Legal Updates

Supreme Court recognizes limited Judicial Power to modify Arbitral Awards

In a landmark judgment delivered by a 4:1 majority, the Hon'ble Supreme Court in the matter of ***Gayatri Balasamy vs. M/s ISG Novasoft Technologies Limited*** vide judgement dated 30.04.2025 has held that courts possess a limited power to modify arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Act**"). The Constitution Bench, comprising Chief Justice Sanjiv Khanna and Justices B.R. Gavai, Sanjay Kumar, A.G. Masih, and K.V. Viswanathan held that while arbitration is intended to serve as an efficient and cost-effective mode of dispute resolution, judicial intervention is warranted when necessary to avoid injustice, undue delay, or hardship. The majority opinion was authored by Chief Justice Sanjiv Khanna. Justice K.V. Viswanathan delivered a dissenting opinion, holding that the power to set aside an arbitral award does not encompass the power to modify it, as the two are distinct and qualitatively different under the scheme of the Act.

The Court clarified that although Section 34 is primarily designed for setting aside arbitral awards, it does not preclude courts from providing appropriate reliefs, including limited modifications, provided such reliefs remain within the statutory framework. It held that a rigid interpretation, permitting only setting aside and not modification, would compel parties to initiate fresh arbitral proceedings even for minor corrections, thereby frustrating the very objective of arbitration. It relied on a purposive interpretation of the statute, the Court upheld the application of the doctrine of severability, allowing courts to modify specific portions of an award while upholding the rest. The judgment distinguished between "modification" and "setting aside," noting that partial setting aside may, in effect, result in a modification of the award. It held that under Section 34, courts can apply the doctrine of severability, allowing for modifications to specific portions of an award while retaining the remainder. This provides courts with flexibility to address issues within an award without overturning the entire decision. In addition to this, the judgement clarified that Section 34,

while limiting recourse to applications for setting aside awards, does not restrict the reliefs that the courts can grant within the statute's scope.

However, Justice K.V. Viswanathan delivered a dissenting opinion, holding that the power to modify an arbitral award is not subsumed within the power to set it aside, as the two powers are qualitatively distinct and do not emanate from the same legal source under the Arbitration and Conciliation Act. He further held that Article 142 of the Constitution of India will not be exercised by this Court to modify awards passed by arbitrators as it is well settled that the Article 142 power cannot be used to give a go by to the substantive statutory provision.

Supreme Court clarifies that Cross-Subsidy Surcharge may be determined independently of Tariff Orders

The Hon'ble Supreme Court in the matter of ***Jaipur Vidyut Vitran Nigam Limited v. Rajasthan Textile Mills Association, C.A. No's 8862-8868 OF 2022*** has held that the determination of Cross-Subsidy Surcharge ("**CSS**") by a State Electricity Regulatory Commission is not required to be tied to the issuance of tariff orders. The Bench comprising of Abhay S. Oka and A. G. Masih set aside the Appellate Tribunal for Electricity's ("**APTEL**") decision which had held that CSS could only be determined as part of a tariff order.

The case arose from a challenge by JVVNL and other distribution licensees against the judgment of APTEL which had quashed an order dated 18.10.2016 passed by Rajasthan Electricity Regulatory Commission ("**RERC**") which determined that CSS for open access consumers would be effective from 01.12.2016. However, APTEL held that such CSS determination was impermissible in isolation and must be contemporaneous with a tariff order.

The Hon'ble Supreme Court disagreed with this reasoning and held that neither the Electricity Act, 2003 nor the RERC (Terms and Conditions for Determination of Tariff) Regulations, 2014 prohibit the determination of CSS independently of tariff fixation. It clarified that Regulation 90 expressly provides for an independent methodology for determining CSS based on the prevailing retail tariff. While CSS may be determined with the tariff, it may also be determined separately, as was validly done by RERC in its order dated 18.10.2016.

The Hon'ble Supreme Court emphasized that CSS is compensatory in nature and represents the notional tariff the distribution licensee would have recovered from open access consumers. Hence, the CSS must align with the applicable retail tariff during the relevant period, regardless of whether the surcharge is determined as part of the tariff order or through a separate proceeding. The Hon'ble Supreme Court further observed that the APTEL had erred in mandating that CSS determination must always coincide with tariff determination. Notably, the RERC order dated 01.12.2016 was based on data and financials from the tariff order of 22.09.2016 and remained valid until it was superseded by the next tariff order dated 02.11.2017. It held that since CSS was determined based on the prevailing tariff rates, APTEL should not have found fault with the Commission's determination of the CSS rates. Consequently, the APTEL's judgment was set aside.

Supreme Court orders Liquidation of Bhushan Power while holding that commercial wisdom of CoC is not Absolute

The Division Bench of the Supreme Court in the matter of ***Kalyani Transco v. Bhushan Power and Steel Ltd***. (Civil Appeal No. 1808 of 2020), underscored the boundaries within which the commercial wisdom of the Committee of Creditors (**CoC**) must operate under the Insolvency and Bankruptcy Code, 2016 (**IBC**). While reaffirming that the commercial wisdom of the CoC enjoys significant deference, the Court clarified that such discretion must be exercised within the framework of law and cannot be used to validate non-compliance or arbitrary conduct. The case concerned the approval of JSW Steel's resolution plan for Bhushan Power and Steel Ltd. (**BPSL**), valued at ₹19,350 crores. Despite clear non-compliance with Section 30(2) and 31(2) of the IBC and Regulations 38 and 39 of the CIRP Regulations, the CoC chose to approve the plan, even after raising compliance objections in earlier meetings.

The Supreme Court observed that the CoC, instead of resolving these material concerns, proceeded to accept the resolution plan and later allowed delayed payments by JSW Steel—almost two years after plan approval—without adequate justification. The Court held that such conduct reflected an abdication of duty and a misuse of commercial discretion. It further criticized the Resolution Professional for failing to enforce compliance or uphold the sanctity of the CIRP timeline.

Highlighting that JSW's actions in delaying implementation and seeking to benefit from improved market conditions amounted to strategic abuse of the resolution process, the Court concluded that the CoC's decision lacked bona fide commercial evaluation and rejected the resolution plan and directed the liquidation of BPSL under Section 33 of the IBC.

Delhi High Court upholds the Order of the Ld. Single Judge exercising the power under Section 89 of the Code of Civil Procedure, 1908 to refer the parties to arbitration and appointing a Sole Arbitrator

In ***Vistrat Real Estate Private Limited v. Tata Steel Limited and Others***, 2025 SCC OnLine Del 2606, the Division Bench of the High Court of Delhi has upheld the Order passed by the Ld. Single Bench exercising its power under Section 89 of the Code of Civil Procedure, 1908, to refer the parties to Arbitration based on the consensus arrived at between the parties, even though the Arbitration Clause in the Lease Agreement did not cover the dispute that had arisen between the parties.

The Order was upheld on the ground that the parties had consented to being referred to Arbitration before the Ld. Single Bench and also before the Ld. Division Bench.

Bombay High Court holds that an Arbitrator cannot be substituted under Section 29A (6) of the Arbitration and Conciliation Act, 1996, unless the ingredients of Sections 14 and 15 of the Act are met

In ***Indiabulls Infraestate Ltd. V. Imagine Realty Pvt. Ltd.***, Arbitration Petition No. 39/2025 and ***Indiabulls Infraestate Ltd. v. Bliss Habitat Pvt. Ltd.***, Arbitration Petition No. 33/2025, the Bombay High Court has held that the jurisdiction under Section 29A of the Arbitration and Conciliation Act, 1996 ("**the Act**") does not give the Court an unbridled power to substitute an Arbitrator without meeting the ingredients of Sections 14 (Failure or impossibility to act) and 15 (Termination of mandate and substitution of arbitrator)of the Act.

Imagine Realty Pvt. Ltd. ("**Imagine**") and Bliss Habitat Pvt. Ltd. ("**Bliss**") had booked high-end apartments in Indiabulls Blu, Worli, Mumbai, which were allotted to them by Indiabulls Infraestate Ltd. ("**Indiabulls**"). Imagine and Bliss had availed a loan facility from Indiabulls Housing Finance Ltd. ("**IHFL**") and a mortgage was created over the units. Indiabulls cancelled the reservation of the units allocated to Bliss and Imagine on the ground of non-payment of the balance amounts due. The amounts owed by them to IHFL was paid by Indiabulls to release the mortgage. The arbitral proceedings initiated by Imagine and Bliss were being conducted together as one composite matter.

Indiabulls filed two Petitions under Section 29A of the Act seeking an extension of mandate of the Arbitral Tribunal by one year, which had already expired. Bliss and Imagine contended that the Court did not have jurisdiction to entertain the Petitions and that if the Court disagrees with this contention, the Sole Arbitrator should be substituted *inter alia* on the alleged ground that there was an inordinate delay in completing the arbitration and that the Sole Arbitrator had already made up his mind.

After analysing Section 29A (6) of the Act, which deals with the power to substitute an arbitrator, the High Court held that the jurisdictional Court has the power to substitute the arbitrator however, such power can never be construed to be an absolute power that can be exercised for the asking and that too by a party aggrieved by having lost in a parallel arbitration. The Court further observed that in the scheme of the Act, substitution of an arbitrator is envisaged in Section 15 where the mandate of the arbitrator terminates due to his withdrawal from office or pursuant to an agreement between the parties and in Section 14 where the arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons, he fails to act without undue delay. Section 29A of the Act does not give the Court an unbridled power to substitute an arbitrator lightly, without meeting the ingredients of Section 14 and 15 of the Act.

Calcutta High Court holds that the General Manager of the Metro Railway can neither act as an arbitrator or appoint an arbitrator in a dispute with Metro Railway as the same is barred under Section 12(5)

In ***M/s Krishna Construction v. The Chief General Manager Metro Railway and Ors***., AP-COM/253/2025, the Hon'ble High Court of Calcutta has held that the General Manager of the Metro Railway can neither act as an arbitrator or appoint an arbitrator in a dispute with Metro Railway as the same is barred under Section 12(5) of the Arbitration and Conciliation Act, 1996.

M/s Krishna Construction was awarded a contract for up-keeping and cleaning of sub-stations, AV section, Pump section, and the Conductor Rail section, of the electrical department under the control of the Dy. CEE/Maintenance, Metro Railway, Kolkata. The contract was terminated by the authority however, as per M/s Krishna Construction, bills were due for payment and the security deposit and bank guarantee was not returned.

of the Arbitration and Conciliation Act, 1996

M/s Krishna Construction approached the High Court seeking appointment of an arbitrator since the appointment of an arbitrator by the General Manager (Metro Railways) from a panel of engineers maintained by them was no longer permissible in law. Metro Railway contended that M/s Krishna Construction did not approach the Metro Railways for appointment of an arbitrator by following the proper procedure.

The High Court reiterated the settled law that an arbitrator cannot be appointed by a party or an officer of a party, as the same would be contrary to the doctrine of competenc. A person who cannot act as an Arbitrator, also cannot appoint an Arbitrator. Thus, the General Manager can neither act as an arbitrator nor appoint an arbitrator, who is an officer of Metro Railways. The General Manager cannot appoint an arbitrator as he has interest in the outcome of the proceeding and a Gazetted Officer of the Railways cannot act as an arbitrator as he is *de jure* unable to perform. The High Court relied upon *Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd.*, 2019 SCC OnLine SC 1517, and *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A joint Venture Company*, 2024 SCC Online SC 3219.

APTEL observes that unilateral demand for pass-through VFC without agreement or regulatory sanction cannot form the basis for deemed generation or fixed cost claims.

In Appeal No. 459 of 2024, *Tamil Nadu Generation and Distribution Corporation Limited vs* Tamil *Nadu Electricity Regulatory Commission & Anr* ,the Appellate Tribunal for Electricity ("**APTEL**") partly modified the order dated 13.08.2024 passed by the TNERC in DRP No. 3 of 2024. The dispute arose from SEPC Power Pvt. Ltd.'s claim for fixed capacity charges (**FCC**) for periods during which power was not scheduled by TANGEDCO between 01.12.2022 and 31.03.2023. SEPC argued that despite having declared availability and kept its plant ready, TANGEDCO's refusal to requisition power entitled it to fixed charges under the PPA. TANGEDCO opposed the claim, arguing that SEPC's insistence on supplying power at a pass-through variable fixed cost (**VFC**), contrary to the PPA terms capping VFC at domestic coal prices, meant that the generator was not willing to perform under contract.

The Tribunal broke the disputed period into three sub-periods: (i) 01.12.2022–31.12.2022 (Section 11 directions of the Electricity Act, 2003 were in force); (ii) 01.01.2023–28.02.2023 (directions not in force); and (iii) 16.03.2023–31.03.2023 (directions again in force). For Sub-Period 1 and 3, APTEL upheld SEPC's entitlement to FCC, finding that TANGEDCO could not simultaneously withdraw consent under Section 11 and insist on adherence to the PPA's capped VFC, especially when SEPC was prevented from selling to others due to a lack of NOC and contractual restrictions. The Tribunal emphasized that under Section 11, the generator is entitled to recovery of fixed costs, and SEPC's availability declarations were not invalidated merely due to coal price-driven VFC disputes. Moreover, TANGEDCO's failure to schedule power during Section 11 operation, coupled with MoP orders, rendered them liable.

However, for Sub-Period 2 (01.01.2023–28.02.2023), when Section 11 directions were not operative, the Tribunal held that SEPC was not entitled to FCC. During this phase, SEPC had refused to supply power as per the PPA's capped VFC and instead insisted on pass-through pricing. APTEL found that SEPC's conditional availability declarations violated PPA terms, and payment of FCC cannot be claimed while simultaneously disregarding the agreed variable charge mechanism. It ruled that SEPC's unilateral demand for pass-through VFC without agreement or regulatory sanction cannot form the basis for deemed generation or fixed cost claims.

Conclusively, the Tribunal modified TNERC's order by disallowing FCC for the period 01.01.2023 to 28.02.2023 while affirming SEPC's entitlement to FCC for 01.12.2022–31.12.2022 and 16.03.2023–31.03.2023. The appeal was disposed of with these limited modifications, reinforcing principles of sanctity of contract, regulatory compliance, and fair application of Section 11 mandates in exceptional power supply situations.

APTEL observes that prudence check on the required AC:DC ratio to achieve the mandated CUF, especially when the Regulations did not

In Appeal No. 302 of 2024, **Greenyana Solar Private Limited** (GSPL) challenged the order dated 29.01.2024 passed by the Haryana Electricity Regulatory Commission (HERC) in Petition No. 33 of 2023, wherein HERC approved a levelised tariff of ₹2.35/kWh for GSPL's 10.72 MW (AC) solar project by restricting the admissible DC capacity to 10.72 MWp—applying an AC:DC ratio of 1:1—thereby disallowing capital cost for the actual installed DC capacity of 14.90 MWp. GSPL argued that the Commission's approach was erroneous as it failed to undertake a prudence check for the appropriate AC:DC ratio necessary to achieve the prescribed CUF of 21% under HERC's RE Regulations, 2021. Relying on APTEL's judgments in Amplus Sun Solutions and Nisagra Renewable Energy, the appellant contended that a CUF of 21% cannot be achieved with a 1:1

prescribe any specific ratio is necessary

AC:DC ratio and that the capital cost of additional DC modules used to attain the required CUF should be allowed.

The Tribunal held that HERC erred by not conducting a prudence check on the required AC:DC ratio to achieve the mandated CUF, especially when the Regulations did not prescribe any specific ratio. It emphasized that tariff determination under Section 62 of the Electricity Act must reflect the economic and operational realities of a project, and acknowledged the interlinked nature of AC:DC ratio, capital cost, and CUF. The Tribunal rejected HERC's assumption that the normative CUF must be achieved without regard to actual project design, and found merit in GSPL's contention that an AC:DC ratio higher than 1:1 was necessary to meet the 21% CUF.

While setting aside the impugned order to this extent, APTEL remanded the matter to HERC for a fresh determination, specifically directing it to undertake a prudence check of the AC:DC ratio and reassess the corresponding capital cost and levelised tariff. However, since the adjustment for system unavailability and grid downtime (claimed by GSPL) had not been challenged in the appeal, it was deemed closed. In the interim, the Tribunal allowed a provisional tariff of ₹2.50/kWh (instead of the claimed ₹2.75/kWh) till the matter is decided afresh by HERC. The appeal and pending applications were accordingly disposed of.

CERC schedules public hearing on the Draft Central Electricity Regulatory Commission (Cross Border Trade of Electricity) (Second Amendment) Regulations, 2024

On 31.12.2024, the Central Electricity Regulatory Commission ("**CERC**") had issued the Draft Central Electricity Regulatory Commission (Cross Border Trade of Electricity) (Second Amendment) Regulations, 2024 and invited comments / objections / suggestions till 07.02.2025.

CERC has, vide public notice dated 28.04.2025, has scheduled a public hearing on **09.05.2025** at **10.30 AM** via online video conferencing. CERC has requested that the names of the proposed participant(s) be communicated to the Secretary by 05.05.2025 and presentations, if any, be shared in advance.

The public notice can be accessed from the following *link*.

KERC has passed an order notifying the Average Pooled Power Purchase Cost (APPC) at Rs. 5.54/unit for FY 2024 – 25 w.e.f. 01.04.2025, subject to truing up, as per actuals

On 29.04.2025, the Kerala Electricity Regulatory Commission ("**KERC**") has passed an order in 'In the Matter of Truing up of Average Pooled Power Purchase Cost [APPC] for the Financial Year 2024 – 25 and notifying provisional APPC for the Year 2025 – 26 – reg' with the following directions:

i. For the purpose of Renewable Energy Certificate (REC), the APPC has been notified at Rs. 5.54/unit for FY 2025 – 26 w.e.f. 01.04.2025, subject to truing up, as per the actuals.
ii. In accordance with the KERC (Procurement of Energy from Renewable Sources) (Seventh Amendment) Regulations, 2019, the ESCOMs shall bill RE generators selling energy to them under the REC mechanism at lower of Rs. 5.54/unit or 75% of the Generic tariff determined for FY26.
iii. Since the actual APPC for FY 2024 – 25 has been revised to Rs. 5.54/unit from the earlier provisional value of Rs. 4.93/unit, the difference between the amount already paid and the revised applicable rate shall be settled by ESCOMs in three equal instalments.

The order dated 29.04.2025 can be accessed from the following *link*.

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