



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

REGULATORY & POLICY UPDATES

SEBI notified SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations 2024.

Securities and Exchange Board of India (“SEBI”) through its notification dated 17.05.2024 has notified the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024¹ (“LODR Amendment Regulations”) to amend the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”). The LODR Amendment Regulations came into force on 17.05.2024 (“Effective Date”). The key amendments introduced are as follows:

- i. Prior to the amendment, Regulation 3(2) stated that LODR Regulations which apply to listed entities are based on market capitalization criteria and shall continue to apply to such entities even if they fall below the specified thresholds. The LODR Amendment Regulations replace Regulations 3(2) with a new provision which provides that the applicability of the LODR Regulations to a listed entity based on market capitalisation shall be determined as follows:
 - a. At the end of every calendar year, a recognised stock exchange shall prepare a list of entities that have listed their specified securities, and these entities will be ranked on the basis of their average market capitalisation from 1st July to 31st December of that calendar year. The relevant provisions shall become applicable to a listed entity that is required to comply

¹ SEBI (Listed Obligations and Disclosure Requirements) (Amendment) Regulations, 2024

with the requirements for the first time, after 3 months from 31st December or from the beginning of the immediately next financial year.

- b. All listed entities shall continue to comply with relevant provisions that were applicable to them based on the market capitalisation of the previous year and continue(s) to remain applicable on the basis of their rank in the list prepared by recognized stock exchanges annually.
 - c. Regulation 3(2A) and (2B) have been inserted which states that (i) in case of a change of ranking resulting in the listed entity remaining outside the applicable threshold for 3 consecutive years, the entity shall fall outside the purview of the provisions which become applicable to a listed entity based on the market capitalisation, and (ii) for such entities, the provisions will cease to apply at the end of the financial year after 31st December of the third consecutive year.
- ii. In Regulation 26A of the LODR Regulations which deals with vacancies in respect of KMPs, an additional proviso has been incorporated providing that where a listed entity is required to obtain approval of the regulatory, government, or statutory authorities to fill up such vacancies, then the vacancies shall be filled up by such listed entity at the earliest and in any case not later than 6 months from the date of vacancy.
 - iii. In Regulation 29 of the LODR Regulations which lists out the actions that require prior intimation to the stock exchanges, it has been clarified that the prior intimation should be given at least 2 working days in advance, excluding the date of intimation and date of the meeting of the board of directors. Further, two additional events have been incorporated that shall require prior consent of the stock exchanges: (i) any alteration in the form or nature of any of its securities that are listed on a recognised stock exchange or in the rights or privileges of the holders thereof; and (ii) any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or debentures or bonds, shall be payable. Additionally, it has been clarified by way of a proviso that no intimation to the stock exchange is required for determination of the issue price in a QIP where such placement is in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
 - iv. A new proviso to Regulation 30(11) of the LODR Regulations has been inserted providing that when the listed entity confirms (within 24 hours from the trigger of a material price movement) any reported event or information, on

which pricing norms provided under SEBI (Buyback of Securities) Regulations, 2018 or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any other pricing norms specified by SEBI or the stock exchanges are applicable, within 24 hours, then the effect on the price of the equity shares of the listed entity due to material price movement and confirmation of the reported event or information may be excluded for calculation of the price for that transaction.

SEBI notified amendments to SEBI (Buyback of Securities) Regulations, 2018, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in light of LODR Amendment Regulations

SEBI through several notifications dated 17.05.2024 has notified SEBI (Buyback of Securities) (Amendment) Regulations, 2024², SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024³, SEBI (Prohibition of Insider Trading) (Amendment) Regulations 2024⁴ and SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024⁵, which came in effect from even date to align with the amendments introduced in Regulation 30 (11) of the LODR Amendment Regulation. A brief overview of the amendments is set out below:

- i. SEBI (Buyback of Securities) (Amendment) Regulations, 2024 amended the SEBI (Buyback of Securities) Regulations, 2018 to include an exclusion under Regulation 19, which covers compliances for open market buy back through recognized stock exchanges. As per the exclusion under Regulation 19, the effect of the price of the equity shares of a company due to material price movement and confirmation of a reported event or information may be excluded as per prescribed framework under SEBI LODR Regulation for determination of the volume weighted average market price. Furthermore, the amendment to Regulation 22B, which deals with buyback through book building, excludes the effect of the above on the price of equity share for calculation of the lower end of the price range. These exclusions aim to ensure the prices calculated for buyback transactions reflect a company's usual market prices.
- ii. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024 amended the SEBI

² SEBI (Buy-Back of Securities) (Amendment) Regulations, 2024

³ SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024

⁴ SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2024

⁵ SEBI Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024.

- (Substantial Acquisition of Shares and Takeovers) Regulations, 2015 by inserting sub-regulation (17) under Regulation 8 which deals with compliances regarding offer price for acquiring of shares of target company. Regulation 8 (17) excludes the effect on the price on the equity shares of the target company due to material price movement and confirmation of reported event or information, for determination of the offer price under the regulation. Furthermore, Regulation 9 which deals with mode of payment for shares proposed to be acquired under these regulations, has been amended to reflect that if equity shares of a listed entity are offered as consideration, the effect on the price of such shares due to material price movement and confirmation of reported event or information may be excluded, for determination of the price of such equity share under this regulation.
- iii. SEBI (Prohibition of Insider Trading) (Amendment) Regulations 2024 amended the SEBI (Prohibition of Insider Trading) Regulations, 2015 wherein the definition of ‘generally available information’ has been amended to specify that it shall not include an unverified event or information reported in print or electronic media.
- iv. SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024 amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. Through the SEBI ICDR Amendment Regulations, the following amendments/changes have been made:
- Regulation 14 relating to ‘Minimum Promoter’s Contribution’ has been revised to allow (a) other members of the promoter group other than the promoters, whether individual or non-individual, and (b) non-individual shareholders owning a minimum of 5% of the post-issue capital, to contribute towards the Minimum Promoter’s Contribution in case of a deficiency. Further to this, Regulation 15 has been amended to provide that shares acquired by the new categories of shareholders mentioned above during the preceding one year at a price lower than the price at which specified securities are being offered to the public in the initial public offer, shall not be eligible for computation of ‘Minimum Promoter’s Contribution’. Regulation 16 has also been amended to include reference to shares held by such new categories of shareholders mentioned above in the lock-in requirements.
 - A new clause (iv) under Regulation 15 has been inserted providing that compulsorily convertible shares have now been categorized as eligible for Minimum Promoters’ Contribution, provided full disclosures of the terms of conversion or exchange are made in the draft offer document, and they are converted or exchanged into equity shares and have been held for a minimum period of one year, prior to the filing of the offer document.
- Regulation 46(3), Regulation 142(3), Regulation 203(3), and Regulation 266(3) have been amended to reduce the minimum number of days for which the bidding can be extended, in case of force majeure, banking strike or similar circumstance, from three working days to one working day.
 - Prior to the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024, issuers were required to deposit with the stock exchanges a refundable amount equal to 1% of the issue size available for subscription. Pursuant to the amendment, the requirement of ‘security deposit’ has been omitted.
 - A new provision under Regulation 166 has been inserted to provide that the effect on the price of the equity shares of the issuer due to material price movement and confirmation of reported event or information may be excluded as per the framework specified in Regulation 30(11) of the SEBI LODR Regulations for determination of the price for a preferential issue.

SEBI introduces framework for calculating ‘Unaffected Market Price’ for market rumours verification.

SEBI through its Circular dated 21.05.2024⁶ (“Unaffected Market Price Circular”) has introduced a framework for considering unaffected price for transactions upon confirmation of market rumours further to the amendments introduced by the LODR Amendment Regulations to Regulation 30(11) of the LODR Regulations.

The amended regulation stipulates that listed entities are required to verify market rumours within 24 hours of from the trigger of material price movement, and then the effect on the price of the equity shares of the listed entity due to material price movement and confirmation of the reported event or information may be excluded for calculation of the price for that transaction.

Through the Unaffected Market Price Circular, SEBI has brought in the framework for considering the unaffected price which shall be applicable to top 100 listed entities with effect from 01.06.2024, and the next top 150 listed entities with effect from 01.12.2024.

The Circular provides for following framework for considering unaffected price:

- Methodology for calculation of the adjusted volume weighted average price consideration of the unaffected price;
- If the price variation on account of the market rumour hits the price band limit on the next trading day post the

⁶ SEBI Circular- Unaffected Market Price

- confirmation of the rumour, the price variation in subsequent trading days shall be included for adjustment till the price does not hit the band limit;
- c. The unaffected price will only be applicable if the listed entity has confirmed the rumour within 24 hours from the trigger of material movement;
 - d. The unaffected price will be applicable for a period of 60 days or 180 days based on the stage of transaction, from the date of the confirmation of the market rumour till the relevant date (as per the existing regulations). Stages of transactions and the applicability of the unaffected price will be specified in Industry Standards on Regulation 30(11) of LODR Regulations;
 - e. The unaffected price shall be applicable for every instance of the confirmation of rumour when subsequent rumours are reported in media after the confirmation of a rumour in a transaction has been confirmed by the listed entity.

RBI regularised the issuance of partly paid units by AIFs to persons resident outside of India.

Reserve Bank of India (“RBI”) through its circular dated 21.05.2024⁷ (“AIF Circular”) has allowed the regularisation of partly paid units issued by Alternative Investment Funds (“AIFs”) to persons resident outside India to the NDI Rules Amendment dated 14.03.2024 (explained below), subject to specified conditions.

The Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 was amended on 14.03.2024 to allow the issuance of partly paid units to non-residents through ‘investment vehicles’ i.e. AIFs (“NDI Rules Amendment dated 14.03.2024”). Through the AIF Circular, RBI has allowed the regularisation of the issuance of such partly paid units by AIFs to non-residents prior to the Amendment dated 14.03.2024 through compounding under the Foreign Exchange Management Act, 1999. However, AD-Category-1 Banks are to ensure that all necessary administrative actions such as reporting of such issuances by AIFs to RBI and issuing of conditional acknowledgements for such reporting have been completed prior to approaching RBI for compounding.

MERC amended the MERC Ombudsman Regulations 2020 *inter alia* providing that a Distribution Licensee shall now establish one forum for redressal of consumer grievances in each distribution circle falling within its area of supply.

Maharashtra Electricity Regulatory Commission (“MERC”) through notification dated 22.05.2024 issued MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) (First Amendment) Regulations, 2024⁸ (“MERC Ombudsman Amendment Regulations 2024”) to amend MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (“MERC Ombudsman Regulations 2020”).

The MERC Ombudsman Amendment Regulations 2024 substitutes Regulation 3.3 of the MERC Ombudsman Regulations 2020. Earlier Regulation 3.3 provided that a distribution licensee shall generally establish one forum in each distribution zone falling within its area of supply, which has now been substituted to provide that a distribution licensee shall establish one forum in each distribution circle falling within its area of supply. Furthermore, where a forum was established with jurisdiction of more than one circle, such forum shall henceforth function as a forum for the circle in which it is located. However, all pending grievances as on the date of notification shall be decided by such forum only without transferring it to the forum to be setup for respective circle.

The requisite qualifications of the chairperson of the forum and the electricity ombudsman have also been revised.

GOVERNMENT NOTIFICATIONS

MNRE issued clarifications and updates regarding ALMM Order.

Ministry of New and Renewable Energy (“MNRE”) through Office Memorandum dated 20.05.2024⁹ issued clarification regarding Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for compulsory registration) Order, 2019 (“ALMM Order”). It has been clarified that ALMM Order in respect of List I (Manufacturers and Modules of Solar PV Modules) shall be applicable on such bids whose last date of bid submission is on or after 10.04.2021 i.e., projects where last date of bid submission was prior to 10.04.2021, ALMM Order in respect of List I (Manufacturers and Modules of Solar PV Modules) shall not be applicable.

MNRE through Office Memorandum dated 24.05.2024¹⁰ has further revised the List I (Manufacturers and Modules of Solar PV Modules) of the ALMM Order. The List I of the ALMM Order was last updated on 29.04.2024¹¹.

MNRE through Office Memorandum dated 27.05.2025¹² granted exemption to renewable energy plants located inside a Special Economic Zone (“SEZ”) or Export Oriented Unit

⁷ RBI-Issuance of partly paid units to persons resident outside India.

⁸ MERC Ombudsman Amendment Regulations 2024

⁹ ALMM Clarification dated 20.05.2024

¹⁰ ALMM Office Memorandum dated 24.05.2024

¹¹ Covered in Sagus Speaks – April 2024 (Part II)

¹² ALMM Office Memorandum dated 27.05.2024

("EOU") and supply power exclusively for production plants of Green Hydrogen (or its derivatives), which are located inside SEZ or set up as on EOU (either the same or different SEZ/EOU) from the purview of ALMM Order. Such renewable energy plants must be commissioned by 31.12.2030. MNRE through Office Memorandum dated 27.05.2025¹³ has granted similar exemption to renewable energy plants from the purview of Revised List of Models and Manufacturers for Wind Turbine Models, issued by MNRE under the Guidelines for Development of Onshore Wind Power Projects issued on 22.10.2016.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that lawyers cannot be held liable for 'deficiency of service' before the consumer courts under the consumer protection laws.

The Supreme Court by its judgment dated 14.05.2024 in the matter of *Bar of Indian Lawyers Through Its President Jasbir Singh Malik v. D.K. Gandhi National Institute of Communicable Diseases and Anr.*¹⁴ held that advocates cannot be liable under the Consumer Protection Act, 1986 ("CP Act, 1986") and Consumer Protection Act 2019 (which replaced the CP Act 1986), for deficiency of services.

The Supreme Court held that the CP Act, 1986 was enacted to provide for better protection of the interests of consumers against their exploitation by traders and manufacturers of consumer goods. It aims to help consumers in getting justice and fair treatment in the matter of goods or services purchased and availed by them in a market dominated by large trading and manufacturing bodies. The Court noted that there was not a whisper in the statement of objects and reasons either of the CP Act, 1986 or Consumer Protection Act, 2019 to include the professions or the services provided by professionals like advocates, doctors etc. within its purview. The Court observed that 'businesses or 'trade' having a commercial aspect, cannot be used interchangeably with the term 'profession', which normally would involve some branch of learning or science.

The Supreme Court clarified that no professional, either legal, medical, or any other professional, enjoys immunity from being sued or from being held liable for his misconduct, either professional or otherwise, or other misdeeds causing legal, monetary, or other injuries to his clients or the persons hiring or availing his services. The fact that professionals are governed by their respective councils like Bar Councils or Medical Councils also would not absolve them from their civil or criminal liability arising out of their professional misconduct or negligence. Nonetheless, the Supreme Court opined that neither the professions nor the professionals were ever intended to be

brought within the purview of the CP Act, 1986 or Consumer Protection Act, 2019.

The Court referred to various judicial precedents and observed that the legal profession is *sui generis* i.e., unique in nature and cannot be compared with any other profession. It held that the services hired or availed of an advocate would be that of a contract 'of personal service' and would therefore stand excluded from the definition of "service" contained in Section 2(42) of the CP Act, 2019. Therefore, a complaint alleging "deficiency in service" against advocates practising legal profession would not be maintainable under the CP Act, 1986 or Consumer Protection Act, 2019.

In view of the above, the Supreme Court referred the judgment passed by three judge bench in *India Medical Association v. V.P Shantha*¹⁵ where the Supreme Court had held *inter alia* that the wide amplitude of the definition of 'service' in the main part of Section 2(1)(o) would cover the services rendered by Medical Practitioners within the said Section 2(1)(o), to Hon'ble Chief Justice of India for consideration of the matter by larger bench.

Supreme Court held that entities not covered under the third and fourth proviso to Section 14 of the Electricity Act, 2003 need to obtain license to be declared as a 'deemed licensee' and get exemption from complying with Regulation 12 of the APERC Regulations, 2013.

The Supreme Court by its order dated 17.05.2024 in the matter of *M/s Sundew Properties Limited v. Telangana State Electricity Regulatory Commission & Anr.*¹⁶ held that entities not covered under the third and fourth proviso to Section 14 of the Electricity Act, 2003 ("Electricity Act") i.e., Appropriate Government and Damodar Valley Corporation, need to obtain license to be declared as a deemed distribution licensee. The Supreme Court further held that a deemed distribution licensee is exempt from the concomitant obligation of complying with Regulation 12 of the Andhra Pradesh Electricity Regulatory Commission (Distribution Licence) Regulations, 2013 ("APERC 2013 Regulations").

The Court noted that provisos to Section 14 of the Electricity Act distinguish between entities that are *ipso facto* deemed distribution licensee and those that are merely declared as deemed distribution licensee without clarity on the necessity of making an application to obtain a license. For instance, the third and fourth proviso to Section 14 of the Electricity Act not only confer the status of deemed distribution licensee to Appropriate Government and Damodar Valley Corporation, respectively, but also explicitly exempt them from the requirement to obtain a licence. The Supreme Court accordingly held that entities not

¹³ RLMM Office Memorandum dated 27.05.2024

¹⁴ Civil Appeal No. 2646 of 2009.

¹⁵ (1995) 6 SCC 651

¹⁶ Civil Appeal No. 8978 of 2019

covered by these specific provisos would, therefore, be required to obtain a licence.

The Court noted that Regulation 12 of the APERC 2013 Regulations stipulates that an applicant seeking a distribution licence shall, in addition to Regulations 4 to 11 of the APERC 2013 Regulations, comply with the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 (“2005 Rules”). On the other hand, Regulation 13 of the APERC 2013 Regulations provides that nothing in Regulations 4 to 11 of the APERC 2013 Regulations shall apply to the deemed licensee. In this regard, the Court held that having been exempted from complying with Regulations 4 to 11 of the APERC 2013 Regulations, the deemed distribution licensee would also be exempt from obligations under Regulation 12 of the APERC 2013 Regulations.

The Court observed that Regulation 12 of the APERC 2013 Regulations deals solely with regular distribution licensees and not deemed distribution licensees. ‘Reading up’ Regulation 12 of the APERC 2013 Regulations so as to expand its ambit to include within its scope deemed distribution licensees, especially when the Electricity Act does not stipulate any such inclusion, runs contrary to the subsequently added proviso to clause (b) of Section 14 the Electricity Act. Therefore, the recognition of the status of a deemed distribution licensee cannot hinge on compliance with Rule 3(2) of the 2005 Rules read with Regulation 12 of the APERC 2013 Regulations.

High Court of Allahabad held that the Collector (Stamp) does not have inherent powers to review its own decisions.

The High Court of Allahabad by its judgment dated 17.05.2024 in the matter of *Smt. Shivani Chaurasia and Anr. v. State of U.P. and Anr.*¹⁷ held that the Collector (Stamp) does not have the necessary power bestowed upon it under Section 47-A of the Indian Stamp Act, 1899 to recall or review its own order. The Court opined that a quasi-judicial body is limited to act within the four corners of the statute. If the statute does not provide for a particular act, the same cannot be undertaken by the authority. Any such action taken *de hors* the legislative intent would result in an overreach and beyond the authority's power.

The Court further held that constitutional courts and quasi-judicial authorities are distinct, especially when exercising review/ recall powers. Constitutional courts being courts of record under the Constitution of India enjoy inherent power to review their orders and correct errors whereas quasi-judicial authorities lack inherent powers and can only act within the

powers conferred to them by the statute. The Court further opined that the Legislature may grant limited review powers to certain quasi-judicial authorities based upon the nature of dispute they govern for the effective administration of justice, however, any expansion of the same would undermine the principles of legislative supremacy and judicial independence.

High Court of Allahabad held that a party which has knowledge of an arbitral award, understands its implications, and begins to act upon it, demonstrates practical acknowledgement of arbitral award.

The High Court of Allahabad by its judgment dated 24.05.2024 in the matter of *Bharatiya Rashtriya Rajmarg Pradhikaran v. Neeraj Sharma & Ors.*¹⁸ held that a party's awareness of the award and its actions further to the terms award negate the party's claim of non-receipt of a signed copy.

The Court held that strict interpretation of Section 31(5) of the Arbitration and Conciliation Act, 1996 (“A&C Act”) could enable parties to delay or obstruct the arbitration process by claiming non-receipt of signed copy of award despite being aware of the award's contents and having acted upon it. The Court held that the legislative intent behind Section 31(5) of the A&C Act is to ensure that parties are adequately informed about the award to take necessary legal actions within the prescribed timelines. Therefore, an interpretation that considers the party's actual awareness and actions, even if a signed copy was not formally received, aligns better with the legislative intent and the principles of justice and equity.

The Court clarified that the emphasis on acting upon the award is crucial. For instance, if a party begins to comply with the award's directives or uses the award's findings in subsequent actions, it indicates a *de facto* acceptance of the award. Such actions provide clear evidence that the party has understood and accepted the award's contents, thus making any later claims of non-receipt appear disingenuous.

CERC granted extension of time period for achieving COD of transmission project in view of the rerouting around GIB Arc and delay in grant of NOC, which along with its conditions, constituted change in law and force majeure events.

Central Electricity Regulatory Commission (“CERC”) by its order dated 13.05.2024 in *Fatehgarh-Bhadla Transmission Limited v. Adani Renewable Energy Park Rajasthan Limited & Ors*¹⁹, allowed extension of time period to the Fatehgarh-Bhadla Transmission Limited (“FBTL”) for achieving Commercial

¹⁷ Writ C No. 13775 of 2023

¹⁸ Appeal under Section 37 of Arbitration and Conciliation Act No. 8 of 2020

¹⁹ Petition No. 87/MP/2022

Operation Date (“COD”) of the project along with grant of compensation on occurrence of *force majeure* and Change in Law events in view of the rerouting of transmission line around the Great Indian Bustard (“GIB”) Arc as well as the delay in grant of the conditional No Objection Certificate (“NOC”) by the Defence Aviation Department.

Insofar as the claim of *force majeure* for rerouting of lines was concerned, CERC noted that the requisite notice was not issued by FBTL to Adani Renewable Energy Park Rajasthan Limited (“AREPRL”). However, CERC held that since FBTL upon being informed of the revised route had immediately filed a petition before CERC wherein AREPRL was also a party, thus AREPRL had constructive notice of such event. CERC proceeded to hold that the delay in submission of revised forest proposal in view of the rerouting was covered under *force majeure* and that there was a change in the scope of the work which was a consequence of Change in Law event.

With regard to the delay in the grant of NOC from the Defence Aviation Department and the conditions imposed thereunder, which constrained FBTL to redesign and reduce the height of towers along with the abandonment of towers/ foundations already constructed leading to delayed COD, CERC held that such events would constitute a *force majeure* event under the agreement between the parties. CERC also held that time taken to obtain the NOC and subsequent time taken for complying with the conditions in the NOC was a *force majeure* event.

With respect to the claim for Change in Law on account of the above-mentioned rerouting and grant of conditional NOC, CERC observed that since the original route would not have required such NOC leading to the reduction in tower heights, the rerouting around the GIB Arc as well as the grant of conditional NOC were Change in Law events under the agreement, which was defined to also include imposition of a requirement for obtaining consents, clearances and permits not required earlier. Accordingly, CERC granted both monetary relief as well as extension of time on account of such Change in Law events. CERC however disallowed the claim on account of abandonment of towers, which it held could be utilized elsewhere.

NCLT held that to quantify the nature of a debt arising out of monetary transactions, an explicit agreement or document evidencing the nature and terms of the transaction is required to determine the real nature of the transaction and to classify the debt as financial debt or operational debt.

National Company Law Tribunal (“NCLT”), Kolkata by its judgment dated 17.05.2024 in the matter of *Gokul Sai Udyog*

*LLP v. Katyayni Contractors Private Limited*²⁰ rejected an application filed under Section 7 of IBC and held that in order to determine if a debt arising out of a monetary transaction is financial or operational, a clear and explicit agreement or document setting out the terms of the transaction is necessary to establish the true nature of transaction and the date of default.

In the instant case, Gokul Sai Udyog LLP (“GSU”) claimed to be a financial creditor of Katyayni Contractors Private Limited (“KCPL”) on the basis of a resolution passed in a GSU meeting which authorized a loan of Rs. 6 crores at 12% interest to KCPL. GSU claimed that it has only received Rs. 2 crores back from KCPL.

NCLT noted that the resolution relied upon by GSU contained a GST number from a period when GST law was not in force and therefore held that reliance cannot be placed on the said resolution. Even otherwise, a resolution was an internal document and not an agreement executed between the parties. There were no written documents evidencing the loan arrangement between the parties involved in the dispute. NCLT also observed discrepancies in the recording of debt between KCPL's balance sheet and GSU's books.

NCLT accordingly noted that in the absence of an explicit agreement or any reliable evidence, the nature of debt (whether operational or financial) cannot be determined. Further, in such a scenario the date of default of the debt cannot be established/determined.

KSERC exempted the prosumers, who set up renewable energy systems with plant capacity up to 100 kW, from the requirement of installation of Special Energy Meters with remote terminal units.

Kerala State Electricity Regulatory Commission (“KSERC”) by order dated 22.05.2024 regarding “Removal of Difficulties - KSERC (Renewable Energy & Net metering) Regulations, 2020 - Exemption from the installation of Special Energy Meter for prosumers installing renewable energy systems up to 100 KW, in excess of their contract demand or connected load as applicable”²¹ has exempted prosumers who set up renewable energy systems with capacity greater than their contract demand/connected load with plant capacity up to 100 kW from the requirement of installation of Special Energy Meters with Remote Terminal Units. KSERC invoked its power to give directions and power to remove difficulty as provided in the KSERC (Renewable Energy and Net Metering) Regulations, 2020 (“Net Metering Regulations 2020”) to grant the aforesaid exemption after noting the difficulties faced by the prosumer in installation of roof top solar plants beyond their sanctioned contract demand or connected load.

²⁰ CP (IB) No. 350/KB/2022

²¹ No.567/Com.Ex/24

In this regard, the Government Higher Secondary School, Munderi (“Munderi School”) had approached the KSERC citing substantial increase in their monthly bills after establishing a 100 KWp roof top solar plant due to fixed charges applicable for contract demand much above their actual requirement and denial of their application for reduction in contract demand by Kerala State Electricity Board (“KSEB”). KSERC categorically noted that when Munderi School approached KSEB to reduce their

contract demand of 100 KVA even though the recorded maximum demand of the consumer was in the range of 20 KVA to 30 KVA, the same ought to have been allowed on the basis of provisions in the Net Metering Regulations 2020 for installation of renewable energy systems in excess of the connected load / contract demand in a prosumer premises subject to payment of certain applicable charges.

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.

Delhi Office:

Ground Floor, B-7/8
Safdarjung Enclave, Delhi-110029

Gurugram Office:

I-46, Emaar Emerald Hills,
Sector 65, Gurugram – 122001

Satellite Office:

Bhubaneswar, Odisha
Email: info@saguslegal.com
Phone No.: +91 1146552925
Website: <https://www.saguslegal.com/>



The contents of this Newsletter are for general information only. It shall not be construed as legal advice. For any specific legal or factual query/ opinion, kindly obtain appropriate professional advice.
