



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

REGULATORY & POLICY UPDATES

SEBI extends timeline for verification of market rumours by listed entities under the SEBI (Listing and Obligations and Disclosure Requirements) Regulations, 2015.¹

The Securities and Exchange Board of India (“SEBI”) through its circular dated 25.01.2024 (“Circular”) has extended the timeline for complying with the regulations requiring mandatory verification of market rumours by a listed entity in accordance with the proviso to Regulation 30(11) of the SEBI (Listing and Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”).

Prior to the issue of this Circular, the top 100 listed entities by market capitalisation and thereafter the top 250 listed entities

by market capitalisation had to mandatorily confirm, deny, or clarify ‘any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of Regulation 30 are circulating amongst the investing public’ with effect from 01.02.2024 (for top 100 listed entities) and 01.08.2024 (for top 250 listed entities).

SEBI through this Circular has extended the timelines for complying with such requirements to 01.06.2024 for the top 100 listed entities, and to 01.12.2024 for the top 250 listed entities.

¹ SEBI Circular dated 25.01.2024

SEBI provides a framework for Offer for Sale of shares to employees through the stock exchange mechanism.²

SEBI through its circular dated 23.01.2024 (“OFS Circular”) has allowed promoters of eligible companies (i.e., companies that are eligible for trading and are required to increase public shareholding to meet the prescribed minimum public shareholding requirements, and companies with a market capitalization of INR 1,000 Crores or more) to additionally offer shares to employees of the company in an offer for sale (“OFS”) through the Stock Exchange Mechanism (“SE Mechanism”). The provisions of this OFS Circular shall come into effect from the 30th day of its issuance.

The key features of the mechanism allowed in the OFS Circular are:

- i. OFS to the employees shall be made on T+1 day (where ‘T’ refers to the first day of OFS) along with the retail category under a new category, namely, ‘Employee’.
- ii. A certain number of shares must be reserved for employees which shall be mentioned in the OFS notice sent to the stock exchanges by the promoter.
- iii. Each employee shall be eligible for allotment of equity shares of up to INR 2,00,000 provided that in case of under subscription in the employee portion of reserved shares, such under subscribed portion may be allotted to employees whose bid amount is more than INR 2,00,000, on a proportionate basis, for a value in excess of INR 2,00,000, subject to the total allotment to an employee not exceeding INR 5,00,000.
- iv. An employee shall upfront pay the margin to the extent of 100% of the order value in cash or cash equivalents. An allotment under the ‘Employee’ category shall be based on the PAN details of employees shared by the company on T-1 day and any mismatch in the PAN details shall lead to the rejection of bids.
- v. The promoters shall transfer the total shares of OFS on T-1 day, including shares reserved for ‘Employee’ category, to the designated clearing corporation.

DERC issues the Delhi Electricity Regulatory Commission (Conduct of Business for Holding Inquiry by Adjudicating Officer) Regulations, 2023.³

Delhi Electricity Regulatory Commission (“DERC”) on 19.01.2024 issued the Delhi Electricity Regulatory Commission (Conduct of Business for Holding Inquiry by Adjudicating Officer) Regulations, 2023 (“Regulations”).

² SEBI Circular dated 23.01.2024

³ DERC Regulations dated 19.01.2024

⁴ CERC Order dated 19.01.2024

These Regulations shall come into force on the date of their publication in the Official Gazette.

These Regulations provide for a statutory framework regarding the process of adjudication before the Adjudicating Officer appointed by DERC.

The Regulations will be applicable for holding enquiries by the Adjudicating Officer on receiving complaints regarding violation of Section 14 and or Section 15 of the Energy Conservation Act, 2001 (“EC Act”) in the manner as specified in the Regulations. Section 14 of the EC Act deals with the power of Central Government to enforce the efficient use of energy and its conservation. Further, Section 15 of the EC Act deals with the power of the state government to enforce certain provisions for efficient use of energy and its conservation.

CERC approves the procedure on ‘Centralized supervision for quick fault detection and restoration’ under the Central Electricity Regulatory Commission (Communication System for inter-State transmission of electricity) Regulations, 2017.⁴

CERC through its order dated 19.01.2024 approved the ‘Procedure on Centralized supervision for quick fault detection and restoration’ (“Procedure 2024”) under the Central Electricity Regulatory Commission (Communication System for inter-State transmission of electricity) Regulations, 2017 (“Communication Regulations”).

Procedure 2024 provides a mechanism for ‘centralized supervision for quick fault detection and restoration’ so as to facilitate coordination in operation amongst concerned users of the interconnected communication systems.

Procedure 2024 has been issued in compliance with Regulation 7.2 of Communication Regulations which provides for role of Central Transmission Utility. Further, Procedure 2024 is applicable to both inter-state and intra-state transmission systems.

GOVERNMENT NOTIFICATIONS

MCA issues Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 allowing Indian Companies to list equity shares on specified International Exchanges.⁵

⁵ Listing of Equity Shares in Permissible Jurisdiction Rules dated 24.01.2024

The Ministry of Corporate Affairs (“MCA”) has issued the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 (“Rules”) on 24.01.2024.

The Rules provide a framework for unlisted and listed public companies to issue equity shares for listing on permitted stock exchanges in permissible jurisdictions. For the purposes of these Rules, ‘permissible jurisdiction’ means the International Financial Services Centre in India (IFSC), and ‘permissible stock exchange’ means the India International Exchange and NSE International Exchange in IFSC.

The Companies (Amendment) Act, 2020 allowed for the direct listing of a prescribed class of securities on permitted stock exchanges in permissible foreign jurisdictions under Section 23 of Companies Act, 2013 (“Companies Act”) which was made effective from 30.10.2023. The Rules provide the terms and conditions applicable for such listings.

The highlights of the Rules are:

- i. The Rules shall apply to unlisted public companies and listed public companies which *seek to* issue their securities for listing on permitted stock exchanges in permissible jurisdictions.
- ii. The following companies shall not be eligible for issuing its equity shares for listing in accordance with these Rules: (a) a Section 8 company, (b) a Nidhi company, (c) a company limited by guarantee and also having share capital, (d) a company with outstanding public deposits, (e) a company with negative net worth, (f) a company which has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor (except where such default has been made good and 2 years have elapsed since such default was made good), (g) a company that has made an application for winding-up under the Companies Act or for resolution or winding-up under Insolvency and Bankruptcy Code, 2016 (“IBC”), and in case any proceedings against the company for winding-up under the Companies Act or for resolution or winding-up under IBC is pending, (h) a company that has defaulted in filing of its annual return under Section 92 or financial statement under Section 137 of Companies Act within the specified period.
- iii. An eligible unlisted public company which has no partly paid-up shares shall be allowed to issue equity shares (including offer for sale of equity shares by existing shareholders) for the purposes of listing on a stock exchange in a permissible jurisdiction. Such company or its existing shareholders shall also comply with the *Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme*.

- iv. Such company which also intends to get its equity shares listed with any recognised stock exchange (as defined under Securities Contracts (Regulation) Act, 1956) shall also comply with such conditions as may be specified by SEBI in this regard.
- v. The unlisted public company shall file the prospectus in e-Form LEAP-1 specified in the Second Schedule of the Rules, with the permitted stock exchange within 7 days after the same has been finalised and filed, along with the required fees.
- vi. Post listing, the companies shall adhere to Indian Accounting Standards specified in the Companies (Indian Accounting Standards) Rules, 2015. This requirement is in addition to any other accounting standards mandated for the financial statements filed before the relevant securities regulator or stock exchange.

Importantly, Indian companies which seek to raise funds from foreign investors (i.e., persons not being resident in India) are also required to satisfy the conditions listed in the Foreign Exchange Management (Non-debt Instrument) Rules, 2019 through the Foreign Exchange Management (Non-debt Instrument) Amendment Rules, 2024 (*discussed below*).

MoF issues Foreign Exchange Management (Non-debt Instrument) Amendment Rules, 2024 allowing foreign investment in Indian companies listed on specified International Exchanges.⁶

The Ministry of Finance (“MoF”), on 24.01.2024, issued the Foreign Exchange Management (Non-debt Instrument) Amendment Rules, 2024 (“Amendment Rules”) amending the Foreign Exchange Management (Non-debt Instrument) Rules, 2019 (“NDI Rules”). The Amendment Rules have come into force from 24.01.2024, i.e., the date of its publication in the Official Gazette.

Pursuant to these Amendment Rules, foreign investors (i.e., persons not resident in India) can also invest in Indian companies listed on specified International Exchanges. It is in furtherance to the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 issued by the MCA allowing Indian companies to list on specified International Exchanges.

The highlights of the Amendment Rules are:

- i. The definition of ‘International Exchange’ has been introduced to mean the permitted stock exchange in permissible jurisdictions which are listed in Schedule XI of the Amendment Rules (which are, India International Exchange and NSE International Exchange).

⁶ FEMA NDI Amendment Rules dated 24.01.2024

- ii. Investments into Indian companies listed on specified International Exchanges pursuant to the Amendment Rules shall also be subject to the limits specified for foreign portfolio investors under the NDI Rules and the sectoral caps specified for FDI.
- iii. The Amendment Rules list out additional conditions which must be satisfied by an Indian company for issuing shares on the International Stock Exchanges, and by existing shareholders seeking to offer shares in an OFS on such International Exchanges.
- iv. The equity shares of the Indian company listed on the International Stock Exchange shall be in dematerialized form and rank *pari-passu* with equity shares listed on a recognized stock exchange in India.
- v. Investments in Indian companies pursuant to the Amendment Rules by a person who is a citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall require approval of the Central Government.
- vi. The voting rights on equity shares listed on an International Exchange which held by a person not resident in India are to be exercised directly by such holder or its custodian pursuant to voting instructions from such holder.
- vii. The Amendment Rules also specify the pricing norms applicable for initial listing of equity shares and also subsequent issue and transfer of securities.

MoF extends the scope of ‘financial services’ under International Financial Services Centres Authority Act, 2019.⁷

Ministry of Finance by its notification dated 18.01.2024 has expanded the definition of ‘financial services’ under International Financial Services Centres Authority Act, 2019 to include the following:

- i. book-keeping services;
- ii. accounting services;
- iii. taxation services; and
- iv. financial crime compliance services

Such services can now be provided by units in the International Financial Service Centre that regulated by the International Financial Services Centres Authority to only such non-residents whose business is not established through the splitting up, reconstructing, or reorganizing of existing businesses in India. Additionally, such services by an IFSC unit shall not be offered on account of transfer of existing contracts or work arrangements from their group entities in India.

⁷ MoF Notification dated 18.01.2024

⁸ Electricity Second Amendment Rules, 2024 dated 17.01.2024

Ministry of Power issues the Electricity (Second Amendment) Rules, 2024 to amend the Electricity Rules, 2005.⁸

The Ministry of Power (“MOP”) by way of a notification dated 17.01.2024 issued the Electricity (Second Amendment) Rules, 2024 (“Second Amendment Rules”) to amend the Electricity Rules, 2005 (“Electricity Rules”). The Second Amendment Rules came into force on 17.01.2024 i.e., date of publication in Official Gazette.

Second Amendment Rules amend Rule 22 of the Electricity Rules, which was inserted by way of Electricity (Amendment) Rules, 2024 and that came into force on 11.01.2024.

Rule 22(1) of the Electricity Rules provides a formula for computing Wheeling Charges. The Second Amendment Rules have added a proviso, which is in the nature of a clarification, allowing the Appropriate Commissions to determine Wheeling Charges for different voltage levels, separately, in accordance with the formula provided in Rule 22(1) of the Electricity Rules.

MNRE issues Scheme Guidelines for Implementation of Strategic Interventions for Green Hydrogen Transition (SIGHT) Programme Component – II: Incentive for Procurement of Green Hydrogen Production (Under Mode-2B) of National Green Hydrogen Mission.⁹

Ministry of New and Renewable Energy (“MNRE”) through its notification dated 16.01.2024 issued Scheme Guidelines for Implementation of SIGHT Programme-Component-II: Incentive for Procurement of Green Hydrogen Production (Under Mode-2B) of the National Green Hydrogen Mission (“Scheme 2B”).

The main objectives of Scheme 2B are to: (a) maximize production of Green Hydrogen in India; (b) enhance cost-competitiveness *vis-à-vis* fossil-based alternatives; and (c) encourage large scale utilization of Green Hydrogen.

The highlights of Scheme 2B are:

- i. Scheme 2B will be implemented by Oil & Gas Companies and Centre for High Technology (“CHT”) which shall aggregate demand and call for bids for production and supply of Green Hydrogen at the lowest cost for a single refinery or multiple refineries, through a competitive selection process with the incentive being fixed.
- ii. To qualify for incentives under Scheme 2B, bidders shall ensure that Green Hydrogen produced and supplied

⁹ SIGHT Programme-Component-II: Incentive for Procurement of Green Ammonia Production (Under Mode-2B) of the National Green Hydrogen Mission

- aligns with detailed criteria outlined in the ‘National Green Hydrogen Standard’ notified by MNRE.
- iii. Under Scheme 2B, a direct incentive in terms of Rs/Kg of Green Hydrogen produced and supplied will be provided for a period of 3 years from the date of commencement of Green Hydrogen production and supply. The incentive will be Rs. 50/Kg of Green Hydrogen in the first year of production and supply, Rs 40/Kg during the second year of production and supply and Rs 30/Kg during the third year of production and supply.
 - iv. The beneficiaries under Scheme 2B will be selected through a competitive selection process. The bidder quoting the least price of supply will be allocated its admissible capacity first and there will be subsequent allocations to bidders quoting the next lowest price.
 - v. The bidder is required to produce Green Hydrogen capacity quoted for supply, and trading/arbitrage is not allowed under Scheme 2B.
 - vi. The capacity available for bidding under Tranche I of Mode 2B is 2,00,000 MT per annum of Green Hydrogen. Additional capacity of Green Hydrogen may be decided by MNRE for subsequent tranches, if any.
 - vii. For the purposes of bidding, the net worth of the bidder as on the last date of the previous financial year, should be equal to or greater than INR 15 Crore per thousand MT per annum of quoted production and supply capacity of Green Hydrogen.
 - viii. The Scheme 2B also specifies the formula for computation of incentive payout to the successful bidders.

JUDICIAL PRONOUNCEMENTS

The Supreme Court held that a court cannot mechanically pronounce a judgement merely due to the failure of the defendant to submit its written statement if the plaintiff does not prove his case.

The Supreme Court in its judgement dated 12.01.2024 in the matter of *Asma Lateef & Anr. v. Shabbir Ahmad & Ors*¹⁰ held that the court cannot pronounce a judgement merely on the default of the defendant to submit its written statement if the plaintiff does not prove his case.

The Supreme Court observed that Rule 10 of Order VIII of the Code of Civil Procedure, 1908 (“CPC”) provides two options to the court when a party fails to submit its written submission to the court i.e., either to pronounce the judgement against the person or make such an order as it deems fit. Further the verb ‘shall’ under the first option does not prescribe it to be a mandatory provision and if in every case a judgment is

pronounced against a person in response to non-submission of the written statement, then it would render the second part of Rule 10 i.e., “or make such order in relation to the suit as it thinks fit” otiose.

In light of the same, the Supreme Court held that power under Rule 10 of Order VIII of the CPC ought to be invoked with caution and circumspection, and only on account of deemed admission could the court pass a judgement against a defendant who has not filed its written statement. If there are disputed questions of fact, the court must only pass a judgement after requiring the plaintiff to prove the facts.

The High Court of Delhi held that an arbitral award cannot be challenged on the ground of unilateral appointment of the arbitrator if at an earlier stage no recourse was taken to law for revocation of appointment of the arbitrator.

The High Court of Delhi in its judgment dated 23.01.2024 in the matter of *Arjun Mall Retail Holdings Pvt. Ltd. & Ors. v. Gunocen Inc.*¹¹, held that a party cannot challenge an arbitral award on the grounds of unilateral appointment of the arbitrator if it did not challenge the appointment of such arbitrator at an earlier stage either by filing an application under Section 11(6) or under Sections 13 and 14 of the Arbitration and Conciliation Act, 1996 (“A&C Act”).

In the instant case, Gunocen Inc. issued multiple notices to Arjun Mall Retail Holdings Pvt. Ltd. invoking arbitration. Thereafter, since the arbitration clause under the memorandum of understanding executed between the Parties entitled Gunocen Inc. to unilaterally appoint the arbitrator, it appointed the sole arbitrator. Upon receiving the notice from the arbitrator, Arjun Mall Retail Holdings Pvt. Ltd. wrote a letter to the arbitrator objecting to its appointment. However, the arbitrator noted that since it had already entered reference, the arbitration proceedings could not be terminated. Arjun Mall Retail Holdings Pvt. Ltd. did not appear before the arbitrator and finally an *ex parte* award was passed by the arbitrator.

The Court observed that there was a time gap of around 8 months between the issuance of first notice invoking arbitration and commencement of arbitration proceedings. However, Arjun Mall Retail Holdings Pvt. Ltd. did not take any recourse to law during that period. Further, while Arjun Mall Retail Holdings Pvt. Ltd. had sent a letter to the arbitrator objecting to its appointment, it neither challenged the appointment of such arbitrator under the provisions of Section 11(6) of the A&C Act nor did it participate in arbitral

¹⁰ Civil Appeal No. 9695 of 2013

¹¹ FAO(COMM) 31 of 2021

proceedings. Therefore, challenge against the appointment of the arbitrator under Section 34 of the A&C Act is not tenable.

The High Court of Delhi held that arbitral award cannot be challenged on grounds of bias of the arbitrator when no such objection was raised during the arbitral proceedings.

The High Court of Delhi in its judgement dated 10.01.2024 in the matter of *Allied-Dynamic Joint Venture v. Ircon International Ltd Delhi*¹² held that parties involved in arbitration proceedings must promptly raise concerns regarding bias on the part of the arbitrator and not wait for the award to be rendered before challenging the award on the grounds of bias. The Court further noted that an arbitral award cannot be challenged on the grounds of bias of the arbitrator when no such objection was raised during the arbitral proceedings.

The High Court observed that while Allied- Dynamic Joint Venture claimed to have written letters raising the issue of bias, it never sought any formal adjudication on the bias of the arbitrator and also never sought to change the arbitrator on the ground of bias.

The High Court further observed that the conduct of a party which party participates in arbitration proceedings, does not raise any allegations of bias, and receives the final award rendered in terms of Section 31 of the A&C Act would constitute waiver under section 4 of the A&C Act.

The High Court of Delhi held that in order to determine its pecuniary jurisdiction, only the interest accrued till the date of invocation of arbitration ought to be considered.

The High Court of Delhi in the matter of *Simentech India Private Limited v. Bharat Heavy Electricals Limited* held that for computation of 'specified value' as provided under Section 12(2) of the Commercial Courts Act, 2015 ("CCA 2015"), the interest accrued until the date of invocation of an arbitration shall only be considered i.e., the date of invocation of an arbitration shall be the cut-off date for considering the interest for the determination of pecuniary jurisdiction.

While adjudicating on an I.A. filed under Order VII Rule 10 of the Code of Civil Procedure, 1908 for seeking return of a petition filed under Section 34 of the A&C Act, the Court observed that the calculation provided in the petition, which included interest calculated until the filing of the petition

under Section 34 of the A&C Act, stands in conflict with Section 12 of the CCA 2015 and would lead to continual revision of the specified value. The Court further observed that if the specified value until the invocation of arbitration is below the pecuniary jurisdiction of the relevant court, the same would not come under its jurisdiction due to the accrual of interest over time as such interpretation would in effect contravene the intention of the legislature which has provided a specific threshold for the pecuniary jurisdiction of relevant courts.

The Court allowed the I.A. and returned the petition filed by Simentech India Private Limited as the specified value fell short of its pecuniary jurisdiction and granted liberty to present it before the Court of competent jurisdiction as per the revised specified value.

CERC held that nomination of a Qualified Coordination Agency in accordance with the RERC Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources Regulations, 2017 is a 'Change in Law' Event.

Central Electricity Regulatory Commission ("CERC") vide its order dated 15.01.2024 in the matter of *NTPC Green Energy Limited v. Rajasthan Urja Vikas Nigam Limited*¹³ held that nomination of a Qualified Coordination Agency ("QCA"), in accordance with the RERC Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources Regulations, 2017 ("DSM Regulations, 2017") is a regulatory mandate, and constitutes a 'Change in law' event.

In the present petition, NTPC Green Energy Limited sought for declaration of the notification of DSM Regulations, 2017 dated 14.09.2017 as a 'Change in Law' event, in terms of the Power Purchase Agreement ("PPA") dated 31.03.2016 and accordingly sought compensation thereof.

CERC here emphasized that the nomination of a QCA was not an internal decision but a regulatory mandate under the DSM Regulations, 2017 and since the DSM Regulations, 2017 were enacted after the effective date of the PPA, the notification of the DSM Regulations qualifies as a 'Change in Law' event. Accordingly, CERC held that the engagement of a QCA by NTPC Green Energy Limited falls under the category of a 'Change in Law' event, as defined in Article 10 of the PPA, necessitating reimbursement of the scheduling and forecasting charges as paid by NTPC Green Energy Limited to the QCA.

¹² O.M.P. (COMM) 451/2016

¹³ Petition No. 190/MP/2022

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