SAGUS SPEAKS

Sagus Legal
Advisors & Advocates

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

REGULATORY & POLICY UPDATES

SEBI launches SCORES 2.0 a new version of the SEBI complaint redressal system for Investors[1].

Securities Exchange Board of India ("SEBI") through a press release dated 01.04.2024 launched a new version of the SEBI Complaint Redress System ("SCORES 2.0").

SEBI through its circular dated 20.09.2023 had revamped the existing complaint redressal mechanism ("SCORES 2.0 Circular"). Pursuant to the changes in the SCORES 2.0 Circular, the salient features of SCORES 2.0 are as follows:

i. The timelines have been reduced and made uniform across the securities market, i.e. to 21 calendar days from the date of receipt of complaint.
ii. All complaints are required to be auto-routed to the concerned regulated entity to eliminate time lapses, if any, in the flow of complaints.
iii. Non-adherence to the prescribed timelines by the relevant regulated entity or designated body, as the case may be, shall lead to the auto-escalation of complaints to the next level.
iv. Two levels of review shall be available to the investors. The first level of review shall be by the 'designated body' if the investor is dissatisfied with the resolution provided by the concerned regulated entity. The second level of review shall be conducted by SEBI in case the investor is still dissatisfied after the first review.
v. KYC Registration Agency database has been integrated for easy registration of investors onto the platform.
vi. Investors shall be able to lodge complaints only through SCORES 2.0, however, the investors shall be able to check

[1] SEBI SCORES 2.0 Press Release 01.04.2024

the status of complaints already lodged, under the older version of SCORES.

GOVERNMENT NOTIFICATIONS

MOP constitutes Thermal Project Monitoring Group for monitoring the execution of Thermal Power Projects[2].

The Ministry of Power ("MOP") through its office memorandum dated 02.04.2024 ("Office Memorandum") constituted an independent Thermal Project Monitoring Group ("TPMG") for monitoring the execution of Thermal Power Projects ("TPPs") to conduct site inspections and provide an assessment of each site of the TPP under implementation by a central/state utility and Independent Power Plants ("IPPs")

The Office Memorandum directs the members of TPMG to undertake site visits of all the TPPs' of the central/ state sector as well as IPPs' which are under implementation. The members of TPMG are required to conduct a site inspection of the project and based on their assessment, submit a progress report to TPMG. TPMG shall be required to compare this progress report with the progress being reported by project proponents directly to Central Electricity Agency ("CEA"). Based on both reports, CEA shall submit the realistic position about the progress of the projects during regular capacity addition review meetings. Additionally, TPMG is tasked with the responsibility to identify any challenges or obstacles encountered during the implementation phase and accordingly evaluate the effectiveness of the mitigation strategies employed by the project proponents.

MNRE revived the Approved List of Models and Manufacturers mandate with effect from 01.04.2024[3].

The Ministry of New & Renewable Energy ("MNRE") through its notification dated 29.03.2024 has stated that the Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019 ("ALMM Order") will come into effect from 01.04.2024, following a one-year abeyance period for financial year 2023-2024, imposed through its order dated 10.03.2023.

Further, each project where the solar photovoltaic modules have been received at the project site by 31.03.2024 and is unable to commission the project by 31.03.2024 on account of reasons beyond the control of the renewable power developers, shall be examined separately.

KERC mandates specific timeframes for electricity supply for distribution licensee[4].

The Karnataka Electricity Regulatory Commission ("KERC") through its Suo Moto Order dated 28.03.2024, in the matter of *'Specifying the maximum time period for providing the power supply, after submission of application complete in all respect'* directed that where the supply of electricity does not require any extension of distribution mains or the commissioning of new substations, every distribution licensee must provide/supply electricity within specified timeframes on the receipt of an application as follows:

i. In metro cities, electricity should be provided within 3 days of receiving the application.
ii. For other municipal areas, electricity should be provided within 7 days of receiving the application.
iii. For rural areas, electricity should be provided within 15 days of receiving the application.

Further, if supply requires an extension of distribution mains or commissioning of a new sub-station, the distribution licensee shall supply electricity to such premises promptly after such extension or commissioning, within a period not extending 90 days.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that the maximum stamp duty payable for increase in the share capital as provided under the Bombay Stamp Act is payable only once and not on every subsequent increase of the share capital.

The Supreme Court through its judgement dated 05.04.2024 in the matter of *State of Maharashtra & Anr v. National Organic Chemical Industries Ltd*[5] has held that under the Bombay Stamp Act, 1958 ("Stamp Act"), the maximum stamp duty payable on increase of share capital of a Company is payable only once if stamp duty equivalent to or more than the cap has already been paid and accordingly, no stamp duty shall be payable on subsequent increases.

The Supreme Court clarifying the position held that the ceiling of INR 25,00,000 as provided under Article 10 of the Stamp Act (post amendment) is applicable on subsequent increases in the authorised share capital, subject to the maximum cap payable under the said article of the Stamp Act. Therefore, in case stamp duty equivalent to or more than such cap has already been paid, then no further stamp duty can be levied on every subsequent increase individually.

[2] MOP Office Memorandum 02.04.2024
[3] MNRE notification dated 29.03.2024
[4] KERC Suo Moto Order 28.03.2024
[5] Civil Appeal No. 8821 of 2011

Supreme Court lifted the blanket restriction against the laying of underground powerlines of high voltage and low voltage power lines in the Great Indian Bustard 'potential' and 'priority' areas.

The Supreme Court, through its judgement dated 21.03.2024, in the matter of *M.K. Ranjitsinh & Ors. v. Union of India & Ors*[6] held that there needs to be a dynamic interplay between protecting a critically endangered species and addressing global climate change, there needs to be a delicate balance between protecting critically endangered species such as Great Indian Bustard ("GIB") and conservation of environment as a whole.

The Court through its judgment recalled its Order dated 19.04.2021, which directed the undergrounding of high voltage and low voltage power lines in the 'potential' and 'priority' areas in GIB habitat and constituted an expert committee for the following purposes:

i. Assessing the feasibility and extent of electric lines (overhead and underground) in 'priority' areas identified by the Wildlife Institute of India in Rajasthan and Gujarat.
ii. Addressing conservation measures for the GIB and other fauna specific to the region.
iii. Identifying measures to ensure the long-term survival and population increase of the GIB in 'priority' areas, including habitat restoration, anti-poaching initiatives, and community engagement programs.
iv. Evaluating the impact of climate change on GIB habitats and developing strategies to enhance their resilience.
v. Identifying sustainable options for laying power lines while balancing GIB conservation with India's commitments to renewable energy development.
Engaging stakeholders to gather input, build consensus, and promote collaborative efforts.
vi. Reviewing global conservation efforts for similar species to inform best practices.
vii. Implementation of monitoring and research programs to track GIB populations and assess conservation measures effectiveness.
viii. Recommending additional measures, including the installation of bird diverters on power lines, ensuring their quality meets specified standards, and considering expert recommendations from the MOP.

High Court of Bombay held that a notice under Section 21 of the A&C Act, need not be re-issued prior to filing a petition for the appointment of the arbitrator, after the award is set aside under Section 34 of the A&C Act.

The High Court of Bombay through its judgement dated 21.03.2024 in the matter of *Kirloskar Pneumatic Company Ltd v. Kataria Sales Corporation*[7], held that a fresh notice under Section 21 of the Arbitration and Conciliation Act, 1996 ("A&C Act") is not necessary when a party seeks appointment of an arbitrator after setting aside of award passed by ineligible arbitrator.

In the present case, the award passed by the sole arbitrator was set aside as it was unilaterally appointed by Kirloskar Pneumatic Company Ltd. ("Kirloskar"). Thereafter, Kirloskar filed an application under Section 11(6) of the A&C Act seeking the appointment of an arbitrator. The same was opposed by the Kataria Sales Corporation on the ground that Kirloskar approached the court without giving notice under Section 21 of the A&C Act.

The High Court held that Section 21 of the A&C Act indicates that the arbitral proceedings in respect of a particular dispute, commence on the date on which the request or the dispute to be referred to arbitration is received by the other party. The moment a request for referring a dispute to arbitration is received by a party from the other, it shall mark the commencement of arbitral proceedings. Further, the procedure provided under Section 21 of the A&C Act is applicable to all arbitration proceedings unless it is otherwise agreed between the parties.

Further, merely because the award passed by an ineligible arbitrator is set aside, it is not sufficient enough to give a new contour to the dispute, as the dispute between the parties still remains the same.

High Court of Allahabad held that provision of Commercial Courts Act, 2015 providing for territorial jurisdiction of courts to adjudicate on, being an enabling provision, cannot override the inter-se agreement between the two parties specifically excluding the jurisdiction of the Court.

The High Court of Allahabad through its judgement dated 01.04.2024 in the *matter of Northeastern Railway v. Calstar Steel Ltd*[8], held that Section 6 of the Commercial Courts Act, 2015 which deals with the jurisdiction of the commercial courts under the Act, is an enabling provision and cannot override the inter-se agreement between the parties agreeing to specifically exclude jurisdiction of the court.

In the present case, an application was filed under Section 34 of the A&C Act in the Commercial Court Gorakhpur which was returned for being presented before the Court of competent jurisdiction. The High Court while rejecting the present appeal filed under Section 34 of the A&C Act, observed that in the present case, it was specifically provided that that the courts of place from where the tender documents and acceptance of the tender were issued, shall alone have jurisdiction to decide any

[6] W.P.(C) 838 of 2019
[7] Commercial Arbitration Petition No. 16 of 2023
[8] 2024: AHC: 55125: DB

disputes arising between the parties out of or in respect of the tender documents. Accordingly, the High Court held that since the tender documents were issued and acceptance of tender was also made from New Delhi by the railway board, only the Courts at New Delhi had the jurisdiction in respect of the dispute which has arisen between the parties to the present case.

Further while elaborating on Section 6 of the Commercial Courts Act, 2015, the High Court observed that though the section empowers these commercial courts to adjudicate on all suits and applications pertaining to commercial disputes meeting a specified value, arising out of the entire territory of the state over which the commercial court has been vested jurisdiction, the said provision was only an enabling provision and it cannot be said to override the inter-se agreement between the parties specifically excluding the jurisdiction of the court.

High Court of Delhi held that the use of the word 'seat' is not compulsory in an arbitration clause.

The High Court of Delhi in its judgment dated 08.04.2024 in the matter of *Anuj Jain & Anr. v. M/s WTC Noida Development Company Private Limited*[9], held that in an arbitration clause the use of word 'seat' is not compulsory, and the court has to decipher the intention of the parties.

In the present case, an application under Section 11 of the A&C Act was filed for the appointment of an arbitrator. The arbitration clause in the present case provided that arbitration shall be held in Delhi and subject to the arbitration clause, all legal matters between the parties, the courts/tribunals/forums of Noida would have jurisdiction.

The Court held that the use of the word 'seat' is not compulsory in a particular arbitration clause and it's the duty of the court to decipher the intention of the parties. In the present case, the intention of the parties was clear that the seat of arbitration would be Delhi and only in case when the matter is not referred to arbitration or if there are other disputes which have to be entertained by civil courts/tribunals/forums, the courts of Noida will have jurisdiction.

NCLT, Mumbai held that a claim and penalty does not become 'operational debt' under the IBC Code until the liability has been adjudicated upon by a civil court.

The National Company Law Tribunal, Mumbai ("NCLT") through its judgement dated 02.04.2024 in the matter of *Sucden India Pvt. Ltd v. Matoshri Laxmi Sugar Co-Generation Industries Ltd*[10] held that 'operational debt' as defined under section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("IBC Code") does not include a claim of penalty or liquidated damages, and such claim of penalty liquidated damages can come under the ambit of 'operational debt' only after the claim has been adjudicated by a competent court.

In the present case, insolvency proceedings were initiated under the IBC Code by Sucden India as an operational creditor against Matoshri Laxmi Sugar (the corporate debtor) in relation to a claim of penalty under a sugar purchase agreement for delay in supply of sugar by Matoshri Laxmi Sugar to Sucden India in accordance with the terms of such agreement and interest on the penalty amount claimed.

The NCLT observed that in order to qualify as an 'operational debt' under Section 5(21) of the IBC Code, the amount in default must represent "a claim in respect of the provision of goods or services", however, in the instant case, the claim amount was not on account of provision of goods but on account of penalty or damages for the delay in delivery of sugar by Matoshri Laxmi Sugar to Sucden India.

The Court relying on the settled principle that 'operational debt' under the IBC Code does not include penalty or liquidated damages held that claim and penalty do not become operational debt until the liability has been adjudicated upon by a civil court and damages have been assessed and crystallized.

Captive consumers must fulfill their Renewable Purchase Obligations and cannot offset these obligations using co-generation based on fossil fuel - APTEL.

The Appellate Tribunal for Electricity ("APTEL") through its judgement dated 20.02.2024 in the matter of *M/s. Tata Steel Ltd. v. Odisha Electricity Regulatory Commission & Anr.*[11] held that captive consumers are required to fulfil their Renewable Purchase Obligations ("RPO") but they cannot seek to set off such obligations from co-generation based on fossil fuels.

In the present case, Tata Steel Limited argued for exemption from its RPO for its waste heat recovery system and sought to set off RPO targets against its coal-based plant. However, the Orissa Electricity Regulatory Commission ("OERC") denied these requests, imposing RPO obligations from February 15, 2022, under the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations 2021 ("Regulations 2021") but exempting RPOs from 2015 onwards for the waste heat recovery system.

At the outset, APTEL on hearing the parties clarified that the Electricity Act, 2003 ("Electricity Act") does not treat co-generation on par with generation from renewable sources of energy. APTEL stated that Section 86(1)(e) of the Electricity Act does not require "co-generation" to be treated equally and at par with "generation of electricity from renewable sources of energy". It was highlighted that as per Section 2(12) of the Electricity Act the term "co-generation" means generating electricity along with another form of energy, which is distinct

[9] ARB.P. 1329/2023
[10] CP (IB) No. 219/MB/2022
[11] Appeal No. 337 of 2023

from renewable energy sources. It is only a process of generation of electricity and another form of energy and cannot be termed as a 'source of electricity' like renewable sources of energy.

Further, APTEL highlighted the legislative intent behind the Electricity Act, according to which the power conferred on State Electricity Regulatory Commissions ("SERCs") under Section 86(1)(e) of the Electricity Act is confined only to renewable sources of energy, and not from co-generation.

Accordingly, APTEL held that captive consumers cannot seek exemptions or offsets for RPO targets by relying on co-generation plants based on fossil fuels.

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.

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