

GATI - विधि

-LAW IN ACTION



Legal Updates

Ministry of Power (“MoP”) vide letter dated 09.04.2021 notified Draft Electricity (Rights of Consumers) (Amendment) Rules, 2021 (“**Draft Amendment Rules**”) to the Electricity (Rights of Consumers) Rules, 2021 (“**Principal Rules**”). Stakeholder comments are invited by way of email by 30.04.2021.

The Draft Amendment Rules provide as follows:

1. Definitions for ‘Gross-metering’, ‘Net-metering’ and ‘Net-billing or net feed-in’
2. Rule 11(4) of the Principal Rules is proposed to be substituted and the proposed amendment provides that:
 - a. The arrangement for net metering / gross metering / net billing or net feed-in shall be as specified by the State Commission from time to time;
 - b. Wherever regulations do not provide for net metering/ net billing or net feed in, Commission may allow net metering for loads up to 500 kW / sanctioned load, whichever is lower; and net billing or net feed in for other loads;
 - c. Commission may introduce Time of Day tariffs in the cases where Prosumers are availing net billing or net feed in;
 - d. In case of net metering/net billing or net feed in, distribution licensee may install a solar energy meter to measure the gross solar energy generated for the purpose of RPO credit;
 - e. Commission may permit gross metering for Prosumers who would like to sell all generated solar energy to distribution licensee instead of availing net metering / net billing or net feed in facility.
3. Rule 11(13) of the Principal Rules is substituted and the proposed amendment provides that the energy generated shall, instead, be adjusted as per regulations prescribed by the Commission for Grid Interactive Rooftop Solar PV system.

**Ministry of Power
notifies Draft
Electricity (Rights
of Consumers)
(Amendment)
Rules, 2021**

Rajasthan Electricity Regulatory Commission (“**REERC**”) vide Order dated 08.04.2021 issued the Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2021 (**2021 Regulations**). The 2021 Regulations shall be applicable to all grid interactive distributed renewable energy generating systems that are commissioned on or after 01.07.2021. The existing Rooftop and Small Solar Grid Interactive Systems commissioned under the net metering agreements up to 30.06.2021 shall continue to operate under the respective net metering agreements. Hence, the 2021 Regulations shall remain in force along with the Rajasthan Electricity Regulatory Commission (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems) Regulations, 2015 and subsequent amendments thereof.

The following are its salient features:

1. The net metering and net billing arrangement through Renewable Energy Service Company (“**RESCO**”) shall be permitted for which the Eligible Consumer may lease out / rent the rooftop space/ land etc., to a RESCO.
2. The cumulative capacity of renewable energy generating system to be allowed at a particular distribution transformer has been increased from 30% to 50% of the capacity of such transformer.
3. The maximum renewable energy generating system capacity to be installed at any Eligible Consumer’s premises has been increased from 80% to 100% of the sanctioned load/contract demand of the consumer.
4. The connection agreement for net billing arrangement or net metering arrangement shall be for 25 years.
5. The excess quantum exported by such domestic consumer shall be purchased by the Distribution Licensee at the weighted average tariff discovered through competitive bidding in last financial year.
6. The quantum of electricity generated from the self-owned renewable energy generating system under net metering arrangement, if installed on Eligible Consumer premises, shall be exempted from banking charges, wheeling charges, cross subsidy surcharge, and additional surcharge.

The Central Electricity Regulatory Commission (“**CERC**”) vide Draft Order dated 12.04.2021 in Petition No. 04/SM/2021 (Suo-Motu) considered the issue of determination of mechanism for compensation on account of installation of Emission Control System by the generating companies in compliance of Revised Emission Standards notified by Ministry of Environment, Forest & Climate Change (“**MoEFCC**”) vide Environment (Protection) Amendment Rules, 2015 (“**2015 Rules**”) and subsequent amendments thereof in respect of the thermal power generating stations.

Vide the said Draft Order, the CERC proposed a compensation mechanism on account of capital cost incurred by the generating companies to install the emission control system. Moreover, inclusion or exclusion of any other expenditure shall be decided on case-to-case basis.

The proposed Compensation Mechanism shall be applicable as per the following principles:

1. The Mechanism shall be applicable to generating stations which have valid PPAs with the procurer(s), having provisions of restitutionary relief under Change in Law or having specific provision which vests power in the Commission to determine the impact of change in law during operation period;
2. The Mechanism shall not be applicable in cases where the PPAs entered into by the parties already have a mechanism for compensation on account of change in Law for the expenditure incurred during the operation period;
3. In cases where the PPAs do not provide for a mechanism for compensation but the parties to the PPAs have agreed mutually to a compensation mechanism, the compensation worked out by this proposed Compensation Mechanism shall be the ceiling compensation.

**Rajasthan
Electricity
Regulatory
Commission issues
Regulations for
Grid Interactive
Distributed
Renewable Energy
Generating Systems**

**Determination of
compensation for
installation of
Emission Control
System by the
generating
companies**

**Insolvency and
Bankruptcy Code
(Amendment)
Ordinance, 2021**

The President of India promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 vide Gazette Notification dated 04.04.2021 (“**IBC Amendment**”) to amend the Insolvency and Bankruptcy, Code 2016 (“**IBC**”). The IBC Amendment has been notified with the stated objective of providing an alternative pre-packaged insolvency resolution process for MSMEs and is effective immediately.

The salient features of the IBC Amendment are as below:

1. The minimum value of default for the pre-packaged insolvency resolution process under newly inserted Chapter III-A may be specified by the Central Government to be between Rupees One Lakh to Rupees One Crore.
2. Pre-packaged insolvency resolution process shall be completed within a period of 120 days from the commencement date. The resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority within a period of ninety days from the commencement date. When no resolution plan is approved by the committee of creditors within the time period, the resolution professional shall after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.
3. During the pre-packaged insolvency resolution process period the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partner of the corporate debtor.
4. Resolution professional within 7 days of the pre-packaged insolvency commencement date, constitute a COC based on the list of claims confirmed.
5. Committee of creditors, after the pre-packaged insolvency commencement date but before the approval of resolution plan by a vote of 66% may resolve to initiate a corporate insolvency resolution process.

Penalty between Rupees One Lakh to Rupees One Crore may be imposed for fraudulent or malicious initiation of pre-packaged insolvency resolution process or for initiation of process with intent to defraud any person.

**Central, State or
Local Government
bound by
Resolution Plan
approved by an
Adjudicating
Authority under
Section 31(1) IBC**



The Hon’ble Supreme Court in *Ghanashyam Mishra v. Edelweiss ARC* (Civil Appeal No. 8129 of 2019) settled several key issues pertaining to the Insolvency and Bankruptcy Code (“**IBC**”). It categorically held that the 2019 amendment to IBC that made a reference to Central, State or Local Government in Section 31, is clarificatory and declaratory in nature and therefore shall have retrospective operation. It further added that even without the 2019 amendment to IBC, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term 'creditor' and in any case, by the term 'other stakeholders' as provided in Section 31(1) of the IBC.

The Hon’ble Court further clarified that on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

**Inter se priorities
amongst Secured
Creditors are valid
and prevail in
distribution of
assets under IBC**

The National Company Law Appellate Tribunal in *Technology Development Board v. Anil Goel and ors. (Company Appeal (AT) (Insolvency) No.731 of 2020)* considered whether there can be no sub-classification inter-se the Secured Creditors in the distribution mechanism adopted in a Resolution Plan of the Corporate Debtor as according priority to the first charge holder would leave nothing to satisfy the claim of Appellant who too is a Secured Creditor.

The Court held that once a Secured Creditor elects to relinquish its security interest to the liquidation estate, it ranks higher in waterfall mechanism under Section 53 to a Secured Creditor who has enforced its security interest but failed to realise its claim in full and for the unpaid part of its claim ranks lower to the Secured Creditor who has relinquished its security interest. The Court further added that Section 52, incorporating the doctrine of election, read in juxtaposition with Section 53 providing for



distribution of assets treats Secured Creditor relinquishing its Security interest to the liquidation estate differently from a Secured Creditor who opts to realise its security interest, in so far as any amount remains unpaid following enforcement of security interest to a Secured Creditor is concerned by relegating it to a position low in priority.

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4579 2925 F: +91 11 4659 2925
E: mail@neetiniyaman.co
W: www.neetiniyaman.com

Office No. 51, 4th Floor, Nawab Building,
327, Dr. D.N. Road,
Opp. Thomas Cook, Flora Fountain
Mumbai – 400 023, India
T: +91 22 4973 9114

Disclaimer: 'GATI-विधि: LAW IN ACTION' is for information purposes only and should not be construed as legal advice or legal opinion. Its contents should not be acted upon without specific professional advice from the legal counsel. All rights reserved.