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

REGULATORY & POLICY UPDATES

SEBI introduced a framework for SEs to administer and supervise Research Analysts and Investment Advisors[1]

Securities Exchange Board of India ("SEBI") through its circular dated 02.05.2024 ("RE and IA Circular") established a framework for Stock Exchanges'("SEs") to administer and supervise Research Analysts ("RAs") and Investment Advisors ("IAs") which shall be effective from 25.07.2024 ("Effective Date").

In accordance with Regulation 38A of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ("SECC Regulations"), a recognized SE is authorized to oversee and supervise specific intermediaries. Thus, through this RE and IA Circular, SEBI recognised SEs as Research Analyst Administration and Supervisory Body ("RAASB") and Investment Adviser Administration and Supervisory Body ("IAASB") under the SEBI (Research Analysts) Regulations, 2014 ("RA Regulations") and SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations"), respectively.

Annexure I of the RE and IA Circular outlines a comprehensive framework for RAASB and IAASB. The key aspects of this framework are as follows:

(a) SEs are required to satisfy specific eligibility criteria to obtain recognition as RAASB and IAASB, including, (i)

[1] SEBI Circular dated 02.05.2024

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minimum 15 years of existence as a recognised SE, (ii) minimum net worth of INR 200 Crores, (iii) nation-wide trading terminals, (iv) implementation of an investor grievance redressal mechanism and online dispute resolution mechanism and (v) establishment of Investors Service Centers in at least 20 cities.

(b) All SEs that are recognised as RAASB/IAASB are required to set-up requisite systems and necessary infrastructure, amend their MOA/AOA, constitute an internal committee for administration and supervision of RAs and IAs etc.

(c) It is clarified that existing RAs/IAs registered with SEBI shall be deemed to be enlisted with the IAASB. Furthermore, pending registration applications for RA/IA with SEBI at the time of operationalisation shall continue to be processed by SEBI. After the Effective Date, all new applications shall be routed through RAASB/IAASB, and enlistment will be a pre-requisite for grant registration certification as RA/IA.

(d) To maximize efficiency, RAASB and IAASB shall be one and the same SE. Additionally, for individuals registered as both RA and IA, a streamlined approval process will be implemented for efficiency.

Post the Effective Date, all RA/IAs shall be required to submit periodic reports to RAASB/ IAASB in the manner prescribed by SEBI.

SEBI introduced a standardised format for periodic reporting of Investment Advisors. [2]

SEBI through its circular dated 07.05.2024 (“Reporting of IAs Circular”) introduced a standardised periodic reporting format for IAs. The Reporting of IAs Circular is effective from the date of issuance i.e., from 07.05.2024.

As per the IA Regulations, IAs are obligated to furnish SEBI with designated information and reports. SEBI recently issued a RE and IA Circular, introducing a revised framework for administration of IAs and formally recognizing the IAASB. At present, the IAASB has been seeking reports from IAs on an *ad-hoc* basis. However, under the revised framework it has been provided that a specified reporting format shall be introduced by SEBI. Therefore, a standardized reporting format for the submission of information by IAs at regular intervals has been formulated. This periodic reporting format is appended as Annexure I to the Reporting of IAs Circular.

IAs must furnish a semi-annual report for the periods ending on 30th September and 31st March of each financial year. Further, IAs have been directed to submit their report for the period ending on 31.03.2024 to IAASB within 15 days from the date of issuance of the Reporting of IA Circular. For subsequent semi-annual periods, IAs must submit reports within 7 days from the end of each period. The reporting format comprises of three sections:

(a) Section 1: General details of IAs including registered name, trade name, registration number, bank account details, compliance officer details, shareholding pattern, etc.

(b) Section 2: Details of complaints filed against the IA, including number of complaints, total pending complaints, average resolution time, etc.; and

(c) Section 3: Details pertaining to client, assets under advice, and fee information.

RBI relaxed FEMA rules to enhance foreign investment in derivatives.[3]

The Reserve Bank of India (“RBI”) on 30.04.2024 issued Foreign Exchange Management (Margin for Derivatives Contracts) (First Amendment) Regulations, 2024 (“MDC Amendment Regulation”) and on 06.05.2024 issued Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024 (“Deposits Amendment Regulation”) (collectively referred to as “RBI Amendment Regulations”) to amend Foreign Exchange Management (Margin for Derivatives Contracts) Regulations, 2020 (“MDC Principal Regulation”) and Foreign Exchange Management (Deposit) Regulations, 2016, respectively (“Deposit Principal Regulation”) , to streamline the process for posting and collecting margins by authorised dealers in permitted derivative contracts under the MDC Principal Regulations. The RBI Amendment Regulations were both published in the official Gazette on 06.05.2024 and came into force on the same date.

The MDC Amendment Regulations amended Regulation 4 of the MDC Principal Regulations through which the authorised dealers (“AD”) are now permitted to post and collect margins for permitted derivative contracts both within and outside India for receiving and paying interest on these margins subject to adherence with applicable RBI guidelines/ regulations including the provisions of the Foreign Exchange Management Act, 1999 (“FEMA”).

Whereas the Deposits Amendment Regulations by incorporating a new sub-regulation (6) to Regulation 7 of the Deposit Principal Regulations, now permits the AD to open interest-bearing accounts for a person resident outside India for the purpose of posting and collecting margin under the permitted derivative contracts.

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[2] SEBI Reporting of IAs Circular

[3] Foreign Exchange Management (Margin for Derivatives Contracts) (First Amendment) Regulations, 2024 Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024

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APERC notified the Andhra Pradesh Electricity Regulatory Commission (Green Energy Open Access, Charges, and Banking) Regulations, 2024.[4]

Andhra Pradesh Electricity Regulatory Commission ("APERC") through its notification dated 02.05.2024 notified the Andhra Pradesh Electricity Regulatory Commission (Green Energy Open Access, Charges, and Banking) Regulation, 2024 ("APERC Green Energy Regulations, 2024"). The objective of the APERC Green Energy Regulations, 2024 is to facilitate open access for electricity generated from renewable energy sources for utilization within the state through Intra-State Transmission Systems and/or distribution systems of the licensed entities.

The APERC Green Energy Regulations, 2024 aims to enhance accessibility for energy consumers and producers to invest and engage in green energy initiatives. The APERC Green Energy Regulations, 2024 also revises the charges associated with green energy procurement. APERC established a structured tariff system to incentivize the adoption of renewable energy sources, rendering them more economical for consumers.

Further, the APERC Green Energy Regulations, 2024 introduces new banking rules related to energy production and consumption. As per the APERC Green Energy Regulations, 2024, banking facilities will be provided to consumers utilizing Green Energy Open Access, subject to specific conditions. This provision of the APERC Green Energy Regulations, 2024 addresses the intermittency of renewable energy by enabling the storage and utilization of excess energy generated during peak production periods to be used during the low production times.

GOVERNMENT NOTIFICATIONS

MoP issued a clarification to the Revised Policy for Biomass Utilization for Power Generation through Co-firing in Coal based Power Plants[5]

The Ministry of Power ("MoP") on 14.05.2024 issued a clarification to Revised Policy for Biomass Utilization for Power Generation through Co-firing in Coal based Power Plants, which was issued by MoP by letter dated 08.10.2021 ("Biomass Revised Policy"). Biomass Revised Policy included the provisions related to tariff determination.

Para 3(viii) (b) of the Biomass Revised Policy specified that for projects set up under Section 63 of the Electricity Act, 2003 ("Electricity Act"), the energy charge rate due to biomass co-firing can be claimed under 'Change in Law' provisions. However, it was noticed that the 'Change in Law' clause in the Power Purchase Agreements ("PPA") stipulate that compensation shall be payable only if cost to the seller is in excess of an amount equal to 1% of the Letter of Credit ("LC") in aggregate for a contract year.

The aforementioned provision was examined by MoP, and it has now been clarified that for the projects established through competitive bidding under Section 63 of the Electricity Act, wherein 'fuel cost pass through' is provided in the PPA, the cost of biomass pellets shall also be treated as pass through in the energy charge rate.

JUDICIAL PRONOUNCEMENTS

High Court of Allahabad held that a writ petition would not be maintainable against a dispute arising out of contract of service despite the company carrying out public duty.

The High Court of Allahabad in its judgment dated 08.04.2024, in the matter of *Reddy Veerraju Chowdary* v. *Resolution Professional, C.A. Sai Ramesh Kanuparthi*[6] held that a writ petition under Article 226 of the Constitution of India would not be maintainable for breach arising out of contract of employment, either by the employee or by the employer, unless it is a breach of a law or a statutory rule.

In the present case, the employer was a private limited company. The employee filed a writ petition against the employer seeking consideration of his letter of resignation and other related relief. Regarding the employer being a private company, the Court opined that the maintainability of a writ petition before the High Court is not dependent upon the 'Article 12 test', unlike before the Supreme Court. A writ, order or direction under Article 226 of the Constitution of India may be issued by the High Courts even to a private person. The only condition being that such person must be engaged in the discharge of a public function and the breach in respect of which relief is sought, must be related to such discharge of that public function.

The Court observed that the relief sought by the employee in the present case was not related in any manner to the company's public function. It was in relation to a dispute arising out of the contract of service between the employee and the employer. As such, the Court opined that the writ petition was not maintainable.

High Court of Delhi held that a complaint under Section 138 of NI Act can be instituted for a foreign cheque presented in India in the absence of any prohibition against such presentation.

The High Court of Delhi in its order dated 22.04.2024, in the matter of *Right Choice Solutions JLT & Ors.* v. *State NCT of*

[4] APERC Green Energy Regulations, 2024
[5] Clarification to revised Biomass Policy
[6] WRIT - A No. - 15614 of 2023

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Delhi & Anr.[7], held that a complaint under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act") can be instituted for a dishonored 'foreign cheque' deposited for encashment in India and the court within whose jurisdiction the account of the payee was located and where the cheque was presented will have the jurisdiction to adjudicate such complaint. The Court held that the offence under Section 138 of NI Act is deemed to have been committed where the cheque is delivered for collection by the payee and is dishonored.

The Court observed that though the cheque in question was a 'foreign instrument' in terms of Section 12 of the NI Act, there was no prohibition on depositing it for collection in Delhi, and therefore in terms of Section 142(2) of the NI Act, the courts at Delhi will have the jurisdiction to hear the complaint in the event of such presentation and dishonour of the cheque. The Court noted that the object behind Section 138 of NI Act was to enhance the acceptability of cheques in the settlement of liabilities and there can be no difference in this regard between an Indian and foreign cheque.

High Court of Allahabad held that the grounds for contesting an award in appellate proceedings under Section 37 of the A&C Act would be confined to the grounds available under Section 34 of the A&C Act.

The High Court of Allahabad in its order dated 23.04.2024 in the matter of *Union of India* v. *Satendra Nath Sanjeev Kumar Architect*[8], held that the scope of interference in appellate proceedings under Section 37 of the Arbitration & Conciliation Act, 1996 ("A&C Act") stands bracketed to the grounds which are available under Section 34 of the A&C Act for challenging the award.

The Court held that patent illegality must appear on the face of award and an award cannot be set aside merely on the ground of erroneous application of law or evidence to warrant interference of the Court in appellate proceedings.

High Court of Karnataka declared introduction of Para 83 of EPF Scheme and Para 43A of EP Scheme as unconstitutional.

The High Court of Karnataka in its order dated 25.04.2024 in a batch of Writ Petitions titled as *Stone Hill Education Foundation* v. *Union of India*[9], held that the introducing Para 83 of Employees Provident Fund Scheme ("EPF Scheme") and Para 43A of Employees Pension Scheme ("EP Scheme") is violative of Article 14 of the Constitution of India and classification made thereunder is unreasonable and would defeat the very intent of the parent act i.e., the Employees Provident Fund & Miscellaneous Provisions Act, 1952 ("EPFMP Act").

The Union of India, through notification dated 01.10.2008, introduced Para 83 in the EPF Scheme and Para 43A under the EP Scheme covering international workers under the EPFMP Act and the above schemes with effect from 01.10.2008, irrespective of the salary drawn by them. While on the other hand, employees other than the international workers, who draw salary exceeding Rs. 15,000/- per month are outside the purview of the EPF Scheme.

The Court further held that the amendment to scheme must be in line with the object of the EPFMP Act and noted that the objects of the EPFMP Act do not provide for covering employees irrespective of the salary drawn by them. It was enacted with a view that those in lower salary brackets gets retirement benefits. Accordingly, Para 83 of the EPF Scheme which removes the ceiling for contribution for international workers while providing ceiling for the domestic workers is arbitrary and unconstitutional.

The Court noted the purpose behind introduction of Para 83 of EPF Scheme was to protect Indian employees going abroad and motivating host countries to enter into reciprocating Social Security Agreements ("SSA") and held that an Indian working abroad in a country with SSA would contribute only Rs. 15,000/- whereas a foreign worker in a country without reciprocating agreements will contribute on his entire salary, although they both are international workers by the definition. Such distinction, without any nexus, was also discriminatory and thus is in violation of Article 14 of the Constitution of India.

High Court of Delhi held that the question of limitation ought to be adjudicated by arbitral tribunal.

The High Court of Delhi in its order dated 29.04.2024 in the matter of *M/s. Kimaya Buildtech LLP* v. *K.C. Software Pvt. Ltd. & Ors.*[10], held that the courts have a very limited role in adjudicating the issue of limitation under Section 11 of the A&C Act and the question of limitation ought to be adjudicated by the arbitral tribunal.

The Court referred to the judgment in *Vidya Drolia* v. *Durga Trading Corp*[11] and *BSNL* v. *Nortel Networks*[12], wherein it was held that the courts adjudicating a petition under Section 11 of the A&C Act can determine the issue of limitation in very limited circumstances i.e., when the bar of limitation is inherent and evident from the petition and the documents filed. Further, the role of the courts at pre-reference stage is only to determine if there is a valid arbitration agreement, and the question of limitation ought to be adjudicated by the arbitral tribunal.

[7] CRL. M.C. No. 6853 of 2022 & CRL. M.A. No. 26554 of 2022
[8] Appeal No. 182 of 2024
[9] W.P. No. 18486 of 2012 & other connected matters
[10] [Arb. P. 631/2023]
[11] (2021) 2 SCC 1
[12] (2021) 5 SCC 738

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UPERC held that an increase in BCD and GST are 'Change in Law' events.

Uttar Pradesh Electricity Regulatory Commission ("UPERC") in its order dated 29.04.2024 in the matter of *Tata Power Renewable Energy Limited* v. *U.P. Power Corporation Limited & Anr.*[13] held that the increase of Basic Custom Duty ("BCD") from 5% to 20% imposed on the import of Solar Inverter through notification dated 01.02.2021 issued by Ministry of Finance ("MoF") as well as the increase in Goods and Service Tax ("GST") through notification dated 30.09.2021 issued by MoF are 'Change in Law' events in terms of the PPA.

With respect to the consequential reliefs, UPERC granted relief due to increase in BCD, however, noted that relief due to increase in GST is not tenable, due to delayed bill raised by EPC Contractor. Thus, UPERC held that the burden of late issue of invoices by EPC Contractor cannot be made to pass on to the beneficiaries/ consumers.

Moreover, with respect to the rate of interest for the computation of carrying cost, UPERC observed that since the funds arranged by the Project Developer are based on the interest rate framework followed by the scheduled commercial bank, thus, UPERC awarded carrying cost from the actual date of commissioning of the project until the date of the order at yearly SBI MCLR Rate.

UPERC held that a developer can seek cancellation of connectivity of sub-station at a particular place and seek new connectivity for at least 50% of the capacity at an alternative location in terms of the First Amendment to the Connectivity Regulations, 2010.

UPERC in its order dated 02.05.2024 in the matter of *Chitradurga Renewable Energy India Pvt. Ltd.* v. *U.P. Power Transmission Corporation Limited & Anr.*[14] held that as per the mechanism provided in the First Amendment to the UPERC (Grant of Connectivity to intra-state Transmission System) Regulations, 2010, ("First Amendment to Connectivity Regulations, 2010"), a developer can seek cancellation of connectivity of the sub-station at a particular place and seek new connectivity for at least 50% of the capacity at an alternative location.

UPERC observed that the First Amendment to the Connectivity Regulations, 2010 deals with the cases where if a project has failed to take place at a particular location due to the implementation issues, and where the developer is still keen to invest in that State and further desires to implement the power plant considering new connectivity. In such circumstances, UPERC notes that the First Amendment to Connectivity Regulations, 2010 provides for the treatment of Bank Guarantee ("BG") if full cancellation of connectivity is sought due to the implementation issues and at the same time a new connectivity on different location is sought for at least 50% of such previous capacity. Further, the Connectivity Regulations, 2010 provides that if new connectivity is sought for at least 50% of the previous capacity, then the previous BG shall be returned along with new BG of fresh connectivity, when commercial operation date is achieved for full capacity under the new connectivity.

CERC clarified the requirements regarding the LC under the directive issued by MoP by its order dated 28.06.2019.

Central Electricity Regulatory Commission ("CERC") in its order dated 07.05.2024 in the matter of *Coastal Energen Private Limited* v. *Tamil Nadu Generation & Distribution Corporation Limited.*[15] clarified that the LC to be given by distribution licensee under the directive issued by MoP through order dated 28.06.2019 ("MoP Order") must be in line with PPA. The MoP Order emphasises the need for a robust Payment Security Mechanism ("PSM") due to unpaid power bills and directed Load Despatch Centres to despatch power only after the confirmation that the desired quantum of power has been opened.

Coastal Energen Private Limited ("CEPL") sought recovery of capacity charges under the PPA and in terms of the MoP Order and subsequent clarifications thereto due to under-recovery of capacity charges, as a result of which CEPL stopped scheduling power supply to Tamil Nadu Generation & Distribution Corporation Limited ("TANGEDCO").In this regard, CERC clarified that the MoP's directive did not mandate the distribution licensee to furnish LC covering the entire outstanding amount.

In the present case, CEPL argued that the LC provided by TANGEDCO was inadequate and was conditional. CERC held that as per the MoP directives, the LC must be in accordance with the PPA and not for the entire outstanding amount, as was claimed by CEPL. CERC held that non-scheduling of power supply due to inadequate LC value was unjustified.

Further, CERC acknowledged the conditional nature of the LC and noted that only an unconditional LC would serve the purpose of PSM as the conditional LC from the defaulting distribution licensee might amount to nothing more than a false sense of security. However, it noted that the said issue was never raised before filing the present petition. CERC held that CEPL's actions were untenable since it did not raise the issue of the LC's conditionality earlier, thereby rejecting the claim for capacity charges during the disputed period.

[13] Petition No. 1952 of 2023
[14] Petition No. 1993 of 2023
[15] Petition No. 360/MP/2022

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ABOUT SAGUS LEGAL

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