of vehicles (which includes criteria such as minimum range, maximum electric energy consumption, minimum max speed, etc. as per specific category of vehicles). Additionally, vehicles are required to be fitted with suitable monitoring devices in specified category of vehicles and have branding that it has been purchased under the Scheme.
4. Pricing of vehicles: Vehicles should have ex-factory price lesser than the prescribed thresholds (for e-2Ws the maximum ex-factory price to avail incentives is INR 1,50,00,000 (Indian Rupees one lakh fifty thousand) for e-rickshaws and e-carts is INR 2,50,00,000 (Indian Rupees two lakh fifty thousand) collectively, while for L5 e-3Ws is INR 5,00,000 (Indian Rupees five lakh) and that for e-buses is INR 2,00,00,000 (Indian Rupees two crore), and the Scheme also prescribes for indicative number of vehicles in specific categories which would be supported by the Scheme.
5. Type approval and compliance with Central Motor Vehicle Rules, 1989 ("CMVR"): The vehicle models are to be type approved as per prescribed procedures by recognised testing agencies. The vehicles should be registered as 'Motor Vehicle' as per the CMVR, and should comply with provisions of CMVR in relation to type approval, road worthiness, registration, classification, categorisation, etc.
6. Certificate: OEMs are required to obtain certificate of PM E-Drive eligibility assessment from recognised testing agencies.
7. Warranty and after sales: OEMs are required to have comprehensive warranty including for battery, and adequate facilities for after sales for the vehicle life as prescribe under the Scheme.
8. Disbursements: OEMs will submit reimbursement claims to MHI, detailed guidelines for which have been issued separately.

Steps for implementation

1. Nodal Ministry: MHI will be the nodal ministry in GoI for planning, implementation and review of the Scheme.
2. Project Implementation and Sanctioning Committee ("PISC"): PISC, an inter-ministerial empowered committee, headed by the Secretary, MHI is constituted for overall monitoring, sanctioning as well as implementation of the Scheme. PISC has been empowered to *inter alia,* decide scheme parameters, downward revisions to demand incentives, quantum of financial support to charging infrastructure, etc.
3. PMA: The Scheme will be implemented through a PMA which would *inter alia* be responsible for secretarial, managerial and providing implementation support and other responsibilities as assigned by MHI from time to time. The responsibilities of the PMA would *inter alia* include development and maintenance of online portal, processing of applications, examination of claims, etc.
4. Digitalisation process: The Scheme contemplates use of Aadhaar-authenticated e-vouchers for EV buyers, making the process more accessible and transparent for stakeholders.

Conclusion

The Scheme puts an end to the speculations around continuity of demand side incentives. While new categories of vehicles have been included in the Scheme, it may be relevant to note that e-4 (four) wheelers have been specifically excluded from the coverage of the Scheme. Further, there is an emphasis to promote EVs for public transportation and commercial purposes. The enhancement of fund allocation for charging infrastructure is also a positive step given the crucial role of charging infrastructure for ensuring EV deployment. This initiative of GoI is poised to boost e-mobility in India, and the Scheme along with Phased Manufacturing Programme, is likely to attract increased investment in the EV ecosystem.

MoP issues 'Guidelines for Installation and Operation of Battery Swapping and Battery Charging Stations'

On October 4, 2024, the MoP issued 'Guidelines for Installation and Operation of Battery Swapping and Battery Charging Stations' ("**BSS & BCS Guidelines**"). Battery Swapping is a method of quickly replacing an EV's fully or partially discharged battery with a charged one. BSS & BCS Guidelines aim to govern such battery charging systems.

Brief Background

On September 17, 2024, MoP issued 'Guidelines for Installation and Operation of EV Charging Infrastructure-2024' ("**Principal Guidelines**"). Notably the Principal Guidelines are aimed at meeting the requirements of EVs with integrated batteries, alternative method of powering EVs is through swappable batteries which can be charged separately at dedicated battery charging stations, and in this regard, MoP has issued BSS & BCS Guidelines.

Key points under the BSS & BCS Guidelines

1. These guidelines are:
   a) applicable to swappable battery providers, owners and operators of BCS and BSS located anywhere; and
   b) issued with the objective to:
      i) promote swapping of batteries as an alternate method of powering EV;
      ii) promote battery as a service; and
      iii) develop a battery-swapping ecosystem.
2. **Salient features**:
   a) Clauses 5, 7, 9, 11, 12(5), 13 (except sub-clause 2) and 20 of the Principal Guidelines will also apply to BCS, BSS, and battery providers. Notably, these clauses *inter alia* provide for general requirements for setting up and operation of EV charging stations and tariff for supply of electricity to EV charging stations;
   b) extant provisions relating to electrical safety shall be applicable to BSSs and BCSs;
   c) owners of BCS or BSS are permitted to use existing electricity connections with or without seeking an increase in the connected load, for charging the swappable batteries; and
   d) BSS or BCS may deploy liquid-cooled swappable batteries for larger vehicles such as trucks and buses.

Conclusion

BSS & BCS Guidelines lays down the framework to establish a robust battery swapping ecosystem to further enhance the EV charging infrastructure. It is likely that battery swapping will minimise the downtime due to traditional charging and, as a result, it will enhance the overall efficiency of EVs.

MHI launches PM E-DRIVE Scheme

MHI, on October 9, 2024 launched the PM E-DRIVE scheme, with a financial outlay of INR 10,900 crore (Indian Rupees ten thousand nine hundred crore), effective from October 1, 2024, until March 31, 2026. The PM E-DRIVE scheme aims to accelerate the adoption of EVs in India by providing incentives for EV purchases, enhancing charging infrastructure, and promoting a robust domestic EV manufacturing ecosystem. It focuses on mass mobility, supporting public transportation systems and reducing transportation-related environmental impacts all aligned with the *Aatmanirbhar Bharat* initiative.

Key components of the PM E-DRIVE scheme include demand incentives for electric 2 (two)-wheelers, 3 (three)-wheelers, e-ambulances, e-trucks and e-buses, alongside significant funding for establishing charging infrastructure and upgrading testing facilities. The initiative emphasises advanced battery technology for eligibility and sets specific targets for the number of vehicles incentivised. Additionally, the scheme plans to deploy e-vouchers for customers to streamline the incentive process, further encouraging the transition to electric mobility. Overall, this initiative is positioned to enhance sustainable transportation, improve air quality, and generate employment opportunities within the EV sector in India

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- transactional advice including mergers and acquisitions, project finance, structuring legal, regulatory and contractual frameworks.

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