Sagus Legal
Advisors & Advocates

SAGUS SPEAKS

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

REGULATORY AND POLICY UPDATES

IBBI notifies the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations 2025, amending the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The Insolvency and Bankruptcy Board of India ("IBBI") through its notification dated 03.02.2025 notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025[1] ("IBBI CIRP Regulations Amendment 2025"), amending the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Principal Regulations").

The key amendments under the IBBI CIRP Regulations Amendment 2025 are *inter-alia* as follows: -

(i) **Introduction of Regulation 4E to the Principal Regulations relating to 'Handing Over Possession' for homebuyers:** IBBI CIRP Regulations Amendment 2025 has introduced Regulation 4E to the Principal Regulations wherein the Resolution Professional ("RP"), after obtaining approval of not less than sixty percent of the votes of the Committee of Creditors ("CoC") shall hand over possession of plots, apartments, or buildings where the allottee has requested for the same and has performed its part of the agreement.

[1] IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025.

(ii) **Introduction of Regulation 16-C to the Principal Regulations for 'Appointment of Facilitators': -** In the event where creditors in a particular class exceeds one thousand the CoC may direct the Interim Resolution Professional ("IRP") or RP for appointment of facilitator for sub-class within the creditors.

Further, the appointment of facilitator is subject to the following conditions:

a. The appointment of facilitator shall be considered only if, after the first meeting of the CoC, a sub-class comprising of at least one hundred creditors out of the total number of creditors in a class, request for the inclusion of an agenda for such appointment along with the name of the proposed facilitator.

b. The total number of facilitators shall not exceed five.

c. The fee for facilitator for each sub-class shall be twenty per cent. of the fees specified for the authorized representative and such fee shall be part of the insolvency resolution process cost.

(iii) **Amendment of Regulation 18 of the Principal Regulations:** Where a corporate debtor has any real estate project, CoC can now invite relevant land authorities to their meetings for inputs and perspectives on matters related to development of project, regulatory and land development related matters without voting rights.

(iv) **Introduction of Regulation 30-C to the Principal Regulations mandating a report on real estate development rights:** In the event the corporate debtor has any real estate project, RPs shall prepare a detailed report on the status of development rights, approvals, and permissions for real estate projects within 60 days of commencement of Corporate Insolvency Resolution Process ("CIRP") of the corporate debtor.

(v) **Regulation 36A of the Principal Regulations dealing with 'Invitation for expression of interest' amended introducing relaxations for Real Estate Allottees:** CoC has been empowered to relax certain conditions for associations or group of homebuyers to participate as resolution applicants in the insolvency resolution process. These include relaxations in eligibility criteria, performance security and deposits for submitting resolution plans.

(vi) **Regulation 38 of the Principal Regulations dealing with 'Mandatory contents of resolution plan' has been amended introducing a monitoring committee for implementation of resolution plan:** CoC shall now onwards consider forming a monitoring committee to monitor and supervise the implementation of resolution plan. The committee, which may comprise of the RP and representatives of creditors and the successful resolution applicant, must submit quarterly progress reports to the Adjudicating Authority.

SEBI issues Consultation Paper on Advance Fee Provisions for Investment Advisers and Research Analysts

The Securities and Exchange Board of India ("SEBI") issued a consultation paper on 12.02.2025[2], seeking public comments on proposed revisions to advance fee provisions for Investment Advisers ("IAs") and Research Analysts ("RAs"). The proposal aims to strike a balance between investor protection and business flexibility while ensuring compliance with existing fee-related safeguards.

The SEBI (Investment Advisers) Regulations, 2013 were amended in September 2020, and the two-quarter advance fee limit became effective from April 1, 2021. The SEBI (Research Analysts) Regulations, 2014 were amended in December 2024, restricting RAs to a one-quarter advance fee limit. SEBI received multiple representations from IAs and RAs, arguing that these restrictions disrupt business models and create financial uncertainty.

Based on these representations from various IAs and RAs, SEBI proposed the following key changes for consideration:

(i) To allow IAs and RAs to charge advance fees for up to one year, provided the investor agrees.

(ii) To safeguard investor interests, existing provisions for refunds and breakage fees will continue to apply. In case of pre-mature termination, IAs may retain a breakage fee of up to one quarter, while RAs will be required to refund the proportionate unexpired fee without any breakage charge.

(iii) The revised fee provisions will apply only to individual and HUF clients. Institutional and accredited investors will continue to be governed by bilateral contractual agreements.

The proposed changes aim to encourage longer-term advisory services from (Ras) while ensuring investors are not unfairly locked in.

SEBI has invited stakeholders to submit their comments and suggestions by 27.02.2025. Feedback can be provided

[2] Consultation Paper on Advance Fee Provisions for Investment Advisers and Research Analysts.

through the designated online portal or via email to consultationMIRSD@sebi.gov.in.

SEBI Issues Consultation Paper on Corporate Governance Enhancements for Listed Entities

The Securities and Exchange Board of India ("SEBI") has released a consultation paper on 07.02.2025("Governance Consultation Paper")[3], seeking public feedback on proposals aimed at enhancing corporate governance among listed entities. The proposed changes would require amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") and SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 ("SBEBS Regulations").

The key proposals under the Governance Consultation Paper are as follows:

(i) Mandatory disclosure of the Annual Secretarial Compliance Report ("ASCR"): SEBI proposes to make the disclosure of ASCR in the annual report mandatory to enhance transparency and accountability in securities law compliance.

(ii) Eligibility Criteria for statutory auditors: SEBI recommends aligning LODR Regulations with Rule 3(1) of the Companies (Audit and Auditors) Rules, 2014 to ensure that audit committees assess the qualifications and experience of statutory auditors and their signing partners.

(iii) Disclosure requirements for auditor appointments: A standardized format for disclosures regarding statutory and secretarial auditor appointments or re-appointments is proposed to ensure uniformity and transparency.

(iv) Approval process for Related Party Transactions ("RPTs") by subsidiaries: SEBI proposes introducing monetary thresholds in addition to percentage-based criteria for audit committee approvals to align with materiality norms.

(v) Clarifications on RPT Provisions: SEBI aims to clarify definitions and applicability of RPT provisions, particularly concerning related parties of subsidiaries and exemption criteria for RPT approvals.

SEBI has invited stakeholders to submit their comments and suggestions by 28.02.2025. Feedback can be provided via SEBI's designated online portal or emailed to consultationcfd@sebi.gov.in.

CEA issues procedure for verification of captive generation status of generating plants for plants and users are located in more than one state

Central Electricity Authority ("CEA") on 10.02.2025 has issued Procedure for Verification of Captive Generation status of Generating Plants located in more than one state ("Procedure for Verification of CGP")[4]. The key highlights of the Procedure for Verification of CGP are *inter-alia* as follows:

(i) The Procedure for Verification of Captive Generating Plant ("CGP") shall be applicable on all power plants and consumer who wish to submit claim for verification as CGP and associated captive user to the Authority in terms of Rule 3(3) of the Electricity Rules, 2005 ("Electricity Rules").

(ii) As per Clause 5 of the Procedure for Verification of CGP, CEA has been mandated to verify the captive status. Further, such verification shall be done in accordance with the conditions of CGP provided under the Procedure for Verification of CGP in terms of Rule 3 of the Electricity Rules.

(iii) Clause 6 of the Procedure for Verification of CGP provides for general conditions which prescribes compliance of the requirement of Rule 3 of the Electricity Rules. Further, in terms of Clause 6.5 and 6.6 of the Procedure for Verification of CGP, the consumption of electricity by a subsidiary company and holding company respectively of a Captive User shall also be admissible as consumption by the Captive User.

(iv) The test of proportional consumption in case of the group captive users except cooperative society, shall be on actual energy consumption by captive users, determined on an annual basis and in proportion to the shares in ownership of the power plant within a variation not exceeding ten percent.

(v) Clause 8 of the Procedure for Verification of CGP further provides for documents to be submitted for verification by both categories, namely: (a) generating plant owned by a company registered under the Companies Act, 2013 and (b) generating plant owned by a cooperative society.

(vi) Clause 9 of the Procedure for Verification of CGP provides for criteria for verification of consumption in terms of Rule 3 of the Electricity Rules. Verification n criteria of consumption shall be based on the net electricity generated and metered at a metering point of the generating station by the interface meter, from the generating unit(s) in a generating station.

(vii) In terms of Clause 10 of the Procedure for Verification of CGPs, captive users, and Energy Storage Systems ("ESS") must install real-time interface meters with

[3] Governance Consultation Paper for Listed Entities.

4 Procedure for Verification of Captive Generation status of Generating Plants.

communication facilities, as per CEA Metering Regulations. ESS shall be considered as part of CGP ownership only if it is used for generation.

(viii) Clause 12 of the Procedure for Verification of CGP further provides for appeal mechanism against the decision of the verifying authority wherein the first appeal shall be made to the Chief Engineer, Legal Division, CEA within 30 days from the receipt of the decision of the verifying authority.

(ix) A second appeal can be preferred to a committee constituting of member (E&C), Member (GO&D) and Chief Engineer (PDM&LF), CEA. Chief Engineer (PDM&LF) shall be the member Convener of the committee which shall be filed within 30 days from the receipt of the decision of the first appeal.

GOVERNMENT NOTIFICATIONS

MCA extends deadline for Mandatory Dematerialization of Securities for Private Companies

The Ministry of Corporate Affairs (MCA) has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2025 ("Amendment to Allotment Rules")[5] through G.S.R. 131(E) dated 12.02.2025, amending Rule 9B(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("Allotment Rules"). The Amendment to Allotment Rules provides additional time to certain private companies for complying with dematerialization requirements prescribed under Rule 9(B) of the Allotment Rules.

A private company, except a Producer company, which was not a small company as of 31.03.2023, is now allowed to comply with Rule 9B(2) of the Allotment Rules by 30.06.2025. This provides an extension for non-small private companies to transition to dematerialization of securities in line with regulatory requirements.

The amendment is effective immediately from the date of publication in the Official Gazette..

MOP issued Tariff Based Competitive Bidding Guidelines for Procurement of Storage Capacity/ Stored Energy from Pumped Storage Plants.

The Ministry of Power on 06.12.2025 issued Tariff Based Competitive Bidding Guidelines for Procurement of Storage Capacity/ Stored Energy from Pumped Storage Plants[6] ("Guidelines for Procurement of Storage Capacity/ Stored Energy") with the objective to promote the development of Pumped Storage Plants (PSPs) and provide a transparent, fair, standardized procurement framework based on open competitive bidding with appropriate risk-sharing between various stakeholders. The key highlights of the Guidelines for Procurement of Storage Capacity/ Stored Energy are as follows:

A. Applicability

The Guidelines for Procurement of Storage Capacity/ Stored Energy are applicable on the power developers and both the intermediary and end procurers. Further, the Guidelines for Procurement of Storage Capacity/ Stored Energy are applicable for the procurement of storage capacity or stored energy by the Procurers from existing, under-construction or new PSP projects.

B. Clarification and Modification

In reference to the clarifications and modifications, the Guidelines for Procurement of Storage Capacity/ Stored Energy provide as follows:

(i) The Procurer shall seek prior approval of the Appropriate Commission for deviations from the process defined in the Guidelines for Procurement of Storage Capacity/ Stored Energy before the initiation of the bidding process itself.

(ii) However, if the Procurer while preparing the Bid Documents and other Project Agreements, provides detailed provisions that are consistent with Guidelines for Procurement of Storage Capacity/ Stored Energy, such detailing shall not be considered as deviations from Guidelines for Procurement of Storage Capacity/ Stored Energy.

(iii) In the event of any ambiguity, difficulty, or need for modification in interpreting or implementing these Guidelines, the Ministry of Power shall have the authority to provide clarification.

C. General Conditions of the Bid

The Guidelines for Procurement of Storage Capacity/ Stored Energy lays the General Conditions of the Bid ("GCB") which provides for the following:

(i) Request for Selection ("RFS") documentation, bid process and bid responsiveness.

(ii) The GCB also provides for eligibility and qualification criteria whereunder the general eligibility criteria has been provided.

(iii) The GCB further stipulates the procedure for submission and evaluation of bids submitted by the bidders.

[5] MCA extends deadline for Mandatory Dematerialization of Securities for Private Companies.

6 Tariff Based Competitive Bidding Guidelines for Procurement of Storage Capacity/ Stored Energy from Pumped Storage Plants.

D. Special Conditions of the Bid

The Guidelines for Procurement of Storage Capacity/ Stored Energy lays the Special Conditions of the Bid ("SCB") which provides for the following:

(i) Mode of procurement under two categories: (a) Mode 1: for procurement from a PSP developed on a site identified by the Procurer and (b) Mode 2: for procurement from a PSP developed on a site identified by the bidder or an already commissioned PSP or under development PSP.

(ii) Indicative Timelines under Mode 1 and Mode 2 of the procurement wherein under Mode 1, the power purchase agreement shall be signed within 285 days from the date of issuance of bid documents. For Mode 2, the power purchase agreement shall be signed within 255 days from the date of issuance of bid documents.

(iii) The SCB further provides for bidding parameters, minimum bid capacity along with the technical and financial eligibility criteria.

(iv) The SCB also lays down the technical requirements under the bid documents along with the submission of Earnest Money Deposit ("EMD") and Performance Guarantee ("PG").

E. General Conditions of the Contract

The General Conditions of the Contract ("GCC") provided under the Guidelines for Procurement of Storage Capacity/ Stored Energy *inter-alia* provides for the following:

(i) Contract award and conclusion along with the term of the power purchase agreement.

(ii) Liquidated Damages, terms of procurement, deviation settlement mechanism.

(iii) Transmission connectivity, commencement of supply, payment security mechanism, force majeure.

(iv) Event of default, change in law, construction and performance monitoring and dispute resolution mechanism.

F. Special Conditions of the Contract

The Special Conditions of the Contract ("SCC") provided under the Guidelines for Procurement of Storage Capacity/ Stored Energy *inter-alia* provides for the following:

(i) Performance parameters, additional liquidated damages for performance shortfall.

(ii) Additional terms of procurement, financial closure, codes & standards, and design & safety.

MoEFCC issued draft notification issuing Draft Environment (Protection) Amendment Rules, 2025.

The Ministry of Environment, Forest and Climate Change ("MoEFCC") on 07.02.2025 issued Draft Notification under the Environment (Protection) Amendment Rules, 2025[7] ("Draft Notification") for amendment of the Environment (Protection) Rules, 1986.

MoEFCC has thus proposed the insertion of the following note after Sr. No. 5A under Schedule I of the Environment (Protection) Rules, 1986:

MoEFCC in consultation with the Central Electricity Authority ("CEA") and the Central Pollution Control Board ("CPCB") may, on case-to-case basis, through an order, grant exemption to thermal power plants from installation of cooling towers.

Further, MoEFCC has invited stakeholders' comment, suggestions and objections on the proposal contained in the Draft Notification.

The Draft Notification further states that the Draft Notification shall be taken into consideration on or after the expiry of a period of sixty days from the date on which copies of the Gazette containing Draft Notification are made available to the public.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that an oral undertaking falls within the scope of arbitration clause.

The Supreme Court in its judgement dated 10.02.2025 in *AC Choksi Share Broker Private Limited v. Jatin Pratap Desai & Anr.*[8] held that an oral contract undertaking joint and several liability falls within the scope of an arbitration clause.

The Supreme Court held that an oral contract undertaking joint and several liability falls within the scope of the arbitration clause and the arbitral tribunal can exercise its jurisdiction in such cases. It was observed that under Section 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") courts must only determine whether the court under Section 34 of the Arbitration Act has exercised its jurisdiction properly and rightly without extending its scope.

Supreme Court held that interference under Section 37 of the Arbitration Act cannot travel beyond the

[7] Draft Notification under the Environment (Protection) Amendment Rules, 2025.

8 SLP (C) No. 18393 of 2021.

restrictions laid down under Section 34 of the Arbitration Act.

The Supreme Court by its judgment dated 27.01.2025 in *Somdatt Builders – NCC – NEC (JV) v. National Highways Authority of India & Ors.*[9] set aside the judgment passed the High Court of Delhi under Section 37 of the Arbitration Act. The Supreme Court held that the interference by court under Section 37 Arbitration Act cannot go beyond the thresholds provided under Section 34 of the Arbitration Act.

The Supreme Court further held that court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.

The Supreme Court further placed reliance on its judgment in *Reliance Infrastructure Ltd. v. State of Goa*[10] and observed that a great deal of restraint is required to be shown while examining the validity of an arbitral award when such an award has been upheld, wholly or substantially, under section 34 and that frequent interference defeats the very purpose of the Arbitration Act.

High Court of Delhi holds that the arbitral award cannot be set aside solely on the ground that the appointment of the arbitrator was illegal in view of Section 12(5) of the Arbitration Act.

The High Court of Delhi in its judgement dated 11.02.2025 in the matter of *Bhadra International India Pvt. Ltd. Vs. Airport Authority of India*[11] held that the arbitral award cannot be set aside solely on the ground that the appointment of the arbitrator was illegal in view of Section 12(5) of the Arbitration Act when no such objections were raised before the arbitrator or the court under Section 34 of the Arbitration Act.

The High Court held that that since no objections as to the appointment of the arbitrator were raised before the arbitrator or the court under Section 34 of the Arbitration Act, the arbitral award cannot be set aside solely on the ground that the appointment of the arbitrator was illegal in view of Section 12(5) of the Arbitration Act.

High Court of Madras held that there is no prohibition on filing of more than one application seeking extension of mandate of the arbitral tribunal under Section 29A of the Arbitration Act.

The High Court of Madras by its judgment dated 05.02.2025 in *Powergear Limited v. Anu Consultants*[12] allowed the application under Section 29A (5) of the Arbitration Act extending the mandate of the arbitrator for the second time. The High Court held that there is no statutory prohibition against filing more than one application under Section 29A of the Arbitration Act for extension of time, provided sufficient cause is demonstrated by an applicant.

The High Court analyzed Section 29A of the Arbitration Act and clarified that while the provision intends to ensure the timely completion of arbitration, it does not impose a restriction on the number of times an application seeking extension of the mandate of the arbitral tribunal can be filed.

The High Court observed that a restrictive interpretation of section 29A would result in injustice and that subsequent extension can be granted if sufficient cause is shown.

APTEL held damages cannot be imposed on solar power developers for delay in achieving the Schedule Commercial Operation Date not attributable to the solar power developers.

The Appellate Tribunal for Electricity ("APTEL") through its judgment dated 10.02.2025 in the matter of *M/s Solaire Surya Urja Private Limited v. Central Electricity Regulatory Commission and Ors.*[13] set aside the judgment of the Central Electricity Regulatory Commission ("CERC") and held that CERC erred in refusing to extend the Schedule Commercial Operation Date ("SCOD") of the solar power developer and imposing liquidated for delay in supply of power.

The Hon'ble APTEL held that the delay in supply of power by solar power developer beyond the SCOD was not attributable to the solar power developer. It was noted that the delay was occasioned on account of inability on the part of Rajasthan Rajya Vidyut Prasaran Nigam Limited i.e., State Transmission Utility of State of Rajasthan to make available the evacuation transmission system for the power project on or before the SCOD.

It was further observed that when the delay on the part of the solar power developer to supply power is mainly due to external factors i.e., either in the absence of or delay in establishment of the evacuation transmission system, it would not be justified to hold the solar power developer liable for liquidated damages.

APTEL provides grounds on which review of its judgement/order can be sought.

APTEL through its judgment dated 07.02.2025 in the matter of *Jindal India Thermal Power Limited v Central Electricity Regulatory Commission & Anr*[14]. partly allowed the review of judgement dated 31.07.2024 passed in Appeal No. 78 of 2022.

[9] Civil Appeal No. 2058 of 2012.
[10] (2024) 1 SCC 479.
[11] FAO (OS) (COMM) 23/2025 & FAO (OS) (COMM) 24/2025.
[12] Application No.101 of 2025.
[13] Appeal No. 126 of 2022.
14 RP No. 11 of 2024.

APTEL observed that a review petition can be allowed in case of discovery of a new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of party seeking review or could not be produced when the judgement/order was passed.

APTEL observed that the expression "error apparent on the face of record" used in Order XLVII Rule 1 of the Code of Civil Procedure ("CPC"), which specifies the grounds on which review of a judgment/order can be sought, indicates an error which is self-evident and staring in the eye and not an error which has to be deducted by the process of reasoning.

Further, it was observed that the power of review can be exercised only where a glaring omission or a patent mistake is found and can be exercised for the correction of such error, not to substitute a view for the reason that a review petition cannot be permitted to be an appeal in disguise.

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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