

SAGUS SPEAKS



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

REGULATORY AND POLICY UPDATES

SEBI notifies Securities and Exchange Board of India (Mutual Funds) Amendment Regulation 2025

The Securities and Exchange Board of India (“SEBI”) on 14.02.2025 notified the Securities and Exchange Board of India (Mutual Funds) Amendment Regulation 2025¹ (“Amendment Regulations”) amending the provisions of the SEBI (Mutual Funds) Regulations, 1996 (“MF Regulations”), which shall come into effect from 01.04.2025. The key highlights of the Amendment Regulations are as follows:

(i) Regulation 25 of the MF Regulations provides for the obligations of the Asset Management Company

(“AMC”). In this regard, sub-regulation 16A requires the AMC to invest certain amounts in such schemes of the mutual fund as may be specified by SEBI based on the risks associated with such schemes. The Amendment Regulations have now inserted sub-regulation 16B which further provides that the AMC is required to invest the specified percentage of the remuneration of the designated employees specified by SEBI, in units of mutual fund schemes based on their designation or roles in the manner specified by the SEBI.

(ii) The Amendment Regulations have inserted a sub-regulation (30) in Regulation 25 which provides that the AMC shall conduct stress testing for such schemes (as

¹ Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2025

may be specified by SEBI) and disclose the results in the form and manner as may be specified by SEBI.

- (iii) Regulation 35 of the MF Regulations deals with the allotment of units and refund of money by the mutual fund and AMC, and provides that the AMC shall specify, the minimum subscription amount it seeks to raise, and in case of over-subscription, the extent of subscription it may retain in the offer document.

The Amendment Regulations have now inserted sub-regulation 5 in Regulation 35 which stipulates that a mutual fund scheme shall be required to deploy the funds raised from a new fund offer within the timelines as may be specified by SEBI.

- (iv) Regulation 52 of the MF Regulations deals with the limitation on fees and expenses on the issue of schemes.

In this regard, the Amendment Regulations have inserted sub-regulation (4A) which stipulates that the AMC shall pay the charge/fee/commission related to distribution of mutual fund schemes in the manner as may be prescribed by the SEBI.

SEBI notifies Circular on Opening of Demat Account in the name of Association of Persons

The Securities and Exchange Board of India has issued the Circular² dated 25.02.2025 (“Circular”), to permit an Association of Persons (“AoP”) to open demat accounts directly in its names.

Earlier, according to Paragraph 1.2.6. of Section 1 of the Master Circular for Depositories dated 03.12.2024 (“Master Circular”), a beneficial ownership account could only be opened in the name of a natural person, and the PAN details of the AoP were used for opening such an account.

By way of the Circular, Paragraph 1.2.6.A has been added in the Master Circular, which permits the option of opening the demat account directly in the name of the AoP for holding the units of mutual funds, corporate bonds, and Government securities, subject to the following conditions:

- (i) AoP shall subscribe to only those securities that are permitted by relevant statutes governing their constitution.
- (ii) AoP shall submit details of its PAN as well as of a principal officer (secretary, treasurer, manager, agent or any person connected with the management or administration of the AoP) to the depositories.
- (iii) Further, depository participants shall ensure that:

- (a) AoP shall hold securities in only dematerialized form.
- (b) AoP shall not use the demat account to subscribe to or hold equity shares.

The Circular also provides that the principal officer would be considered as legal representative of the AoP and at all times, the members of the AoP will be jointly and severally liable on behalf of the AoP.

The depositories are required to take necessary steps for the implementation of this Circular, including notifying the same to the market participants and disseminating this information on their respective websites.

The provisions of the Circular shall be effective from 02.06.2025.

Competition Commission of India notifies the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2025³

The Competition Commission of India (“Commission”) has notified the Competition Commission of India (Manner of Recovery of Monetary Penalty), Regulation, 2025 (“Recovery Regulation”) dated 25.02.2025, for specifying the manner of recovery of penalty imposed by the Commission under the Competition Act, 2002 (“Act”) and repealed the erstwhile Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulation, 2011, with effect from 25.02.2025.

The salient features of these Recovery Regulation are as follows:

- (i) Issuance of demand notice: Regulation 3 provides that a demand notice (as specified in Form I of the Recovery Regulation) along with a copy of the order imposing the penalty passed by the Commission would be issued by the secretary to the person on whom the penalty is levied. The demand notice shall provide a minimum time period of 60 days from the date of receipt of the order passed by the Commission, to deposit the penalty through the challan as specified in Form II of the Recovery Regulation.
- (ii) Extension of time and grant of instalments: Regulation 4 provides that on an application submitted by the person or enterprise on whom the penalty is imposed, before the expiry of the due date mentioned in the demand notice, the Commission may extend the time for payment of penalty or allow payment in instalments. On default in payment within the extended time, the person or

² SEBI| Circular on the opening of a Demat Account in the name of an AoP

³ Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2025

enterprise would be deemed to be in default and in the case of default of payment of any instalment, the outstanding amount along with other future instalments would also be deemed to have been due on the same date as the actual instalment default.

- (iii) Interest on penalty: Regulation 5 provides that in case of default, the person would be liable to pay simple interest at one per cent per month on the amount outstanding for every month or part of a month comprised in the period commencing from the date immediately after the expiry of the due date mentioned in demand notice and ending with the day on which the penalty is paid in full. The Commission may reduce or waive the penalty if it is satisfied that default in payment of such penalty was due to circumstances beyond the control of the enterprise, or the person concerned.
- (iv) Issuance of recovery certificate: Regulation 5 provides that if the enterprise/person commits a default or is deemed to be in default with respect to payment of the penalty, the Commission shall issue a recovery certificate through the secretary to be executed by the recovery officer mentioning the amount of penalty and interest along with the mode of recovery, providing 15 (fifteen) days' time to deposit the penalty.
- (v) Mode of Recovery: Regulation 9 of the Recovery Regulation provides that in the event of default by the enterprise/person to pay a penalty within the time specified in the recovery certificate, the recovery officer would proceed to recover the same in the following manner:
 - (a) After the expiry of time, the Commission would require the entity committing the default or any other entity which holds or may subsequently hold money for or on account of such entity in default, to pay a sufficient amount as the penalty. In case, such other entity also fails to pay such sufficient amount, they would also be treated as an enterprise in default.
 - (b) The Commission may also issue a recovery certificate to the other entity who holds or may subsequently hold any money for or on account of the entity in default and the entities holding joint interests shall be presumed to have equal shares for the purposes of these regulations. However, the liability of the legal heirs of the person in default in case the person in default is deceased, would be limited to the extent to which the estate of the deceased person is bestowed upon such legal heir.
 - (c) In case an entity to whom the recovery certificate is issued, objects to it by a statement on oath to the Commissioner that the sum demanded is not due from the entity to the enterprise or person in default or that it does not hold any amount for or on account of them, then nothing in the Recovery Regulation would be deemed to require such enterprise/person to pay any sum thereof.
 - (d) The recovery officer can also apply to the court which has custody of the money belonging to the enterprise or person in default, for release of the amount sufficient to discharge the penalty.
 - (e) If the enterprise/person in default has property outside India (a country with whom the Central Government has signed an agreement for recovery of penalty), then the Commission may propose to that country to take actions thereon and remit any sum so recovered.
 - (f) During the pendency of any proceedings under the Act or after the decision but before the service of notice under Regulation 3 of the Recovery Regulation, if an enterprise/person in default creates a charge or parts with the possession of any of its assets, such charge or transfer shall be void as against any claim in respect of any penalty payable. However, such transfer or charge would not be considered as void if it is made for an adequate consideration and without notice of the pendency of the proceedings or with the previous permission of the Commission.
 - (vi) Other modes of the recovery: Regulation 10 provides that in case of default of payment within the time as specified in the recovery certificate, the recovery officer may also proceed with the attachment and sale of movable and immovable property of the enterprise, in accordance with the second schedule of the Income Tax Act, 1961.
 - (vii) Reference by the Commission to the Income Tax authority: Regulation 11 provides that if the Commission is of the opinion, for reasons recorded in writing, that it would be expedient to recover the penalty as per the Income Tax Act, 1961, it shall make the reference under Section 39(2) of the Act to the concerned Income Tax Authority and defer the recovery proceedings initiated earlier.
 - (viii) Refund of excess penalty: Regulation 14 provides that if the appellate authorities held that the enterprise/person is not liable to pay any penalty or is liable to pay less penalty as mentioned in the recovery certificate, the demand notice or the recovery certificate to such extent would be withdrawn or modified, and the amount of excess penalty paid would be refunded.
 - (ix) Regulation 15 provides that the Commission shall have the power to determine its procedure and Regulation 16 provides that the Commission's decision for removal of doubts or difficulties shall be binding with respect to implementation of the Recovery Regulation.

GOVERNMENT NOTIFICATIONS

Government of Madhya Pradesh releases Madhya Pradesh Renewable Energy Policy, 2025

The Government of Madhya Pradesh (“GoMP”) has, through its notification dated 26.02.2025, released the Madhya Pradesh Renewable Energy Policy - 2025 (“Energy Policy”)⁴. The Energy Policy would remain in operation for a period of five years from the date of notification in the Madhya Pradesh State Gazette or until a new policy is notified by the State Government. The key highlights of the Energy Policy are as follows:

- (i) The objective of the Energy Policy are (a) attracting investments in Renewable Energy (“RE”) sector, (b) to have RE mix as 50% by 2030, (c) supplying RE power to other non-RE rich States, (d) endeavour to transform 20%, 50% and 100% State level Government Department as 100% green energy compliant by 2024, 2027 and 2030 and (e) promote establishment of RE zones.
- (ii) Investment of INR 15000 Crores by 2024 and INR 50000 Crores by 2027 in Renewable Energy generation sector in state and investment of 4000 Crores by 2024 and INR 10000 Crores by 2027 in RE equipment manufacturing.
- (iii) The Energy Policy is applicable to all RE technology-based projects, unless the projects are specifically excluded in the Energy Policy. The meaning of the renewable energy project as provided in the Energy Policy is annexed as Annexure A.
- (iv) Energy Policy is applicable for all RE technology-based projects for capacity equal to or more than 500 kW, unless capacity is specified otherwise. The Energy Policy is not applicable for decentralized RE systems, for which separate policy exists.
- (v) Any project registered under the Energy Policy are eligible for the benefits as provided in Annexure -B.
- (vi) The New and Renewable Energy Department, Government of Madhya Pradesh will act as the “Nodal Agency” for implementation of the Energy Policy. The Energy Policy would be implemented through detailed operational guidelines to be issued separately and the ‘Single Window System’ would be established for technical support and project clearance.

RBI issues Amendment to RBI (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023

The Reserve Bank of India (“RBI”) has released a Notification dated 17.02.2025 to amend Section 34.2.3 of RBI (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023⁵ issued earlier on 21.09.2023 (“Directions”), with effect from 01.04.2025.

The salient features of this amendment are as follows-

- (i) Scope: These amendments enlarge the scope of the exemptions provided under Section 34.2.3 for accounting of Held to Maturity (“HTM”) investments vis-a-vis the total investments made by All India Financial Institutions (“AIFI”) to comply with the maximum limit of 25% provided under section 34.2.1 of the Directions.
- (ii) Applicability: These Directions shall be applicable upon AIFIs regulated by the RBI i.e. the Export-Import Bank of India, the National Bank for Agriculture and Rural Development, the National Bank for Financing Infrastructure and Development, the National Housing Bank and the Small Industries Development Bank of India.
- (iii) Effect: The amended Section 34.2.3 now enumerates the following investments of AIFIs as exemptions with respect to accounting of HTM investments for the purposes of Section 34.2.1-
 - (a) Equity held in the subsidiaries and joint ventures.
 - (b) Re-capitalization bonds received from the Government of India, except recapitalization bonds of other banks/AIFIs, and held in the investment portfolio.
 - (c) Investments made by AIFIs, as per their statutory mandates, in long-term bonds and debentures (i.e., having minimum residual maturity of three years at the time of investment) issued by non-financial entities.

Earlier Section 34.2.3 provided only the first two exemptions enumerated above.

MoP issues Amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects

The Ministry of Power (“MoP”) by its notification dated 12.02.2025 issued an Amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects

⁴ Madhya Pradesh Renewable Energy Policy- 2025

⁵ RBI Amendment in Prudential Regulations

(“Amended TBCB Guidelines”)⁶ amending the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects dated 28.07.2023 (“Principal TBCB Guidelines”). The key highlights of the Amended TBCB Guidelines are as follows:

- (i) Introduction of Clause 3.3 which allows procurers to specify the sub-station(s) in the Inter-State Transmission System (“ISTS”) / Intra-State Transmission System (“InSTS”) where Solar PV Developers shall connect their projects.
- (ii) Section 6.6(b) of the Amended TBCB Guidelines imposes stricter penalties on the generator for failing to maintain the declared Capacity Utilisation Factor (“CUF”). If a generator fails to achieve the CUF stated in the Power Purchase Agreement (“PPA”) for two consecutive years, excluding the first contract year ending on March 31 after Commercial Operation Date (“COD”) of the project, the generator will be deemed to be in default. Unlike the old provision, which led to direct PPA termination in such cases, the Amended TBCB Guidelines reduce the generator’s yearly CUF obligation to the average of the two default years and impose lump sum damages equivalent to 24 months’ tariff or the balance PPA period, whichever is less. Non-payment of these damages could lead to the termination of the PPA.
- (iii) Clause 6.7 of the Principal TBCB Guidelines has been amended and provides that Change in Law shall refer to the occurrence of any event related to the project from seven (7) days prior to the last date of bid submission.
- (iv) Introduction of Clause 9.3, which mandates signing of the PPA and Power Sale Agreements (“PSA”) within 30 days from date of issuance of Letter of Award (“LoA”) extendable upto 12 months, beyond which the LoA shall be cancelled.
- (v) Section 10.4 requires the distribution licensee or the intermediary procurer to approach the Appropriate Commission for adoption of tariffs, within 30 days of discovery of tariff by way of e-reverse auction or other transparent competitive bidding process, unlike the old provision which provided a timeline of 15 days.
- (vi) Introduction of insurance surety bonds or any other instrument under General Financial Rules (“GFR”) as an alternate instrument for establishment of Earnest Money Deposit (“EMD”) and Performance Bank Guarantee (“PBG”) as per Clause 11.1(a1) and Clause 11.2(a1) of Amended TBCB Guidelines, respectively. The Amended TBCB Guidelines provides that PBGs to be refunded to

the Generator within 45 days of actual commencement of supply date of the project.

- (vii) The updated technical specifications as per Clause 15 of the Amended TBCB Guidelines now explicitly require the developers to install GPS-enabled Automatic Weather Stations (“AWS”) to monitor real-time weather data, adhering to specifications provided by relevant Central Government agencies and load dispatch centres in accordance with the provisions of Indian Electricity Grid Code, unlike the broad parameters mentioned in the Principal TBCB Guidelines. Furthermore, developers must comply with cybersecurity regulations, reinforcing the security of critical infrastructure.

MoP issues Amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems

The MoP through its notification dated 12.02.2025 notified amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems (“Amended FDRE Guidelines”)⁷. The key highlights of the Amended FDRE Guidelines are as follows:

- (i) Clause 3.1.1. (b) has been modified whereby the amended clause has given power to the Appropriate Commission to approve the deviation (if any) from the FDRE Guidelines, which earlier was to be sought from the Government. Thus, the deviation (if any) can now be approved by the Appropriate Commission.
- (ii) Introduction of Clause 3.3 which allows procurers to specify the sub-station(s) in the ISTS / InSTS where Solar PV Developers shall connect their projects.
- (iii) Clause 7.6(b) has been modified, imposing stricter penalties on the Generator for failing to maintain the declared CUF. If a Generator fails to achieve the CUF stated in the PPA for two consecutive years, excluding the first contract year ending on March 31 after COD of the project, the Generator will be deemed to be in default. Unlike the old provision, which led to direct PPA termination in such cases, the Amended FDRE Guidelines reduce the generator’s yearly CUF obligation to the average of the two default years and impose lump sum damages equivalent to 24 months’ tariff or the

⁶ Amended TBCB Guidelines for Procurement of Power from Grid Connected Solar PV Power Projects, 2025

⁷ Amended FDRE Guidelines for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems, 2025

balance PPA period, whichever is less. Non-payment of these damages could lead to the termination of the PPA.

- (iv) Clause 7.7 has been amended and provides that change in law shall refer to the occurrence of any event related to the project from 7 days prior to the last date of bid submission.
- (v) 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. 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 10.3 has been inserted whereunder the PPA or PSA (as applicable) should be signed within 30 days from issuance of LoA, which period may be extended up to 12 months from LoA date, beyond which the LoA will be cancelled.
- (vii) Clause 11.4 has been amended and now requires the distribution licensee or the intermediary procurer to approach the Appropriate Commission for adoption of tariffs, within 30 days of discovery of tariff by way of e-reverse auction or other transparent competitive bidding process, unlike the old provision which provided a timeline of 15 days.
- (viii) Introduction of insurance surety bonds or any other instrument under GFR as an alternate instrument for establishment of EMD and PBG as per Clause 12.1(a1) and Clause 12.2(a1) respectively.
- (ix) Clause 12.3 has been modified and PBGs have to be refunded to the Generator within 45 days of actual commencement of supply date of the project.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that the Public Procurement Policy for Micro and Small Enterprises Order-2012 has force of law, and the authorities and statutory bodies created thereunder are impressed with enforceable duties

The Supreme Court through its judgement dated 25.02.2025 in *Lifecare Innovations Private Limited & Anr. v. Union of India & Ors.*⁸ reinforced the legal standing of Public Procurement Policy for Micro and Small Enterprises (“MSEs”) Order 2012 (“Procurement Order 2012”).

⁸ Writ Petition (C) NOx. 1301 OF 2021

The Procurement Order 2012 was issued under Section 11 of Micro Small and Medium Enterprises Development Act, 2006 (“MSMED Act”) and mandated yearly procurement of a minimum of 25% from MSEs. Apart from this, 358 items were reserved for exclusive procurement from MSEs. Another important feature of this policy was the constitution of a Grievance Cell for redressal of “imposition of unreasonable conditions in tenders floated by the Government Departments or agencies that put MSEs at a disadvantage”.

The Court observed that the Procurement Order 2012 issued as per the MSMED Act has the force of law and is enforceable, it further observed that while the MSMED Act and the Procurement Order 2012 do not create an 'enforceable right' for an individual MSE, the statutory authorities and administrative bodies created thereunder are empowered with enforceable duties. They are accountable and subject to judicial review.

High Court of Punjab and Haryana held that written application is not required to seek information under Section 6 of the RTI Act.

The High Court of Punjab and Haryana in its judgement dated 19.02.2025 in the matter of *Dr. Sandeep Kumar Gupta v. State Information Commission, Haryana and Ors.*⁹ held that submission of written application along with signatures is not necessary under Section 6 of the Right to Information Act, 2005 (“RTI Act”).

In the present case, Dr. Sandeep Kumar sought some information under Section 6 of RTI Act through email and deposited the requisite fees. However, information was not supplied on the ground of non-submission of written application.

The High Court held that once the person who has sent the email seeking information has confirmed his identity, the demand for a written application along with signatures is not envisaged under Section 6 of the RTI Act.

High Court of Andhra Pradesh held that limitation period for making an application seeking appointment of arbitrator commences after notice invoking arbitration has been issued

The High Court of Andhra Pradesh in its judgement dated 20.02.2025 in the matter of *Alliance Enterprises v. Andhra Pradesh State Fiber Net Limited*¹⁰ held that limitation period for making an application seeking appointment commences only after a valid notice invoking arbitration has been issued by one of the parties.

⁹ CWP No. 36226 of 2018

¹⁰ Arbitration Application No. 48 of 2023

The High Court relied upon the judgements of *Arif Azim Co. Ltd. v. Aptech Ltd*¹¹ and held that the limitation period for making application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an arbitral tribunal.

The High Court further held that the limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on the part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.

High Court of Andhra Pradesh held that reference of disputes to the named arbitrator is a rule

The High Court of Andhra Pradesh in its judgement dated 20.02.2025 in the matter of *M/s. Kranthi Grand DKNV Hospitalities and Anr v. M/s. Manasa Estates and Hospitality Pvt. Ltd & Ors*¹² held that reference of disputes to the named arbitrator is a rule and ignoring the named arbitrator/arbitral tribunal shall be an exception to the rule, to be resorted only for valid reasons.

In the present case, the parties entered into a sub-lease agreement. The arbitration clause in the sub-lease agreement provided the name of the person who will be appointed as arbitrator. Dispute arose between the parties and Manasa Estates issued the notice invoking arbitration and appointed the person whose name was given in the arbitration clause. Instead of agreeing on the name of person given in arbitration clause, Kranthi Grand suggested a different name of which Manasa Estates did not agree. However, no reason was provided by Kranthi Grand for not appointing the named person as arbitrator.

The High Court relied upon judgements of Supreme Court in *Northern Railway Administration v. Patel Engg. Co. Ltd. & Indian Oil Corporation Ltd*¹³ and *Indian Oil Corporation Ors. v. Raja Transport Private Ltd*¹⁴ and held that an arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what law would govern the parties etc. A party to contract cannot claim benefit of arbitration under the arbitration clause but ignores the appointment procedure relating to the named arbitrator contained in the arbitration clause.

High Court of Kerala held that attachment proceedings under SARFAESI Act or IBC will take

precedence over attachment proceedings under Banning of Unregulated Deposit Scheme Act, 2019.

The High Court of Kerala in its judgement dated 21.02.2025 in the matter of *HDB Financial Services Limited v. the Sub Registrar, Killipalam, Karamana & Ors*¹⁵ held that proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) and the Insolvency and Bankruptcy Code, 2016 (“IBC”) takes precedence over attachment orders issued under the Banning of Unregulated Deposit Schemes Act, 2019 (“BUDS Act”).

The High Court held that Section 13(1) of the BUDS Act provides that “*Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016) that any action/proceedings under the SARFAESI Act*”, which can only mean that any action/proceeding under the SARFAESI Act and the IBC is saved from the provision providing precedence to the BUDS Act.

The High Court of Allahabad held requirements of Section 31 of A&C Act are not mandatory

The High Court of Allahabad in its judgement dated 20.02.2025 in the matter of *M/s Mukesh and Associates v. Motilal Nehru National Institute of Technology*¹⁶ held Section 31 of the A&C Act deal with form and content of the award. The mere fact that the form under Section 31 of A&C Act *inter-alia* indicates mentioning of place of arbitration, by itself does not make it mandatory to the extent that the lack of such mention in the award, without there being any challenge based on such absence, the award would stand vitiated.

The High Court further held that mentioning or absence of place where award is passed in arbitral award may assume significance, in case where there is dispute between the parties on the said aspect. All the Section 31 A&C Act clauses cannot be viewed in a manner that absence of any requirements enumerated therein would lead to award being vitiated.

NCLAT held that NCLT is empowered to decide whether successful resolution applicants are liable to pay pre-CIRP electricity dues under Section 60(5) of the IBC

¹¹ (2024) 5 SCC 313

¹² Arbitration Application No. 62 of 2023

¹³ (2008) 10 SCC 240

¹⁴ (2009) 8 SCC 520

¹⁵ WP(C) NO. 15010 OF 2024

¹⁶ 2025: AHC: 25546 DB

The National Company Law Appellate Tribunal (“NCLAT”) by its judgement dated 25.02.2024 in *Punjab State Power Corporation Limited v. Akums Lifesciences Limited*¹⁷ held that Section 60(5)(C) of IBC clearly indicates that National Company Law Tribunal (“NCLT”) is empowered to adjudicate any question of priorities or any question of law or facts arising out of or in relation to the insolvency of Corporate Debtor (“CD”).

The NCLAT further held that the issue whether the successful resolution applicant is liable to pay Pre-CIRP electricity dues after the approval of the resolution plan and taking over of the CD is an issue directly arising out of the approval of resolution plan and its effective implementation. Hence, NCLT is empowered to dispose of any application or proceeding against the CD arising out of or in relation to insolvency resolution.

¹⁷ Company Appeal (AT) (Insolvency) No. 1258 of 2023

ANNEXURE – A

Renewable Energy Source Based Projects

1. Single RE source-based grid connected/ off-grid power projects:
 - a. Solar PV based power projects
 - i. Ground mounted
 - ii. Floating solar
 - iii. Canal top or water body (like canal, pond, lake, river) bank
 - b. Solar thermal based power projects;
 - c. Wind based power projects including repowering of existing projects
 - d. Hydro based power projects with capacity less than or equal to twenty-five (25) MW with minimum allowable capacity of 1 kW;
 - e. Bio-energy based power projects
 - i. using biomass/ non-conventional feedstock to generate electricity/ produce bio-CNG;
 - ii. Co-generation power projects using biomass;
 - iii. using waste to energy sources;
2. RE Source based Power Project with Energy Storage: This shall include pumped hydro based storage, battery based storage, hydrogen based storage or any other form of commercially viable energy storage technology. Minimum energy storage capacity should be 'X/10" MWh, where X is the capacity of RE power project;
3. RE hybrid power project: This shall be RE project having combination of RE technology/ source based project with storage or more than one RE technologies/ sources with/ without storage having single point of injection or maximum two points of injections into the grid ;
4. RE source based park/ RE hybrid park (Plug and play facility);
5. Projects registered under renewable energy certificate (REC) scheme;
6. Bundling of RE source based/ RE hybrid energy projects with conventional energy projects;
7. RE power projects interconnected with MP DISCOMS' grid (for e.g., component A of KUSUM scheme) with minimum capacity of 1 kW under Central/ State Government scheme;
8. Project using RE source(s) / technology(ies) as recognized by MNRE, Gol producing any form of energy, other than power such as steaming, heating, cooling and biofuels.

ANNEXURE – B

Incentives under Madhya Pradesh Renewable Energy Policy		
S.No.	Particulars	Incentives
1.	Electricity Duty	100% exemption for 10 years from date of COD
2.	Energy Development Cess	100% exemption for 10 years from date of COD
3.	Stamp Duty	50% reimbursement on purchase of private land
4.	Wheeling Charges	50% exemption; available for 5 years
5.	Carbon Credits	As per applicable guidelines
6.	Government Land Rate	50% concession on circle rate for project land allotted as per paragraphs 3.2.4(a) to 3.2.4(d) of the Energy Guidelines
		25% concession on circle rate for project land allotted as per paragraphs 3.2.4(e) to 3.2.4(g) of the Energy Guidelines
Incentives for re-powering and/ or technology upgrade of RE projects		
1.	PPA Terms	Power procured by the procurer based on average generation of the last 3 years of the project. Then, PPA period may be extended to compensate for any generation loss during repowering period.
2.	Land	State may facilitate additional land required for higher capacity on merit of individual projects.
3.	Land Use Permission	Land use permission may be extended on the recommendation of Nodal Agency and developer shall be required to pay 100% of DLC rates for remaining period.
4.	Power Evacuation Facility	MPPTCL to provide evacuation facilities for new or upgraded substations based on load flow studies and capacity available. Any additional expenditure to be incurred shall be charged as per charges asked by MPPTCL.
5.	Equipment Replacement	Project Developer should replace major components in line with State and Central Government norms.
Incentives of RE Equipment Manufactures		
6.	Investment based incentives	Manufactures to avail general incentives as per respective policy whose investment is less than 50 Cr.
		Manufactures to avail special incentives as per respective policy whose investment is more than or equal to 50 Cr
Additional Incentives for Production of Green Hydrogen		
1.	Basic Investment Promotion as per IPP 2025	Basic investment promotion shall be limited to maximum INR 200 Cr. provided in 7 equal installments.
2.	Infrastructure Development Assistance	Units shall be eligible for 50 % assistance for developing power, water, gas pipeline, road, drainage, and sewage infrastructure upto the factory gate subject to INR 5 Cr. if the investor acquires private land or gets undeveloped Government land for setting up of the unit.
3.	Green Industrialisation Assistance	50% assistance, up to f5 Crores for waste management systems (ETP, STP, pollution control devices), and up to UO Crores for ETP with Zero Liquid Discharge, in 2 equal annual instalments.
4.	IPR Assistance	100% reimbursement of expenses incurred for filing patents, copyrights, trademarks, and geographical indications (GI), up to a maximum of UO Lakh per unit for first 5 years.
5.	CCIP Customized Package	Mega Industrial Units with an investment of more than 500 Cr. in this sector shall be eligible to avail customised package under CCIP
Additional incentive for renewable energy sourced energy storage project		
1.	Exemption in registration cum facilitation charges	ESP shall be exempted from payment of 20% registration charges cum facilitation fees.

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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