

SAGUS SPEAKS



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

REGULATORY & POLICY UPDATES

SEBI removes mandatory 1% deposit required for issue of securities to the public.

The Security Exchange Board of India (“SEBI”) through its circular dated 21.11.2024¹ (“SEBI Circular”) has withdrawn the mandatory requirement to deposit 1% of the issue size available for subscription to the public with the designated stock exchange by the issuer company under Regulation 38 (1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”) and the Master-Circular dated 07.11.2022 which provides that the amount of

1% shall be released to the issuer only after obtaining the NOC from SEBI.

The SEBI Circular immediately came into effect on 21.11.2024. The stock exchanges are instructed to create a joint standard operating procedure (sop) for the release of 1% security deposits that were deposited by issuers prior to the amendment in accordance with the ICDR Regulations.

SEBI notifies SEBI (Alternative Investment Funds) (Fifth Amendment) Regulations 2024.

SEBI has notified the SEBI (Alternative Investment Funds) (Fifth Amendment) Regulations 2024² (“AIF Amendment

¹ Sebi Circular dated 21.11.2024

² Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024

Regulations”) amending the SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”) on 18.11.2024. Key provisions of the AIF Amendment Regulations are as follows:

- i. Regulation 20 of AIF Regulations which provides for general obligations and responsibilities of Alternative Investment Funds (“AIFs”), has been amended, to include two new sub-regulations after sub-regulation 20(20) as mentioned below:
 - (a) Regulation 20(21)- Investors in an AIFs scheme will have rights in proportion to their commitment in each investment and in the distribution of proceeds. However, schemes established prior to AIF Amendment Regulations, where investor rights, are not proportional to their commitment and are not exempted, will be dealt with in a manner specified by SEBI.
 - (b) Regulation 20(22)- The rights of investors in an AIF scheme, other than those outlined in Sub-Regulation (21), must be *pari-passu* in all respects. However, differential rights may be granted to select investors, provided these rights do not affect the interests of other investors. Further, if an AIF has already issued any differential rights prior to the AIF Amendment Regulations, and these rights do not fall within the first proviso of Sub-Regulation (22), will be dealt with in a manner as specified by the Board.
- ii. Regulation 19B of AIF Regulations which is applicable to angel funds and schemes launched by such angel funds shall be exempt from the aforementioned provisions of Regulation 20(21) and Regulation 20(22).

CCEA approved the Income Tax Department project for upgrading PAN.

The Cabinet Committee on Economic Affairs (“CCEA”) on 25.11.2024 has approved the Income Tax Department’s Permanent Account Number (PAN) 2.0 Project (“PAN 2.0 Project”)³.

The key features of PAN 2.0 Project are as follows:

- i. PAN 2.0 Project shall be a single portal to comprehensively dealing with the issues/matters related to permanent account number and tax deduction and collection account number, including application, updates, corrections, Aadhaar-PAN linking, re-issuance requests, and even online PAN validation.

- ii. Eco-friendly paperless procedure to reduce paperwork.
- iii. PAN will be issued free of cost, with quicker processing time.

The Pan 2.0 Project aims to protect personal and demographic data through enhanced security measures, including a PAN data vault.

KERC issued Karnataka Electricity Regulatory Commission (Fee) Regulations, 2024.

The Karnataka Electricity Regulatory Commission (“KERC”) on 18.11.2024 notified the Karnataka Electricity Regulatory Commission (Fee) Regulations, 2024⁴ (“KERC Fee Regulations 2024”). Further, in terms of Regulation 6(1) of the KERC Fee Regulations, 2024, KERC has repealed the earlier applicable Karnataka Electricity Regulatory Commission (Fee) Regulations, 2016.

Regulation 3(i) (b) of the KERC Fee Regulations, 2024 provides that every application for grant of license under Section 14 of the Electricity Act, 2003 (“Electricity Act”) shall be accompanied with a fee of Rs. 50,000/- till the time no fee is prescribed by the State Government under Section 15 read with Section 180(2) (a) of the Electricity Act.

Regulation 4 of the KERC Fee Regulations, 2024 provides for schedule of fee payable for the respective application / petition / annual license which is provided below as Annexure A.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that referral courts should not undertake detailed examination of factual matrix at the stage of appointment of arbitrator.

The Supreme Court of India through its judgement dated 07.11.2024 in the matter of *Goqii Technologies Private Limited v. Sokrati Technologies Private Limited*⁵ held that referral courts must confine their analysis to the *prima facie* existence of an arbitration agreement and should not undertake detailed examination of factual matrix while deciding a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“A&C Act”).

The Supreme Court relied on the judgment of *SBI General Insurance Co. Ltd. v. Krish Spinning*⁶ wherein it was held that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of *prima facie* existence of the arbitration agreement.

The Supreme Court observed that the determinations of frivolity or merit are the prerogative of the arbitral tribunal and should not be decided at the referral stage as the arbitral

³PAN 2.0 Project

⁴ Karnataka Electricity Regulatory Commission (Fee) Regulations, 2024.

⁵ Civil Appeal No. 12234 of 2024.

⁶ Civil Appeal No. 7821 of 2024.

tribunal constituted would be equally capable of adjudicating and deciding the merits of the case.

Supreme Court held that the existence of a “prima facie case” alone is not sufficient to appoint a Court Receiver.

The Supreme Court on 12.11.2024 passed an order in the case of *Hitesh Bhuralal Jain v. Rajpal Amarnath Yadav & Ors.*⁷ and held that mere *prima facie* case or conduct alone are not sufficient causes to appoint a court receiver

The Supreme Court reiterating the settled position of law noted that a court receiver would not be appointed until there are compelling reasons for the same and should also be backed by evidence showing that the property would deteriorate if there was no court intervention in a timely manner.

Supreme Court held that ‘sufficient cause’ under section 29A of the Arbitration and Conciliation Act, 1996 should be interpreted in the context of facilitating effective dispute resolution.

The Supreme Court by its judgement dated 22.11.2024 in the matter of *M/S Ajay Protech Pvt. Ltd. v. General Manager & Anr.*⁸ held that the extension of arbitral tribunal’s mandate under Section 29A (4) of the A&C Act can be allowed either before or after the expiry of the statutory period under Section 29A (1) and 29A (3) of the A&C Act.

The Supreme Court relied on its judgement passed in the matter of *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*⁹ to conclude that an application for extension can be filed either before or after the termination of the arbitral tribunal’s mandate upon expiry of the statutory and extendable period.

The Supreme Court further observed that the phrase ‘sufficient cause’ under section 29A of the A&C Act must take color from the purpose of the arbitration process.

Delhi High Court held that a claim for liquidated damages must reflect the actual loss suffered by a party in a contractual dispute.

The High Court of Delhi, through its judgment dated 20.11.2024 in the matter of *Indian Oil Corporation Ltd. v. M/S Fiberfill Engineers*¹⁰ held that a party claiming liquidated damages must demonstrate that it has suffered loss due to breach of contract.

The High Court relied on the judgment of *Mahanagar Telephone Nigam Ltd. v. Finolex Cables Limited*¹¹ whereby it was observed that a party claiming liquidated damages under

Section 74 of the Indian Contract Act, 1872, is entitled only to ‘reasonable compensation’ not exceeding the amount specified. Further, even in a contract, where it is difficult to prove the actual damage or loss, proof thereof is not dispensed with to arrive at ‘reasonable compensation’.

The High Court analyzing all facts and circumstances of the case emphasized that while parties may agree to liquidated damages clauses, these must align with the actual losses incurred and should not be construed as penalties unless explicitly stated.

Delhi High Court held that parties cannot invoke writ jurisdiction to circumvent the statutory mandate under Section 19 of the Micro, Small And Medium Enterprises Development Act, 2006.

The High Court of Delhi, through its judgment dated 21.11.2024 in the matter of *Omaxe Ltd v. Micro and Small Enterprises Facilitation Council and Anr.*¹² held that writ jurisdiction cannot be invoked to challenge an arbitral award, only to circumvent statutory requirement of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”).

The High Court dismissed the writ petition *in-limine* and held that the A&C Act provides a self-contained framework for challenging arbitral awards wherein Section 5 has been specifically introduced to minimize judicial interference.

The High Court observed that the mandatory pre-deposit requirement under Section 19 of the MSMED Act is a legislative mandate intended to discourage frivolous challenges and ensure timely payments to micro and small enterprises.

CERC held that goods and services tax is payable by a party on liquidated damages if the same is applicable as per the provisions of the Goods and Services Act, 2017.

The Central Electricity Regulation Commission (“CERC”) through its order dated 25.11.2024 in the matter of *Jindal India Thermal Power Ltd. & Anr. v. BSES Rajdhani Power Limited*¹³ held that in case where a Goods and Services Tax (“GST”) is applicable and payable by a party, such payment is also to be made on the liquidated damages arising out of breach of contract.

CERC observed that merely because a party has quoted single tariff inclusive of all taxes, duties, cess, etc., does not mean that if a statute provides levy and collection of tax in a particular manner or on a particular transaction or entity, the

⁷ SLP (Civil) Diary No(s). 51132/2023.

⁸ SLP (Civil) No. 2272 of 2024.

⁹ 2024 SCC Online SC 2494.

¹⁰ FAO (OS)(COMM) 114 of 2019.

¹¹ 2017 SCC Online Del 10497.

¹² W.P. (C) 16112 of 2024.

¹³ Petition No. 75/MP/2022.

party will not pay such taxes, duties, cess, merely because it has quoted an all-inclusive tariff.

CERC further held that the levy and collection of GST are exclusively governed by the provision of Goods and Services Act, 2017 (“GST Act”).

CERC relying on Section 97(2) and Section 95(a) of the Central Good and Services Act, 2017 (“CGST Act”) held that consideration on the subject of applicability and determination of GST is vested with the authority constituted under Section 96 of the CGST Act. Therefore, such issues regarding the levy of GST on liquidated damages squarely fall under Section 97(2) of the CGST Act.

CERC observed that Section 162 of CGST Act puts a bar on the jurisdiction of civil courts in dealing with or deciding any question arising from or relating to anything done or purported to be done under the CGST Act.

Telangana High Court held that arbitration clause does not automatically extend across multiple agreements between the same parties unless there is no integral connection between the agreements.

The High Court of Telangana through its judgement dated 22.11.2024 in the matter of *PSM Energy Pvt. Ltd. v. ZAM Engineering and Logistics Pvt. Ltd.*¹⁴ held that where multiple agreements are interconnected and form part of the single commercial transaction, the presence of an arbitration clause in one or more agreements can justify referring all disputes, involving all agreements and parties to arbitration.

In the present case, parties entered into an operational lease agreement, wherein PSM Engineering defaulted in payment. Subsequently, PSM Energy and ZAM Engineering entered into Memorandum of Understanding (“MoU”) in furtherance of operational lease agreement. Thereafter, ZAM Engineering entered into a joint venture agreement with defendants. However, ZAM Engineering did not perform its obligations under the joint venture agreement and Engineering failed to pay rents, PSM Energy filed a case against all the defendants under the operational lease agreement.

ZAM Engineering contended that as per arbitration clause under joint venture agreement, commercial court does not have jurisdiction. However, the commercial court refused to accept such submission.

The High Court, while relying on the judgment of *Ameet Lalchand Shah v. Rishabh Enterprises and Anr*¹⁵, observed that the commercial arrangement between the parties should be interpreted with business efficacy and not be restricted on account of technicalities or allegations of fraud unless substantial ground exists. The High Court held that

operational lease agreement and joint venture agreement were not interconnected. Thus, no reliance can be placed on the arbitration clause under joint venture agreement to contend that commercial court does not have jurisdiction.

¹⁴ Commercial Court Appeal No. 20 of 2024.

¹⁵ (2018) 15 SCC 678.

ANNEXURE A

Sr. No.	Particulars	Amount of Fee
1.	<i>Annual Licensee Fee:</i>	
i.	Transmission Licensee	State Transmission Utility – Rs. 20,00,000/- per annum Other Transmission Licensees – Rs. 1,00,000/- per MW or part thereof of the transmission capacity subject to maximum of Rs. 20,00,000/- per annum.
ii.	Distribution Licensee other than Rural Electric Co-operative Societies and SEZ	Rs. 20,00,000/- per annum
iii.	Distribution Licensee - Rural Electric Co-operative	Rs. 3,00,000/- per annum
iv.	Special Economic Zone	Rs. 3,00,000/- per annum
v.	Electricity Trader	As specified in the KERC (Eligibility conditions and Duties of Electricity Trader) Regulations, 2004.
2.	<i>Court fee for filing petition before KERC:</i>	
i.	Petition for amendment of license under Section 18 of the Electricity Act	Rs. 2,50,000/-
ii.	Petition for specific conditions of deemed distribution license de-notification of licensed area and amendment of license under Section 18 of the Electricity Act.	Rs. 1,00,000/-
iii.	Petition for revocation of transmission and distribution license under Section 19(2) of the Electricity Act	Rs. 10,00,000/- (in case of licensee) Rs. 1,00,000/- (in case of any other licensee)
iv.	Petition for determination of tariff for generating companies	Rs. 7,500/MW or part thereof the installed capacity in case of conventional fuel-based plant. Rs. 3,000/MW or part thereof of the installed capacity subject to maximum of Rs. 25,000/- in case of renewable energy sources including co-generation.
v.	Petition for approval of Annual Revenue Requirement / determination of transmission tariff	0.030% of the expected revenue for the year for which the tariff is to be determined by the Commission subject to a minimum of Rs.2,00,000/-
vi.	Petition for approval of Annual Revenue Requirement / determination of tariff for distribution and retail sale of electricity.	0.030% of the expected revenue for the year for which the tariff is to be determined by the Commission subject to a minimum of Rs.2,00,000/-
vii.	Petition for Annual Performance Review and approval of revised ARR of the Licensee under the MYT framework during the control period, as may be necessary	State Transmission Utility – Rs. 10,00,000/- Other Transmission Licensee – Rs. 5,00,000/- State Distribution Utility – Rs. 20,00,000/- Distribution Licensee – Rural Electric Cooperative Society – Rs. 5,00,000/-

		Special Economic Zones – Rs. 2,50,000/- Others – Rs. 1,00,000/-
	viii. Petition for review of order of KERC (except Tariff Orders)	Rs. 25,000/- for licensees and generating companies. Rs. 10,000/- for others.
	ix. Petition for review of tariff orders	Rs. 1,00,000/- for licensees and generating companies Rs. 15,000/- for others.
	x. Petition under Section 11 or 11(2) of the Electricity Act	Rs. 50,000 per Petition
	xi. Petition under Section 142 of the Electricity Act	Rs. 2,000/-
	xii. Petition for adjudication of disputes under the Electricity Act.	In cases of disputes with monetary claim – 1% of the claim amount subject to minimum of Rs. 50,00,000/- and maximum of Rs. 1,00,00,000/- In other cases – Rs. 50,000/-
	xiii. Petition not covered above, seeking order of KERC	Rs. 10,000/-
3.	Application for prior approval under Section 17 of the Electricity Act for each transaction	Rs. 2,00,000/- for State Transmission Utility and Distribution Licensee Rs. 50,000/- for other licensees
4.	Processing fee for approval of Power Purchase / Procurement including approval of PPA, if any: Note: When Tariff is adopted under Section 63 of the Electricity Act, no processing fee for approval of PPA shall be paid.	For conventional fuel-based plant – Rs. 7,500 per MW or part thereof of the contracted capacity For renewable energy source including co-generation - Rs. 7,500 per MW or part thereof of the contracted capacity
5.	Processing fee for approval of transmission agreement entered into by the transmission licensee with the distribution licensees/ other transmission licensee or any other agencies.	Rs. 7,500 per MW or part thereof of the contracted capacity
6.	Application for adoption of tariff for short / medium / long term power purchase through competitive bidding	Rs. 500 per MW or part thereof of the contracted capacity per annum subject to a minimum of Rs. 10,000/- per application.
7.	Inspection of records of KERC	Rs. 500 per day
8.	Issue of certified copies of documents / orders of KERC	Rs. 2 per page.

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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