# SAGUS SPEAKS

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

## REGULATORY AND POLICY UPDATES

### RBI notifies RBI (Non-Banking Financial Companies - Concentration Risk Management) Amendment Directions, 2026.

The Reserve Bank of India ("RBI"), through notification dated 01.01.2026 notified the RBI (Non-Banking Financial Companies - Concentration Risk Management) Amendment Directions, 2026 ("CRM Amendment Directions")[1] to amend the RBI (Non-Banking Financial Companies – Concentration Risk Management) Directions, 2025 ("CRM Directions").

the definition of "infrastructure lending" under the CRM

Directions by way of inserting a proviso in respect of 'high quality infrastructure projects' as summarised below:

(i) Projects meeting all the specified conditions with respect to 'infrastructure lending' shall be classified as lending to "high-quality infrastructure projects" subject to compliance with the following conditions:

   a. The infrastructure project shall have completed at least one year of operations after achieving the date of commencement of commercial operations, without any breach of material covenants stipulated by the lenders.

[1] RBI (Non-Banking Financial Companies – Concentration Risk Management) Amendment Directions, 2026.

b. The exposure shall be classified as 'standard' in the books of the lender.

c. The borrower's revenue shall depend on rights granted under a concession or contract by the Central Government, a State Government, a public sector entity, or a statutory or regulatory body, and such concession or contract shall provide protection of these rights for the entire concession or contract period, subject to the borrower fulfilling its contractual obligations.

d. The concession or contractual provisions shall provide a high degree of protection to the lender, including at a minimum: (i) an escrow or Trust and Retention Account mechanism for ringfencing cash flows; (ii) *pari-passu* charge in favour of the lender over all movable and immovable assets; and (iii) risk mitigation measures for lenders in case of early termination, including step-in rights and minimum termination payments.

e. The borrower shall have sufficient internal or external financial arrangements, as assessed by the lender, to meet current and future working capital and other funding requirements of the project.

f. The borrower shall be restricted from acting to the detriment of the lender, including restrictions on issuance of additional debt or further encumbrance of project cash flows and assets without the consent of existing lenders.

The CRM Amendment Directions shall be applicable from the date the respective Non-Banking Financial Company ("NBFC") decides to implement the RBI (Non-Banking Financial Companies – Prudential Norms on Capital Adequacy) Amendment Directions, 2026 or from 01.04.2026, whichever is earlier.

## SEBI notifies consequential requirements for amended Merchant Bankers Regulations

The Securities and Exchange Board of India ("SEBI") by way of circular dated 02.01.2026 ("MB Circular")[2], has specified the consequential requirements and implementation timelines with respect to the SEBI (Merchant Bankers) Amendment Regulations, 2025, which were notified on 05.12.2025 and shall be applicable from 03.01.2026.

The key highlights of the MB Circular are as follows:

(i) Capital adequacy and liquid net worth requirements: SEBI has introduced a phased structure to maintain capital adequacy and new liquid net worth requirements for Merchant Bankers ("MBs"), which is as follows:

a. *Phase I (by 02.01.2027):* Category I MBs must maintain net worth of atleast INR 25 Crore and liquid net worth of atleast INR 6.25 Crore, and Category II MBs must maintain net worth of atleast INR 7.5 Crore and liquid net worth of atleast INR 1.875 Crore.

b. *Phase II (by 02.01.2028):* Category I MBs must maintain net worth of atleast INR 50 Crore and liquid net worth of atleast INR 12.5 Crore, and Category II MBs must maintain net worth of atleast INR 10 Crore and liquid net worth of atleast INR 2.5 Crore.

Existing MBs must intimate SEBI by 02.01.2027 regarding their intended category (Category I or II) along with a CA certified net worth certificate. MBs failing to meet Category I requirements will be automatically designated as Category II, and those failing Category II requirements shall not undertake any fresh permitted activities.

(ii) Calculation of liquid net worth: Liquid net worth means net worth deployed in unencumbered liquid assets with applicable haircuts, such as 0% for cash and bank fixed deposits, 10% each for government securities and certain mutual fund schemes and 30% for listed securities of Nifty 500 companies.

(iii) Underwriting obligations: Total underwriting obligations of an MB shall not exceed 20 times its liquid net worth. Existing MBs must comply with this requirement by 02.01.2028.

(iv) Certification requirements: Employees specified under Regulation 6(b), i.e., those professionally qualified in finance or law or accountancy or business management, must possess NISM Series-IX: Merchant Banking Certification. Existing employees shall obtain the certification by 02.01.2027 and new employees appointed on or after 03.01.2026 must obtain certification within 90 days of appointment. Compliance officers must possess both NISM Series-IX: Merchant Banking Certification and NISM

[2] Specification of the consequential requirements with respect to amended SEBI (Merchant Bankers) Regulations, 1992.

Series-IIIA: Securities Intermediaries Compliance (Non-Fund) Certification, with similar timelines.

(v) Independence of compliance officer: The compliance officer must be separate and independent from the principal officer and employees referred to in Regulation 6(b). Existing MBs must comply by 03.04.2026.

(vi) Principal officer experience: The principal officer must have at least five years of experience in financial markets. Existing MBs must comply with this requirement by 02.01.2027.

(vii) Prohibition on outsourcing core activities: MBs shall not outsource core merchant banking activities. Existing MBs with open mandates/agreements for outsourcing must close them by 03.04.2026.

(viii) Minimum revenue requirements: MBs must generate minimum revenue from permitted activities on a cumulative basis over three immediately preceding financial years: Category I (INR 25 Crore) and Category II (INR 5 Crore). The first assessment will be carried out with effect from 01.04.2029. MBs must submit revenue details within three months from the end of each financial year, starting from FY 2026-27.

(ix) Disclosures for marketing-only involvement: Where an MB is only involved in marketing (due to conflicts under Regulation 21C, i.e., when its directors, key managerial personnel, compliance officer, employees or their relatives, individually or in aggregate, hold more than 0.1% of paid-up share capital or shares whose nominal value is more than INR 10,00,000, whichever is lower, in the issuer), it must disclose the nature of instruments, investment amounts, quantum of holdings, and relationships in the offer document and marketing materials. This applies to public issues filed on or after 03.01.2026.

(x) Conditions for Non-SEBI regulated activities: MBs undertaking activities not regulated by SEBI must do so through separate business units (SBUs) segregated by a Chinese Wall and ring-fenced from SEBI-regulated activities. Such key requirements include:

a. segregation to be completed by 03.07.2026;
b. separate grievance redressal mechanisms and records;
c. distinct staff for non-SEBI regulated activities (with certain exceptions);
d. website disclosure of non-SEBI regulated activities by 02.02.2026 for existing MBs;
e. upfront written disclosures to stakeholders with confirmation/acknowledgement;
f. compliance report for existing mandates by 03.07.2026.

## RBI notifies RBI (Commercial Banks – Credit Risk Management) Amendment Directions, 2026.

RBI, through notification dated 05.01.2026, notified the RBI (Commercial Banks – Credit Risk Management) Amendment Directions, 2026 ("Credit RM Amendment Directions")[3] to amend the RBI (Commercial Banks – Credit Risk Management) Directions, 2025 ("Credit RM Directions").

The salient features of the Credit RM Amendment Directions are as follows:

(i) Amendments to definitions section under the Credit RM Directions, as follows:

a. "Committee on lending to related parties" means a committee of the Board of the bank entrusted with sanctioning of loans to related parties. Banks may also identify any existing committee, other than the Audit Committee, for this purpose.

b. "Lending" in the context of a "related party" means extending funded or non-fund-based credit facilities to related parties. Investments in debt instruments of related parties are covered, while equity investments are excluded.

c. "Reciprocally Related Person" means an individual who is: (i) a director (excluding independent director or nominee director appointed by the Government or RBI or a statutory body) of another commercial bank, or an All India Financial Institution, or a scheduled cooperative bank, or a subsidiary of a commercial bank; or (ii) a trustee of a mutual fund or an alternate investment fund established by any of the aforesaid regulated entities; or (iii) a relative of such director or trustee.

d. "Related Party" with respect to a bank means a related person, a reciprocally related person, or an entity where such person: (i) is a partner, manager, key managerial personnel, director or promoter; or (ii) is a shareholder with more than ten per cent of paid-up equity share capital; or (iii) has control, singly or jointly; or (iv) controls more than twenty per cent of voting rights through ownership, voting agreement or any other arrangement; or (v)

[3] RBI (Commercial Banks – Credit Risk Management) Amendment Directions, 2026.

has the power to nominate a director to the Board (power arising exclusively from a lending or financing arrangement); or (vi) the entity is accustomed to act on the advice, direction or instruction (given in professional capacity) of such person; or (vii) is a guarantor or surety; or (viii) is a trustee, author or beneficiary in case of a private trust; or (ix) is related as a subsidiary, parent, holding company, associate or joint venture. Government of India or State Government-owned or controlled entities shall not be treated as related parties to a government-owned bank only due to common government ownership or control.

e. "Related Person" with respect to a bank means a person and the relatives of such person, where the person: (i) is a promoter, director or key managerial personnel of the bank; or (ii) owns more than five per cent of paid-up equity share capital of the bank or can exercise more than five per cent of voting rights, singly or jointly; or (iii) can nominate a director to the Board through an agreement with the bank; or (iv) is in control of the bank, singly or jointly.

f. "Specified employees" mean all employees of a bank who are positioned up to two levels below the Board and any employee designated as such as per the bank's policy.

(ii) Coverage of lending to related parties under credit risk policy: The comprehensive Board approved policy on Credit Risk Management shall also cover aspects related to lending to related parties.

(iii) A new Section B.1 dealing with lending to related parties has been inserted to provide the following:

a. General principles for lending to related parties: Banks shall follow prudent risk management principles for lending to related parties, wherever permitted, and shall ensure effective implementation of their policy on lending to related parties. The credit policy shall contain specific provisions governing such lending and prescribe additional safeguards like provisions relating to lending to 'specified employees' and their relatives.

b. Regulatory prohibitions: Restrictions stipulated under the Credit RM Directions shall apply to loans and advances to spouse and minor or dependent children of directors. Banks may grant loans to spouses of directors having independent income from employment or profession, based on credit assessment and on commercial terms in line with the arms-length principle.

c. Materiality threshold:

i. Loans to related parties, shall be subject to materiality thresholds under the credit policy, which shall not exceed as follows:

| Asset Size of the bank (in INR crore) | Materiality Threshold Ceilings |
|---|---|
| > 10,00,000 | INR 25 Crore |
| ≥ 1,00,000 to up to 10,00,000 | INR 10 Crore |
| Less than 100,000 | INR 5 Crore |
| Asset size based on the last audited balance sheet.<br>For loans, materiality threshold shall apply at individual transaction level. | |

d. Recusal of interested persons: Directors, key managerial personnel, and 'specified employees' shall recuse themselves from deliberations and decisions on loan proposals, contracts, settlements, write-offs, waivers, enforcement of security, and resolution plans.

e. Monitoring and reporting: Banks shall maintain and periodically update the list of related persons, related parties, and loans sanctioned to them. Credit facilities to 'specified employees' and their relatives shall be reported to the Board annually. Internal auditors shall conduct periodic reviews at quarterly or shorter intervals to verify compliance.

The Credit RM Amendment Directions shall come into force from 01.04.2026 or any earlier date as per the discretion of the respective Banks.

RBI has notified similar amendments to the Credit RM Directions applicable to Urban Co-operative Banks, Small Finance Banks, Rural Co-operative Banks, Regional Rural Banks, Non-Banking Financial Companies, Local Area Banks and All India Financial Institutions on 05.01.2026.

## RBI notifies Foreign Exchange Management (Guarantees) Regulations, 2026.

RBI, through notification dated 06.01.2026, notified the Foreign Exchange Management (Guarantees) Regulations, 2026 ("Guarantee Regulations 2026")[4] to supersede the

[4] Foreign Exchange Management (Guarantees) Regulations, 2026.

Foreign Exchange Management (Guarantees) Regulations, 2000.

The salient features of the Guarantee Regulations 2026 are as follows:

(i) Definition of "Guarantee": shall include 'counter-guarantee' and mean to be a contract, by whatever name called, to perform the promise, or discharge a debt, obligation or other liability (including portfolio of debts, obligations or other liabilities), in case of default by the principal debtor.

(ii) Prohibition: Unless permitted under the Foreign Exchange Management Act, 1999 ("FEMA"), no person resident in India may be a party, i.e. – either as principal debtor, surety or creditor, to a guarantee where any of the parties to such guarantee involve any person resident outside India.

(iii) Exemptions: The Guarantee Regulations 2026 shall not apply to: (a) guarantees undertaken by a branch of an authorised dealer bank outside India or in an International Financial Services Centre ("IFSC"), unless any other party to the guarantee is a person resident in India; (b) an irrevocable payment commitment (IPC) issued by an authorised dealer in its capacity as custodian bank, where the principal debtor is a registered foreign portfolio investor and the creditor is an authorised central counterparty in India; or (c) guarantees issued in accordance with the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

(iv) Permission to act as surety or principal debtor: A person resident in India may act as a surety or a principal debtor for a guarantee, subject to compliance with the following conditions: (a) the underlying transaction for which the guarantee is being given or arranged is not prohibited under FEMA or rules or regulations or directions issued under FEMA; and (b) the surety and the principal debtor are eligible to lend to and borrow from each other, respectively, under the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, as amended from time to time. These conditions shall not be applicable if the guarantee is: (a) by an authorised dealer bank, backed by a counter-guarantee or 100% collateral from a non-resident; or (b) by an Indian agent of a foreign shipping or airline company, for obligations to any statutory or government authority in India; or (c) where both the surety and the principal debtor are residents of India

(v) Permission to obtain a guarantee as creditor: A person resident in India being a creditor may arrange or obtain a guarantee in its favour, subject to the condition that where the principal debtor and surety both are persons resident outside India, the creditor shall ensure that the underlying transaction is not prohibited under the applicable laws.

(vi) Reporting requirements: Guarantees covered under the Guarantee Regulations 2026 shall be reported by: (a) the surety, where the surety is a person resident in India; (b) the principal debtor (who arranged the guarantee), where the surety is a person resident outside India; or (c) the creditor, where both the surety and principal debtor are persons resident outside India or where the creditor has arranged the guarantee.

(vii) Scope and timeline of reporting: The reporting person shall report (a) issuance of a guarantee, (b) any subsequent changes in its terms (including change in amount, extension, or pre-closure), and (c) invocation of the guarantee, if any, in the prescribed format. Such reporting shall be submitted to an authorised dealer bank on a quarterly basis within fifteen calendar days from the end of each quarter for onward submission to the RBI, and the authorised dealer bank shall submit the returns to the RBI in the prescribed manner and format within thirty calendar days from the end of the relevant quarter.

(viii) Late Submission Fee ("LSF") for delayed reporting: A person resident in India who has delayed reporting may regularise the delay by completing the reporting and/or paying the applicable LSF. The LSF shall be INR 7,500 + (0.025% × Amount Involved × Number of Years of delay) (rounded up to the nearest hundred).

The Guarantee Regulations 2026 have come into force on the date of publication in the Official Gazette i.e., 06.01.2026.

## Compliance reporting formats for Specialized Investment Funds (SIFs) issued by SEBI.

SEBI, through circular dated 08.01.2026, issued compliance reporting formats for Specialized Investment Funds ("SIFs") ("SIF Circular")[5]. The SIF Circular follows the earlier SEBI circular dated 27.02.2025 which specified the regulatory framework for SIFs.

[5] Compliance reporting formats for Specialized Investment Funds.

SEBI has modified the compliance reporting formats applicable to SIFs by introducing an additional Compliance Test Report ("CTR") format and the Half-Yearly Trustee Report ("HYTR") format. Asset Management Companies ("AMCs") managing SIFs are required to report compliance covering 20 new and specific regulatory requirements including minimum investment thresholds, NISM certification, investment strategy characteristics, fee limitations, single issuer limits, derivative restrictions, product differentiation, branding and advertising compliance, disclosure requirements, portfolio disclosures, subscription and redemption provisions, listing requirements, benchmarking, distribution provisions, risk band compliance, and scenario analysis disclosures.

### SEBI simplifies the requirements for grant of accreditation to investors.

SEBI, by way of circular dated 09.01.2026 ("AIF Circular")[6], has introduced simplifications to the accreditation requirements for investors under the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations").

The key provisions of the AIF Circular include:

(i) Investment managers may now finalize and execute contribution agreements with investors and initiate related operational procedures based on their assessment of the investor's eligibility, even while accreditation from an accreditation agency is pending. However, following conditions are required to be complied with: (a) any commitment made by such investor shall not be included in the calculation of the scheme's corpus until accreditation is obtained; and (b) schemes of Alternative Investment Funds ("AIFs") shall receive funds from such investors only after they obtain the accreditation certificate.

(ii) The requirement to submit a detailed break-up of net worth as an annexure to the net-worth certificate has been eliminated. Additionally, it is now optional for the chartered accountant to specify the actual net-worth figure in the certificate, provided they certify whether the investor meets the specified threshold. The modified documentation requirements are set out in the revised Annexure A to the AIF Circular.

(iii) Trustees, sponsors, or managers of AIFs must ensure that the CTR prepared under Chapter 15 of the Master Circular for AIFs includes compliance with the provisions of this AIF Circular.

## GOVERNMENT NOTIFICATIONS

### MCA notifies Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2025.

The Ministry of Corporate Affairs ("MCA"), through notification dated 31.12.2025, notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2025 ("Removal of Names Amendment Rules")[7] to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 ("Removal of Names Principal Rules").

The Removal of Names Amendment Rules insert a proviso to rule 4, sub-rule (3) of the Removal of Names Principal Rules, after the existing proviso:

"Provided further that in case of any other Government Company, including its subsidiaries, the indemnity bond in Form STK-3A, in respect of one or more directors appointed or nominated by the Central Government or State Government, shall be given by an authorised representative not below the rank of under secretary or equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of such company."

The Removal of Names Amendment Rules came into force on the date of its publication in the Official Gazette, i.e., 31.12.2025.

### MCA issues Companies (Appointment and Qualification of Directors) Amendment Rules, 2025.

MCA, through notification dated 31.12.2025, notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2025 ("Appointment Amendment Rules")[8] to amend the Companies (Appointment and Qualification of Directors) Rules, 2014 ("Appointment Principal Rules").

Rule 11 of the Appointment Principal Rules containing references to "Regional Director (Northern Region), Noida" have been substituted with "Regional Director, Northern Region Directorate I" across sub-rules (1) and (2)

[6] Simplification of requirements for grant of accreditation to investors.
[7] Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2025.
[8] Companies (Appointment and Qualification of Directors) Amendment Rules, 2025.

of Rule 11. In sub-rule (2) of Rule 11, the requirement for intimation of particulars has been streamlined.

Failure to submit particulars only through Form No. DIR-3-KYC-Web within the prescribed timeline will result in deactivation of Director Identification Number ("DIN") by the Central Government or the Regional Director, Northern Region, or any authorised officer.

Re-activation of a deactivated DIN is now permitted only after filing Form No. DIR-3-KYC-Web, along with the prescribed fee.

The Appointment Amendment Rules have substituted Rule 12A of the Appointment Principal Rules, which deals with Directors KYC. Under the erstwhile Rule 12A, every individual who holds a DIN as on 31st March of a financial year must submit e-form DIR-3 KYC for that financial year to the Central Government on or before 30th September of the immediately following financial year. Where an individual has already submitted e-form DIR-3 KYC in relation to any previous financial year, submitting the web-form DIR-3 KYC-WEB through the web service for any subsequent financial year is deemed compliance for that year. If an individual wishes to update their personal mobile number or email address, they must do so by submitting e-form DIR-3 KYC only on or before 30th September of the financial year. For any additional update to the personal mobile number or email address during the same financial year beyond this allowed update, they must submit e-form DIR-3 KYC with a fee of INR 500. The fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB (as applicable) is payable as per the Companies (Registration Offices and Fees) Rules, 2014 ("Companies Fees Rules").

Under the substituted Rule 12A, every individual who holds a DIN as on the 31st March of a financial year shall file a KYC intimation in Form No. DIR-3 KYC Web to the Central Government on or before the 30th June of the immediately following every third consecutive financial year. Additionally, every individual holding a DIN shall, in the event of any change in their personal mobile number, email address, or residential address, submit Form No. DIR-3 KYC Web within a period of thirty days of such change, along with the fee as provided under the Companies Fees Rules.

The Appointment Amendment Rules further substitute "DIR-3-KYC and DIR-3- KYC-WEB" with Form No. DIR-3-KYC-Web (Intimation of Changes or Reactivation of DIN).

The Appointment Amendment Rules shall come into force from 31.03.2026.

## MoP issues draft amendments to Rule 3 of the Electricity Rules, 2005.

The Ministry of Power *vide* letter dated 02.01.2026 issued draft amendments to Rule 3 (Requirements of Captive Generating Plant) of the Electricity Rules, 2005 ("Draft MoP Amendment")[9]. The amendments will come into force on the date of publication in the Official Gazette, except Rules 3(2)(iii)(b), (c) and 3(4), which shall come into force with effect from 01.04.2026.

The salient features of the Draft MoP Amendment are as follows:

(i) Rule 3(1)(a) defines the assessment period as a financial year or such other continuous period within a financial year, as may be opted for by the captive user(s) for the purposes of verification under the Rules.

(ii) Rule 3(1)(b) defines captive user as an end user of the electricity generated in a Captive Generating Plant ("CGP"), and includes persons or group of persons consuming electricity directly or through an energy storage system storing electricity generated from the CGP. If the captive user is a company, it will be deemed to include as a single captive user its subsidiary(ies), holding company and other subsidiary(ies) of such holding company.

(iii) Rule 3(1)(c) defines ownership as proprietary interest and control or equity share capital carrying voting rights, held directly or through subsidiary(ies), its holding company and any other subsidiary or subsidiaries of such holding company.

(iv) Rule 3(1)(d) defines a special purpose vehicle as a legal entity established for the sole purpose of owning, operating and maintaining a generating station, and which does not undertake any other business or activity. The SPV shall be treated as an Association of Persons ("AoP") under the Rules.

(v) Rule 3(2)(i) stipulates the requirement for qualifying as a CGP whereby (a) captive users' percentage of ownership should not be less than 26% and (b) captive consumption of the aggregate electricity generated from the CGP should not be less than 51% during the assessment period by the users. As per Explanation 1 to the Rule, the captive consumption shall be determined with reference to the aggregate generation of the generating unit or units identified for captive use, and not with reference to the entire

[9] Draft amendments to Rule 3 of the Electricity Rules, 2005.

generating station as a whole. Further, as per Explanation 2, equity shares to be held in the generating station shall not be less than 26% of the proportionate equity corresponding to generating units identified as CGP.

(vi) Rule 3(2)(ii) provides that in case of power plant set up by a registered co-operative society, the conditions specified in Rule 3(2)(i) shall be satisfied collectively by the members of the co-operative society.

(vii) Rule 3(2)(iii) provides an illustration in Schedule-III and stipulates that in case of AoP:

a. The conditions specified in Rule 3(2)(i) shall be satisfied collectively by all the captive users and aggregate consumption by all such users shall be considered;

b. captive consumption by any individual user shall be admissible only upto 100% of its proportionate entitlement, calculated with reference to its share in the total captive ownership in the power plant. However, this condition relating to proportionate entitlement shall not be applicable to a captive user holding not less than 26% of the ownership in the power plant;

c. if there is variation in ownership of the plant during the assessment period, the proportionate entitlement of each captive user shall be determined on the basis of the weighted average shareholding of such captive user during the assessment period; and

d. for calculation of proportionate consumption for AoP, the captive user, its subsidiary or subsidiaries, its holding company, and any other subsidiary or subsidiaries of such holding company shall be collectively treated as a single captive use.

(viii) Rule 3(3) mandates the captive users to ensure the requirements in Rule 3(2) are complied with during the assessment period. In the event the requirements are not met, entire electricity generated shall be treated as supply of electricity by a generating company.

(ix) For verification of CGP status, Rule 3(4) provides that:

a. If the power plant and the captive users are located in the same State, a nodal agency designated by the State Government shall undertake the verification as per the procedure issued by such nodal agency. If the CGP and its captive users are located in more than one State, the verification shall be carried out by the National Load Despatch Centre in accordance with the procedure issued by it with approval of the Central Government;

b. An appeal against the verification carried out by the nodal agency shall lie before a Grievance Redressal Committee constituted by the appropriate government; and

c. Pending such verification for any financial year, the cross-subsidy surcharge and additional surcharge will not be levied, subject to furnishing of a declaration by the captive users as per the procedure to be issued by the nodal agency. If the power plant fails the verification after furnishing such declaration, applicable cross-subsidy surcharge and additional surcharge along with the carrying cost calculated at the base rate of late payment surcharge specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, shall be payable.

## JUDICIAL PRONOUNCEMENTS

### Supreme Court holds that an arbitral proceeding commences upon receipt of notice invoking arbitration and not upon appointment of the arbitrator.

The Supreme Court in the matter of *Regenta Hotels Private Limited v. Hotel Grand Centre Point & Ors.*,[10] through its judgment dated 07.01.2026 held that arbitral proceedings commence for all statutory purposes on the date the opposite party receives a Notice Invoking Arbitration ("NIA") under Section 21 of the Arbitration and Conciliation Act, 1996 ("A&C Act") and not on the date of appointment of an arbitrator or filing of a petition under Section 11 of the A&C Act. It held that the statutory consequences flowing from commencement of arbitration, including compliance with the mandate under Section 9(2), must be assessed solely with reference to Section 21 of the A&C Act. Treating the filing of a petition under Section 11 of the A&C Act as the trigger for commencement would be contrary to its text, scheme, and object, undermining the efficacy of interim protection granted under Section 9 thereof.

[10] SLP(C) 30212 of 2024.

The Supreme Court held that Section 21 of the A&C Act defines commencement of arbitration as a statutory event triggered by the receipt of a request to refer the disputes to arbitration. Furthermore, the expressions initiated in Rule 9(4) of Rule 9 of the Arbitration (Proceedings Before the Courts) Rules, 2001 and commenced in Section 9(2) must be read harmoniously with Section 21 of the A&C Act, failing which the statutory framework would be rendered incoherent.

## Supreme Court holds that mere participation in arbitration does not waive ineligibility of arbitrator.

The Supreme Court in the matter of *Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India*[11] through its judgment dated 05.01.2026 held that mere participation in arbitral proceedings does not lead to a waiver of the disqualification under law to be appointed as an arbitrator under Section 12(5) of the A&C Act. It held that waiver of such ineligibility can arise only through an express agreement in writing between the parties after the disputes have arisen, and cannot be inferred from conduct, acquiescence, or silence. Any appointment made in violation of Section 12(5) read with the Seventh Schedule of the A&C Act is *ex facie* invalid, and the arbitrator's mandate stands automatically terminated by operation of law.

The Supreme Court further held that ineligibility under Section 12(5) of the A&C Act is a matter of jurisdiction and cannot be cured by participation in the proceedings. A person who is himself ineligible to act as an arbitrator is equally disqualified from appointing one. It was clarified that the proviso to Section 12(5) of the A&C Act admits of waiver only by a clear, unequivocal, and express written agreement, and any notion of deemed waiver is alien to the statutory scheme. Furthermore, an objection to the inherent lack of jurisdiction of an arbitrator may be raised at any stage i.e., pre-award or post-award since an arbitrator lacking jurisdiction cannot validly adjudicate the dispute.

## NCLT, Ahmedabad held that the essential requirement under Section 9 of IBC is the existence of unpaid operational debt as on the date of consideration of the application.

The National Company Law Tribunal, Ahmedabad Bench-I ("NCLT") through its judgement dated 05.01.2026 in *Dhyaneshwar Shankar Unde v. Shukla Dairy Private Limited*[12] held that the essential requirement under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is the existence of unpaid operational debt as on the date of consideration of the application under Section 9 of IBC. It held that proceedings under Section 9 of the IBC are summary in nature and the NCLT is required to confine itself to examining whether an operational debt exists and whether a default subsists on the date of consideration of the application.

## MERC directs MSEDCL to allow net metering for rooftop solar consumers availing open access.

The Maharashtra Electricity Regulatory Commission ("MERC") through its judgment dated 01.01.2026 in *M/s. Hatsun Agro Product Limited v. Maharashtra State Electricity Distribution Co. Ltd.*[13], has directed Maharashtra State Electricity Distribution Co. Ltd. ("MSEDCL") to allow net metering for the rooftop solar installation of Hatsun Agro Product Limited ("HAPL") availing open access along with consequential adjustments in billing.

The MERC held that the earlier regulatory provision mandating gross metering during open access was expressly deleted by the Distribution Open Access (Second Amendment) Regulations, 2023 ("Amended Regulations"), whereunder Regulation 3.4 now clearly permits consumers to simultaneously avail open access and net metering. The MERC held that Amended Regulations are applicable and in force and the consumers cannot be deprived of benefits due to MSEDCL's delayed implementation or internal procedural issues.

The MERC directed MSEDCL and HAPL to reconcile the excess amounts billed from November 2023 onwards and to pass the corresponding credit adjustments in the immediate next billing cycle along with interest at the applicable bank rate. The MERC directed that similarly placed consumers are entitled to the same treatment under the Amended Regulations.

## APTEL affirms statutory liability for relinquishment charges upon grant of LTA.

The Appellate Tribunal for Electricity ("APTEL") through its judgment dated 08.01.2026 in the matter of *Director, Aryan Renewable Energy Private Pvt. Ltd. v. The Secretary, Central Electricity Regulatory Commission & Ors.*[14], upheld the Central Electricity Regulatory Commission ("CERC") direction to Aryan Renewable Energy Private Limited to pay relinquishment charges for surrender of Long-Term Access ("LTA"), even though the generating project never commenced operations due to force majeure events.

[11] Civil Appeal Nos. 37-38 of 2026.
[12] CP(IB) 239 of 2020.
[13] Case No 213 of 2025.
[14] Appeal No. 185 of 2018.

The APTEL held that Regulation 18 of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 imposes a statutory liability to pay relinquishment charges once LTA is granted and the Bulk Power Transmission Agreement ("BPTA") is executed, regardless of whether the project becomes operational. The APTEL further held that statutory regulations override contractual provisions, and therefore the force majeure clause in the BPTA cannot negate the regulatory framework.

## ABOUT SAGUS LEGAL

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