SAGUS SPEAKS

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

REGULATORY & POLICY UPDATES

Securities and Exchange Board of India issued a circular on Business Responsibility and Sustainability Reporting.[1]

The Securities and Exchange Board of India ("SEBI") has issued a circular dated 12.07.2023 regarding Business Responsibility and Sustainability Reporting ("BRSR") Core - Framework for assurance and ESG disclosures for value chain' ("BSR Circular"). The BSR Circular has introduced a new component called BRSR Core, which is a subset of the Business Responsibility and Sustainability Report ("BRSR"), consisting of Key Performance Indicators ("KPIs") related to nine Environmental, Social, and Governance ("ESG") attributes. Additionally, for better global comparability intensity ratios based on revenue adjusted for purchasing power parity have been included. In order to facilitate the verification process, the BRSR Core also specifies the data and approach for reporting and assurance. The updated BRSR format with these new requirements is applicable to the top 1000 listed entities (by market capitalization) starting from FY 2023-24. Additionally, a glide path has been provided for BRSR Core, starting with the top 150 listed companies in FY 2023-24.

Furthermore, listed companies shall be required to make ESG disclosures for their value chain which shall encompass all the top upstream and downstream partners of such listed entity, cumulatively comprising 75% of its purchases or sales (by value), respectively. The listed entities may report the KPIs

[1] SEBI Circular on BRSR Core

for the value chain to the extent they are attributable to their businesses with that specific value chain partner. Such ESG disclosures for the value chain shall be applicable to the top 250 listed entities (by market capitalization), on a comply-or-explain basis effective from FY 2024-25.

This introduction of the BRSR Core is aimed at standardizing the disclosures across listed entities and increasing investor confidence with respect to ESG reporting.

SEBI issued a circular on disclosure of material events/ information by listed entities.[2]

SEBI has issued a circular dated 13.07.2023, regarding additional disclosure obligations of listed entities in relation to material events/ information under Regulation 30 and 30A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), ("LODR Circular"). The LODR Circular has come into force from July 15, 2023.

The LODR Circular updates Schedule III of the LODR Regulations pertaining to Regulation 30 and 30A which deals with the disclosure requirements of the listed entities. The LODR Circular includes four annexures that provide detailed guidelines for different aspects of disclosure, such as the timelines for the disclosure, guidance on when an event/ information can said to have occurred, and criteria for determination of materiality.

Annexure I amends Paragraph A of Part A of Schedule III (matters deemed to be material) to expand the scope of material events. The key change introduced in Annexure I is the requirement for a listed company to disclose all agreements which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or impose any restriction or create any liability upon the listed entity, entered into by its shareholders, promoters, promoter group entities, related parties, directors, KMP or employees of the listed entity or of its holding, subsidiary or associate company, among themselves or with the listed entity or with a third party (whether or not the listed entity is a party to such agreement). The other additions include the requirement to disclose: (i) sale of 'whole or substantially the whole of the undertaking(s)', (ii) 'sale of stake in the associate company of the listed company', (iii) change in credit ratings even where such revision was not requested for by the listed entity or the request was withdrawn by the listed entity, (iv) any revision in the rating outlook even without revision in rating score, (v) issue of ESG ratings, and (vi) fraud or defaults by a listed entity, its promoter, director, key managerial personnel, senior management or subsidiary or arrest of KMP, senior management, promoter or director whether occurred within India or abroad, both at the time of occurrence / unearthing of the fraud, and also subsequently to provide details of the amount involved, impact and the corrective measures taken. Further, with respect to pending litigations and disputes the scope of disclosure also includes events where the director or any of senior management or subsidiary of the listed entity becomes a party to any litigation, assessment, etc. Additionally, any delay or default in the payment of fines, penalties, or dues that are pending to any regulatory, statutory, enforcement or judicial authority needs to be disclosed.

SEBI issued a circular extending the framework for restricting trading by Designated Persons.[3]

SEBI has issued a circular dated 19.07.2023 extending the framework for restriction of trading by Designated Persons ("DPs") by freezing PAN at the security level to all listed companies.

Currently, the restriction of trading by DPs by way of freezing their PAN at the security level during the trading window closure period is applicable to listed companies that are part of benchmark indices. However, the freezing of PAN of DPs is now being extended to all the remaining listed entities in a phased manner.

The dates prescribed for implementation of the above is as follows: (a) 01.10.2023 for the Top 1000 listed companies as per the BSE market capitalisation as on 30.06.2023; (b) 01.01.2024 for the next 1000 listed companies as on 30.06.2023; (c) 01.04.2023 for the remaining companies listed on BSE, NSE and MSEI and (d) for companies that get listed post the issuance of this circular, the date shall be the 1st day of the second quarter from the quarter in which such company gets listed.

Department for Promotion of Industry and Internal Trade issues Press Note No. 1 (2023 Series) regarding the validity period of Industrial Licenses.[4]

The Department for Promotion of Industry and Internal Trade ("DPIIT") has issued Press Note No.1 (2023 Series) dated 21.07.2023 ("Press Note"). The Press Note increases the initial validity period of the 'Industrial License' to be issued, from three to fifteen years.

Additionally, the Press Note has stated that the validity of Industrial Licenses where the existing License holder has not

[2] SEBI LODR Circular
[3] SEBI circular on restriction of trading by Designated Persons
[4] DPIIT Press Note on Industrial Licenses

commenced production of the items within fifteen years of the issue of the license may be extended by a further three years.

An application for such an extension needs to be submitted prior to the expiry of fifteen years. The DPIIT has clarified that at the time of such application, there should be no substantial change in the status of such entity/firm. Finally, the guidelines provide certain specific provisos that need to be considered prior to filing the application.

SEBI issued a circular mandating Legal Entity Identifier (LEI) for all non-individual Foreign Portfolio Investors (FPIs).[5]

SEBI has issued a circular dated 27.07.2023 ("LEI Circular"), mandating Legal Entity Identifier ("LEI") for all non-individual Foreign Portfolio Investors ("FPIs").

This LEI Circular makes it mandatory for all non-individual FPIs to provide their LEI details. Earlier FPIs were only required to provide LEI details on a voluntary basis. LEI is a unique global code that identifies legally distinct entities involved in financial transactions. This measure aims to improve the quality and accuracy of financial data systems for better risk management.

Depositories have been directed to make the necessary modifications to the Common Application Form used for registration, KYC, and account opening of FPIs.

Additionally, all the existing FPIs, including those applying for renewal, must now provide their LEIs to their Designated Depository Participants within 180 days from the commencement date of the LEI Circular as failure to do so shall result in the blocking of their accounts for further purchases until the LEI is provided. Finally, all fresh registrations after the issuance of the LEI Circular shall require the submission of the FPIs' respective LEI details.

GOVERNMENT NOTIFICATIONS

Ministry of Corporate Affairs notified the date of implementation of Section 12 of Competition (Amendment) Act, 2023.[6]

The Ministry of Corporate Affairs ("MCA") issued the Competition (Amendment) Act, 2023 ("Competition Amendment Act") on 11.04.2023 and pursuant to the Competition Amendment Act, the MCA has issued a notification stating that Section 12 of the Competition Amendment Act shall come into effect on 18.07.2023.

Section 12 of the Competition Amendment Act amends Section 16 of the Competition Act, 2002 ("Competition Act") which deals with the appointment of the Director-General which prior to the amendment was done by the Central Government, however now the Competition Commission of India ("CCI") can, with the prior approval of the Central Government, appoint the Director General. Director General under the Competition Act assists the CCI and is empowered to investigate any contravention of the provisions of the Competition Act.

Ministry of Electronic and Information Technology declares the Critical Information Infrastructure of five banks as a Protected System.

The Ministry of Electronics and Information Technology ("MeitY") issued notifications dated 26.07.2023 classifying computer resources relating to core banking solution, real-time gross settlement, ATM switch, and UPI interface being part of the Critical Information Infrastructure of Indian Bank Limited.[7] Pursuant to such classification, specific personnel including (i) any designated employee of the Paytm Payments Bank, (ii) any team member of the contractual managed service provider or third-party vendor for need-based access, and (iii) any consultant, regulator, government official, auditor and stakeholder on a case-to-case basis, have been authorised to access the following Protected Systems, exercising the powers conferred under Section 70 of the Information and Technology Act, 2000 ("IT Act").

Similarly, the MeitY has classified via similar notifications dated 26.07.2023 the computer resources of core banking solution and UPI switch of Paytm Payments Bank Limited[8], computer resources of core banking solution, real-time gross settlement, NEFT and UPI switch of IDBI Bank Limited[9], computer resources of core banking solution, real-time gross settlement and UPI interface of Central Bank Limited[10] and computer resources of core banking solution, real-time gross settlement, NEFT, IPSS and UPI switch of YES Bank Limited[11] being part of their respective Critical Information Infrastructure.

Ministry of Power notified Electricity (Second Amendment) Rules, 2023 amending Electricity Rules, 2005.[12]

[5] SEBI Circular mandating LEI for non-individual FPIs
[6] Implementation of Section 12 of Competition Act, 2002
[7] MeitY notification for Indian Bank
[8] MeitY notification for Paytm Bank
[9] MeitY notification for IDBI Bank
[10] MeitY notification for Central Bank
[11] MeitY notification for Yes Bank
[12] Electricity Amendment Rules

The Ministry of Power ("MoP") in its notification dated 26.07.2023 has notified Electricity (Second Amendment) Rules, 2023 ("Electricity Amendment Rules") amending Electricity Rules, 2005 ("Electricity Rules") thereby substituting Rule 15 (Subsidy accounting and payment) and introducing new Rule 20 (Framework for Financial Sustainability).

Rule 15 has now been substituted by Electricity Amendment Rules to provide for (1) issuance of quarterly report by respective State Commission for each DISCOM providing detailed information regarding the subsidy availed and actual energy consumed by the subsidised category; (2) submission of quarterly report before the respective State Commission by each DISCOM; (3) empowers State Commissions to pass order for implementation of tariff without subsidy in case the subsidy has not been paid in advance by the State Government; and (4) empowers State Commissions to take appropriate action against the concerned officers of the DISCOMs for non-compliance.

The erstwhile Rule 20 (Issue of orders and practice directions) of the Electricity Rules has now been renumbered as Rule 21 and new Rule 20 has been introduced providing for a framework for financial sustainability of DISCOMs.

The new Rule 20 provides that (1) the Aggregate Technical and Commercial loss ("AT&C Loss") reduction trajectory of the DISCOMs for tariff determination shall be approved by the State Commissions in accordance with the trajectory agreed by the respective State Governments and approved by the Central Government under any national scheme or programme ("Approved Trajectory"); (2) the trajectory for both collection and billing efficiency for DISCOMs shall be determined by the State Commissions in accordance with the Approved Trajectory; (3) prudent costs of power procurement incurred by DISCOMs shall be taken into account; (4) prudent costs incurred by DISCOMs for creating the assets for development and maintenance of distribution system shall be pass through; (5) gains or losses accrued to DISCOMs due to deviation from approved AT&C Loss reduction trajectory shall be quantified on the basis of average power purchase cost and shared between the DISCOMs and consumers in the determined ratio; and (6) reasonable return on equity shall be permitted by State Commissions.

MoP notified guidelines for tariff based competitive bidding process for procurement of power from grid connected wind power projects[13].

MoP in its notification dated 26.07.2023 has notified Guidelines for Tariff Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects ("Wind Project Bidding Guidelines") to facilitate renewable capacity addition and provide a transparent, fair, and standardized procurement framework for inter-state and intra-state sale-purchase of power generated from wind energy.

Wind Project Bidding Guidelines have been issued for procurement of electricity from grid-connected Wind Power Projects ("WPP") having (a) capacity of 10 MW and above connected to intra-state transmission system; and (b) capacity of 50 MW and above connected to inter-state transmission system.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that the provisions of Insolvency and Bankruptcy Code, 2016 shall override the provisions of Electricity Act, 2003.

The Supreme Court in its judgment dated 18.07.2023 in the matter of ***Paschimanchal Vidyut Vitran Nigam Limited. v. Raman Ispat Private Limited. & Ors.***[14] has held that Section 238 of the Insolvency and Bankruptcy Code, 2016 ("IBC") shall override the provision of the Electricity Act.

In the present case, Paschimanchal Vidyut Vitran Nigam Limited ("PVVNL") had appealed against the decision of National Company Law Appellate Tribunal ("NCLAT") upholding the release of the attached property of the corporate debtor, Raman Ispat Private Limited ("RIPL"), in favor of the liquidator, to facilitate its sale and distribution in accordance with IBC instead of Electricity Act.

The Supreme Court, in light of the distribution waterfall in Section 53 of IBC, noted that government debts have lower priority than the debts owed to unsecured financial creditors.

High Court of Delhi held that the court exercising the power under Section 29A of the Arbitration & Conciliation Act, 1996 for extension of the mandate of arbitrator would not consider issues regarding the fees of the arbitral tribunal as grounds for removal.

The High Court of Delhi in its judgment dated 10.07.2023 in the matter of ***Mr. Anay Kumar Gupta v. Mr. Jagmeet Singh Bhatia***[15] has held that the only ground for removal of an arbitrator under Section 29A of the Arbitration and Conciliation Act, 1996, ("A&C Act") can be on account of the

[13] Guidelines for competitive bidding of wind projects
[14] Civil Appeal No. 7976 of 2019
[15] OMP. (MISC.) (COMM.) 147 of 2023

arbitrator failing to proceed expeditiously in the adjudication process. Section 29A provides for an extension of time to conclude arbitration proceedings and cannot be extended to remove the arbitrator due to any dispute with the arbitrator with regard to the arbitrator's fee.

In the present case, the Petitioner had filed an application under Section 29A of A&C Act requesting the Court to extend the mandate of the arbitral tribunal by 6 months. However, the Respondent opposed the application filed by the Petitioner and sought the removal of the arbitrator on the grounds that fee fixed by the arbitrator was not in accordance with the Fourth Schedule of the A&C Act. The Court rejected the objections and held that dispute regarding the arbitrator's fees cannot be a ground for substitution of an arbitrator under Section 29A of A&C Act.

High Court of Jharkhand held that the credit of the Input Tax Credit cannot be availed for the period before the approval of a resolution plan under the Insolvency and Bankruptcy Code, 2016.

The High Court of Jharkhand in its judgement dated 11.07.2023 in the matter of ***M/s ESL Steel Limited v. Principal Commissioner, CGST & Central Excise & Ors.***[16] has held that the credit of input tax credit cannot be availed for a date prior to the date on which National Company Law Tribunal ("NCLT") has approved the resolution plan under the IBC.

In the present case, the date of initiation of the corporate insolvency resolution process ("CIRP") against M/S ESL Steel Limited ("ESL") was 21.07.2017 and the date of approval of the resolution plan was 17.04.2018. ESL, due to technical issues in filing of TRAN-1 forms on the Goods and Service Tax ("GST") portal, revised its TRAN-1 on 30.11.2022 to avail additional input tax credit of INR 92,13,412/-. In response to the revision of the TRAN-1 forms, the Principal Commissioner of Central GST issued a notice and passed an order demanding INR 6,02,34,616/- on the grounds of irregular availing of transitional credit during the FY2017-2018 period. Both parties relied on the Supreme Court judgement of ***Ghanshyam Mishra and Sons Private Limited v. Sons Private Limited***[17], that has explicitly held that no recovery proceeding can be continued against a corporate debtor for any dues prior to the date of approval of the resolution plan.

The Court, relying on the Supreme Court judgement, quashed the order passed by Principal Commissioner of Central GST and held that it was arbitrary and illegal. Further, the Court opined that ESL cannot avail/claim the input tax credit for a period prior to the approval date of the resolution plan.

High Court of Delhi held that the Patents Act, 1970 overrides the Competition Act and it cannot be saved by the provisions of Section 21A of the Competition Act.

The High Court of Delhi in its judgement dated 13.07.2023 in the matter of ***Telefonaktiebolaget LM Ericsson (Public) v. Competition Commission of India & Anr***.[18] held that Competition Act is a general legislation pertaining to anti-competitive agreements and abuse of dominant position in general.

The question before the Court was, when a patentee asserts its rights, can the CCI inquire into the actions of such patentee in exercise of its power under the Competition Act. The Court observed that there is no overlap between the Patents Act, 1970 ("Patents Act") and the Competition Act and held that inquiry that CCI proposed to conduct with regards to the assertion of patent rights is nearly identical to that of the Controller under Chapter XVI of the Patents Act for inquiry into unreasonable conditions in agreements of licensing and abuse of status as a patentee, as introduced by amendment in 2003.

The Court held that on a reconciliation of both the statutes anti-competitive agreements and abuse of dominant power are dealt by both the Patents Act as well as the Competition Act, however, in specific cases of anti-competitive agreements and abuse of dominant position by a patentee in exercise of their rights under the Patents Act, provisions of Patent Act will supersede Competition Act, as the former is a special statute.

High Court of Delhi held that PayPal Payments Private Limited is to be considered as a "payment system operator" and is obliged to comply with reporting entity obligations under the Prevention of Money Laundering Act, 2002.

The High Court of Delhi in its judgment dated 24.07.2023 in the matter of ***PayPal Payments Private Limited vs. Financial Intelligence Unit India & Ors,***[19] held that meaning to be ascribed to the phrase "payment system" must necessarily be ascertained bearing in mind the theme and ethos of the Prevention of Money Laundering Act, 2002 ("PMLA").

In the present case PayPal Payments Private Limited ("PayPal") challenged the order passed by Financial Intelligence Unit India ("FIUI") holding PayPal as a

[16] W.P. (T) No. 1995 of 2023
[17] (2021) 9 SCC
[18] LPA 247/2016
[19] W.P.(C) 138/2021

"reporting entity" under the PMLA and imposing monetary penalty for non-compliance of reporting obligations under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 ("PML Rules").

The Court rejected the contention of PayPal that it is not a payment system operator as defined under PMLA and is not engaged in rendering services relating to clearing, payment or provision of settlement between payers and beneficiaries, and is merely providing an interface for efficient and convenient transfer of funds. The Court further rejected the reliance placed by PayPal on ***Abhijit Mishra vs. Reserve Bank India***[20] wherein was not recognised as a reporting entity under the Payment and Settlement Systems Act, 2007.

The Court held that for the purpose of PMLA all elements of the transaction comprised or connected with payment being effected between two parties would fall within the scope of 'payment system' as defined under PMLA and a restrictive construction of the definition would be contrary to intent and purpose of PMLA.

NCLAT held that a third-party who was not a party to the proceedings before the Adjudicating Authority is not required to file an application seeking leave to prefer an appeal before filing such appeal.

The NCLAT in its judgment dated 14.07.2023 in the matter of ***Trimex Industries Private Limited. v. Bhuvan Madan, RP of Sathavahana Ispat Limited & Anr.***[21] has held that a third-party who was not a party to the proceedings before the adjudicating authority is not required to file an application seeking leave to prefer appeal before filing such appeal under Section 61 of IBC.

The NCLAT noted that Section 61 of IBC clearly provides that *any person aggrieved by the order of the Adjudicating Authority can file an appeal before the NCLAT*, regardless of whether they were a party to the original proceedings. The tribunal further emphasized that it is a settled principle of law that if a statute clearly states to do thing in a specific manner, then it is to be done in the same manner and not in any other way, and as IBC was unambiguous on the issue of enabling any person aggrieved by the order of the Adjudicating Authority to prefer an appeal, there was no need for such person to file a separate application seeking leave to file the said appeal.

NCLT held that an application for withdrawal of liquidation proceedings cannot be filed during the Liquidation process.

The NCLT, Chennai Bench, in its judgment dated 19.07.2023 in the matter of ***Narayan Maheshwari v. Kavitha Surana and Ors.***[22], IBC treats CIRP and Liquidation as two different and distinct proceedings. All the provisions under Chapter-II of IBC deal with CIRP and it cannot be applied to Chapter-III of IBC which deals with Liquidation of the corporate debtor.

In the present case, an application was filed by the Promoter Director of the corporate debtor seeking direction from NCLT to direct Liquidator to file an application for withdrawal of liquidation proceedings against the corporate debtor. The Tribunal rejected the contention of the applicant that an application under Section 12A of IBC (Withdrawal of application admitted under Section 7, 9 and 10) can be presented during the liquidation proceedings, and held that in the absence of any express provisions either under the provisions of IBC for withdrawal applications during liquidation process or under the regulations framed by Insolvency and Bankruptcy Board of India an application for withdrawal cannot be filed during the liquidation process.

The Court further held that there are no provisions under the IBC to enable a corporate debtor to come out of the liquidation process once such process has been ordered by the Tribunal.

Karnataka Electricity Regulatory Commission held that distribution companies are liable to pay interest on the delayed payments in terms of Power Purchase Agreement.

The Karnataka Electricity Regulatory Commission ("KERC") in its judgment dated 14.07.2023 in the matter of ***Soham Phalguni Renewable Energy Private Limited v. Karnataka Power Transmission Corporation Limited (KPTCL) & Anr.***[23] has held that Mangaluru Electricity Supply Company Limited ("MESCL") i.e., the distribution company in the present case is liable to pay interest on the delayed payment to Soham Phalguni Renewable Energy Private Limited ("SPREPL") i.e., the generating company for supply of electricity to the Respondents as per Clause 6.4 of the Power Purchase Agreement ("PPA"). Clause 6.4 of PPA provided for payment of interest if either party failed to make any payment within 60 days after the due date under PPA.

In the present case, the delay was caused due to appeals against the order of KERC in tariff determination petition being *sub judice* before Appellate Tribunal for Electricity and the Supreme Court between 2014 to 2019. KERC noted that the contention of SPREPL that the claim was made after limitation is not justified in as much as the limitation is to be reckoned from the date of payment. The non-payment of

[20] W.P.(C) No. 7007 of 2019
[21] Company Appeal (AT) (Insolvency) No. 130 of 2023
[22] IA(IBC)/193(CHE)/2023 in CP/229/(IB)/2018
[23] OP No.37/2021

arrears towards differential tariff gives rise to continuing cause of action which is recurring as there was a legal proceeding before the appellate authorities. KERC also held that even if there is a stay order, it will not absolve SPREPL from payment of interest and SPREPL could not take the excuse of pendency of petition for non-payment of interest.

KERC held that generating company is not entitled to inject energy more than the installed capacity of the Mini - Hydel project.

The KERC in its judgment dated 14.07.2023 in the matter of ***Murudeshwar Power Corporation Private Limited v. Hubli Electricity Supply Company Limited, (HESCOM)***[24] held that Murudeshwar Power Corporation Private Limited ("MPCPL") is not entitled to inject energy more than the installed capacity of the Mini - Hydel project in question during a month and is therefore, not entitled to reimbursement for the energy injected in excess of the installed capacity in such month.

For the installed capacity of the Mini - Hydel project of 11.6MW (11600 Kilowatt), the maximum generation possible at 100% plant load factor is 8.352 million units in a month. As per the submission of MPCPL, in certain months, it has generated energy in excess of the maximum possible units. MPCPL contended that HESCOM has consumed additional units and ought to have paid for the same.

KERC held that over injection of energy impedes grid stability of HESCOM and that the generators cannot be permitted to inject/supply more than the exportable capacity of their plant. KERC also held that generators are not entitled to payments for the excess energy so injected.

Central Electricity Regulatory Commission refused to consider several events causing delay as *force majeure* events under the agreement between the parties.

The Central Electricity Regulatory Commission ("CERC") in judgement dated 17.07.2023 in the matter of ***Indian Railways v. Bhartiya Rail Bijlee Company Limited***[25] held that Indian Railways is not entitled to claim the benefit of events claimed to be covered under *force majeure* clause of the Bulk Power Purchase Agreement ("BPPA"). These events included delay of more than 6 years on the part of Bhartiya Rail Bijlee Company Limited in commissioning its thermal generating plant, a delay on the part of the Central Transmission Utility ("CTU") in operationalising the Long Term Access ("LTA") and delay in issuance of No-objection Certificate ("NOC") by various State Transmission Utilities ("STUs").

The CERC held that since no date has been provided in the BPPA for declaration of commissioning of thermal generating plant and its consequential implications, therefore, it cannot be termed as *force majeure* event. Further, the issues pertaining to LTA operationalisation by CTU are *res judicata* having settled in Petition No. 42/MP/2019 and 24/MP/2017 by CERC. Lastly, for delay in issuance of NOC from STUs, CERC held that Indian Railways ought to have approached State Commissions for non-compliance of its regulations and hence none of the various events claimed by the Indian Railways were held to qualify as *force majeure* under the BPPA.

KERC condoned delay in commissioning of solar power project for delay caused due to *force majeure* events.

KERC in its judgment dated 26.07.2023 in the matter of ***Raygen Power Private Limited v. Chamundeshwari Electricity Supply Corporation Limited***[26] condoned the delay in commissioning of the solar power project and consequently allowed tariff as agreed in the PPA.

Some of the events which caused delays included the delay in grant of permission for the project, the delay in approval of PPA and supplemental PPA, demonetization, delay in power evacuation approvals, safety approvals, NA conversion, etc. Relying on the settled principles of law, KERC held that the delay in commissioning the project needed to be condoned on *force majeure* events as stipulated in the terms of PPA. KERC also held that the extension of time amounts to waiver of the Petitioner's obligation to commission the project within a particular time frame as provided in PPA and such extension of time does not affect the tariff and therefore, does not affect the consumer interest.

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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,

[24] OP No. 42/2022
[25] Petition No. 132/MP/2019
[26] OP No. 62 of 2017

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