



POWER PURCHASE AGREEMENT (PPA)

The Linchpin of Thermal Power Project Financing

By

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**CHITALE & CHITALE
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Legal and Regulatory Framework for Thermal Power Purchase Agreement

PPA is governed by

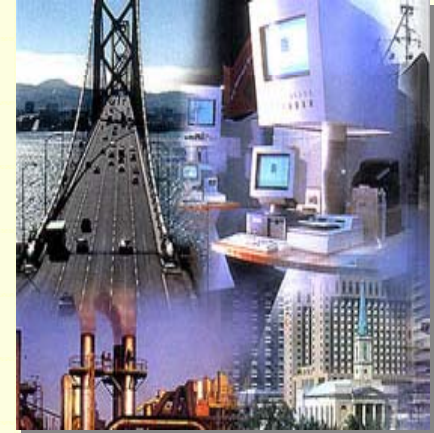
- The Indian Contract Act, 1872
- The Electricity Act, 2003 (Electricity Act) and rules & regulations framed there under
- The rules and regulations framed by
 - the Central Electricity Regulatory Commission (CERC)
 - the State Electricity Regulatory Commission (SERC)

Framework for power purchase under Electricity Act

- Has facilitated investment by creating competitive environment in generation.
- Has de-licensed generation, freed from all controls for thermal power projects (Section 7)
- Has mandated open access in transmission and permits multiple licensees in distribution (Section 40 (c) & Section 42)
- Has set up regulatory commission at centre and state levels to adopt tariff determined through competitive bidding process. (Section 63)

Salient Features of PPA

- PPA is the heart and soul of a power project
- PPA is executed between Seller and the Purchaser (Procurer/Distribution Licensee)
- PPA is usually entered into for long-term, eg.7 years.
- All other project documents are executed simultaneously with PPA
- PPA decides the revenue stream of the project
- The Lenders would evaluate the PPA to ascertain the financial strength of the project



Important Provisions of PPA

- Definitions and Interpretation
- Term of Agreement
- Conditions subsequent to be satisfied by the seller and the procurer
- Development of the project
- Construction
- Synchronisation, commissioning and commercial operation
- Operation and maintenance
- Capacity, availability and dispatch

Important Provisions of PPA (Contd...)

- Metering and energy accounting
- Insurances
- Billing and payment
- Force majeure
- Change in law
- Events of default and termination
- Liability and indemnification
- Assignments and charges
- Governing law and dispute resolution

Schedules appended to the PPA

- Names and details of the procurers
- Site details
- Initial consents
- Calculation of 'x' days
- Functional specification
- Commissioning and testing
- Tariff
- Escalation index
- Representation and warranties
- Quoted tariff
- List of articles [applicable in case of procurement by more than one procurers]
- Allocated contracted capacity
- Capital structure schedule
- Format of the performance guarantee
- Selected bid

Importance of PPA

- Ensures adherence to specifications
- Ensures proper operation and maintenance to provide maximum utility to users
- Builds mutual confidence and cooperation between the seller and the procurer
- Helps tie up financing arrangements
- Takes care of eventualities like force majeure, change of law, disputes etc.



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Full Service Law-Firm

- Chitale & Chitale Partners, formerly known as A.Y. Chitale & Associates, is a full service law firm having expertise in infrastructure projects, corporate commercial law, mergers and acquisitions, joint ventures (JV), litigation, arbitration, competition law, disinvestments and intellectual property laws.
- The firm's clients include the Government of India, State Governments MNCs, PSUs, Banks, Multi Lateral Agencies, Financial Institutions and Corporates.
- The firm is recommended by Legal 500 in the year 2009-10 for its infrastructure practice.
- The firm has recently been awarded 'The Best Law Firm Award' for Competition Law by the India Business Law Journal.

OUR SERVICES FOR POWER PROJECTS

- We have acted Legal advisors for all the players in the power sector- Authority, Developers as well as Lenders to the projects.
- Advice on private placements and equity investments in the infrastructure sector.
- Structuring transaction documents including negotiating and drafting.
- Project Documentation, including Bid Documents, Power Purchase Agreement, Fuel Supply Agreement, EPC Contract, O&M Contract and Financing and Security Documentation.
- Advice regarding regulatory and environmental compliance for all aspects of projects.
- Dispute resolution and litigation

