



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

REGULATORY & REGULATORY & POLICY UPDATES

RBI bars Paytm Payments Bank Limited from offering banking services.¹

The Reserve Bank of India (“RBI”), through a press release dated 31.01.2024, in exercise of its powers under Section 35A of Banking Regulation Act, 1949, placed certain restrictions on the operations and business of Payment Payments Bank Limited (“PPBL”). Following this, RBI issued another press release on 16.02.2024² with the following revised instructions to PPBL:

- i. No further deposits or credit transactions or top ups shall be allowed in any customer accounts, prepaid instruments, wallets, FASTags, NCMC cards, etc. after

15.03.2024, other than any interest, cashbacks, or refunds which may be credited anytime.

- ii. Withdrawal or utilisation of balances by its customers from their accounts including savings bank accounts, current accounts, prepaid instruments, FASTags, NCMC Card, etc. are to be permitted without any restrictions, upto their available balance.
- iii. No other banking services, other than those referred in (ii) above, like fund transfers (irrespective of name and nature of services like AEPS, IMPS, etc.), BBPOU and UPI facility should be provided by PPBL after 15.03.2024.
- iv. The Nodal Accounts of One97 Communications Ltd. and Paytm Payments Services Ltd. are to be terminated at the earliest, in any case not later than 29.02.2024.

¹ RBI Press Release dated 31.01.2024.

² RBI Press Release dated 16.02.2024.

- v. Settlement of all pipeline transactions and nodal accounts (in respect of all transactions initiated on or before 29.02.2024) shall be completed by 15.03.2024 and no further transactions shall be permitted thereafter.

Notably, RBI, through a press release dated 11.03.2022, had directed PPBL to stop onboarding new customers with immediate effect. The present supervisory action is on account of persistent non-compliances and continued material supervisory concerns in the bank, as revealed in the Comprehensive System Audit report and subsequent compliance validation report of the external auditors.

IBBI issues amendment to the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 with respect to the eligibility of bankruptcy trustee and appointment of professionals.³

The Insolvency and Bankruptcy Board of India (“IBBI”) issued IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024 dated 31.01.2024, amending the existing IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The key changes introduced by the amendment are:

- i. Prior to the amendment, an insolvency professional who acted or was acting as an interim resolution professional (“IRP”), resolution professional (“RP”) or liquidator for a corporate debtor was not eligible to be appointed as the bankruptcy trustee (“BT”) in cases involving personal guarantors to the same corporate debtor. This restriction has now been removed through this amendment.
- ii. Prior to the amendment, an insolvency professional who acted or was acting as an IRP, RP or liquidator for the corporate debtor could not be appointed as a professional (such as accountants, registered valuers, advocates or other professionals) by the BT. This restriction has now been removed through this amendment.

IBBI issues amendment to the First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016 in relation to the code of conduct of the insolvency professionals.⁴

IBBI issued IBBI (Insolvency Professionals) (Amendment) Regulations, 2024 dated 31.01.2024, amending the existing IBBI (Insolvency Professionals) Regulations, 2016. The key changes introduced by the amendment are:

- i. The regulations have been amended to allow an insolvency professional to resign from an assignment,

with the recommendation of the committee of creditors in a Corporate Insolvency Resolution Process (“CIRP”), consultation committee in liquidation process, the debtor or the creditor in the insolvency resolution process of personal guarantor to the corporate debtor, as the case may be, and approval of the Adjudicating Authority. However, such insolvency professional shall continue to discharge his duties, functions and responsibilities till the approval of resignation by the Adjudicating Authority.

- ii. The regulations have been relaxed to allow an insolvency professional being an insolvency professional entity to engage or appoint its partners or directors (as the case may be), for or in connection with any work relating to any of its assignment other than work related to valuation and audit of the debtor.
- iii. An insolvency professional being an insolvency professional entity is now also allowed to provide any service, other than service related to valuation and audit, for or in connection with the assignment which is being undertaken by any of its partners or directors, as the case may be.

IBBI issues amendment to IBBI (Voluntary Liquidation Process) Regulations, 2017 with respect to declaration under liquidation proceedings.⁵

IBBI issued IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2024 amending the IBBI (Voluntary Liquidation Process) Regulations, 2017. The key changes introduced by the amendment are:

- i. For the purposes of initiating voluntary liquidation, a corporate person is now additionally required to provide a disclosure about the pending proceedings or assessments before statutory authorities, and pending litigations in which it is involved, and a declaration that the corporate person has made sufficient provision to meet the obligations arising on account of all such pending proceedings, assessments and litigations.
- ii. Regulation 37(2) has been amended to bring it in line with the amendments in Regulation 37(1) through the IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2022. Prior to the amendments in 2022 the timeline for completion of the liquidation process was 12 months from liquidation commencement date, which was increased to 270 days where the creditors have approved the resolution in line with Section 59(3)(c) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) or Regulation 3(1)(c) of these regulations.
- iii. Regulation 39 has been amended to provide the process for a stakeholder (entitled to proceeds from sale of liquidation assets under Section 53 of IBC) to claim any

³ [Insolvency and Bankruptcy Board of India \(Bankruptcy Process for Personal Guarantors to Corporate Debtors\) \(Amendment\) Regulations, 2024](#)

⁴ [Insolvency and Bankruptcy Board of India \(Insolvency Professionals\) \(Amendment\) Regulations, 2024](#)

⁵ [Insolvency and Bankruptcy Board of India \(Voluntary Liquidation Process\) \(Amendment\) Regulations, 2024](#)

amounts from the Corporate Voluntary Liquidation Account and for release of such funds by the liquidator.

IBBI issues amendment to the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 with respect to the eligibility of resolution professionals and appointment of professionals.⁶

IBBI has issued the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024 dated 31.01.2024, amending the existing IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The key changes introduced by the amendment are:

- i. Prior to the amendment, an insolvency professional entity was not eligible to be appointed as the RP in the resolution process of a guarantor where the insolvency professional entity of which he is a partner or a director, or any of the partners or directors of such insolvency professional entity had acted or is acting as an IRP, RP or liquidator in respect of the corporate debtor. This restriction has now been removed through this amendment.
- ii. Regulation 17A has been inserted which mandates the RP to place the repayment plan in terms of Section 105 of the IBC in the meeting of the creditors for its consideration, and where no repayment plan has been received within such period as stipulated under Section 106 of the IBC, the RP shall notify the creditors in such meeting.

GOVERNMENT NOTIFICATIONS

MCA notifies circular regarding the relaxation of additional fees and extension of last date of filing of Form LLP BEN – 2 and LLP Form 4D.⁷

The Ministry of Corporate Affairs (“MCA”) issued a circular on 07.02.2024 providing relaxation from payment of additional fees and extension of last date of filing of Form No. LLP BEN-2 and LLP Form No. 4D (“Forms”) under the Limited Liability Partnership Act, 2008 (“LLP Act”).

On 09.11.2023, MCA notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023, which mandates the filing of the prescribed E-form LLP BEN-2 with the Registrar in respect of the beneficial owners of the LLP. Additionally, on 27.10.2023, MCA notified Limited

Liability Partnership (Third Amendment) Rules, 2023 which mandates the filing of E-form LLP Form No. 4D with the Registrar for declaration of beneficial interest in contributions received by the LLP.

MCA has relaxed these requirements in view of transition of MCA-21 from version-2 to version-3 and to promote compliance. LLPs may now file the prescribed Forms without payment of any additional fees up to 15.05.2024. The two forms shall be made available in version-3 for filing purposes with effect from 15.04.2024.

Interim Budget presented in Parliament

On 01.02.2024, the Finance Minister presented the interim budget, and the Finance Bill, 2024 in the Parliament. The Finance Bill, 2024 was passed in Lok Sabha on 07.02.2024 to implement financial proposals for fiscal year 2024-2025 and it received Presidential assent on 15.02.2024. No major policy changes were announced as part of the interim budget.

The key highlights of the Finance Act, 2024⁸ are:

- i. **No changes in tax rates:** For the fiscal year 2024-2025, the existing tax rates for direct taxes will remain unchanged.
- ii. **Deduction and Exemptions:** The following deductions and exemptions which were expiring on 31.03.2024 have been extended by an year:
 - a. Tax exemption under Section 10(23FE) of the Income Tax Act, 1961 (“IT Act”), for wholly owned subsidiaries of Abu Dhabi Investments Authority, sovereign wealth funds, and pension funds, has been extended until 31.03.2025;
 - b. Tax exemption under Section 10(4D) of the IT Act provided to the Investment Division of an Offshore Banking Unit located in the International Financial Services Centre (“IFSC”), Category-I Foreign Portfolio Investors, and Category III Alternative Investment Funds (“AIFs”) established in an IFSC is now available for such entities which commence operation on or before 31.03.2025;
 - c. Tax exemption under Section 10(4F) of the IT Act on royalty or interest income received by a non-resident from leasing aircraft or ships to an IFSC unit is now available for those which commence its operation on or before 31.03.2025;
 - d. Now, all eligible start-ups incorporated on or before 31.03.2025, can enjoy full tax deduction on profits derived from their eligible business for 3 consecutive

⁶Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024

⁷ Circular regarding the relaxation of additional fees and extension of last date of filing of Form LLP BEN – 2 and LLP Form 4D

⁸ Finance Act, 2024

assessment years within 7 years from the date of incorporation; and

- e. Tax concessions under Section 80LA of the IT Act granted to Offshore Banking Units and entities operating in International Financial Services Centers (IFSCs) have been extended to such entities that commence operations on or before 31.03.2025.
- iii. **Faceless Scheme:** The Finance Act, 2024 provides that the Central Board of Direct Taxes will issue directives by 31.03.2024 to implement a faceless regime in key sections of the IT Act, namely Section 92CA (*Determination of Arm's Length Price*), Section 144C (*Dispute Resolution Panel*), Section 253 (*Appeal to Appellate Tribunal*), and Section 255 (*Procedure of Appellate Tribunal*). This shift to a digital-first approach is aimed at enhancing efficiency and transparency in activities such as determining arm's length prices, resolving disputes, and handling appeals. Such amendments will be amended by 31.02.2025.
- iv. **Tax Collected at Source (TCS):** The threshold for TCS on remittances under the Liberalized Remittance Scheme is INR 7 lakhs per financial year. For purchasing overseas tour packages, a 5% TCS is applicable on the first Rs. 7 lakhs per individual annually, increasing to 20% for amounts exceeding this limit. The increased TCS rates, initially set for 01.07.2023, will now be effective from 01.10.2023, with specified modifications.

RBI holds first meeting of the Monetary Policy Committee of 2024; holds repo rate at 6.5%

On 08.02.2024, the RBI issued the first monetary policy statement of 2024. The key highlights of the outcome of the meeting of RBI's Monetary Policy Committee are:

- i. The Indian economy has performed remarkably well in the recent years, with growth accelerating and outpacing most forecasts and inflation being on a downward trajectory.
- ii. India's potential growth is propelled by structural drivers like improving physical infrastructure, development of world class digital and payments technology, ease of doing business, enhanced labour force participation, and improved quality of fiscal spending.
- iii. The policy repo rate to continue at 6.50%, and consequently, the standing deposit facility (SDF) rate to

continue at 6.25% and the marginal standing facility (MSF) rate and the Bank Rate at 6.75%.

- iv. The first advance estimates have placed the real GDP growth at 7.3% for 2023-24, marking the third successive year of growth above 7%.
- v. The investment cycle is gaining steam, aided by sustained thrust on government capex, increasing capacity utilisation, rising flow of resources to the commercial sector, and policy support from schemes such as production linked incentive scheme. There is also a revival in private corporate investment.
- vi. The domestic financial system remains resilient with healthy balance sheets of banks and financial institutions. The financial parameters of NBFCs are also improving in tandem with those of the banking system.

MoP amends various guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Renewable Energy Projects.

The Ministry of Power ("MoP") by way of separate resolutions dated 02.02.2024 issued amendments to the following guidelines:

- i. Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems.⁹
- ii. Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects.¹⁰
- iii. Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects.¹¹
- iv. Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects.¹²

collectively, referred to as "RE Guidelines" and the amendments are collectively referred to as "RE Guidelines Amendments".

The RE Guidelines Amendments have deleted the relevant clause under the RE Guidelines under which a generator, who delayed the commencement of supply of power beyond six months from the Scheduled Commencement of Supply Date was debarred from participating in the bids issued by any procurer or any intermediary procurer for: (a) 1 year, in case

⁹ [Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected RE Projects with Energy Storage Systems.](#)

¹⁰ [Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects.](#)

¹¹ [Tariff Based Competitive Bidding Process for Procurement of Power from RE Projects Grid Connected Solar PV Power Projects](#)

¹² [Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects](#)

of first default; and (b) not less than 2 years, and not more than 3 years for second and any subsequent default.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that any claim of a creditor cannot be rejected merely on the ground that the claim has been submitted under a form that is different from the one prescribed.

The Supreme Court in its judgment dated 12.02.2024 in the matter of *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni and Anr.*¹³ held that a claim submitted by a creditor during CIRP cannot be dismissed solely on the ground that such claim has been submitted in the wrong 'Form' to the RP.

The Supreme Court observed that even if a claim submitted, by a creditor, is in a Form that is not specified in the IBBI (CIRP) Regulations, 2016, the same has to be given due consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the corporate debtor.

The High Court of Karnataka held that an arbitration agreement shall be valid even if it refers to the Arbitration and Conciliation Act, 1940.

The High Court of Karnataka in its judgment dated 09.02.2024 in the matter of *M/s. ICDS Ltd. v. Sri Bhaskaran Pillai & Ors.*¹⁴ held that even if the arbitration agreement erroneously refers to the Arbitration and Conciliation Act, 1940 ("1940 Act") after the enactment of Arbitration & Conciliation Act, 1996 ("1996 Act") it does not render the arbitration clause invalid.

The Court relied on the judgment pronounced by the Supreme Court of India in the matter of *Purushottam, S/o Tulsiram Badwaik v. Anil and Ors.*¹⁵, and Section 85(2) of the 1996 Act and further observed that reference to arbitration under the 1940 Act in an arbitration agreement/ clause would be of no consequence and the matter would still be governed under the 1996 Act. An agreement between the parties to refer the dispute to arbitration is the only requirement for the applicability of the provisions of the 1996 Act.

APTEL held that Indian Railways is not a deemed distribution licensee under the Electricity Act, 2003 and is liable to pay Cross Subsidy Surcharge for availing open access.

The Appellate Tribunal for Electricity ("APTEL") through its judgment dated 12.02.2024 in the matter of *West Bengal State*

*Electricity Distribution Company Limited v. Central Electricity Regulatory Commission & Ors.*¹⁶ and other batch matters held that Indian Railways is not a deemed distribution licensee falling within the ambit of the third proviso to Section 14 of the Electricity Act, 2003 ("Electricity Act") as it does not distribute/ supply electricity (i.e., sell electricity to consumers for a price) required from a distribution licensee under the Electricity Act.

APTEL further held that the sale of electricity is a *sine qua non* for distribution of electricity by a distribution licensee, deemed or otherwise, under the Electricity Act. The electricity provided by the Railways within its area to its vendors, contractors, agencies and other entities, is not "supply" of electricity but is merely use of electricity by or on behalf of the Railway Administration. As Indian Railways consumes the entire electricity supplied to it (either directly or through entities with which it has a jural relationship), the Indian Railways is obligated to pay cross subsidy surcharge/ additional surcharge for the electricity sourced by it through open access. Further, it was held that the Indian Railways is entitled to source electricity through open access only as a consumer under Sections 38(2)(d)(ii), 39(2)(d)(ii) and 40(c)(ii) of the Electricity Act.

APTEL advises Petroleum and Natural Gas Regulatory Board to issue guidelines/ regulations regarding mechanism on laying of pipelines.

APTEL in its judgment dated 02.02.2024 in the matter of *Central U.P. Gas Limited v. Hindustan Petroleum Corporation Limited & Ors.*¹⁷ observed that considering the existing scenario that the size of a Geographical Area ("GA") is increasing and the available routes for laying of the pipelines, the City Gas Distribution ("CGD") pipeline connecting from the City Gas Station ("CGS") may also pass through some sections of the other contiguous GA(s). A similar situation may also arise where multiple districts are covered under a single GA but due to no direct sharing of the district boundaries (in some cases), it may not be possible to lay CGD pipeline from one district of a GA to another district covered under the same GA, without crossing the boundary of one other contiguous GA.

Accordingly, APTEL advised Petroleum and Natural Gas Regulatory Board ("PNGRB") to issue guidelines/ regulations in order to deal with the aforesaid situations considering the existing circumstances and scenarios, and in this regard the PNGRB should be guided by the objectives of promoting competition among entities, maintaining or increasing supplies for securing equitable distribution and ensuring adequate availability of natural gas throughout the country.

¹³ Civil Appeal Nos. 7590-7591 of 2023

¹⁴ M.F.A. No. 6319/2014

¹⁵ (2018) 8 SCC 95

¹⁶ Appeal No. 276 of 2015

¹⁷ Appeal No. 714 of 2023

APTEL held that the interest on security amount deposited by a consumer with the distribution licensee is payable from the date of deposit.

APTEL in its judgment dated 31.01.2024 in the matter of *Shree Cement Limited v. Chhattisgarh State Electricity Regulatory Commission & Anr.*¹⁸ held that the interest on security amount deposited by a consumer with the distribution licensee for obtaining an electricity connection is payable from the date of deposit and not from the date of commencement of electricity supply to the consumer.

APTEL observed that there are no specific provisions under the Electricity Act or the concerned State Electricity Supply Code (Chhattisgarh State Electricity Supply Code, 2011 in the instant case) which provide for the date from which interest on security deposit is payable by the distribution licensee. Thus, the relevant provisions of the Interest Act, 1978 (“Interest Act”) would be applicable.

Accordingly, as per the common practices of trade and the provisions of the Interest Act, the interest on security deposit is to be paid from the date of deposit.

NCLT Delhi held that assignment of debt is a valid mode for transfer of rights, and the assignee is entitled to file petition under Section 7 of Insolvency and Bankruptcy Code, 2016 as a financial creditor.

The National Company Law Tribunal, New Delhi (“NCLT”) through its order dated 24.01.2024 in the matter of *CFM Asset Reconstruction Private Limited v. M.G. Finvest Private Limited*¹⁹ held that an assignment agreement for debt cannot be challenged in a petition under Section 7 of the IBC.

NCLT held that the assignment of debt is a transaction between a creditor and the assignee which has been recognized as a valid mode of transfer of rights under Section 5(7) of the IBC. Consequently, the entity who receives the assignment of debt falls within the fold of a ‘financial creditor’ and can file a petition under Section 7 of the IBC.

In the instant case, the corporate debtor also argued that the assignment agreement is unregistered and thus it is unenforceable. In this regard, NCLT observed that under Section 5(1A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, asset reconstruction/ securitization companies acquiring financial assets for the purposes of asset reconstruction or securitization are exempt from stamp duty and accordingly, the assignment agreement is enforceable.

NCLT further held that the proceedings under the IBC are summary proceedings, and it is beyond the ambit of the Adjudicating Authority to delve into the details regarding the

requirement or exemption of registration of assignment agreement for debt.

CERC issues directions for implementation of coupling RTM, RTM with SCED and DAM, on a shadow pilot basis.

Central Electricity Regulatory Commission (“CERC”) in a *suo motu* order dated 06.02.2024 in *Case No. 1/SM/2024*²⁰ observed the need for implementation of market coupling in India, and directed the Grid Controller of India (“GCI”) to implement a shadow pilot coupling of the following:

- i. Real-Time Market (“RTM”) of power exchanges;
- ii. Separate coupling of the RTM at power exchanges along with Security Constrained Economic Dispatch (“SCED”); and
- iii. Coupling of Day Ahead Market (“DAM”) of the power exchanges.

The *suo-moto* cognizance was taken in light of CERC’s notification dated 15.02.2021 wherein CERC notified the CERC (Power Market) Regulations, 2021 (“Power Market Regulations”) which provide enabling provisions for the implementation of market coupling among power exchanges, that are yet to be brought into effect by CERC.

CERC further directed the GCI to frame a procedure containing the operational aspects, in consultation with the power exchanges on a shadow pilot basis and develop software for running a shadow pilot within 2 months, which will run for a 4-month period. GCI should share operational experiences on a monthly basis, providing a feedback report at the end of the 4-month period. GCI should also suggest the feasibility of coupling DAM and Security-Constrained Unit Commitment within 2 months. Further, all power exchanges have been directed to share the necessary data and information with GCI for the shadow pilot. Based on the insights, CERC will decide on the need for a regulatory framework for market coupling.

CERC has also clarified that the results of the shadow pilot run will not have any effect on the price and volume discovery in the actual RTM and DAM, and on the final schedule and settlement for any entity during the trial period.

MERC issued draft suo-moto order notifying Generic Tariff rates for Rooftop PV Projects and undertaking process of determining variable charge for biomass and non-fossil fuel-based co-generation project for FY 2024-25.

The Maharashtra Electricity Regulatory Commission (“MERC”) through its *suo-moto* draft order dated 03.02.2024 in *Case No. 3/SM/2024*²¹ (“Draft Order”) has invited

¹⁸ Appeal No. 225 of 2016

¹⁹ IB (IBC) No. 115/PB/2022

²⁰ Case No. 1/SM/2024

²¹ Case No. 3/SM/2024

objections, comments, and suggestions from stakeholders on the following:

- i. Generic Tariff rates for Rooftop PV Projects for FY 2024-25 - In the Draft Order, MERC has notified Rs. 3.30/kWh as the Generic Tariff rates for procurement of surplus power from Rooftop PV Projects under net-metering or net-billing arrangement;
- ii. Average Power Purchase Cost (“APPC”) for Distribution Licensee for FY 2024-25 - In the Draft Order, MERC has determined APPC for each distribution licensee in the State of Maharashtra based on the Tariff Order of respective distribution licensees; and
- iii. Variable charges of Biomass and Non-fossil fuel-based co-generation projects for FY 2024-25 - In the Draft Order, MERC has determined the provisional variable charge for Biomass Project and Non-fossil fuel-based co-generation projects as Rs. 6.23/kWh and Rs. 4.80/kWh respectively, which shall be applicable with effect from 01.04.2024.

ABOUT SAGUS LEGAL

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