



This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

## REGULATORY & POLICY UPDATES

### **SEBI issued frameworks for dealing with unclaimed amounts with entities having listed non-convertible securities.**

The Securities and Exchange Board of India (“SEBI”) by its circular dated 08.11.2023 (“Unclaimed Amount Framework Circular”)<sup>1</sup> has issued:

- i. a framework for dealing with unclaimed amounts/ interest/ redemption amount for non-convertible securities (“NCS”) lying with entities having listed NCS and the manner of claiming such amounts by investors, and
- ii. framework to be followed by the listed entities (which are not companies) for transfer of unclaimed amounts from

the escrow account to the Investor Protection and Education Fund and claim thereof by an investor

The provisions of this Unclaimed Amount Framework Circular shall come into effect from 01.03.2024.

These frameworks and processes are similar to those prescribed under the Companies Act, 2013 for securities issued by companies.

These frameworks have been notified pursuant to the decision of the SEBI Board in the meeting held on 30.09.2022 where it considered the issue raised by development financial institutions (which have listed non-convertible securities) that they were not constituted as ‘companies’ under the provisions of the Companies Act, 2013, and hence the relevant provisions prescribed under the Companies Act, 2013 did not apply to

<sup>1</sup> SEBI Circular dated 08.11.2023

them. Further, the provisions relating unclaimed amounts set forth in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 were also not applicable to unclaimed amounts relating to non-convertible securities issued by statutory bodies, developmental financial institutions and/ or other similar organizations which did not fall within the definition of ‘company’ under the Companies Act, 2013. Therefore, it was decided that a framework should be formulated for securities issued by such entities.

## **CERC notified Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023.**

The Central Electricity Regulatory Commission (“CERC”) notified the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023<sup>2</sup> amending the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (“Principal Regulations”).

Under Regulation 5(3)(d) of the Principal Regulations, a proviso has been added stipulating that where an inter-regional High-Voltage Direct Current (“HVDC”) transmission system planned to supply power to a particular region is operated to carry power in the reverse direction due to system requirements, 30% or more of the ‘yearly transmission charges’ of such transmission systems will be considered in the ‘national component’ in accordance with sub-clause (a) of Clause (1) of Regulation 6 of the Principal Regulations.

Further, Regulation 6(1)(a) has been substituted and a new proviso has been added to it. According to the new proviso, the percentage of ‘yearly transmission charges’ of such transmission systems to be considered in the ‘regional component’ and the ‘national component’ shall be calculated in the following manner:

$$\text{HVDCr (in \%)} = \left( \frac{\text{MW capacity of power flow in the reverse direction}}{\text{MW capacity of power flow in the forward direction}} \right) \times 100$$

*In case HVDCr (in %) is more than 30%:*

the corresponding yearly transmission charges to HVDCr shall be considered in the ‘national component’ and the balance in the ‘regional component’.

*In case HVDCr (in %) is equal to or less than 30%:*

30% of yearly transmission charges shall be considered in the ‘national component’ and 70% in the ‘regional component’.

The aforementioned calculation is subject to MW capacity of power flow in reverse direction being certified by the National Load Dispatch Centre by way of actual power flow equal to such capacity.

## **RBI notified Directions on Information Technology Governance, Risk, Controls and Assurance Practices.**

Reserve Bank of India by a notification dated 07.11.2023 issued the Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023<sup>3</sup> (“Directions”), which incorporate, consolidate and update the guidelines, instructions and circulars on IT governance, risk, controls, assurance practices and business continuity/ disaster recovery management. These Directions will come into force from 01.04.2024.

The Directions are applicable to: (i) all banking companies, corresponding new banks and State Bank of India, each as defined under the Banking Regulation Act, 1949, (ii) Non-Banking Financial Companies, (iii) Credit Information Companies, and (iv) All India Financial Institutions, such as EXIM Bank, NABARD, NaBFID, NHB and SIDBI (collectively, the “Regulated Entities”). The key highlights of the Directions are:

- i. All Regulated Entities (“REs”) shall put in place a robust IT Governance Framework based on the following parameters: strategic alignment, risk management, resource management, performance management and business continuity/ disaster recovery management, and shall specify: (a) the governance structure and processes necessary to meet the RE’s business/ strategic objectives; (b) roles, responsibilities and authority of the Board of Directors, board level committees and the senior management; and (c) oversight mechanisms to ensure accountability and mitigation of IT and cyber/ information security risks.
- ii. RE’s board shall approve and annually review the strategies and policies relating to IT, Information Assets, Business Continuity, Information Security, Cyber Security. The Audit Committee of the board shall be responsible for exercising oversight of Information Systems Audit of the RE.
- iii. The board shall establish an IT Strategy Committee (with 3 directors as members). This committee shall *inter alia* (a) ensure that the RE has put in place an effective IT strategic planning process; (b) guide in preparation of the IT strategy; (c) satisfy itself that the IT Governance and Information Security Governance structure fosters accountability and is effective; (d) ensure that RE has put

<sup>2</sup> Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023

<sup>3</sup> Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices

in place processes for assessing and managing IT and cybersecurity risks; and (f) ensure the budgetary allocations for the IT function and cyber security are commensurate with the REs' IT maturity, digital depth, threat environment, industry standards and are utilized in a manner intended for meeting the stated objectives.

- iv. REs shall establish an IT Steering Committee with representation from senior management from IT and business functions. This committee shall *inter alia* (a) assist the IT Strategy Committee in strategic IT planning, oversight of IT performance, and aligning IT activities with business needs; (b) oversee the processes put in place for business continuity and disaster recovery (DR); and (c) ensure implementation of a robust IT architecture meeting statutory and regulatory compliance.
- v. REs shall put in place a robust IT Service Management Framework for supporting their information systems and infrastructure to ensure the operational resilience of their entire IT environment (including DR sites).
- vi. REs shall ensure that information systems and infrastructure are able to support business functions and ensure availability of all service delivery channels and review such capacity requirement at least annually.
- vii. REs shall put in place documented policy(ies), procedures and standards for change and patch management, and data migration.
- viii. REs shall establish a robust IT and Information Security Risk Management Framework, and formulate Information Security Policy, Cyber Security Policy, Cyber Incident Response and Recovery Management Policy, Business Continuity Plan and Disaster Recovery Policy, and Information System Audit Policy which shall provide for the various matters specified in the Directions.
- ix. REs shall ensure that every IT application which can access or affect critical or sensitive information, shall have necessary audit and system logging capability and should provide audit trails.
- x. REs shall adopt robust cryptographic controls and access controls for information assets and also implement suitable physical and environmental controls at Data Centre and DR sites used by them.
- xi. REs will establish protocols and will regularly conduct vulnerability assessment / penetration testing of its various information systems.

## GOVERNMENT NOTIFICATIONS

### **MOP issued a circular on non-levy of taxes and duties by State Governments as additional charges for generation of electricity from different sources.**

The Ministry of Power ("MoP") issued a circular on 25.10.2023<sup>4</sup> regarding imposition of charges by State Governments on various forms of generation of electricity from Hydropower/Renewables/Thermal etc.

In the circular, MoP noted that some of the State Governments have imposed additional charges on generation of electricity from various sources under guise of development fee/charges/fund. MoP stated that such additional charges/fees in form of any tax/duty on generation of electricity, which encompasses all types of generation, i.e., Thermal, Hydro, Wind, Solar, Nuclear etc. is illegal and unconstitutional.

MoP explained that no taxes/ duties can be levied by any State Government on generation of electricity as Entry 53 of List II (State List) of Schedule VII of the Constitution of India, 1950 ("Constitution") authorizes State Governments to only levy taxes on consumption and sale of electricity and not on the generation of electricity.

Accordingly, MoP has advised State Governments to remove any kind of tax/duty/cess levied in the guise of development fee/charges/ fund on generation of electricity from any sources, including Thermal/Hydro/Renewables.

### **Ministry of Communication issues press release intimating all Principal Entities to take necessary steps to onboard the Digital Consent Acquisition System.**

Ministry of Communications issued a press release ("Press Release")<sup>5</sup> on 07.11.2023 regarding the implementation of Digital Consent Acquisition ("DCA").

In accordance with the Telecom Commercial Communications Customer Preference Regulations, 2018 ("TCCCPR Regulations"), the Telecom Regulatory Authority of India ("TRAI") had issued a direction dated 02.06.2023 to access providers, mandating the development and implementation of the DCA facility and establishing a unified platform and process for digitally registering customers' consent across all access service providers and Principal Entities ("PEs").

The DCA process provides the facility to seek, maintain and revoke the consents of customers, in accordance with the procedures outlined in the established norms. Furthermore, all consent-related data gathered through this process will be

<sup>4</sup> MOP Circular on non-levy of taxes and duties

<sup>5</sup> Press release for Implementation of Digital Consent Acquisition (DCA).

disseminated on the Distributed Ledger Technology platform, as mandated by TCCCP Regulations, for scrubbing by all access service providers. Subsequent to the implementation of DCA, any pre-existing consents obtained through alternative methods will be invalidated, necessitating PEs to procure new consents exclusively through digital means.

A common short code 127xxx would be used for the consent seeking messages and the purpose, scope of consent and PE/brand name must be clearly mentioned in the consent seeking messages.

As per the directions dated 02.06.2023 issued by TRAI, the onboarding of PEs for banking, insurance, finance and trading sector should have been done by 30.09.2023 and by 30.11.2023, for all remaining sectors. Through the Press Release, PEs have been requested to take necessary steps for onboarding as per the prescribed timelines provided under the direction issued.

## **MCA notifies the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.**

Ministry of Corporate Affairs (“MCA”) by its notification dated 09.11.2023 issued the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (“LLP SBO Rules”)<sup>6</sup>. The LLP SBO Rules shall come into effect from 10.11.2023.

These rules relating to the declaration of beneficial ownership of LLP interests, timelines, requirement to maintain records, and obligations of LLPs are similar to the rules applicable to companies under the Companies Act, 2013.

## **MOP prescribes the procedure for implementation of Uniform Renewable Energy Tariff.**

MoP by its letter dated 25.10.2023 has prescribed the Procedure for Implementation of Uniform Renewable Energy Tariff (“PIURET”).<sup>7</sup>

PIURET has been issued in compliance with Rule 19(n) of Electricity (Amendment) Rules 2022 (“2022 Rules”) for implementation of Uniform Renewable Energy Tariff (“URET”).

MoP had earlier issued the 2022 Rules which came into effect on 29.12.2022, for *inter-alia*, implementation of URET, which were aimed to streamline the pricing of renewable energy across various categories of central pools, each catering to specific renewable energy sources, including Solar Power, Wind Power, Hydro Power, Solar-Wind Hybrid,

Round the Clock Power (Solar Wind Hybrid + Storage), Peaking Power (Solar Wind Hybrid + Storage), Firm and Dispatchable RE Power, and any other new pool specified by the Central Government.

The key features of PIURET are as follows:

- i. Duration of each central pool will be 5 years, and all the capacity for which Power Supply Agreements are signed within this period will become part of the central pool.
- ii. URET for central pools will apply only to end procurers for their contracted capacity, with no impact on the tariff discovered through competitive bidding and payable to renewable energy generators by the intermediary procurer.
- iii. Intermediary procurers are required to include suitable provisions in their bidding documents, Power Purchase Agreements, and Power Supply Agreements and any deviations from the Standard Bidding Guidelines issued by the Central Government will require necessary approvals before commissioning and power supply.
- iv. To become an end procurer, an entity must have a license in terms of Section 15 of the Electricity Act, 2003 (“Electricity Act”) to undertake the distribution and supply of electricity or be designated by the state government to procure power on behalf of the licensees undertaking distribution and retail supply of electricity.
- v. Open access consumers can also become end procurers.

To qualify as an ‘intermediary procurer’, an entity must be designated by an order made by the Central Government as an intermediary between the end procurer and the generating company to purchase electricity from generating companies and resell it to the end procurer by aggregating the purchases.

## **JUDICIAL PRONOUNCEMENTS**

### **Supreme Court held that a plaint cannot be rejected in part under Order VII Rule 11 of CPC.**

The Supreme Court in its judgment dated 31.10.2023 in the matter of *Kum. Geetha, D/o Late Krishna & Ors. v. Nanjundaswamy & Ors.*<sup>8</sup> held that under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”), a plaint cannot be rejected in part.

The Supreme Court observed that the true test while dealing with the issue of rejection of plaint is to first read the plaint in a meaningful manner and as a whole, considering it to be true. If the plaint discloses a cause of action, then any application under Order VII Rule 11 of the CPC must fail. The Court further observed that in so far as application under Order VII Rule 11 of CPC is concerned, the Court has to examine whether the plaint discloses a cause of action and nothing

<sup>6</sup> LLP SBO Rules 2023

<sup>7</sup> MoP PIURET Letter 25.10.2023

<sup>8</sup> Civil Appeal No. 7413 of 2023

further. The Court shall not examine the merits of the averment made in the plaint.

## **NCLAT held that an application filed after reserving of judgment cannot be entertained.**

The National Company Law Appellate Tribunal (“NCLAT”) in its judgement dated 01.11.2023 in the matter of *Loramitra Rath v. JM Financial Asset Reconstruction Company Limited & Anr.*<sup>9</sup> held that the stages of reserving and pronouncement of judgments work in continuum and there exists no gap in between the stages. Thus, an application filed after the judgment is reserved should not be entertained for reasons of procedural propriety.

In the instant case, after the main petition was heard and reserved for orders, the Corporate Debtor filed an application for re-hearing the main petition on the basis of additional objections, which application was dismissed by National Company Law Tribunal, Cuttack (“NCLT”) observing that the matter was already reserved for orders.

NCLAT reiterated the settled principle that once a matter is reserved for orders, there exists no room for the courts to entertain the applications filed for hearing the matter and upheld the order of the NCLT.

NCLAT further observed that the objections raised by the Corporate Debtor in the application were already in existence at the time of filing of the reply and pleadings in the main company petition. No cogent grounds have been cited for not raising these objections in the pleadings of the main company petition, thus, the NCLT committed no error in dismissing the application.

## **Bombay High Court held that an inartistic drafting of the arbitration clause will not invalidate the clause as long as it provides the essential ingredients of an arbitration agreement.**

The Bombay High Court in its judgement dated 27.10.2023 in the matter of *Sri Abhishek Pictures v. Abhishek Agarwal Arts LLP and Ors.*<sup>10</sup> held that even if the arbitration clause is poorly worded, the intention of the parties to refer the disputes under the Arbitration and Conciliation Act, 1996 can be determined from a holistic reading of the main agreement.

The Bombay High Court observed that a party should not take advantage of improper drafting of the arbitration clause, as long as the essential elements of an arbitration agreement form part of the concerned clause.

## **Delhi High Court held that arbitral award passed in defiance of an order of the Supreme Court is liable to be set aside being against public policy.**

The Delhi High Court in its judgement dated 30.10.2023 in the matter of *Unison Hotels Private Limited v. Value Line Interiors Private Limited*<sup>11</sup> held that an arbitral award passed in defiance of an order passed by the Supreme Court would be against public policy.

In the instant case, the arbitrator closed the right of Unison Hotels Private Limited (“Unison”) to file a Statement of Defense (“SOD”). Unison eventually approached the Supreme Court which by its order dated 27.04.2015 granted Unison the liberty to file an application before the arbitrator within 3 weeks. The arbitrator, within the next 2 days, reserved the matters for orders without providing an opportunity to Unison to file appropriate application in terms of the Supreme Court’s order.

The Delhi High Court observed that the manner in which the matter was reserved for order even before the expiry of time granted by the Supreme Court has made the order of the Supreme Court illusory which amounts to defiance of the said order and therefore, the arbitral award passed here is against public policy and liable to be set aside.

## **Delhi High Court upholds constitutional validity of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 and the Open Access Charges and Related Matters (Fourth Amendment) Order, 2021.**

The Delhi High Court in its judgement dated 03.11.2023 in the matter of *Juniper Hotels Private Limited v. Delhi Electricity Regulatory Commission & Anr.*<sup>12</sup> upheld the validity of Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 (“RPO Regulations”) and the Open Access Charges and Related Matters (Fourth Amendment) Order, 2021 (“2021 Order”), which *inter alia* increased the renewable purchase obligations and imposed additional surcharges on obligated entities.

Under the RPO Regulations, the Renewable Purchase Obligations (“RPO”) of obligated entities was increased from 9% to 21.35% of the total annual consumption. Further, the 2021 Order partly removed the exemption from wheeling charges, transmission charges, cross subsidy surcharge and additional surcharge benefits enjoyed by open access consumers and limited the exemptions to the extent of RPO compliance.

The RPO Regulations and 2021 Order were challenged, *inter alia*, on the grounds of anti-consumerism, affecting the competition and fairness in power sector, rendering the

<sup>9</sup> Company Appeal (AT)(Insolvency) No. 1359 & 1360 of 2023

<sup>10</sup> Arbitration Petition (Lodging) No. 18905 of 2023

<sup>11</sup> FAO (OS) (COMM) 47/2021

<sup>12</sup> Writ Petition (Civil) No. 14343 of 2021

procurement of renewable energy unviable and being passed in violation of Section 63 of the Electricity Act as a transparent bidding process was not adopted. The Delhi High Court, while upholding the validity of RPO Regulations and 2021 Order made the following observations:

- i. Juniper Hotel's challenge for withdrawal of exemption under the 2021 Order on the grounds that it is *ultra vires* the Constitution and there was a failure to adhere to due process is not tenable as the procedure adopted was in line with the extant legal provisions and a transparent process was adopted for determination of tariff. Section 63 of the Electricity Act does not provide for bidding as the only mechanism for determination of tariff.
- ii. Exemptions and concessions granted by the Government are privileges and do not confer upon the beneficiary any legally enforceable right against the government for grant of a concession, except to enjoy the benefits of the concession during the period of its grant.
- iii. The scope of judicial review of tariff rate determinations is narrow and the power to evaluate policy choices inherently belongs to the governing bodies, enabling them to adjust and develop in response to shifting circumstances.
- iv. Courts must only intervene minimally when it comes to judicial review over determination of tariff rates. Judicial intervention becomes justifiable only when the contested action is found to be illegal, arbitrary, or beyond the powers conferred by the governing statute.
- v. An action is deemed illegal if it disregards the legally mandated procedure or is so egregiously arbitrary that it offends the judicial sensibilities of the Court, thus compelling intervention.

**Delhi High Court held that under Section 29A of the Arbitration and Conciliation Act, 1996 Court is empowered to extend the mandate of the arbitrator even where the application has been filed after the expiry of arbitrator's mandate.**

The Delhi High Court in its judgment dated 06.11.2023 in the matter of *ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited*<sup>13</sup> held that under Section 29A (4) of the Arbitration & Conciliation Act (A&C Act"), termination of the mandate of the arbitrator(s) is subject to the decision of the Court which may be "either prior or after the expiry" of the specified period. The Court could take a suitable decision upon a petition under Section 29A (4), which petition can be filed either before expiry of the period referred to under Section 29A (1) or Section 29A (3) of the A&C Act or even thereafter.

In the instant case, two applications were filed under Section 29A of the A&C Act by ATC seeking extension of the time to allow the arbitral tribunal to complete the arbitral proceedings and to deliver the award. One of the applications was filed after the expiration of the term of the arbitrator, to which Bharat Sanchar Nigam Limited objected on the grounds that the mandate of the arbitrator had already expired and could not be renewed.

Delhi High Court observed that the intent of Section 29A was not to tie the hands of the parties or the court, and prevent extension of time even where warranted, simply because the petition under Section 29A (4) was filed after expiration of arbitrator's term under Section 29A (1) or Section 29A (3) of the A&C Act.

Notably, the Court took a view different from the view taken by the Calcutta High Court in *Rohan Builders India Pvt Limited v. Berger Paints India Limited* wherein it was held that the mandate of the arbitrator terminates on the expiry of the time limits provided under Section 29A and it cannot be extended by making an application after expiry of mandate.

The Court relied upon the decision in *Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project* by a co-ordinate bench of the Delhi High Court and observed that Section 29A of the A&C Act itself does not contemplate an inflexible outer deadline for completion of arbitral proceedings and provides flexibility to the contracting parties and the Court for extension of time period in appropriate cases. Accordingly, the Court allowed both the applications and extended the mandate of the arbitrator.

**CERC held that limitation period for calculation of Late Payment Surcharge (LPS) is to be determined from the date of accrual of LPS and not from the date of actual invoice.**

CERC in its judgment dated 07.11.2023 in the matter of *Sembcorp Energy India Limited v. Telangana State Power Coordination Committee*<sup>14</sup> held that limitation period for calculation of LPS is to be determined from the date of accrual of LPS and not from the date of actual invoice and that the party claiming LPS is also entitled to interest on delayed payment of LPS as well.

CERC observed that the entire liability of LPS stood crystallized only after the payment of the principal amount. Further, it also observed that even if the period of limitation was to commence from the date of such payment of the principal amount, the claims of the Petitioner towards LPS fall within the period of limitation.

CERC noted LPS is a contractual right that arises upon default in payment of invoices within the due date. The intent behind

<sup>13</sup> O.M.P.(Misc.) (Comm.) 466/2023 and O.M.P.(Misc.) (Comm.) 467/2023

<sup>14</sup> Petition No. 270/MP/2022

incorporating the LPS clause in an agreement is to encourage timely payment of bills within the stipulated time.

Further, CERC clarified that if interest on outstanding LPS dues is not levied, the same would lead to a patently unfair

and absurd situation wherein defaulting parties could simply avoid meeting their undisputed payment commitment towards the LPS for the delayed payment of energy charges.

\*\*\*

## ABOUT SAGUS LEGAL

Sagus Legal is a full-service law firm that provides comprehensive legal advisory and advocacy services across multiple practice areas. We are skilled in assisting businesses spanning from start-ups to large business conglomerates including Navratna PSUs, in successfully navigating the complex legal and regulatory landscape of India. Our corporate and M&A, dispute resolution, energy, infrastructure, banking & finance, and insolvency & restructuring practices are ranked by several domestic and international publications. We also have an emerging privacy and technology law practice.

---

### Delhi Office:

First Floor, S-35B,  
Panchsheel Park,  
New Delhi – 11001

### Gurugram Office:

I-46, Emaar Emerald Hills,  
Sector 65, Gurugram – 122001

### Satellite Office:

Bhubaneswar, Odisha  
**Email:** [info@saguslegal.com](mailto:info@saguslegal.com)  
**Phone No.:** +91 1146552925  
**Website:** <https://www.saguslegal.com/>



---

The contents of this Newsletter are for general information only. It shall not be construed as legal advice. For any specific legal or factual query/ opinion, kindly obtain appropriate professional advice.

---