SAGUS SPEAKS

Sagus Legal
Advisors & Advocates

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

REGULATORY & POLICY UPDATES

SEBI issued circular to introduce the liquidity window facility for investors in debt securities through stock exchange mechanism.

The Securities and Exchange Board of India ("SEBI") issued a circular on 16.10.2024[1], introducing the Liquidity Window Facility ("LWF") for investors in debt securities through the stock exchange, effective from 01.11.2024. This initiative aims to improve liquidity, particularly for retail investors. It allows issuers to adopt standardized norms for this facility using put options exercisable on specified dates, as outlined in Regulation 15 of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, which permits early redemption of debt securities before maturity. Key provisions of the LWF Circular are as follows:

i. The issuer entity issuing debt securities which are proposed to be listed can opt to offer this facility at the time of issuance, available on a per-ISIN basis to specified eligible investors, i.e., investor must hold debt securities in demat form to access the LWF.
ii. The issuer must obtain prior approval from its board of directors, with the implementation and outcomes monitored by the Stakeholders Relationship Committee (SRC) or by the board, as applicable. The LWF should be fair, transparent, non-discriminatory among eligible investors, and aligned with the board's standards for market integrity and risk management.

[1] SEBI circular on introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism.

© Sagus Legal | All rights reserved

iii. The issuer may offer the LWF only after 1 (one) year from the debt securities' issuance date, with no re-issuances allowed under the designated ISINs.
iv. The issuer must set and disclose an aggregate limit for put options on eligible debt securities, which must be at least 10% of the final issue size, with optional sub-limits per liquidity window. If requests exceed the sub-limit, they will be accepted on a proportional basis.
v. The valuation of debt securities will take place 'T-1' day to the liquidity window opening, with payments made to investors within 1 (one) working day after the window closes.
vi. The issuers will report the liquidity window outcomes to stock exchanges and maintain transparency on their websites regarding available ISINs and other relevant information.

SEBI issued circular to clarify usage of 3 –in –1 type account for making an application in public issue of securities.

SEBI issued a clarification vide its circular on 18.10.2024[2] for the usage of 3-in-1 type accounts (*i.e.*, integrating trading, demat, and bank accounts) for making an application in public issue of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitized debt instruments. This option is in addition to physically submitting forms at Self-Certified Syndicate Bank branches using the Application Supported by Blocked Amount payment mechanism, as outlined in the Master Circular no. SEBI/HO/DDHS/PoD1/P/CIR/2024/54 dated May 22, 2024, to ensure a valid and convenient option for investors.

SEBI issued the circular to streamline the inclusion of Mutual Fund units in the SEBI (Prohibition of Insider Trading) Regulations, 2015.

SEBI on 22.10.2024[3] issued the circular ("Circular on Mutual Fund") in order to streamline the inclusion of trading unit of mutual funds in the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations"). The aforesaid inclusion was executed vide notification dated 24.11.2022 with implementation date as 01.11.2024. The Circular on Mutual Fund will come into force from 01.11.2024. Key highlights of the Circular on Mutual Fund are as follows:

i. An asset management company ("AMC") must disclose the details of the holdings of the designated persons of AMCs, trustees and their immediate relatives (on aggregate basis) from 01.11.2024 on quarterly basis. Holdings as of 31.10.2024 must be reported to the stock exchanges by 15.11.2024 with subsequent quarterly disclosures due within ten days of each quarter's end, in the format outlined in Annexure A of the Circular on Mutual Fund.
ii. Under Regulation 5(E)(2) of PIT Regulations, any transactions in an AMC's own mutual fund units by designated persons, trustees, and their immediate relatives that exceed INR 15 lakhs per PAN across all schemes (excluding exempted schemes) in a single or cumulative transaction over a calendar quarter must be reported to the AMC's Compliance Officer within 2 (two) business days from the date of such transaction.
iii. For mutual funds units, trustees, AMCs and their employees and directors from 01.11.2024 must comply with PIT Regulations as the guidelines enumerated under Clause 6.6 of the Master Circular for Mutual Funds dated 27.06.2024 will be no longer applicable for investments and redemption of mutual funds units. Any observed violations of the PIT Regulations must be reported in the format specified at Annexure C of the Circular on Mutual Fund.

RBI issued Directions for Central Counterparties

The Reserve Bank of India ("RBI") issued directions for Central Counterparties (CCPs) on 28.10.2024[4] ("RBI CCP Directions") under the Payment and Settlement Systems Act, 2007 ("PSS Act") which has repealed its earlier directions issued for CCPs on 12.06.2019. CCPs are financial institutions that facilitate trading in various markets by acting as intermediaries between buyers and sellers. The RBI CCP Directions are applicable to both domestic central counterparties authorized to operate in India and foreign CCPs recognized by the RBI under PSS Act for their operations including clearing and settlement in India. Key highlights of the RBI CCP Directions are as follows:

i. CCPs must have a diverse board composition, including nominee and independent directors, ensuring independent oversight of management and strategic aims. The roles and responsibilities of the board encompass risk management, compliance oversight, and ensuring accountability to stakeholders.
ii. A minimum net worth of ₹300 crore is required for CCPs at the time of submitting its application to RBI. The RBI reserves the right to adjust this requirement based on its assessments.

[2] SEBI circular for clarifying the usage of 3 – in – 1 type accounts for making an application in public issue of securities.
[3] SEBI circular on streamlining the inclusion of Mutual Fund units in the SEBI (Prohibition of Insider Trading) Regulations, 2015.
[4] RBI Directions on CCPs.

© Sagus Legal | All rights reserved

iii. The authorized CCP shall be a public company limited by shares and any individuals wishing to acquire shares in CCP must meet specified "fit and proper" criteria.
iv. Any transfer of shares of 5% or more requires RBI approval. Further, an authorized CCP must notify RBI about any transfer or divestment of equity shares within 15 (fifteen) calendar days following the approval of its board of director for such transfer or divestment.
v. Foreign CCPs can apply for recognition to operate in India, provided they meet specific organizational and compliance requirements, aligning with international standards.

CERC notifies procedure for recovery of charges in case of deficit in deviation and ancillary service pool account.

The Central Electricity Regulatory Commission ("CERC") through its order dated 15.10.2024 in L-1/260/2021/CERC approved the detailed procedure for recovery of charges in case of deficit in the Deviation and Ancillary Service Pool Account ("Procedure for Recovery") prepared by the National Load Dispatch Centre ("NLDC") under CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2024 ("DSM Regulations")[5] The key highlights of the Procedure for recovery are as follows:-

i. The Procedure for Recovery is applicable from 16.09.2024 upto 31.03.2026, the said procedure is not applicable to cross-border entities.
ii. The surplus available based on the weekly account for payment of ancillary services in the regional Deviation and Ancillary Service Pool Account ("DASPA") shall be considered as follows (a) Net surplus available after payment of deviation charges, reactive energy charges payments and congestion charges of all the receivable entities, (b) net interest received in DSPA (due to delay in payment and bank interest), (c) congestion amount as defined in CERC (Power Market) Regulations, 2021 and (d) Till operationalization of the National Deviation and Ancillary Services Pool account, NLDC to maintain a separate account for congestion amount where power exchange will transfer the congestion amount.
iii. In case of deficit in the DSPA of a region, the surplus amount available in the DSPA of other regions will be used for settlement of payment. If this surplus amount is insufficient, the remaining deficit will be recovered from drawee Designated ISTS Customers ("DICs") in the ratio of their total block wise actual drawl as per Special Energy Meter ("SEM") reading at ISTS periphery and proportion of their General Network Access.
iv. The Regional Power Committee will prepare and issue the statement of charges for deviation on a weekly basis along with RPC Format SCUC_BB and RPC shall also issue monthly format SCUC_CC.
v. Regional Load Despatch Centers will assess the net deficit in their respective regional DASPA and provide details to NLDC. NLDC shall assess, on a weekly basis, the net deficit in the Deviation and Ancillary Pool Account on All India basis duly considering the Amount available in congestion amount account. Further, NLDC shall publish the net deficit recovery statement on All India basis as per the Format_ Net shortfall recovery and notify on its website.
vi. The drawee DICs shall pay the designated amount as per Format_ Net Shortfall Recovery in their respective regional DASPA within ten (10) days. In case of delay DICs shall pay simple interest @ 0.04% for each day of delay from the due date.
vii. Total shortfall towards payment of deviation, reactive, congestion charge, ancillary charges for the period prior to 16.09.24 shall be recovered from the drawee DICs in the ratio of (a) 50% of the total net shortfall in proportion to their actual drawl as per SEM at the ISTS periphery. Actual drawl shall be considered as per SEM at the ISTS for the period 16.09.2023 to 15.09.2024 and (b) The remaining 50% net shortfall shall be apportioned among the drawl DIC in proportion to their GNA. GNA, shall be considered as average GNA for the period October'23 to September'24 as per the notification of ISTS charges by NLDC
viii. NLDC will publish the net deficit recovery statement for the period prior to 16.09.24 as per Format_ Net shortfall Recovery_Legacy Dues. The net shortfall shall be recovered in equal instalments on a weekly basis in such a way that the total shortfall for the period prior to 16.09.2024 shall be recovered by the end of the financial year 2024-25.

CERC notifies CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2024

The CERC by its notification dated 23.10.2024 issued CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2024 ("IEGC First Amendment 2024") amending the CERC (Indian Electricity Grid Code) Regulations, 2023 ("IEGC"). The IEGC First Amendment 2024 will come into force from the date of publication in the official gazette except for the amendment to Clause 12 of Regulation 45 of IEGC which shall come into force from 01.04.2024. The key highlights of the IEGC First Amendment 2024 are as follows:

[5] Procedure for Recovery

© Sagus Legal | All rights reserved

i. Regulation 19(2)(b) of IEGC has been substituted with sub-Clauses (b) and (c) which provides that the period for injecting infirm power shall not exceed 1 (one) year from the date of first synchronisation for generating stations other than R.E. Energy Generating Stations ("REG") and Energy Storage Systems ("ESS") as per, and the period for injection of infirm power shall not exceed 45 (forty-five) days from date of first time energization and integration approval for REGs and ESSs, (except for hydro pump storage projects ESS).

ii. A proviso has been inserted in Regulation 19(3) of IEGC whereby request can be made for extending the aforesaid stipulated period up to three (3) months through an application to the Regional Load Desptach Center at least 10 (ten) days in advance of the completion of the stipulated period. For extension beyond three (3) months, an application has to be submitted to the commission by generating station or ESS (except for hydro pump storage projects ESS) least 15 (fifteen) days in advance of the completion of the stipulated period.

iii. Regulation 22(3)(d) of IEGC has been amended whereby the successful trial run of a wind turbine(s) shall now mean the flow of power and communication signal for a period of not less than four (4) hours on a cumulative basis in a single day.

iv. Regulation 27(2) of IEGC has been amended and now on declaration of commercial operation date, the scheduling of a generating station or unit will now start from 0000 hours of D+2 (where D is the date when a generating station intimates the commercial operation of the generating station or unit thereof) or the COD date declared by the Generator, whichever is later.

v. The Third Proviso to Regulation 45(12) of IEGC has been amended to provides for compensation to regional entity thermal generating stations whose tariffs are adopted under Section 63 of the Electricity Act 2003 ("EA 2003") for part load operations, in terms of the contract entered into with the beneficiaries, and in the absence of such provision in the contract, as per the mechanism already in force under CERC (IEGC) Regulations 2010. Further, the Fourth Proviso under Regulation 45(12) of IEGC has been amended to provide for compensation for part load operation for thermal generating stations whose tariffs are determined as per Section 62 of the EA 2003 as per the provisions of the applicable tariff regulations.

vi. Regulation 49(1)(l) of IEGC has been amended and now allows a generating station whose tariff is determined under Section 62 of the EA 2003 to sell its un-requisitioned surplus as available at 9:45 AM in the day-ahead market without the consent of the beneficiaries.

vii. A new sub-clause (v-a) has been added in Regulation 49(2) of IEGC which provides that in case a reginal entity generating station, whose tariff has been determined under Section 62 of EA Act, 2003, a schedule below Minimum Turndown Level ("MTL") for Off-Peak Hours but above MTL for Peak-Hours, can request NLDC to adjust the schedule below the MTL in the manner provided thereunder.

viii. Regulation 49(2)(a)(vi)(b) of IEGC has been amended whereby the condition for accommodation under the Security Constrained Economic Dispatch ("SCED") of the entire drawal schedule of the regional entity thermal generating station getting schedule below MTL, and wishes to arrange power scheduled by its buyers through SCED, has been deleted.

ix. The Proviso to Regulation 49(4)(a) of IEGC has been amended and now provides for scheduled transactions under temporary general network access can now also be revised in case of partial outages as per Regulation 49(7-a) of IEGC.

GOVERNMENT NOTIFICATIONS

MOP issues Draft Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2024 for stakeholders' comments.

The Ministry of Power ("MoP") through its notification dated 25.10.2024 has issued Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2024 ("LPS Amendment Rules"),[6] inviting stakeholder comments by 23.11.2024. The key highlights of the LPS Amendment Rules are as follows:

i. Rule 1 has been substituted to include all transmission licenses instead of inter-state transmission licensee as provided earlier.

ii. Sub-rule 6 has been added under Rule 5 of the Electricity (Late Payment Surcharge and Related Matters) Rules,

[6] Draft Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2024

© Sagus Legal | All rights reserved

2022 ("LPS Principal Rules") which states that any outstanding dues not informed by the distribution licensee and arising out of the court order after enforcement of LPS Principal Rules shall be settled in accordance with the procedure provided under the court order.

iii. In the event where no procedure is provided in the court order, the procedure provided under Rule 5(1) of the LPS Principal Rules shall apply.

iv. Where the court order is issued after the promulgation of the LPS Amendment Rules, the reference date of communication by the distribution licensee under Rule 5(2) shall be calculated from the date of passing of the court order.

v. Where the court order is issued prior to the promulgation of the LPS Amendment Rules, the reference date under Rule 5(2) shall be the date of enforcement of the LPS Amendment Rules.

vi. The distribution licensee is obligated to communicate the repayment schedule within 90 days from the reference date.

MOP issued draft amendment to the Guidelines for the Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Power Projects for stakeholder's comments.

The Ministry of Power ("MoP") through its notification dated 25.10.2024 has issued the draft amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected ("Draft Amendments to Guidelines for TBCB Power Procurement Process from grid connected RE Projects")[7] for: (i) Solar PV Power Projects (ii) Wind Power Projects (iii) Wind Solar Hybrid Power Projects and (iv) Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems, inviting stakeholders comments within 15 days. The key highlights of the Draft Amendments to Guidelines for TBCB Power Procurement Process from grid connected RE Projects are as follows:

A. ***Re: Solar PV Power Projects:***

i. Clause 3.3 has been added wherein it is stated that the request for selection may specify the sub-station(s) in Inter-State Transmission System ("ISTS") or Intra-State Transmission System ("InSTS") where the developers will connect the RE project.

ii. Clause 7.1 has been amended and the period of Power Purchase Agreement ("PPA") has been reduced from twenty (20) years to fifteen (15) years from the Scheduled Commencement of Supply Date ("SCSD").

iii. Clause 7.6(b) has been modified providing that in case of generator's failure to maintain supply corresponding to the minimum Capacity Utilization Factor ("CUF") for a continous period of 3 years, the procurers shall have the option to reduce generator's yearly minimum availability upon payment of lump sum damages equivalent to 24 (twenty-four) months or balance PPA period whichever is less of tariff for the supply obligation corresponding to reduction in availability or treat such failure of the Generator as an event of default and terminate the PPA.

iv. Clause 9.2.1(ii) has been added stating that the developer shall install and maintain GPS enabled Automatic Weather Station ("AWS") as per the standards and specifications of the Central Government agency.

v. Clause 9.2.1(iii) has been added and states that the technical criteria shall include provisions to ensure that the developer complies with applicable cyber security regulations, directives, guidelines issued by the Central Government Authorities dealing with cybersecurity.

vi. Clause 11.4 has been amended wherein the Distribution Licensee ("DL") or the Intermediary Procurer ("IP"), as the case may be, shall now approach the appropriate commission for adoption of tariff under Section 63 of the Electricity Act within 15 days of acceptance of Letter of Award ("LOA").

vii. Under Clause 12.1(a1) insurance surety bond has now been added for establishment of the earnest money deposit or Performance Bank Guarantee ("PBG"), as the case may be which is to be paid unconditionally, similar to bank guarantee or any other instrument approved in General Financial Rules as amended from time to time by Central Government.

viii. Clause 12.3 has been amended and states that the PBG (or alternative provided thereto) shall be returned to the generator within 45 days from the actual commencement of supply date instead of the scheduled commencement of supply date, as specified earlier.

ix. The approval for deviation shall now be obtained from the appropriate commission instead of the appropriate government.

B. ***Re: Wind Power Projects***

i. Clause 4.3 has been added wherein it is stated that the request for selection may specify the sub-station(s) ISTS in ISTS InSTS where the developers will connect the RE project.

[7] Draft Amendments to Guidelines for TBCB Power Procurement Process from grid connected RE Projects

© Sagus Legal | All rights reserved

ii. Clause 6.1 has been amended and the period of PPA has been reduced from twenty (20) years to fifteen (15) years from the SCSD.
iii. Clause 6.6(b) has been modified providing that in case of generator's failure to maintain supply corresponding to the minimum CUF for a continuous period of 3 years, the procurers shall have the option to reduce generator's yearly minimum availability upon payment of lump sum damages equivalent to 24 (twenty-four) months or balance PPA period whichever is less of tariff for the supply obligation corresponding to reduction in availability or treat such failure of the Generator as an event of default and terminate the PPA.
iv. Clause 8.2.1(ii) has been added stating that the developer shall install and maintain GPS enabled AWS as per the standards and specifications of the Central Government agency.
v. Clause 8.2.1(iii) has been added and states that the technical criteria shall include provisions to ensure that the developer complies with applicable cyber security regulations, directives, guidelines issued by the Central Government Authorities dealing with cybersecurity.
vi. Clause 11.4 has been amended wherein the DL or the IP, as the case may be, shall now approach the appropriate commission for adoption of tariff under Section 63 of the Electricity Act within 15 days of acceptance of LOA.
vii. Under Clause 12.1(a1), insurance surety bond has now been added for establishment of the earnest money deposit or PBG, as the case may be which is to be paid unconditionally, similar to bank guarantee or any other instrument approved in General Financial Rules as amended from time to time by Central Government.
viii. Clause 12.3 has been amended and states that the PBG (or alternative provided thereto) shall be returned to the generator within 45 days from the actual commencement of supply date instead of the SCSD, as specified earlier.
ix. Under Clause 18, the approval for deviation shall now be obtained from the appropriate commission instead of the appropriate government.

C. ***Re: Wind Solar Hybrid Power Projects***

i. Clause 5.3 has been added wherein it is stated that the request for selection may specify the sub-station(s) in ISTS or InSTS where the developers will connect the RE project.
ii. Clause 7.1 has been amended and the period of PPA has been reduced from twenty (20) years to fifteen (15) years from the SCSD.
iii. Clause 7.7(b) has been modified providing that in case of generator's failure to maintain supply corresponding to the minimum CUF for a continuous period of 3 years, the procurers shall have the option to reduce generator's yearly minimum availability upon payment of lump sum damages equivalent to 24 (twenty-four) months or balance PPA period whichever is less of tariff for the supply obligation corresponding to reduction in availability or treat such failure of the Generator as an event of default and terminate the PPA.
iv. Clause 9.2.1(ii) has been added stating that the developer shall install and maintain GPS enabled AWS as per the standards and specifications of the Central Government agency.
v. Clause 9.2.1(iii) has been added and states that the technical criteria shall include provisions to ensure that the developer complies with applicable cyber security regulations, directives, guidelines issued by the Central Government Authorities dealing with cybersecurity.
vi. Clause 12.4 has been amended wherein the DL or the IP, as the case may be, shall now approach the appropriate commission for adoption of tariff under Section 63 of the Electricity Act within 15 days of acceptance of LOA.
vii. Under Clause 13.1(a1) insurance surety bond has now been added for establishment of the earnest money deposit or PBG, as the case may be, which is to be paid unconditionally, similar to bank guarantee or any other instrument approved in General Financial Rules as amended from time to time by Central Government.
viii. Clause 13.3 has been amended and states that the PBG (or alternative provided thereto) shall be returned to the generator within 45 days from the actual commencement of supply date instead of the SCSD, as specified earlier.
ix. Under Clause 19, the approval for deviation shall now be obtained from the appropriate commission instead of the appropriate government.

D. ***Re: Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems***

i. Clause 3.3 has been added wherein it is stated that the request for selection may specify the sub-station(s) in ISTS or InSTS where the developers will connect the RE project.
ii. Clause 7.1 has been amended and the period of PPA has been reduced from twenty (20) years to fifteen (15) years from the SCSD.
iii. Clause 7.6(b) has been modified providing that in case of generator's failure to maintain supply corresponding

© Sagus Legal | All rights reserved

to the minimum CUF for a continous period of 3 years, the procurers shall have the option to reduce generator's yearly minimum availability upon payment of lump sum damages equivalent to 24 (twenty-four) months or balance PPA period whichever is less of tariff for the supply obligation corresponding to reduction in availability or treat such failure of the Generator as an event of default and terminate the PPA.

iv. Clause 9.2.1(ii) has been added stating that the developer shall install and maintain GPS enabled AWS as per the standards and specifications of the Central Government agency.

v. Clause 9.2.1(iii) has been added and states that the technical criteria shall include provisions to ensure that the developer complies with applicable cyber security regulations, directives, guidelines issued by the Central Government Authorities dealing with cybersecurity.

vi. Clause 11.4 has been amended wherein the DL or the IP, as the case may be, shall now approach the appropriate commission for adoption of tariff under Section 63 of the Electricity Act within 15 days of acceptance of LOA.

vii. Under Clause 12.1(a1) insurance surety bond has now been added for establishment of the earnest money deposit or PBG, as the case may be, which is to be paid unconditionally, similar to bank guarantee or any other instrument approved in General Financial Rules as amended from time to time by Central Government.

viii. Clause 12.3 has been amended and states that the PBG (or alternative provided thereto) shall be returned to the generator within 45 days from the actual commencement of supply date instead of the SCSD, as specified earlier.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that entries made in the balance sheets amounts to clear acknowledgement of debt.

The Supreme Court by its judgement dated 22.10.2024 in matter of *Vidyasagar Prasad v UCO Bank & Anr.*[8] held that entry made in the balance sheet coupled with the note of the auditor clearly amounts to acknowledgement of the liability.

In the present case UCO Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016. The same was contested by corporate debtor primary on ground of limitation. The corporate debtor contended that there is no clear and unequivocal acknowledgement of debt of the corporate debtor in the entries of the balance sheet. Thus, UCO Bank cannot have the benefit of Section 18 of the Limitation Act, 1963 to extend the period of limitation which commenced on 05.11.2014.

The court relying on the judgment of *Asset Reconstruction Company (India) Ltd. v Bishal Jaiswal*[9] held that there is a compulsion in law to prepare a balance sheet but no compulsion to make a particular admission, and whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.

Supreme Court held that royalty charged by municipal corporation for hoardings and advertisement cannot be termed as tax

The Supreme Court by its judgment dated 16.10.2024 in matter of *The Patna Municipal Corporation & Ors. v. M/s Tribro Ad Bureau & Ors.*[10] held that imposition of royalty cannot be equated with imposition of tax/levy, the nomenclature cannot be used interchangeably in law both carry starkly different imports and connotations.

In the present case Patna Municipal Corporation ("PMC") entered into an agreement with advertising agencies in 2005 to charge royalty of Re.1 per square foot per year for advertisements on its land, which was later increased to Rs.10 per square foot in 2007. After the enactment of the Bihar Municipal Act, 2007, PMC started working as per the new act and took actions against defaulting advertisers, including raising demand notices for unpaid royalties. The advertising agencies challenged these demands in the Patna High Court, where the single judge upheld the PMC's right to charge royalty but quashed the penalty. However, the Division Bench of the High Court ruled that PMC lacked the authority to levy taxes without proper legislative backing and regulations.

The court while relying on the judgment of *Mineral Area Development Authority v Steel Authority of India*[11] held that imposition of royalty by the municipal corporation cannot be termed as compulsory extraction to be termed as tax. The court further observed that once a party acquiesce to pay royalty, it would preclude from assailing a decision acquiesced, except where there is an inherent lack of jurisdiction, or the exercise of authority is perverse or malafide.

High Court of Delhi held that if the action of non-signatory aligns with those of signatories they are bound by the arbitration agreement.

The High Court of Delhi in its judgement dated 21.10.2024 in matter of *KKH Finvest Private Limited & Anr. v Jonas*

[8] Civil Appeal No. 1031 of 2022.
[9] (2021) 6 SCC 366.
[10] Civil Appeal No 11117 of 2024.
[11] Civil Appeal Nos. 4056-4064 of 1999.

© Sagus Legal | All rights reserved

Haggard & Ors.[12] held that if non-signatory actively participates in the performance of contract, and it actions align with those of the other members of the group, it gives the impression that the non-signatory is a 'veritable' party to the contract which contains the arbitration agreement.

The court further held that the assessment required to be undertaken by the court to arrive at prima-facie observation on whether the non-signatory is a 'veritable' party, the court is required to consider factors such as mutual intent, relationship between the signatories and non-signatories, commonality of subject matter, composite transactions and performance of the contract.

The court also observed that to infer the non-signatory's consent, its participation /involvement in the negotiation or performance of the contract must be positive, direct and substantial, rather than merely incidental. The burden of proof establishing the same lies on the party seeking to implead the non-signatories to the arbitration proceedings.

High Court of Bombay clarifies the jurisdiction for challenging the award made under MSMED Act

The High Court of Bombay through its judgment dated 16.10.2024 in the matter of *Gammon Engineers and Contractors Pvt. Ltd. v Rohit Sood*[13] held provisions of Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") are silent post passing of award. Thus, once the award is passed, the provisions of the Arbitration and Conciliation Act, 1996 ("A&C Act") would govern for the purpose of challenging the award and ascertaining the 'Court' before whom the application for setting aside the award is to be made.

The court further held that phrase 'jurisdiction' used in Section 18(5) of the MSMED Act is only for limited purpose for identification of the facilitation council where the supplier is located who would be the authority to whom the arbitration would be referred to. Thus, Section 18(5) of the MSMED Act overrides only Section 11 of the A&C Act which deals with appointment of arbitrator.

The court also observed that provisions of Section 18(4) of MSMED Act referring to the matter for arbitration would apply only in two cases. Firstly, where parties to dispute do not have an arbitration agreement. Secondly, if there is an arbitration clause in the agreement between the parties and it provides certain mechanism for appointment of an arbitrator,

High Court of Delhi held that issue of limitation is mixed question of law and fact and should be left for determination by the Arbitral Tribunal.

The High Court of Delhi, by its judgement dated 15.10.2024 in matter of *Home and Soul Private Limited v T.V. Today Network Limited*[14] held that issue of limitation, raised as a jurisdictional challenge under Section 16 of Arbitration and Conciliation Act, 1996 ("A&C Act"), is rarely a question of law. More often, it is a mixed question of law and fact.

The court observed that that it is within the arbitrator's jurisdiction, when considering the challenges under Section 16 of A&C Act, to decide whether to resolve the issue of limitation immediately or defer it until the parties have had the opportunity to lead the evidence. This deferral is necessary where the limitation issue requires factual determination, making it unsuitable for resolution purely on legal grounds.

The court further observed that it is within the arbitrator's discretion to defer the question of limitation until sufficient evidence is available. Challenging the same through a writ petition under Article 226 or 227 of the Constitution is neither appropriate or permissible unless there are compelling circumstances, such as order being manifestly perverse or contrary to established legal principles.

High Court of Bombay held award made by Facilitation Council/Tribunal by exercising jurisdiction vested in it, has to be challenged only by invoking Section 34 of A&C Act.

The High Court of Bombay in its judgment dated 22.10.2024 in matter of *M/s. Duro Shox Pvt. Ltd. v The State of Maharashtra & Ors.*[15] held that when the award is made by the Facilitation Counsil/ Tribunal by exercising jurisdiction vested in it, however erroneous the award may be, the same has to be challenged only by invoking Section 34 of Arbitration and Conciliation Act 1996.

The court further held that entertaining a petition Articles 226/227 of the Constitution of India, in order to obviate compliance with the requirement of pre-deposit under Section 19 of Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") would defeat the object and purpose of the special enactment which has been legislated upon by the Parliament. Thus, court would not exercise jurisdiction under Section 226 and 227 of the Constitution of India, only to avoid the aggrieved party from the hardship of deposit of 75% of the award amount in Section 19 of MSMED Act.

[12] ARB.P. 38 of 2024.
[13] Arbitration Petition (ARBP) (L) No. 28089 of 2022.
[14] W.P.(C) No. 14422 of 2024.
[15] Writ Petition No. 6690 of 2024.

© Sagus Legal | All rights reserved

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.

© Sagus Legal | All rights reserved