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SAGUS SPEAKS

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

REGULATORY & POLICY UPDATES

SEBI issued a circular to modify the timelines for submission of status regarding payment obligations to the stock exchanges by entities having listed commercial paper.

The Securities and Exchange Board of India ("SEBI") through a circular dated 06.09.2024 ("Amended NCS Circular")[1] modified the timeline for entities having listed commercial paper to report to the stock exchanges regarding the status of their payment obligations from '2 (two) days of payment becoming due' to '1 day of payment becoming due' as stipulated under Para 8.4 of Chapter XVII of the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated 22.05.2024 ("NCS Master Circular"). The NCS Master Circular specifies provisions pertaining to the listing of commercial paper by entities. SEBI introduced these changes to align with the timelines provided under Regulation 57 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 which requires entities with listed non-convertible securities to report to the stock exchanges regarding the status of their payment obligations (including interest/ dividend/ repayment/ redemption of principal) within 1 (one) working day of payment becoming due.

SEBI issued the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024 to amend and modify provisions of the SEBI (Foreign Venture Capital Investors) Regulations, 2000.

[1] Amended NCS Circular

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SEBI notified the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024 ("FVCI Amended Regulations")[2] on 05.09.2024 to amend the (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations") which regulate and govern the Foreign Venture Capital Investors ("FVCIs") investing in India. The FVCI Amended Regulations will come into effect from 01.01.2025. Key highlights of the FVCI Amended Regulations are as follows:

i. The process for registration as a FVCI stands revised. An applicant who desires to register itself as an FVCI may make an application to a designatory depository participant registered with SEBI ("DDP") as opposed to making such an application to SEBI directly, as was the requirement prior to the FVCI Amended Regulations.

ii. The FVCI Amended Regulations require fresh FVCI applicants to provide details of their beneficial owners to their respective DDPs in the format stipulated under the annexure to be submitted with the application form. Any application which is false or misleading with respect to any material particulars shall be deemed deficient and rejected accordingly. However, an applicant may within a period of 30 (thirty) days from the date of receipt of rejection from the DDP, apply to SEBI for reconsideration of such decision.

iii. The registration granted by the DDP on behalf of SEBI shall be permanent unless suspended or cancelled by SEBI or surrendered by the FVCI. However, to keep the registration in force, the FVCI is required to pay the renewal fees as specified in the second schedule for every block of 5 (five) years from the beginning of the sixth year from the date of grant of certificate of registration and the fee shall be paid before the expiry of the block for which fee has been paid, in the manner specified by SEBI from time to time.

GOVERNMENT NOTIFICATIONS

MCA notifies the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024.

The Ministry of Corporate Affairs ("MCA") through notification dated 09.09.2024 notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024[3] ("Amalgamation Amendment Rules"), thereby amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("Amalgamation Rules"). The Amalgamation Amendment Rules will come into force on 17.09.2024.

The Amalgamation Amendment Rules insert sub-rule (5) to Rule 25A in the Amalgamation Rules relating to a merger or amalgamation entered into between a foreign company incorporated outside India which is a holding company ("Transferor Company") and an Indian company which is a wholly owned subsidiary company incorporated in India of such Transferor Company ("Transferee Company"). The following compliances are required to be followed for such mergers or amalgamations as stipulated under the Amalgamation Amendment Rules: –

i. both the Transferor and Transferee Companies are required to obtain prior approval from the Reserve Bank of India;

ii. the Transferee Company shall meet such conditions, and follow such procedure as stated under Section 233 of the Companies Act, 2013 ("Companies Act"), which including but not limited to, provides the procedure for fast-track mergers involving a holding company and its wholly-owned subsidiary(ies);

iii. the Transferee Company shall make an application to the Central Government in accordance with the procedure laid down under Section 233 of the Companies Act and in the manner stated under Rule 25 of the Amalgamation Rules, which provides for the procedure for submitting the scheme, in case of mergers and amalgamations entered into by certain companies in accordance with Section 233 of the Companies Act;

iv. the Transferee Company shall submit a declaration as stipulated under sub-rule (4) of Rule 25A of the Amalgamation Rules at the time of the making of the application. Sub-rule (4) of Rule 25A provides for a declaration to be made in Form CAA 16. Transferee Company is required to make the following declarations as stipulated under Form CAA-16 which are:–

   a. No requirement to obtain prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019; or
   b. Prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 has already been obtained and the same is attached with the declaration.

MCA notifies the Competition (Criteria of Combination) Rules, 2024.

The MCA through a notification dated 09.09.2024 notified the Competition (Criteria of Combination) Rules, 2024[4] ("Combination Rules"), under the Competition Act, 2002 ("Competition Act"), and has come into effect on 10.09.2024.

[2] SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024

[3] Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

[4] Competition (Criteria of Combination) Rules, 2024

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The Combination Rules lays down the criteria to be complied by parties to a combination, for submitting a notice to the Competition Commission of India ("CCI") in accordance with Section 6 of the Competition Act. Key highlights of the Combination Rules are as follows:

i. The parties to a combination are required to serve a notice to the CCI in accordance with sub-section (4) of Section 6 read with Rule 3 of the Combination Rules.
ii. The parties to a combination shall declare under such notice that:
    a. the parties do not produce or provide similar/ identical products or services; and
    b. they are not engaged in activities that are on different stages/ levels of production, or services/ products that are complementary to each other.
iii. The term 'parties to the combination and their respective group entities' under the Combination Rules means–
    a. the ultimate controlling person of the acquirer and other entities within the same group;
    b. the enterprise being acquired and its downstream entities within its group;
    c. enterprises being merged or amalgamated, their controlling persons, and entities forming a part of their group.
iv. Further, the Combination Rules clarifies that an enterprise is considered an affiliate of another enterprise if the latter has–
    a. 10% or more of the shareholding/ voting rights of the enterprise; or
    b. right or ability to have a representation on the board of directors of the enterprise, either as a director or as an observer; or
    c. right or ability to access commercially sensitive information of the enterprise.

MCA notifies the Competition (Minimum Value of Assets or Turnover) Rules, 2024.

The MCA through a notification dated 09.09.2024 notified the Competition (Minimum Value of Assets or Turnover) Rules, 2024[5] ("Minimum Value Rules") which has come into effect on 10.09.2024. The Minimum Value Rules prescribe the value or amount which would not be categorised as a combination, for it to fall under the purview of Section 5(e) of the Competition Act. Sub-section (e) of Section 5 states that an acquisition, merger, or amalgamation does not constitute a combination if the value of the assets or turnover of the enterprise being acquired is not more than a prescribed value. The prescribed values for such amounts as revised by the Minimum Value Rules are: –

i. where the value of assets being acquired shall be INR 450 Crores; or
ii. where the value of turnover shall be INR 1250 Crores.

MCA notifies the Competition (Criteria for Exemption of Combinations) Rules, 2024.

The MCA through its notification dated 09.09.2024 notified the Competition (Criteria for Exemption of Combinations) Rules, 2024[6] ("Exemption Rules") which has come into effect on 10.09.2024. Under Rule 3 of the Exemption Rules, certain categories of combinations which fulfil the criteria mentioned in the Schedule of the Exemption Rules, are exempted from complying with the applicable provisions of Section 6 of the Competition Act for serving notice to the CCI. The Exemption Rules provide for the following exemptions under the Schedule–

i. Acquisition of shares in the ordinary course of business including: –
    a. An acquisition of unsubscribed shares devolved due to an underwriting agreement by an acquirer as an underwriter when the total shares/ voting rights held by the acquirer, do not entitle the acquirer to hold more than 25% of the total shares/ voting rights of the company, of which shares are being acquired;
    b. An acquisition of shares as a stockbroker registered with SEBI when the total shares/ voting rights held by the acquirer, does not entitle the acquirer to hold more than 25% of the total shares/ voting rights of the company, of which shares are being acquired;
    c. An acquisition of shares as a mutual fund registered with SEBI when the total shares/ voting rights held by the acquirer, does not entitle the acquirer to hold more than 10% of the total shares/ voting rights of the company, of which shares are being acquired.
ii. Acquisition of shares/ voting rights solely for investment when the total shares/ voting rights held by the acquirer, does not entitle the acquirer to hold more than 25% of the total shares/ voting rights of the company, of which shares/ voting rights are being acquired, not leading to acquisition of control of the enterprise whose shares/ voting rights are being acquired.
iii. Acquisition of additional shares/ voting rights of an enterprise by the acquirer or its group entities where the acquirer prior to or after the acquisition, holds not more than 25% (twenty-five percent) shares/ voting rights of the enterprise. Provided that: (a) such acquisition does not result in acquisition of control of such enterprise by the acquirer or its group; (b) pursuant to the acquisition, the acquirer or its group entities do not gain a right or ability

[5] Competition (Minimum Value of Assets or Turnover) Rules, 2024

[6] Competition (Criteria for Exemption of Combinations) Rules, 2024

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to have a representation on the board of directors of any enterprise either as a director or as an observer for the first time; and (c) in case activities of the acquirer or its group entities and their affiliates exhibit horizontal/ vertical/ complementary links with the activities of the target company or its downstream group entities and their affiliates, the incremental shareholding/ voting rights acquired by a single acquisition or a series of smaller inter-connected acquisitions does not exceed 5% and such acquisition does not result in the shareholding/ voting rights of the acquirer or its group entities increasing from less than 10% to 10% or more.

iv. Acquisition of additional shares/ voting rights of an enterprise by the acquirer or its group entities where the acquirer or its group entities, prior to acquisition, holds more than 25% shares/ voting rights of the enterprise, but not more than 50% of the shares/ voting rights of the enterprise, either prior to or after such acquisition, provided however that, such acquisition does not result in a change in control of such enterprise.

v. Acquisition of shares/ voting rights where the acquirer or its group entities, prior to acquisition, already holds more than 50% shares/ voting rights in the enterprise whose shares/ voting rights are being acquired, except for cases when such transaction leads to a change in control of such enterprise.

vi. Acquisition of assets of an enterprise in the ordinary course of business provided that such acquisition involves the acquisition of stock-in-trade, raw materials, stores and spares, trade receivables or other similar current assets that do not constitute business.

vii. Acquisition of assets, not directly related to the business activity of the party acquiring the asset or made solely as an investment, not leading to control of the enterprise whose assets are being acquired except when the acquired assets represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organised as a separate legal entity or not.

viii. Acquisition of shares pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to a change in control.

ix. Acquisition of assets by one person or enterprise of another person or enterprise within the same group except in cases where there is change in control over assets being acquired.

x. A merger or amalgamation of enterprises within the same group, provided that the transaction does not result in a change in control.

xi. Acquisition of shares, control, voting rights or assets by a purchaser approved by the CCI under Section 31 of the Competition Act.

xii. Demerger of a company and issue of shares by the resulting company, either to the demerged company or to the shareholders of the demerged company in proportion to their shareholding in the demerged company prior to demerger, except for discharge of consideration for fractional shares.

The Schedule under the Exemption Rules further clarifies the following:

i. The term ‘acquirer and its group entities’ means the ultimate controlling person of the acquirer and other entities forming part of the same group.
ii. An entity is considered an affiliate of another enterprise if the latter has–
    a. 10% or more of the shareholding/ voting rights of the enterprise; or
    b. right or ability to have a representation on the board of directors of the enterprise, either as a director or as an observer; or
    c. right or ability to access commercially sensitive information of the enterprise.

CCI notifies the Competition Commission of India (Combinations) Regulations, 2024.

The CCI notified the Competition Commission of India (Combinations) Regulations, 2024[7] (“Combination Regulations”). The Combination Regulations lay down the procedure to be undertaken by the CCI for investigation of the combinations. Key highlights of the procedure are mentioned hereunder:

i. Notices are filed using Form I or optionally using Form II preferably for instances where the combined market share of parties to the combination after such combination is more than 15% in any of the relevant markets, with a fee of INR 30 Lakhs and INR 90 Lakhs, payable respectively. A single notice should be filed for inter-connected transactions and the substance of the transaction shall determine the filing requirements.

ii. Under sub-section (d) of Section 5 of the Competition Act, transactions exceeding INR 2,000 Crores are deemed to be a combination. The manner for calculation of such value of transactions has been provided under Regulation 2 of the Combinations Regulations, as follows: -

[7] Competition Commission of India (Combinations) Regulations, 2024

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a. calculation of 'value of transaction' includes every valuable consideration including but not limited to all direct and indirect considerations, immediate or deferred and inter-connected transactions;
b. for digital services, substantial business operations exist if 10% or more of global users are in India;
c. for other businesses, the threshold is 10% or more of global gross merchandise value or turnover in India, exceeding INR 500 Crores.

iii. If an enterprise is being acquired without consent, the acquirer must furnish available information within 10 (ten) days from the filing of the notice. For mergers or amalgamations, parties must jointly file the notice.

iv. CCI may request additional information from the parties to the combination. Failure by the parties to the combination to remove the defects or failure to furnish required information including documents as requested by the CCI may lead to invalidation of notice of combination sent to the CCI. Parties may be given an opportunity to be heard before such invalidation by the CCI.

v. For combinations that may have adverse effects on competition, CCI may issue a statement of objections in this regard.

vi. The CCI's orders related to combinations shall be communicated by the Secretary to the person who has given such notice within 7 (seven) days of such decision. The orders passed by the CCI shall be published on its website.

vii. The Combination Regulations came into effect on 10.09.2024. From the date of notifying the Regulations, the Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 stands repealed.

MNRE issued an Office Memorandum on the draft Green Hydrogen Certification Scheme of India.

The Ministry of New and Renewable Energy ("MNRE") on 04.09.2024 issued the Office Memorandum on the draft Green Hydrogen Certification Scheme of India[8] ("GHC Scheme") inviting stakeholder comments on the proposed GHC Scheme by 27.09.2024. The GHC Scheme aims to decarbonize the economy, reduce fossil fuel imports, and establish leadership in green hydrogen technology and markets. Key highlights of the GHC Scheme are as follows:

i. The GHC Scheme aims to provide a transparent framework for certifying green hydrogen production in India, emphasizing accountability and alignment with national clean energy goals.

ii. The GHC Scheme will cover green hydrogen production processes up to compression and purification but excludes transport, storage, and utilization outside plant boundaries. The certification metrics will only focus on the Greenhouse Gas ("GHG") emission intensity.

iii. The Bureau of Energy Efficiency ("BEE") will serve as the nodal authority, supported by a Technical Committee for strategic direction.

iv. The existing eligible pathways under the GHC Scheme include electrolysis and biomass conversion. However, new pathways can be proposed for inclusion through an application to the BEE.

v. The system boundary will include all direct emissions from production and indirect emissions from energy use. However, emissions from construction, business travel, and upstream assets will remain excluded.

vi. There are two kinds of certificates that will be issued under the GHC Scheme which include provisional certificate and final certificate, where provisional certificates will be issued based on submitted production data and final certificates will confirm compliance over an evaluation cycle (typically 1 (one) financial year).

vii. Certificates will provide unique identification, specifying project details and GHG emissions intensity, and will serve as a guarantee of origin but are not tradeable or usable for emission reduction credits.

viii. Green hydrogen producers shall maintain detailed records for 5 (five) years, including production data, energy consumption, and GHG emissions. A further verification by an Accredited Carbon Verification ("ACV") agency will be required within 1 (one) month of completing the evaluation cycle.

ix. Penalties include financial costs and ineligibility for future certifications which are imposed for non-compliance, such as exceeding emission thresholds, discrepancies in claimed versus actual production, or failing to apply for final certification on time.

x. A Scheme Monitoring Committee, chaired by the Secretary, MNRE will periodically review the implementation status and recommend measures to resolve challenges.

MNRE issued an Office Memorandum on draft Guidelines for implementing the "PM Surya Ghar: Muft Bijli Yojana".

The MNRE on 07.09.2024 issued an Office Memorandum on draft Guidelines for implementing the "PM Surya Ghar:

[8] MNRE Draft Green Hydrogen Certification Scheme.

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Muft Bijli Yojana"[9] ("Guidelines for PM-MBY") inviting comments by 17.09.2024. Key highlights of the Guidelines for PM-MBY are as follows:

i. The Guidelines for PM-MBY pertain to the implementation of the component of Central Financial Assistance ("CFA") to residential consumers for eligible consumer categories only through Renewable Energy Service Companies Models ("RESCO Models") and Utility Led Aggregation Models ("ULA Models") and for the component of Payment Security Mechanism ("PSM").

ii. The Guidelines for PM-MBY provide for 2 (two) primary models which are as follows:

   a. RESCO Models: RESCOs make the initial investment in solar installations and maintain them for a minimum of 5 (five) years. The consumer pays only for the electricity generated.
   b. ULA Models: Utilities or state entities aggregate demand, install, and manage rooftop solar systems further encapsulate 2 (two) models:

      (i). Utility-Owned Assets: The utilities own the installations initially, transferring ownership to households after the project period.

      (ii). Consumer-Owned Assets: The consumers own the installations from the start, with utilities providing grants to reduce costs.

iii. A PSM fund of INR 100 Crores is established to ensure timely payments to RESCOs, protecting them from delays by utilities or state entities.

iv. The CFA is available for residential households with grid-connected solar systems, including net metering and other approved metering arrangements. Further, it excludes non-residential segments like government and industrial consumers.

v. The Guidelines for PM-MBY provide for a technical committee for proposal vetting and approval, ensuring compliance and overseeing the PSM process. Further, the Guidelines for PM-MBY emphasize leveraging solar energy through innovative financing and ownership models to increase adoption in residential sectors, with robust mechanisms for financial security and regulatory compliance.

Ministry of Finance notifies new rules for Compounding of contraventions under FEMA, 1999.

The Ministry of Finance on 12.09.2024 notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 ("Compounding Rules")[10] under the Foreign Exchange Management Act, 1999 ("FEMA") in supersession of the Foreign Exchange (Compounding of Proceedings) Rules, 2000 ("Old Compounding Rules"). Key highlights of the Compounding Rules are as follows:

i. The designation of compounding authority authorised on behalf of the Reserve Bank of India ("RBI") to compound various contraventions of any provision of the FEMA other than contraventions under clause (a) of Section 3 of the FEMA (contraventions of the FEMA when dealing with or transfer of any foreign exchange or foreign security to any person not being an authorised person), shall be determined as follows:

   a. an officer not below the rank of the assistant general manager of the RBI authorised to compound offences where the sum involved in such contravention does not exceed INR 60 Lakhs;
   b. an officer not below the rank of the deputy general manager of the RBI authorised to compound offences where the sum involved in such contravention does not exceed INR 2.5 Crores;
   c. an officer not below the rank of the general manager of the RBI authorised to compound offences where the sum involved in such contravention does not exceed INR 5 Crores; and
   d. an officer not below the rank of the chief general manager of the RBI authorised to compound offences where the sum involved in such contravention is above INR 5 Crores.

ii. For contraventions under clause (a) of Section 3 of the FEMA, the compounding authority shall be as follows:

   a. deputy director of the Directorate of Enforcement authorised to compound offences where the sum involved in such contravention does not exceed INR 5 Lakhs;
   b. additional director of the Directorate of Enforcement authorised to compound offences where the sum involved in such contravention is more than INR 5 Lakhs but does not exceed INR 10 Lakhs;
   c. special director of the Directorate of Enforcement authorised to compound offences where the sum involved in such contravention is more than INR 10 Lakhs but does not exceed INR 50 Lakhs;
   d. special director along with the deputy legal adviser of the Directorate of Enforcement authorised to compound offences where the sum involved in such contravention is more than INR 50 Lakhs but does not exceed INR 1 Crore; and

[9] MNRE Draft Guidelines for implementation of PM Surya Ghar: Muft Bijli Yojana.

[10] Foreign Exchange (Compounding Proceedings) Rules, 2024

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e. the director of enforcement along with the special director of the Directorate of Enforcement authorised to compound offences where the sum involved in such contravention is more than INR 1 Crore.

iii. Contraventions which are not to be compounded under the Compounding Rules:

a. when the amount involved in the contravention is not compoundable;
b. where the provisions of Section 37A of the FEMA are applicable, i.e. – contraventions relating to assets held outside India in contravention of provisions of the FEMA;
c. where the directorate of enforcement is of the view that the proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting the sovereignty and integrity of the nation, the compounding authority shall not proceed with the matter and shall remit the case to the appropriate adjudicating authority for adjudicating contravention under Section 13 of the FEMA.
d. where the adjudicating authority has already passed an order imposing penalty under Section 13 of the FEMA;
e. where the compounding authority is of the view that the contravention involved requires further investigation by the directorate of enforcement to ascertain the amount of contravention under Section 13 of the FEMA.

JUDICIAL PRONOUNCEMENTS

High Court of Delhi held that the period of 12 months for the passing of the arbitral award as per Section 29A(1) of the Arbitration and Conciliation Act, 1996 would begin from the time when the right to file the rejoinder stands exhausted.

The High Court of Delhi through its order dated 04.09.2024 in the matter of *Emco Limited* v. *Delhi Transco Limited*[11] held that the 12 (twelve) month period for passing the arbitral award begins after the completion of the pleadings i.e., from the time when the right to file rejoinder stands terminated.

The High Court observed that a conjoint reading of Section 29A(1) and Section 29A(4) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") would show that the mandate of the arbitral tribunal will be terminated if the award is not passed within 12 (twelve) months from the completion of the pleadings and would not mean that the period of 12 (twelve) months period would be reckoned from the date of filing of the statement of defence.

The High Court further opined that had the legislature intended the arbitral award to be passed within 12 (twelve) months from the filing of the statement of defence, the same would have been provided specifically under the Arbitration Act, especially when Section 23(4) of the Arbitration Act particularly refers to the filing of the statement of defence. The High Court while relying on the judgement of *Anant Construction (P) Ltd* v. *Ram Niwas*[12] observed that a rejoinder also forms part of the pleadings.

The High Court held that in cases where no rejoinder is filed by a party, the period of 12 (twelve) months would only begin from the date when the right to file rejoinder stands exhausted.

NCLAT held that the power of recall does not grant the NCLAT the authority to rehear a case in order to identify any apparent error in the judgment, as that falls within the scope of a review.

The National Company Law Appellate Tribunal ("NCLAT"), New Delhi through its order dated 06.09.2024 in the matter of *M/s Kalpana Jain* v. *Universal Oil Seals Mfg. Co. Pvt. Ltd. and Others*[13] held that the power to recall an order does not allow the NCLAT to rehear a case to identify any apparent error in the judgment, as that falls within the scope of a review.

The NCLAT observed that the order passed by the National Company Law Tribunal ("NCLT"), Mumbai could have been challenged in an appeal, however, admittedly no appeal was filed against such an order and the application for recall was also *per se* not maintainable in law.

The NCLAT referred to the Supreme Court's judgment in *Budhia Swain and others* v. *Gopinath Deb and others*[11], wherein the Supreme Court had laid down the conditions under which a court or tribunal could recall its order. Placing reliance on the aforesaid judgment, NCLAT observed that it was only in cases where there was a lack of jurisdiction, fraud, collusion, mistake by court, or the absence of a necessary party due to lack of service or death that an order can be recalled.

APTEL held that the street lighting on National Highway will be treated under Low Tension - IV except where the lighting is around the toll collection plazas and at the place of commercial activities.

The Appellate Tribunal for Electricity ("APTEL") on 09.09.2024 in the case of *M/s Dilip Buildcon Limited and Anr.* v. *Maharashtra Electricity Regulatory Commission and Anr. & Batch Appeals*[14] held that the treatment of street

[11] O.M.P. (MISC.) (COMM.) 638/2024
[12] 1994 31 DRJ 205.
[13] Appeal (AT) No. 196/2024
14 Appeal No. 230 of 2024.

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lighting on a National Highway under Low Tension-II ("LT-II") Category was erroneous and the lighting on National Highway would continue to be governed under Low Tension-IV ("LT-IV") Category with the exception of lighting in and around the toll collection plazas and at the place of commercial activities.

APTEL held that the inclusion of all lighting on highways under LT-II Non-Residential / Commercial Tariff by Maharashtra State Electricity Regulatory Commission ("MERC") was not justified considering the specific purposes of highway lighting for the benefit of the consumers.

APTEL observed that while toll collection plazas and lighting are in the immediate vicinity where commercial activities could fall under LT-II, general highway lighting is meant for safety and should not be categorized as part of commercial activity.

APTEL directed MERC to incorporate the necessary modifications in its tariff categorization, ensuring that highway lighting is categorized to reflect its public safety function rather than commercial use.

NCLT Kolkata held that interest claims must be based on contractual terms and not just invoice terms.

The NCLT, Kolkata through its order dated 02.09.2024 in the matter of *Sudarshan Paper & Board Private Limited* v. *Verges Properties LLP*[15], held that interest cannot be clubbed along with the debt where there is no agreement between the parties stipulating the same.

The NCLT, Kolkata observed that since there was no contractual agreement or clause in the purchase order for charging of interest payments, the interest amount cannot be clubbed along with the debt.

The NCLT, Kolkata further observed that interest cannot be awarded merely based on a provision in the invoice and the TDS deduction on the interest payable does not constitute any acknowledgment of liability.

PSERC held that interest on outstanding dues is payable on the entire amount including the amount deposited in terms of Section 127 of the Electricity Act, 2003.

The Punjab State Electricity Regulatory Commission ("PSERC") by its order dated 03.09.2024 in *Sandeep Gulati* v. *Sr. Xen/Addl. Superintending Engineer, Operation, CMC Division, PSPCL, Ludhiana*[16], held that a consumer is liable to pay the interest on the entire assessed outstanding amount including the amount deposited with the relevant appellate authority in terms of Section 127 of the Electricity Act, 2003 ("Electricity Act").

PSERC observed that as per Regulation 36.4 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 ("PSERC Supply Code"), interest on the entire assessed outstanding dues is payable at 16% per annum, compounded every 6 (six) months, payable after 30 (thirty) days from the date of passing of the order by the appellate authority.

PSERC further observed that under the PSERC Supply Code, the relevant appellate authority is the Additional Deputy Commissioner ("ADC"), and the interest payable is to be calculated from the date of the order passed by ADC in terms of Section 127 of the Electricity Act.

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[15] Company Petition (IB) No. 54 of 2024
[16] Petition No. 32 of 2024

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