

No: 51/23/2011-CL-III  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> floor, 'A' Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi-110 001.

Dated: 31<sup>st</sup> May, 2011

To,

All Regional Directors,  
All Registrars of Companies

Subject: Depreciation for the purpose of declaration of Dividend under Section 205 in case of companies referred to in Section 616 (C ) of the Companies Act, 1956 (the Act) .

It has been noticed that despite having clear provision in section 616 (C) of the Companies Act, 1956, the companies engaged in the generation or supply of electricity are approaching Ministry of Corporate Affairs for fixing rate of depreciation in individual cases. The Ministry has, considered the whole matter and it is hereby clarified that Section 616 (C) the Companies Act, 1956 provides that the same shall apply to companies engaged in the generation or supply of electricity, except in so far as the said provision is inconsistent with the provisions of the Indian Electricity Act, 1910 or the Electricity Supply Act, 1948 as repealed by enactment of the Electricity Act, 2003.

2. Govt. of India, Ministry of Power vide resolution dated 6<sup>th</sup> January 2006 has notified Tariff Policy in terms of section 3 of the Electricity Act, 2003. The said Tariff Policy inter-alia provides that rates of depreciation as notified by Central Electricity Regulatory Commission (CERC) would be applicable for the purpose of tariffs as well as accounting. CERC, while notifying regulation vide notification dated 19.01.2009, in exercise of power conferred under section 178 of the Electricity Act, 2003, has also notified the rates of depreciation as well methodology for computing such depreciation and Depreciation is to be provided up to 90% of the cost of asset.

3. Since the rates of depreciation and methodology notified under Electricity Act, 2003 are inconsistent with the rates given in Schedule XIV of the Act and the former being special Act, the former shall prevail over rates notified under Schedule XIV of the Companies Act by virtue of section 616(c) of the Companies Act. Accordingly, it is clarified that companies referred to in Section 616(c) of the Companies Act can distribute dividend out of profit arrived at after providing for depreciation following the rates as well as methodology notified by CERC and the same shall be sufficient compliance of section 205 of the Companies Act, 1956.

(Jaikant Singh)  
Director