The Legacy Outreach

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COP26- Taking steps together for a better Earth

The COP26 summit brought parties together to accelerate efforts towards the purposes of the Paris Agreement and the UN Framework Convention on Climate Change. Nearly 200 nations at the United Nations global climate summit in Glasgow, Scotland, agreed to accelerate the fight against climate change and to commit to tougher climate pledges.

The two-week summit resulted in some significant accomplishments, including new pledges on methane gas pollution, deforestation, coal financing, and the completion of long-awaited rules on carbon trading and a notable U.S.-China deal. The summit also closed with calls on governments to return in 2022 with more substantial pledges to slash greenhouse gas emissions and provide more available funding for nations most vulnerable to a changing climate. However, several climate scientists, lawyers, and politicians felt that the final Glasgow agreement resulted in gradual progress that was inadequate to address the severity of the global climate situation.

Key takeaways from the 26th UN climate summit:

- **New commitments on methane pollution**

More than a hundred nations have now agreed to reduce methane gas emissions by 30% by the year 2030 compared to 2020 levels, a significant step toward curbing one of the biggest contributors to climate change.

The Global Methane Pledge applies to nations that emit roughly half of global methane and contribute to 70% of global GDP. Methane is around 84 times more potent than carbon and lasts just a fraction of the time in the atmosphere before breaking down. As a result, it is essential for combating climate change rapidly while also reducing other greenhouse gas emissions. There would not likely be an immediate impact in our day-to-day lives, but the decisions taken at COP26 would affect Governmental actions on a spectrum of measures and eventually translate into noticeable differences in people's lives.

- **A U.S.-China pledge to slow climate change**

The U.S. and China, the world's two biggest carbon emitters, consented to cooperate this decade to prevent global warming from exceeding 1.5 degrees Celsius and ensure that improvement results from the conference.

Though the U.S.-China agreement lacks particulars or deadlines, it emphasizes that Chinese and American leaders will boost clean energy, mitigate deforestation and cut methane emissions. In addition, the joint declaration said the countries would work jointly to help accelerate the evolution to a net-zero global economy.

- **Strengthening 2030 targets to achieve 1.5°C goal**

According to the Intergovernmental Panel on Climate Change, keeping global temperatures from exceeding the 1.5 degrees Celsius level will require the world to half the emissions of greenhouse gases within the next decade to reach net-zero emissions by 2050. Countries eventually agreed to submit more challenging 2030 targets next year and to put forward long term strategies to help the transition to net-zero emissions by around mid-century.

- **Phasing down coal**

A final deal among nearly 200 nations targeted fossil fuels as the key driver of climate change for the first time. The agreement, however, contained a last-minute modification regarding coal power. Some of the world's biggest burners of coal, India and China, insisted on a last-minute change of fossil fuel language in the pact, switching the words from a "phase out" to a "phase down" of coal. Opposing nations opposed the request but ultimately conceded.

"By polluting the oceans, not mitigating CO2 emissions and destroying our biodiversity, we are killing our planet. Let us face it, there is no planet B."

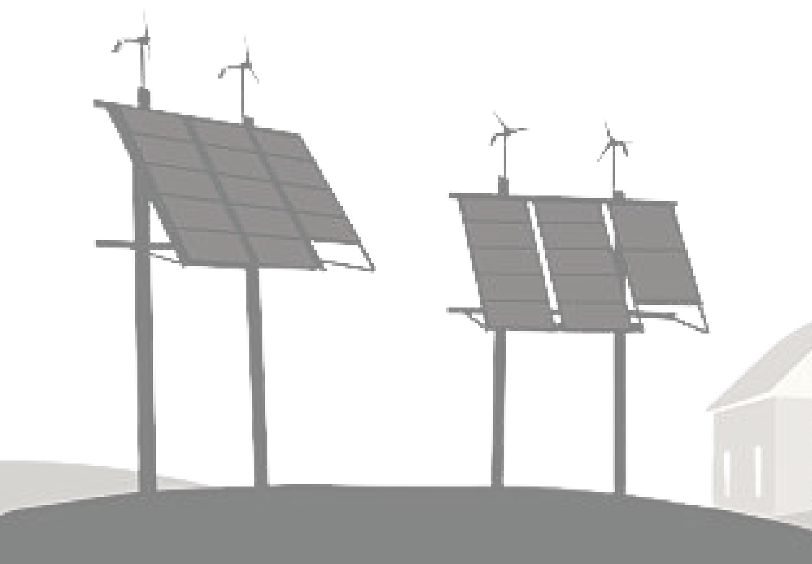
-Emmanuel Macron

Opportunities in Solar Sector - Renewable Energy in India

The energy consumption requirements of India is increasing day by day with the growth of manufacturing, construction, transportation and other development programs, and due to ever-rising prices of petrol, diesel and other fuels, finding an alternate source of energy has become significant for the ever-growing market and consumption needs of India. In this regard, Solar energy has become one such solution that has become an excellent alternate source of energy, be it either for providing electricity to industries, buildings, or domestic consumptions or running of gadgets, cars, aeroplanes, satellites etc. Solar Energy is now seen as the future and alternate to fossil fuels which are certain to deplete in the next 20-40 years.

With an objective to enhance and meet its energy requirement, India had embarked on harnessing solar power in 2010 with the launch of Jawaharlal Nehru Solar Mission (JNNSM), wherein the Government had invited bids from the private players to install power plants in India on the basis of long term Power Purchase Agreements, i.e. for a period of 20-25 years which were signed with the successful bidders with very attractive Feed-in-Tariff of Rs. 9-10 per unit of electricity.

As sunlight is the source for generating solar power, India has an abundance of solar radiation in Rajasthan, Gujarat, and other states. Therefore, taking advantage of the natural conditions, many solar plants with capacities ranging from 5 MW to 20 MW were installed in the 1st and 2nd phases of the JNNSM. Very soon, India became a particularly attractive Solar market in subsequent years, and many domestic and international players took over the share of this market by establishing solar power plants all over India, given the attractive Feed-in tariff and long term Power Purchase Agreements. Expansion of private players in this sector can be gauged from the fact that the target set by the Indian government of installing 20 GW of installed solar capacity by 2022 was achieved well before time, i.e. four years ahead of the target. Seeing the success through the participation of the private sector, the government has revised the target to 450 GW by the end of the year 2030, which will take India a leap forward in becoming self-sufficient in its energy needs.



This enhanced target of 450 GW by the government has given ground to more Indian entrepreneurs and foreign companies to venture into this market and make a strong foothold in this developing solar market in India. The opportunity for foreign investors lies in setting up big solar power plants, captive solar plants, roof-top solar power plants, production of solar panels and other related equipment pertaining to setting up of Solar Power Plant. However, the Central and State Governments are still inviting tenders to enter into a long term Power Purchase Agreement with attractive feed-in-tariff.

At present, some of the private sector players who have played a key role in developing the Solar market in India are Adani Green, Acme Solar, Renew Power, Softbank Energy, Azure Power, Tata Power, Avaada and Greenko, and this list certainly has a lot of scope of many more new names to be added.

Recently many transactions in India regarding acquisitions in the Renewable Energy Sector, particularly the Solar Sector, has been done or announced by domestic and international companies. Some of the major developments that have recently happened in India are the following:

- Reliance New Energy Solar acquires REC Solar Holdings for $771 million
- Adani Green Energy Ltd arm to acquire 40 MW solar asset in Odisha
- AGEL arm acquires 40 MW solar asset in Odisha
- MYSUN bags 140-megawatt solar power projects in Uttar Pradesh
- Petronas to focus on India for clean energy[5]
- Renew Power commissions 250 MW solar project in Rajasthan
- Torrent Power to acquire 50 MW solar plant from Lightsource
- Tata Power Renewable Energy commissions 100 MW solar project in Gujarat
- GE Renewable Energy to set up 148.5 MW wind capacity for Continuum Green Energy

KEY TAKEAWAYS

- Specialized global SMEs with niche technology expertise will find an important growth market.
- The solar market is growing fastest among renewables, and there are programmes and incentives in the sector to encourage investment.
- It is mandatory to understand and adapt to the ground realities, in which local partnerships and teams will play a key role.
- The ecosystem has improved a lot, providing access to incentives and public sector support.
- Solar energy in India has immense opportunities; contact our experts to find out how to capitalize on these.

Emergency Credit Line Guarantee Scheme ("ECLGS")

INTRODUCTION

The Ministry of Finance vide its notification dated 29th. September 2021 has expanded the scope of the Emergency Credit Line Guarantee Scheme ("ECLGS") for the Micro, Small and Medium Enterprises ("MSMEs") and businesses. The MSMEs for the purpose of this scheme will include MSMEs/ Business Enterprises, which are constituted as Proprietorships, Partnerships, Registered Companies, Trusts and Limited Liability Partnerships (LLPs), the interested borrowers under the Pradhan Mantri Mudra Yojana (PMMY) and loans to individuals for the business purposes. The MSME borrower must be GST registered in all the cases where such registration is mandatory. However, this condition shall not apply to the MSMEs not required to obtain GST registration. This scheme has come as a relief for the MSMEs struggling with multiple challenges like the liquidity crises, high default risk, supply shocks, inability to pay dues, shortage of labour, etc. The tenor of the loans provided under the scheme would be 4 (four) years from the date of the disbursement, which includes a moratorium period of 1(one) year. ECLGS provides 100% guarantee coverage to the banks and the Non- Banking Financial Companies to facilitate them to provide emergency credit facilities to the eligible borrowers to meet their working capital requirements. The ECLGS, since its commencement, has extended the relief to over 1.15 crore MSMEs and other businesses.

The modifications which have been made in the ECLGS to enable support to the businesses impacted by COVID are given as follows:

- Existing borrowers under ECLGS 1.0 & 2.0 would be eligible for additional credit support of up to 10% of total credit outstanding as of 29.02.2020 or 31.03.2021, whichever is higher;
- Businesses who have not availed assistance under ECLGS 1.0 or 2.0 can avail credit support of up to 30% of their credit outstanding as of 31.03.2021;
- The interest rate charged under the scheme is capped at 9.25% for banks and 14% for NBFCs;
- Businesses that have been specified under ECLGS 3.0, who have previously not availed ECLGS, can avail credit support up to 40% of their credit outstanding as of 31.03.2021, to a maximum of Rs.200 crore per borrower;
- Incremental credit can be availed within these limits by the existing ECLGS borrowers whose eligibility increased because of a change in cut-off date to 31.03.2021 from 29.02.2020;
- Also, the Borrowers who have availed assistance under ECLGS and whose credit outstanding as of 31.03.2021 (excluding support under ECLGS) is higher than that on 29.02.2020 shall be eligible for incremental support within the cap stipulated under ECLGS 1.0,2.0 or 3.0.

The benefits under the ECLGS have been given to ensure enhanced collateral-free liquidity to small businesses. The business enterprises or the MSME borrower accounts have a combined outstanding loan of up to Rs.25 Crore as of 29.02.2020 with an annual turnover up to Rs. 100 crores for the Financial Year 2019-20 are eligible to benefit from the scheme.

BENEFITS OF THE SCHEME

- The modifications will enhance the utility and the impact of the ECLGS by providing additional support to the MSMEs, safeguarding their livelihood and helping in the smooth running of their business.
- These benefits will also facilitate and promote the flow of institutional credit at reasonable terms.
- This scheme has proved to be a significant relief for the textile industry, which has been struggling to come back to regularity because of the increase in demand in the domestic and export sectors after the covid -19 pandemic.
- The government has extended the tenure of the loan, due to which the borrowers now have to repay the interest only in the first 24 months and then pay back the principal and the interest in the subsequent 36 months.

CONCLUSION

Therefore it can be concluded that the Finance Ministry had launched the Emergency Credit Line Guarantee Scheme ("ECLGS") in May 2020 to help the pandemic hit the economy. Further, due to the continuing adverse impact of the pandemic, the ECLGS Scheme has been extended till 31st March 2022. Apart from providing financial assistance to address the working capital of the MSMEs, the ECLGS is also extended to cater to the hospitality, travel and tourism, leisure and sporting sectors which were affected adversely due to the pandemic.

SC judgment empowers RERA

The recent judgment of the Supreme Court in the case of Newtech Promoters and Developers Pvt. Ltd. versus the State of U.P. has cleared the air on certain aspects of The Real Estate (Regulation and Development) Act, 2016 (Act). The Act was passed in order to protect property buyers and to promote investment and transparency in a large high value but nearly unregulated construction sector. As per a report in a national newspaper more than 50% of the population in the country own houses. This still leaves a vast number of the population as potential property buyers.

The Act was brought in to shift the balance from a developers market and to bring in transparency and fairness in this lucrative sector. The Act sought to curtail the unfettered business practices of the real estate players, like fund diversion and mismanagement and to provide a safety net and relief to home buyers. The Act laid down the scope, powers and functions of the Real Estate Regulatory Authority but the going has not been smooth, with developers ever mindful of repercussions of each and every decision by the Authority, often preferring to file appeals.

Several issues cropped up with time and in the instant case, the developer/ promoter challenged an order passed by a single member of UP-RERA through writ petition before the High Court of Allahabad and thereafter before the Supreme Court.

Observing that "the buyer is in a very vulnerable position - the weakest stakeholder with a high financial exposure", the judgment deals with the following questions for consideration:

- 1. Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?
- 2. Whether the Authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or does the jurisdiction exclusively lie with the Adjudicating Officer under Section 71 of the Act?
- 3. Whether Section 81 of the Act authorizes the Authority to delegate its powers to a single member of the Authority to hear complaints instituted under Section 31 of the Act?
- 4. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for the entertaining substantive right of appeal is sustainable in law?
- 5. Whether the Authority has the power to issue a Recovery Certificate for recovery of the principal amount under Section 40(1) of the Act?

The judges agreed that 'completion certificate' and not 'occupancy certificate' is the key differential and the unambiguous language of the statute makes it retroactive in operation. The Act will apply to all ongoing projects without a completion certificate at the time of commencement of the Act. The court noted that RERA Act definitely provides a remedy to the allottee who wishes to withdraw from the project or claim return. The court held that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand. The court also upheld the delegation of power to a single member of the Authority.

The court negated a contention that pre-deposit by promoters/ developers is discriminatory against other stakeholders. The court also upheld the power of the Authority or the Adjudicating Officer to issue a Recovery Certificate under Section 40(1) of the Act. With this judgment, the Supreme Court has cleared some ambiguity raised before it and the judgment will provide confidence to consumers. What remains to be seen is its effect on the overall real estate sector.

Ministry of Finance declared new dawn on Public Procurement & Project Management guidelines

The focal point of concern for the Government has always been the timely execution of projects within the approved cost with good quality. However, with the advancement of time, the Government endeavours to pace up economic development by amending rules and procedures from time to time and creating certain incentives to value the taxpayer's money.

THE DRIVING FORCE BEHIND THE NEW RULES

The quality of public works execution has not always been regarded as the strength, tendering guidelines being the primary reason. Therefore, the L1 approach is no longer the primary criteria for awarding government contracts. On 29th October 2021, the Ministry of Finance released a revised set of guidelines on public procurement and project management as part of the continuous review process of existing procedures. It outlined innovative rules for the efficient and transparent execution of projects and ensured that any unwanted roadblocks were removed. Alternative approaches for selecting contractors are also allowed under the new standards, increasing project execution speed and efficiency.

MAJOR HIGHLIGHTS

- Underlining some of the significant reforms being brought in, the timely release of ad hoc payments is the one that needed the most attention. The said amendment is expected to improve liquidity with the contractors, especially MSMEs. The new guidelines ensure that the payment of at least 75 per cent of the eligible amount should be made within ten working days of submitting a bill by the contractor. The remaining amount should also be put in place after final scrutiny. It also instructs that the final bill should be cleared within three months of handling the completed project.
- The Quality cum Cost-based Selection (QCBS) method has been introduced as an alternative to the traditional L1 (lowest bidder) system for the projects wherein quality parameters are to be given weightage. It applies to non-consulting services where the approximate cost of the project does not exceed Rs 10 crore inclusive of taxes, given the maximum weightage of non-financial parameters shall in no case exceed 30 per cent. Therefore, this route of evaluating proposals is preferred where the competent authority declares the procurement as a 'quality-oriented procurement'.
- Another critical aspect is time, regarding which the guidelines propose to switch to IT-based solutions. It stresses carefully reviewing the progress while keeping an eye on the timelines using electronic measurement books or other modes that would ensure efficiency, transparency and better outputs.
- Lastly, it also rules out litigation as the first resort in case of any dispute that arises in the implementation of projects. Regarding that litigation has unfavourable implications on the timelines and overall cost of the project, the guidelines direct officials to proceed with discussion, mediation and consultation before resorting to arbitration/litigation.

Such initiatives shall not only improve the quality of work execution but also set new standards for the bidders to showcase promising project execution outcomes. It shall also help achieve Digital India's goal by easing and normalising the digitisation process of public procurement.

Less Adjournments = More Investor Confidence

With economic activity slowly picking up during the ongoing pandemic, an area of concern for investors in India is the ease of doing business in the country. After the last World Bank report on 'Ease of Doing Business,' the government had taken steps and introduced certain reforms on this front. A special task force set up for the purpose red-flagged numerous adjournments granted in commercial cases as a contributing factor for the poor ranking on the parameter of 'Enforcing Contracts'. In its recommendations, the task force identified adjournments as a key area requiring attention.

The Code of Civil Procedure, 1908 (CPC) in Order XVII Rule (1) states that no adjournment shall be granted more than three times to a party during a hearing of the suit. That this rule is seldom followed giving rise to pending cases was highlighted in a NITI Aayog report of 2018 which had estimated that a backlog of 2.9 crore cases (at that time) would take 324 years to clear at the current rate of disposal. The Supreme Court also clearly made its stand clear when in Ram Siromani Tripathi & Ors. Vs State Of U.P. & Ors. (2019) it dismissed the matter while denying an adjournment. The court further went on to state that "under no circumstances, application for restoration shall be entertained" which has been debated subsequently.

The Indian judicial system suffers from many delays and the consequences of inordinate delay are not lost on anyone. Institutional arbitration too has not gained much pace in the country. Suffering litigants in such a scenario also include corporates both domestic and international. At a time when India is keen to attract foreign investment and its policies are more aligned for setting up a business the judicial system also needed to be ramped up for investor confidence.

Commercial Courts in India were started in 2015 with the enactment of The Commercial Courts Act, 2015 after the Law Commission in its 188th Report recommended the establishment of fast-track commercial divisions in High Courts. Under the Act, courts must ensure that the arguments are closed by the parties within six months from the date of the first case management hearing.

- Towards this goal of limited adjournments, the Department of Justice had asked the High Courts of Delhi, Bombay, Calcutta and Karnataka to ensure that commercial courts adhere to Order XVII Rule (1) CPC providing for a maximum of three adjournments during the hearing of a suit. The Supreme Court too started a colour based alert system through daily proceedings screen for compliance of the three adjournment rule where a green light would indicate the case is listed at the same stage for less than three times.

- It is hoped that in addition to commercial courts this system will be followed overall for the benefit of all litigants resulting in not only investor confidence but wider national confidence in the judiciary for delivering timely justice.

Some Recent Amendments

The Food Safety and Standards Authority of India ("FSSAI"), vide its notification dated 3 November 2021, has amended the **Food Safety and Standards (Import) Regulations, 2017**, by bringing into force the Food Safety and Standards (Import) (First Amendment) Regulations, 2021. These regulations shall become effective from 3 November 2021, and the Food Business Operator shall be required to comply with the new requirements with effect from 1 June 2022.

Under the amended regulations, the Foreign Food Manufacturing Facilities intending to export certain food products to India will be required to obtain registration with FSSAI, which will be subject to inspection by the food safety officials and suspension or cancellation in case of any non-compliance with the law in India regarding food safety and standards. The new regime is similar to the protocols being followed by international food safety regulators/agencies such as the US Food and Drug Administration.

Key Highlights:

- **Registration:** The FSSAI may, from time to time, based on its risk, specify the categories of food products intended for export to India for further regulatory control in terms of mandatory registration with the regulator. The Foreign Food Manufacturing Facilities falling under the said categories desirous of exporting such food articles to India shall be required to register with FSSAI before exporting to India.

- **Inspection:** The Foreign Food Manufacturing Facilities may be inspected if required in a manner specified by the FSSAI. It is to be noted that no inspection shall be required in case of such categories of food that are covered under the mandatory Bureau of Indian Standards Certification Mark Scheme and where the Bureau of Indian Standards Scheme of inspection includes the requirements specified under Schedule 4 of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.

- **Validity of registration and its renewal, suspension or cancellation:** The registration shall be valid for two (2) years which may be renewed in the prescribed manner. If Foreign Food Manufacturing Facility or their food products intended for export to India are found not to be in compliance of Food Safety and Standards Act, rules and regulation made there-under, their registration shall be suspended or cancelled. However, the FSSAI may review the same after giving an opportunity for hearing or clarification, as deemed fit.

To safeguard the interests of consumers, the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution, on November 2 2021, notified an amendment in **Legal Metrology (Packaged Commodities) Rules, 2011** which shall come into effect from April 1, 2022.
Upon their enforcement, certain new requirements, as well as exemptions, will be granted from mandatory declarations on the packages.

- It has been clarified that when one or more packages are grouped together to be sold as a retail package on a promotional offer, then each package of the group shall comply with the provisions laid down in Rule 6 i.e., declarations to be made on every package.
- Rule 5 of the Legal Metrology (Packaged Commodities), Rules 2011 has been omitted. With this, goes away the requirement for packing the specified commodities in terms of the standard quantities by weight, measure or number as specified under Schedule II.
- To reduce the burden of compliance and to remove the dubiety of date of declaration on pre-packaged commodities, only the month and year in which the product is manufactured is to be mentioned and not the date of import or packaging.
- The provisions regarding the declaration of MRP have been simplified by eliminating any particular format for the same. It is now mandatory for the manufacturer/ packer/ importer only to declare the MRP in Indian currency inclusive of all taxes, on the pre-packaged commodity in a simplified manner.
- Rules for declaring the commodities sold in pre-packed commodities in numbers have been eased out for reducing the compliance burden for manufacturer /importer/packer. Earlier such declarations could be denoted as 'N' or 'U' only. Now the quantities can be expressed in terms of the number/ unit/ piece/ pair/ set/ other word representing the quantity in the package. This will remove the ambiguity of the declaration of quantity sold by number in pre-packed commodities.

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