

Threat of back billing charges on IT Companies

1. Government of Karnataka has issued IT Policy 2020-2025 in terms of which, Information Technology ('IT') and Information Technology Enabled Services ('ITeS') entities are allowed a Power Tariff Concession ('PTC') i.e., industrial power tariff would be charged instead of commercial power tariff, subject to the orders of Karnataka Electricity Regulatory Commission ('KERC') (Clause 4.5.1.6 of the Policy). As per the Preamble to the IT Policy, the objectives of the IT Policy are *inter alia* to: -
 - a) increase the ease of doing business and facilitate the development of existing market of IT/ITeS entities.
 - b) increase the outreach of the benefits under the IT Policy to all eligible entities.
 - c) boost IT penetration and strengthen the innovation ecosystem, specifically beyond Bengaluru.
2. As per KERC's latest tariff order of 2023, the tariff schedule of HT2A (Industrial tariff) is applicable to IT & ITeS entities who are certified by the IT & BT Department of Government of Karnataka / Government of India.
3. The state government had issued operational guidelines ("Guidelines") which set out the procedure for availing the incentives under the IT Guidelines. The Guidelines restrict the import of the IT Policy by imposing arbitrary conditions like mandating:
 - a) separate IT BT registration certificates and IT BT PTC certificates for different units of 1 (one) IT Company.
 - b) tenants to be the sole occupant of a building in order to avail concessional power tariff.

These conditions are onerous for operational reasons and are counterproductive to the intent and purpose of the IT Policy of 2020-2025. The Guidelines by imposing the conditions restrict the eligible entities which are entitled to avail the benefits of the IT Policy and restrict the outreach of the benefits under the IT Policy.
4. It is observed that Bangalore Electricity Supply Company Limited ("BESCOM") while taking aid of the Guidelines is raising arbitrary back billing charges and denying the benefits of the concessional tariffs to various entities. Some of the violations being flagged by BESCOM are: -
 - a) The IT BT PTC certificate for the lessee is not being produced and the developer's/ owner's IT BT Certificate is not to be considered.
 - b) The IT BT Certificates mention a different unit number.
 - c) Various companies use signage on the building under a different name for which the IT BT certificates are not being produced.

BESCOM has been conducting inspections at various premises and has been flagging violations with respect to the IT / ITeS to raise arbitrary and exorbitant demands in the form of back billing charges. In case the demands are not met, there is a threat of disconnection of electricity supply.

5. The proceedings initiated by BESCO are for unauthorized/ misuse of electricity in terms of Section 126 of the Electricity Act, 2003 read with the relevant regulations of the KERC Conditions of Supply, in terms of which: -
 - a) BESCO would issue a provisional assessment order giving an opportunity for hearing to the owner/ occupier or person in-charge of the premises.
 - b) It is however seen that BESCO is issuing such orders only to the Registered consumers, which in most cases are the landlords, and not on the lessees. The lessees are not made aware of the orders and no opportunity of hearing is provided to them.
 - c) Pursuant to the same, a final assessment order is passed. It is seen that BESCO has not been computing the demand charges as per the relevant provisions and raising substantially high demands. Objections are not being considered and non-speaking orders are passed.
 - d) In case the charges in terms of the final assessment order are not paid within 30 (thirty) days, then there is a threat of disconnection at the premises.

Regulations of KERC do not provide the proper manner of computation of the back billing charges or against whom the same can be raised. This is being misused by BESCO to raise exorbitant demands even for the units that are not consumed by the consumer.

For companies against whom BESCO has initiated the process of unauthorized use of electricity and imposed back billing charges

1. BESCO's orders are appealable under Section 127 of the Electricity Act, 2003, however, there is a requirement of deposit of 50% of the charges in such cases. Further, for violation of the principles of natural justice like passing of a non-speaking order, not giving opportunity to appear or to challenge the provisions of the Guidelines, a writ Petition can also be filed before the Hon'ble High Court.
2. Recently the Hon'ble High Court of Karnataka at Bengaluru has stayed a demand of INR 20,00,00,000 (Indian Rupees twenty crore) of BESCO towards back billing charges wherein no notice was issued and no opportunity of hearing was given to the lessee. The lessee is allowed to make payment of the tariff under the concessional HT 2A tariff category. Similar matters have also been filed by various other entities.

For companies against whom no process of unauthorized use of electricity has been initiated

It is essential for the companies to map out their compliance status with respect to their IT BT Certificates and also assess if there can be any liability with respect to the back billing charges in future. Based on the facts and circumstances of each company, a strategy can be worked out to minimize the threat of disconnection of electricity.

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