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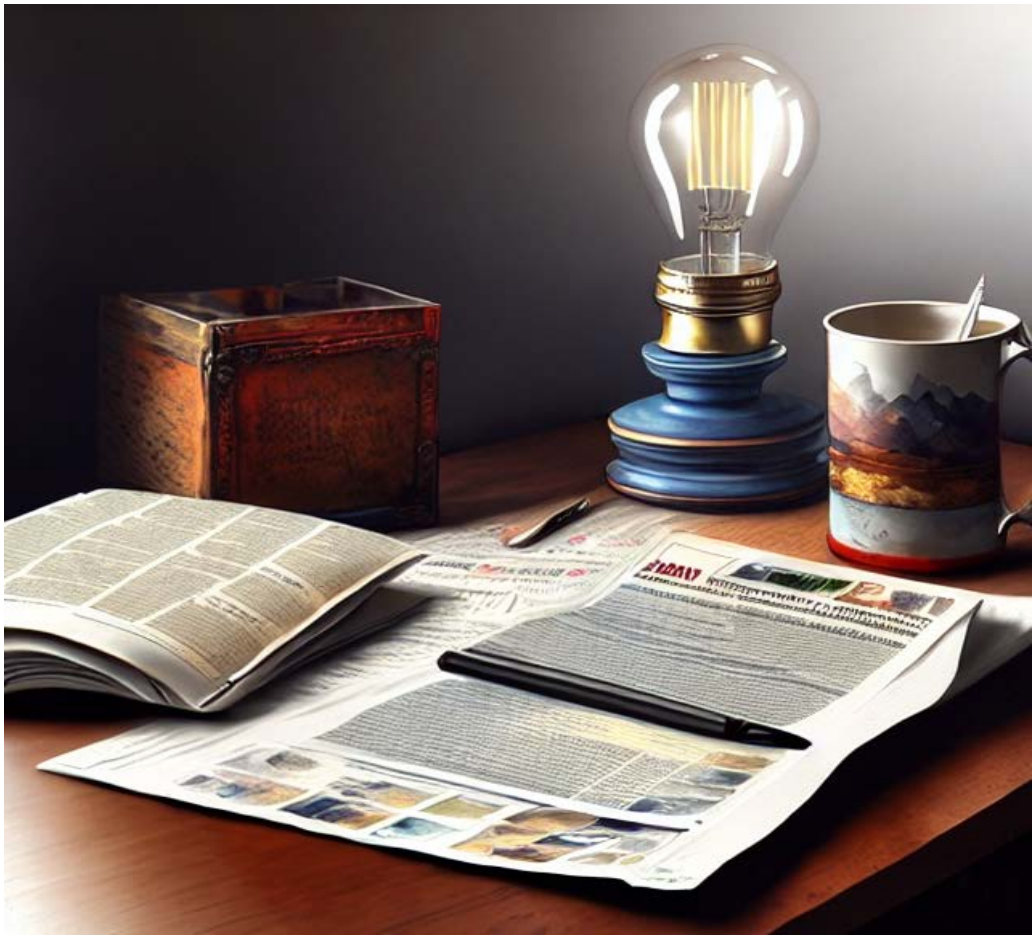

This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

REGULATORY & POLICY UPDATES

SEBI issued a Circular introducing a centralized mechanism for reporting the demise of an investor through KRAs.

The Securities and Exchange Board of India ("SEBI") by its circular dated 03.10.2023[1] ("Circular") has introduced a centralized mechanism for reporting and verification in case of demise of investors through KYC Registration Agencies ("KRA") and to smoothen the process of transmission in the securities market. The Circular shall come into effect from 1st January 2024.

The Circular outlines the operational norms and the responsibilities of regulated entities, specifically registered intermediaries dealing with 'investors' or 'account holders', who are natural persons.

Listed entities which intend to provide beneficial access to such a centralized mechanism to their investors holding securities in physical form, are eligible to establish connectivity with KRA through their Registrar to an issue and share transfer agents ("RTAs"). However, such investors can avail this facility only if their PAN is available in the folio.

In order to have uniformity in operationalization of the Circular, stock exchanges, depositories and industry associations like Association of Mutual Funds in India (AMFI), Registrars Association of India (RAIN) etc. in consultation with stakeholders including KRAs, may put in place common Standard Operating Procedure (SOP), which

[1] SEBI/HO/OIAE_IAD-1/P/CIR/2023/0000000163.

should be made available on their websites as well as that of the intermediaries.

SEBI issued a Circular extending the timeline for verification of market rumours by listed entities.

SEBI issued a circular dated 30.09.2023[2] to extend the effective date of implementation of the proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") which requires listed companies to mandatorily verify, confirm, deny or clarify market rumours. As per the new timelines, this requirement shall be applicable to top 100 listed entities from 01.02.2024 (from the earlier date of 01.08.2023) and to top 250 listed entities by market capitalization from 01.08.2024 (from the earlier date of 01.04.2024).

SEBI issued Circular further extending the relaxation from compliance with Regulation 36(1)(b) and Regulation 44(4) of LODR Regulations.

SEBI by its circular dated 07.10.2023[3] ("SEBI Circular") has extended the relaxations given to listed entities until 30.09.2024 from the requirements of: (i) Regulation 36(1)(b) of the LODR Regulations pertaining to annual general meetings of listed entities; and (ii) Regulation 44(4) of the LODR Regulations only for general meetings of listed entities held in electronic form.

As per Regulation 36 (1)(b) of the LODR Regulations, listed entities are required to dispatch hard copy of the statement containing the salient features of the financial statements and other documents required to be annexed to it, to all shareholders whose email addresses are not registered with the listed entity. Regulation 44(4) requires listed entities to send proxy forms to holders of securities mentioning that a holder may vote either for or against each resolution.

This extension has been provided by SEBI in furtherance to the relaxation, provided by the MCA through General Circular No. 09/2023 dated 25.09.2023, from sending physical copies of financial statements (including board's report, auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs conducted till 30.09.2024.

RBI issued Notification extending Prompt Corrective Action Framework for Non-Banking Financial Companies to Government NBFCs as well.

Reserve Bank of India ("RBI") through its notification dated 10.10.2023[4] ("RBI Notification") has extended application of the Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies ("Framework") to Government Non-Banking Financial Companies ("NBFCs") except those in base layer with effect from 01.10.2024, based on the audit financials of the NBFC as on 31.03.2024, or thereafter.

RBI by way of a notification dated 14.12.2021, had applied the Framework to all deposit taking NBFC's (excluding government companies), all non-deposit taking NBFCs in Middle, Upper and Top layers, excluding – (i) NBFCs not accepting/ not intending to accept public funds; (ii) Government Companies; (iii) Primary Dealers; and (iv) Housing Finance Companies. The scope of application by the RBI Notification has now been extended to also include Government NBFCs.

KERC extends the application of Green Tariff to Low Tension Consumers.

The Karnataka Electricity Regulatory Commission ("KERC") in its order dated 27.09.2023 extended the application of Green Tariff to Low Tension ("LT") Consumers in exercise of its inherent power under Regulation 7 of the KERC (Tariff) Regulations, 2000 to encourage generation and use of green power in the State. The KERC has amended the Tariff Orders of 2023 passed by KERC for Bangalore Electricity Supply Company Limited ("BESCOM"), Mangalore Electricity Supply Company Limited ("MESCOM"), Calcutta Electric Supply Corporation ("CESC"), Hubli Electricity Supply Company Limited ("HESCOM"), Gulbarga Electricity Supply Company Limited ("GESCOM") and Hukeri Rural Electric Co-operative Society ("HRECS") (collectively referred to as "Tariff Order 2023").

The Green Tariff (introduced in 2010 and which was subsequently continued in Tariff Order 2023) being INR 50 paise per unit as the additional tariff over and above the normal tariff to be paid by High Tension ("HT") consumers who opt for supply of green power has now been extended to the LT categories.

GOVERNMENT NOTIFICATIONS

MCA issued clarification regarding moratorium under Section 14 of the IBC in relation to aircraft, aircraft engines, airframes and helicopters.

Ministry of Corporate Affairs ("MCA") by its Notification No. S.O. 4321 (E) dated 03.10.2023[5], has notified that the

[2] SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/162.
3 SEBI/HO/CFD/CFD-PoD-2/P/CIR/2023/167.
[4] RBI/2023-24/67.
[5] MCA Notification S.O. 4321(E) dated 03.10.2023.

provisions of Section 14 (1) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), would not be applicable to transactions, arrangements, or agreements, under the Convention on International Interests in Mobile Equipment ("Convention") and the Protocol to the Convention on International Interests in mobile equipment on Matters specific to Aircraft Equipment ("Protocol").

This has been done in furtherance of India being a signatory to and having acceded to the Convention and the Protocol by depositing the instrument of accession with the International Institute for the Unification of Private Law concluded at Cape Town on 16.11.2011.

By virtue of this notification, moratorium under Section 14 of the IBC will not be applicable to transactions, arrangements or agreements relating to aircraft, aircraft engines, airframes and helicopters.

The Government of Gujarat notifies its Renewable Energy Policy, 2023 with an aim to generate 50% of power through renewable energy sources by 2030.

The Government of Gujarat through its notification dated 04.10.2023 has notified Gujarat Renewable Energy Policy, 2023[6] ("GREP") which supersedes Gujarat Solar Power Policy 2021, Gujarat Wind Power Policy 2016 and Gujarat Wind Solar Hybrid Power Policy, 2018. GREP encourages setting up of wind, solar, offshore wind, and wind-solar hybrid generating plants. Some of the key highlights of GREP are:

1. **Period of Operation:** GREP will remain in force for five years i.e., from 04.10.2023 (date of notification) till 30.09.2028 or until notification of the new policy whichever is earlier.
2. **Scope**: GREP is applicable on ground mounted solar, roof top solar, floating solar, canal top solar, wind, rooftop wind and wind-solar hybrid projects. GREP is not applicable on Renewable Energy ("RE") projects set up for the purpose of supplying power to the units producing Green Hydrogen and Green Ammonia.
3. **Eligibility**: RE project under GREP can be set up for (a) captive use as well as for third party sale whether or not registered under Renewable Energy Certificate ("REC") mechanism, and (b) selling electricity to distribution licensees.
4. **Solar and Wind:** Under GREP ground mounted solar and wind projects can be set up in a solar park and wind parks or outside solar park and wind parks respectively. Rooftop solar and small wind projects can be set up only under a net metering arrangement.
5. **Wind-Solar Hybrid Project:** GREP recognizes two types of wind solar hybrid project (a) Type-A Hybrid Projects– This category includes conversion of existing or under construction standalone wind or solar power plants into hybrid projects, and (b) Type-B Hybrid Projects– This category includes new wind-solar hybrid power generation projects that are not registered with Gujarat Energy Development Agency ("GEDA") or for which evacuation permission has not been granted.
6. **RE Parks**: GREP envisions development of RE Parks to minimize the cost of common infrastructure and optimize the evacuation infrastructure. The minimum capacity of RE park shall be 50 MW, and the maximum capacity shall be in accordance with the guidelines or schemes of Ministry of New and Renewable Energy ("MNRE").
7. **Implementing Agencies:** Gujarat Urja Vikas Nigam Limited ("GUVNL") will be the implementing, facilitating, coordinating and monitoring agency for GREP. GEDA shall act as the State Nodal Agency for (a) registration of projects; (b) certifying the commissioning of RE Projects; (c) accrediting and recommending RE Projects for registering with the central agency under REC mechanism.
8. **Single Window System:** GEDA shall develop and facilitate Single Window Web System for RE projects for ease of doing business and registration & approval will be issued automatically through online mode and made available on the web portal.
9. **Solar and wind projects registered under the erstwhile policy:** Solar and Wind Projects registered under the Solar Power Policy and the Wind Power Policy 2016 respectively can avail the benefits under GREP by commissioning the solar projects within six months from the notification of the GREP and for wind projects by 31.12.2023.
10. **Repowering of wind projects:** RE projects with old, small-sized and inefficient wind turbines shall have to be replaced with bigger and more efficient wind turbines having better technology for optimal utilization of existing land and infrastructure on or before completion of 25 years from the date of commissioning or the extended term of agreement.

JUDICIAL PRONOUNCEMENTS

Supreme Court provides much needed clarity regarding eligibility criteria for a Captive Generating Plant.

The Supreme Court in its judgment dated 09.10.2023 in the matter of ***M/s Dakshin Gujarat Vij Company Ltd. v. M/s Gayatri Shakti Paper and Board Ltd.*** [7] has held that the

[6] Gujarat Renewable Energy Policy, 2023.

[7] Civil Appeal Nos. 8527-8529 of 2009.

minimum ownership criteria of 26% and the minimum consumption criteria of 51% stipulated under Rule 3(1)(a) of the Electricity Rules, 2005 ("Rules") is to be maintained on a continuous basis throughout the year by a Captive User/ Captive Generation Plant ("CGP").

The Supreme Court upheld the Rule of Proportionality ("ROP") as laid down by Hon'ble Appellate Tribunal for Electricity in ***Kadodara Power Pvt. Ltd. v. GERC & Ors.,***[8]. The Court clarified that the ROP specifies a unitary qualifying ratio. This ratio is determined by dividing the consumption requirement (51%) by the shareholding requirement (26%) resulting in a unitary qualifying ratio of 1.96%. Thus, the owner of every 1% shareholding of the CGP should have minimum consumption of 1.96% of the electricity generated by the CGP, with a permissible variation of (+/-) 10%. Once this standard is met and satisfied, the entity satisfying the requirement should be treated as a member of group captive users.

The Supreme Court further held that the principle of weighted average method should be applied to ensure conformity with ROP, when there is a change in the ownership or shareholding of a CGP during the year.

The Supreme Court further observed that the Electricity Act, 2003 ("Electricity Act") recognizes only two types of captive users i.e., single captive users and group captive users. For group captive users, only two categories of users are recognized i.e., co-operative society and 'association of persons'. All group captive users which are not registered as co-operative societies are required to comply with ROP which is to be read as a mandatory condition. Thus, special purpose vehicle which owns, operates and maintains a CGP is an 'association of person' and would need to comply with the ROP.

Supreme Court held that statutory bodies such as the Electricity Regulatory Commission in discharge of their quasi-judicial functions cannot be aggrieved by an order passed by the Appellate Tribunal.

The Supreme Court in its judgment dated 05.10.2023 in the matter of ***GRIDCO Ltd. v. Western Electricity Supply Company of Orissa Ltd. & Ors. etc***.[9] held that the Electricity Regulatory Commission ("Commission") cannot be an aggrieved party in an order passed by the Appellate Tribunal wherein it had corrected the order of Commission wherein the Commission was exercising its quasi-judicial function of determining tariff under Sections 61 and 62 of the Electricity Act.

In the instant case, appeals were preferred by the Orissa Electricity Regulatory Commission ("OERC") before the Supreme Court against the orders passed by the Appellate Tribunal, under Section 125 of the Electricity Act. The appeals were against the orders passed by the OERC regarding fixation of tariffs.

The Supreme Court has dealt with the legality and validity of the decisions of the Commission rendered in its exercise of quasi-judicial power and held that the Commission is bound by the orders of the Appellate Tribunal. Further, the Supreme Court also observed that Section 125 of Electricity Act which provides for an appeal to the Supreme Court from the Appellate Tribunal, limits the scope of the appeal to substantial question of law as set out in Section 100 of Code of Civil Procedure, 1908.

Supreme Court held that the inherent powers under Article 142 of the Constitution of India cannot be exercised to supplant the substantive law appliable to a case.

The Supreme Court in its judgment dated 04.10.2023 in the matter of ***Union Bank of India v. Rajat Infrastructure Pvt Ltd.,***[10] held that the inherent powers of the Supreme Court under Article 142 of the Constitution of India cannot be used to supplant the substantive law applicable to the case.

The Supreme Court in an application seeking extension of time to pay the purchase price of an auctioned property held that when statute provides specific timeline for payment of the purchase price of the auction property, the plenary power under Article 142 of the Constitution of India to extend such period for making payment cannot be exercised by courts.

The Supreme Court further observed that powers under Article 142 of the Constitution of India are inherent in nature and are complementary to those powers which are specifically conferred on the court by various statutes. These powers, though are of very wide amplitude to do complete justice between the parties, cannot be used to supplant the substantive law applicable to the case or cause under consideration.

Supreme Court directed all the High Courts to allow access to video conferencing of hearings to any member of the Bar or litigant and to formulate a uniform SOP for the same.

[8] 2009 SCC OnLine APTEL 119.
[9] Civil Appeal No. 414 of 2007.
[10] Misc. Application No. 1735 of 2022 in Civil Appeal No. 1902 of 2020.

The Supreme Court in its order dated 06.10.2023 in the matter of ***Sarvesh Mathur v. Registrar General, High Court of Punjab & Haryana***[11], directed all the High Courts across the country to allow access to video conferencing or hearing through the hybrid mode to any member of the bar or any litigant desirous of availing such facility.

On 15.09.2023, the Supreme Court issued notice to the Registrars of all the High Courts and Tribunals and directed them to file an affidavit detailing: (i) how many video conferencing hearings have taken place in last three months; and (ii) whether any courts are declining to permit video conferencing hearings. On the basis of the affidavits filed pursuant to the order dated 15.09.2023, the Supreme Court noted that there is a considerable variation between High Courts in the level of adoption of technology. In light of the same, following directions were issued by the Supreme Court:

(i) No High Court shall deny access to video conferencing facilities or hearing through hybrid mode to any member of the bar or any litigant.
(ii) All State Governments shall provide necessary funds to the High Courts to put into place the necessary infrastructure.
(iii) High Courts shall ensure that adequate internet facilities, with sufficient bandwidth, are made available free of charge to all advocates and litigants within the precincts of the High Court complex.
(iv) The links available for accessing hybrid hearings shall be made available in the daily cause-list of each court and there shall be no requirement of making prior applications. No High Court to impose an age requirement or any other arbitrary criteria for availing hybrid hearing.
(v) All High Courts shall put in place an SOP within a period of four weeks for availing of access to hybrid/video conference hearings.
(vi) All High Courts shall ensure that adequate training facilities are made available to the members of the bar and the Bench to be conversant with use of technology.
(vii) Union of India shall ensure that on or before 15 November 2023, all tribunals are provided with requisite infrastructure for hybrid hearings.
(viii) Union Ministry of Electronics & Information Technology to co-ordinate with the Department of Justice to ensure that adequate internet connectivity is provided in all courts in the North-East, Uttarakhand and Jammu and Kashmir to facilitate the access to online hearing.

Madras High Court held that the order passed by the Micro and Small Enterprises Facilitation Council without following due procedure is not a valid award.

The High Court of Madras in its judgement dated 29.09.2023 in ***M/s Feedback Infra Private Limited v. The Micro and Small Enterprises Facilitation Council & Ors.***[12] held that an order passed by the Micro and Small Enterprises Facilitation Council without following the due procedures provided under the Micro Small and Medium Enterprises Development Act, 2006 ("MSMED Act") read with the Arbitration & Conciliation Act, 1996 ("A&C Act") cannot be termed as an award.

Velcity Consulting Engineers Private Limited and Feedback Infra entered into a work order agreement. A dispute arose between the parties when Feedback Infra withheld certain payments to be made to Velcity Consulting, for which it filed a reference to the Facilitation Council under Section 18 of the MSMED Act. The Facilitation Council without giving any notice regarding initiation of arbitration and allowing Feedback Infra to file its pleadings or produce evidence to prove its stand, passed an award against it directing it to pay a certain sum of money to Velcity.

Feedback Infra, aggrieved by the order, filed the writ petition under Article 226 of the Constitution of India, before the High Court of Madras. Velcity objected to the writ petition on the grounds that the order of the Facilitation Council can be challenged only in an application filed under Section 34 of A&C Act read with Section 19 of MSMED Act.

After hearing the parties, the Court noted that the Facilitation Council had wrongfully initiated the arbitration proceedings and passed an order without providing an opportunity to the parties to file their pleadings and produce evidence, and as such the order of the Facilitation Council cannot be termed as an award. Accordingly, it cannot be challenged under Section 34 of the A&C Act. The Court remanded the matter back to the Facilitation Council with a direction to conduct the arbitration proceedings in accordance with the MSMED Act read with A&C Act.

KERC held that a Commission has no jurisdiction to adjudicate upon a dispute relating to grievances of open access consumers under Section 86(1)(f) of the Act.

The KERC in its judgement dated 27.09.2023 in the matter of ***M/s Jodhani Papers Pvt. Ltd. v. Bangalore Electricity Supply Company Limited***[13] held that it has jurisdiction to

[11] WP (Cr) No. 351 of 2023
[12] W.P No. 25062 of 2023.
[13] OP No.12/2023

adjudicate upon the disputes between generating companies and licensees but does not have jurisdiction to adjudicate disputes relating to grievances of open access consumers under Section 86(1)(f) of the Electricity Act.

In the instant case, M/s Jodhani Papers, a registered non-exclusive Open Access Consumer of BESCOM, had purchased power from 'third parties'. However, after the purchase of power, lockdown was imposed due to COVID 19 causing the manufacturing unit of M/s Jodhani Papers to close down and therefore, it requested BESCOM to permit the third parties to modify/reduce/cancel the unutilized units. BESCOM objected to the said petition and contended that the petition is not maintainable as Section 86(1)(f) the Electricity Act only provides for adjudication upon the disputes between the licensees and generating companies and since Jodhani Papers was a consumer, it could not file a petition under Section 86 (1)(f) of the Electricity Act.

KERC noted that Jodhani Papers was an Open Access Consumer and there was no Wheeling and Banking Agreement executed between Jodhani Papers and BESCOM. Accordingly, KERC dismissed the petition as not being maintainable in light of provisions of Section 86(1)(f) of the Electricity Act.

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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, 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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