

GATI - विधि

-LAW IN ACTION



Legal Updates

Supreme Court extends period of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings till further orders

The Hon'ble Supreme Court has, while taking judicial notice of the extraordinary situation caused by the sudden and second outburst of COVID-19, vide order dated 27.04.2021, restored its order dated 23.03.2020, and in continuation of its order dated 08.03.2021, directed that the period(s) of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings - whether condonable or not - shall stand extended till further orders. The Supreme Court has clarified that the period from 14.03.2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), Section 12A of the Commercial Courts Act, 2015 ("**Commercial Courts Act**") and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

Supreme Court directs existing overhead powerlines to be converted to underground power lines in certain areas of Rajasthan and Kutch for protection of endangered species of birds

The Hon'ble Supreme Court in W.P. (C) 838 of 2019 titled as *M.K. Ranjitsinh & Ors. v. Union of India & Ors.* vide order dated 19.04.2021 has issued directions to ensure protection of two species of birds - the Great Indian Bustard ("**GIB**") and the Lesser Florican - which are on the verge of extinction but are found in parts of Rajasthan and Gujarat. Priority and potential GIB areas have been identified by the Supreme Court both in the States of Rajasthan and Gujarat.

The Supreme Court has directed all existing overhead powerlines in the priority and potential GIB area be converted into underground powerlines, wherever feasible, and for all future cases of installing the transmission lines, a study be undertaken for the lines to be laid underground. Areas where conversion is not feasible or possible and pending consideration of conversion of the overhead cables into underground powerlines, 'bird divertors' be installed on the existing power lines. In cases where it is found feasible to convert the overhead cables into underground powerlines, the same is to be

undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing powerlines. A Supreme Court nominated committee shall study the feasibility of conversion of the overhead cables into underground powerlines. Further, with respect to breeding grounds, appropriate fencing is to be provided for conversion, habitat restoration and for making it predator proof.

The Ministry of Power (“**MoP**”) has constituted a committee to prepare and recommend the National Electricity Policy (“**NEP**”), 2021 which is required to submit its suggested draft NEP 2021 within two months. The MoP has invited suggestions for framing the draft NEP 2021 within 21 days from the date of its communication dated 27.04.2021. The salient features of the draft NEP 2021 enclosed with MoP’s communication are as follows, *inter alia*:

1. **Optimal generation mix:**

- (a) Coal-based stations may have to resort to two-shift operation and operate at reduced generation levels to provide flexibility to cope with variable generation from renewable energy sources.
- (b) Differential tariffs between peak and off-peak hours for consumers and generating stations by Central Electricity Regulatory Commission (“**CERC**”) / state electricity regulatory commissions (“**SERCs**”) should be introduced expeditiously in order to appreciate the value of peaking power. SERCs need to frame a scheme whereby consumers willing for curtailment in their demand, part or full load, get the benefit of lower tariff.

2. **Transmission:**

- (a) The principle for planning of transmission system should be that prior agreement between buyers and sellers of electricity might not be a pre-condition for network expansion. Transmission system should be available as per requirements of transmission customers and developed matching with growth of generation and load. A system of fair compensation should be developed either through back-to-back standard agreements or through suitable regulations to facilitate matching completion of two or more transmission systems and / or generating stations.
- (b) Transmission projects could be of two categories: (i) generator or drawing customer specific projects which cater to specific needs of generator or drawing customer; or (ii) system strengthening projects which could be required for transferring power from areas with high generation to areas with high demand.
- (c) There is a need to streamline the process of approval of transmission projects, before any investment is made in creating these infrastructures.

3. **Distribution:**

- (a) All SERCs must make reporting of three reliability indices, viz. SAIDI, SAIFI and CAIDI to facilitate fair and transparent comparison of distribution companies (“**DISCOMs**”). All the monitored parameters must be prominently displayed on the DISCOM’s website. The data could be published by SERCs (state-wise) and Central Electricity Authority (“**CEA**”) (all India) at the end of the year.
- (b) DISCOMs should take necessary steps to achieve 100% metering of all consumers within one year of notification of NEP, 2021. Existing meters should be replaced with pre-paid meters in a phased manner so as to achieve 100% pre-paid metering within 3 years of notification of NEP, 2021. SERCs should put in place an independent third-party meter testing arrangement.
- (c) Subsidy to any consumer or class of consumers by the State Government in the tariff determined by SERC shall be in the form of Direct Benefit Transfer.

4. **Grid operation:**

- (a) Forecasting and scheduling of renewable energy sources, as is being done for conventional generating plants, should be made mandatory by Appropriate Commissions; though a margin of error needs to be specified, beyond which deviation charges would become applicable. CERC standards should apply by default to help State Load Despatch Centres (“**SLDCs**”) till SERCs bring out such standards.
- (b) State governments should take action for separation of SLDCs from state transmission companies. Functioning of SLDC should be ring-fenced and made completely independent.

- (c) National Load Despatch Centre, Regional Load Despatch Centre and SLDC should make information of real time system operation as specified by CERC, available in public domain through its website.

Power markets: A new entity called aggregators may be created to aggregate demand, renewable power generation, demand response, micro-storage, etc. to help small consumers, prosumers and producers reach the market. This would also help in promotion of open access which is presently allowed for consumers with a load of only 1 MW and above.

The Appellate Tribunal for Electricity (“**APTEL**”) in *Srikalahasti Pipes Ltd v. APSPD and Ors.* (Appeal No. 92 of 2021) was faced with the issue whether restriction imposed by the Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) on seeking open access by the Ferro Alloy Industries consumers was justified.

Vide order dated 27.04.2021, Hon’ble Mr. Ravindra Kumar Verma (Technical Member) opined that the decision to ban the open access to Ferro Alloy Industries consumers and forcing them to procure power from DISCOMs only was not as per the Electricity Act, 2003 (“**EA 2003**”) but also the APERC (Terms and Conditions of Open Access) Regulations, 2005. It was opined that the open access provisions have been made to provide a choice to the consumers and foster competition in the power sector. It was further held that the SERC can neither take a decision in the interest of the DISCOM and at the cost of the consumer citing that if open access is allowed, then DISCOM will not be able to recover fixed charges, nor take a commercial decision on behalf of the consumer by declaring that the tariff being charged from the appellant is the lowest and there is no need for the appellant to explore the market through open access.

Hon’ble Mr. Justice R.K. Gauba (Judicial Member) on the other hand took a divergent view by basing his decision on the principle that the right to open access is not an absolute right and the words “non-discriminatory” appearing in the definition of open access given in Section 2(47) of the EA 2003 do not connote that such right is to be enforced unexceptionally and the right created by the extant law is “*only to be considered for open access*”. He further added that in denying open access, if one category is called upon to bear with some abridgment of its rights so that there is a balance created and the legitimate commercial interests of supplier and generator are also protected, the same would be justified. He also opined that the guidance provided by Section 42(2) of the EA 2003 is of wide amplitude and ‘relevant factors’ shall also include other technical constraints and the larger public interest.

Since there was no unanimity in the above two opinions, the matter was referred to the Hon’ble Chairperson of APTEL for appropriate further directions.

The CERC has, in the matter of *Rewa Ultra Mega Solar Limited & Ors.* (Petition Nos.: 91/MP/2020, 631/MP/2020 & 672/MP/2020) vide its order dated 25.04.2021, *inter alia*, allowed certain deviations from the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (“**Solar Bidding Guidelines**”) issued by the MoP under Section 63 of the EA 2003. The Solar Bidding Guidelines apply to long-term procurement of electricity by procurers from grid-connected solar photovoltaic (“**PV**”) power projects having a size of 5 MW and above. The itemized detailed deviations sought by the petitioners which were approved by the CERC are as under, *inter alia*:

1. **Payment security mechanism:** The CERC observed that the ‘letter of mandate’ issued directly to the Reserve Bank of India serves as an adequate substitute for a letter of credit or a payment security fund to be maintained with a scheduled bank, and thus allowed such deviation.
2. **Notification of force majeure event:** The CERC allowed the extension of time for notification of force majeure event from 7 days to 15 days to notify all the effects of force majeure.
3. **Off-take constraints & grid unavailability:** The CERC approved the proposed changes in connection with generation compensation to the solar power developers (“**SPDs**”) due to delay in readiness of transmission / power evacuation infrastructure beyond the scheduled commissioning date of a unit.

APTEL rules on nature of right to open access

CERC allows certain deviations to solar PV power projects from Solar Bidding Guidelines

4. **Event of default on account of SPD's failure to supply energy as per power purchase agreement ("PPA")**: The CERC observed that the intent is to give the parties an option to avoid termination of the PPAs and continue with the project which may be economically beneficial to the stakeholders involved with the project.
5. **Extension of commissioning timelines**: The CERC opined that as the time extension is based on the petitioners' own assessment and is meant to avoid uncertainty in project execution, the CERC does not have any objection to agreeing to the same.
6. **Inclusion of "Epidemic, Pandemic, Quarantine, Lockdown or similar action ordered by any government authority" as Force Majeure Events**: The CERC observed that the expression 'pandemic' or 'epidemic', without a qualification defining inability of the project developer to execute the project, would be too open a position and needs to be restricted to 'pandemic resulting in lockdown or similar action ordered by any government authority'.

Termination due to a Non-Natural Force Majeure Event: The CERC observed that the existing period of 180 days may not be sufficient for the SPDs to revive the projects. Hence, such deviation sought was allowed.

Ratedi Wind Power Private Ltd. ("**Ratedi Wind**") and Wind Urja India Private Ltd. ("**Wind Urja**") had filed petitions against Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**") being DRP Nos. 3 & 4 of 2020 before the Tamil Nadu Electricity Regulatory Commission ("**TNERC**") for payment of outstanding energy invoices, i.e., the principal amount due from October 2017 onwards along with late payment interest on invoices between March 2012 to August 2017, as per the energy purchase agreements ("**EPA**").

While TANGEDCO was pressurizing Ratedi Wind and Wind Urja to waive off the late payment interest, but with a steadfast approach and use of strategic litigation, the wind companies successfully got an order in their favour.

TNERC after taking note of the clauses in the EPAs, observed that TANGEDCO is entitled to make payments to Ratedi Wind and Wind Urja and directed TANGEDCO to verify the claim made by Ratedi Wind and Wind Urja, and after deducting the amount already paid, settle the remaining amount within 30 days from the date of the order, i.e., by 15.05.2021, together with interest at 12% per annum from the date of filing of the petitions till realisation.

Ratedi Wind Power Private Ltd. and Wind Urja India Private Ltd. were represented by Neeti Niyaman before TNERC.

The Supreme Court of India in the case of *PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited* (Civil Appeal No. 1647 of 2021) vide order dated 20.04.2021, while considering the need to balance freedom of contract with public policy, held that nothing contained in either Section 23 or Section 28 of the Indian Contract Act, 1872 or Section 28(1)(a) of the Arbitration Act interdicts two Indian parties from getting their disputes arbitrated at a neutral forum outside India.

The Court also opined that there is no clash between Section 10 of the Commercial Courts Act and the explanation to Section 47 of the Arbitration Act as an arbitration resulting in a foreign award, as defined under Section 44 of the Arbitration Act will be enforceable only in a High Court under Section 10(1) and not in a district court under Section 10(2) or Section 10(3) of the Commercial Courts Act.

The Supreme Court has, vide order dated 22.04.2021 in *Sandeep Khaitan, Resolution Professional for National Plywood Industries Ltd. v. JSVM Plywood Industries Ltd.* (Criminal Appeal No. 447 Of 2021) held that the power of High Courts under Section 482 of the Code of Criminal Procedure, 1973 ("**CrPC**") cannot overlook the statutory dictate in the provisions of Sections 14 and 17 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**").

In the present case, an application under Section 7 of the IBC was admitted against National Plywood Industries Limited ("**NPIL**"). The appellant was appointed as the interim resolution professional ("**IRP**") and moratorium under Section 14 of the IBC was also declared. The appellant contended that the former managing director of NPIL, in conspiracy with respondent, engaged in an illegal transaction

TNERC directs TANGEDCO to pay outstanding amount of energy invoices, along with 12% interest per annum

Supreme Court holds that Indian parties can choose a forum for arbitration outside India

Supreme Court holds that power of High Courts under Section 482 of the CrPC cannot overlook the statutory dictate in the provisions of Sections 14 and 17 of the IBC

to the tune of Rs. 32.50 lakhs without authority from the appellant and in violation of Section 14 of the IBC. The present appeal was filed against impugned order passed by the Hon'ble High Court of Guwahati which had allowed an interlocutory application filed by the respondent, to allow it to operate its bank account maintained with the ICICI Bank, Bhubaneswar and to unfreeze the bank account of its creditors over which a lien had been created and the accounts frozen pursuant to the lodging of an FIR by the appellant.

The Supreme Court observed that the impugned order of the High Court resulting in the respondent being allowed to operate the account without making good the amount of Rs. 32.50 lakhs to be placed in the account of NPIL could not be sustained, in light of the admission of application under Section 7 of the IBC against NPIL and declaration of moratorium under Section 14, and thus allowed the appeal. The Supreme Court further directed that NPIL's assets would be managed strictly in terms of the provisions of the IBC.

The Supreme Court in *Rahul S. Shah v. Jitendra Kumar Gandhi (CA 1659-1660 of 2021)* vide order dated 22.04.2021 made important observations with respect to execution of suits. While considering an appeal arising out of an execution proceeding unresolved over 14 years, it observed that executing courts must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay. All the High Courts were also directed to update rules related to execution of decrees within one year to this effect. A slew of directions was also issued to govern execution proceedings till the High Courts frame necessary guidelines.

The Court further noted that there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree, which goes against the scheme of the Code of Civil Procedure, 1908. In order to avoid multiplicity of proceedings, the court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous and executable decree is passed in any suit.

In continuation to the Ministry of Corporate Affairs ("MCA") General Circular No. 10/2020 dated 23.03.2020, it is further clarified that spending of corporate social responsibility ("CSR") funds for setting up makeshift hospitals and temporary COVID care facilities is an eligible CSR activity under Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and disaster management, respectively. The companies may undertake the aforesaid activities in consultation with state governments subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by the MCA from time to time.

**Supreme Court
directs disposal of
execution
proceedings within
six months**

**MCA issues
clarification on
spending of CSR
funds for setting up
makeshift hospitals
and temporary
COVID care
facilities**

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