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-LAW IN ACTION



Legal Updates

The Supreme Court of India vide its judgment dated 06.01.2021 in Civil Appeal No. 14665 of 2015 holds that the powers under Articles 226/227 of the Constitution of India should be used sparingly by the High Courts when it comes to interfering with arbitral process.

This observation was made by the Supreme Court while considering the question that “whether the arbitral process could be interfered under Article 226/227 of the Constitution of India, and under what circumstance?”. The Supreme Court on this account holds that such power should be exercised only in exceptional rarity, wherein one party is left remediless under the statute or a clear ‘bad faith’ shown by one of the parties.

The Supreme Court observes that the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) itself contains various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Arbitration Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.

The Supreme Court while referring to the judgment of M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited, (2019) SCC Online SC 1602, opined that it is, thus, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. The Supreme Court further opined that if the Courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished. Accordingly, the Supreme Court held that the powers under Articles 226/ 227 of the Constitution of India shall be exercised in exceptional rarity by High Courts while interjecting any arbitral process.

Supreme Court holds that the powers under Articles 226/ 227 should be exercised in exceptional rarity by High Courts when interjecting with the arbitral process



The Ministry of Information & Broadcasting (“MIB”) vide its order dated 30.12.2020 has amended provisions of the ‘Guidelines for obtaining License for providing DTH Broadcasting Services in India’ (“**Amendment Guidelines**”), which shall remain applicable for all licenses providing direct-to-home (“DTH”) services. The existing licensees are required to apply afresh to receive such license, and the issue of fresh license to existing licensees shall be subject to their clearing all dues and fulfilling all obligations under the terms and conditions of existing license as well as those arising out of legal cases pending before various courts of law.

The salient features of the Amendment Guidelines are as follows:

- (a) License shall be valid for a period of 20 years from the date of issue of wireless operational license and the renewal of the same shall be limited to 10 years at a time.
- (b) Vertically integrated entities shall not reserve more than 15% of the operational channel capacity for its vertically integrated operators. The remaining capacity shall be offered to the other broadcasters on a non-discriminatory basis.
- (c) No entry fee shall be charged from DTH operators holding license on the date of notification of the Amendment Guidelines.
- (d) The licensee shall submit a bank guarantee equivalent to Rs. 5 crores for the first two quarters and thereafter shall submit a bank guarantee equivalent to estimated sum payable, license fee for two quarters and other dues not otherwise securitized. Existing DTH operators shall submit equivalent to the estimated sum payable, license fee for two quarters and other dues not otherwise securitized.
- (e) The licensee shall pay an annual fee equivalent to 8% of its adjusted gross revenue (“AGR”), calculated by excluding GST from gross revenue as reflected in the audited accounts of the company for that particular financial year. The minimum annual license fee shall be subject to 10% of the entry fee. The license fee is to be paid on a quarterly basis and shall be equal to the actual license fee payable for the preceding quarter. The annual settlement of the license fee shall be done at the end of the financial year. The licensor will have the right to modify the license fee as a fixed percentage of AGR during the validity of license period.
- (f) DTH operators are permitted to operate platform services (“PS”) channels, subject to a maximum of 5% of their total channel carrying capacity. A one-time non-refundable registration fee of Rs. 10,000 per PS channel shall be charged from the DTH operators.
- (g) DTH operators willing to share DTH platform and transport stream of TV channels on voluntary basis shall be allowed to do so, wherever technically feasible. The common hardware for their subscriber management system and conditional access system applications may also be voluntarily shared.
- (h) Set top boxes offered by DTH service provider shall have such specifications as laid down by the Bureau of Indian Standards from time to time.

The Petroleum and Natural Gas Regulatory Board (“PNGRB”) vide a Public Notice has issued Daft PNGRB (Technical Standards and Specifications including Safety Standards for Petroleum Refineries and Gas Processing Plants), Regulations 2021 (“**Draft PNGRB Regulations**”).

The salient features of the Draft PNGRB Regulations are as follows:

- (a) Said regulations shall apply to all entities engaged in operation of petroleum refineries and / or gas processing plant, to ensure safety and reliable operations at the project premises.

**Ministry of
Information &
Broadcasting issues
amendments to
‘Guidelines for
obtaining License
for providing DTH
Broadcasting
Services in India’**

**Petroleum and
Natural Gas
Regulatory Board
issued Draft
PNGRB (Technical
Standards and
Specifications
including Safety
Standards for**

Petroleum Refineries and Gas Processing Plants) Regulations, 2021

- (b) To ensure uniform application of design principles in layout and to guide in selection and application of materials and components, equipment and systems, and uniform operation and maintenance of the refineries and gas processing plants, keeping in mind the safety aspects of the employees, public, and facilities associated with refineries and gas processing plants.
- (c) Asset Integrity Management System (“**AIMS**”) shall be an important element of organizations process safety management system in order to ensure the integrity and safe operations of process equipment through inspection, testing, preventive maintenance, and quality assurance.
- (d) Proper fire protection equipment and facilities shall be available at the plant in terms of the Draft PNGRB Regulations.
- (e) Two types of Safety Audits are proposed to be carried i.e. (i) Internal Safety Audit to be carried out once in a year; and (ii) External Safety Audit to be carried out once in three years through PNGRB empanelled Third Party Agency.
- (f) It proposes to implement occupational health surveillance to evaluate employees’ health conditions, effectiveness of control measures, and to early recognition occupational health diseases.

Stakeholders have been invited to submit their views and comments on the Draft PNGRB Regulations by 05.02.2021.

Rajasthan Electricity Regulatory Commission issues Draft Rajasthan Electricity Regulatory Commission (Transaction of Business) Regulations, 2021

Rajasthan Electricity Regulatory Commission (“**RERC**”) vide Public Notice has issued Draft RERC (Transaction of Business) Regulations, 2021 (“**Draft RERC Regulations**”). Under the Draft RERC Regulations the commission has proposed certain provisions relating to following:

- (a) Commission’s meetings, the procedure for issuing notice for the meetings and the agenda thereof.
- (b) Initiation and conduct of proceedings before the commission and other miscellaneous provisions in relation to the same.

Stakeholders have been invited to submit their views and comments on the Draft RERC Regulations on or before 05.02.2021.

Relaxation in timelines for holding of Board Meetings and Extraordinary General Meetings through Video Conferencing or Other Audio -Visual Means

The Ministry of Corporate Affairs (“**MCA**”) has notified the Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020 dated December 30, 2020 (“**MCA Amendment Rules**”), under which the requirement of holding board meetings with the physical presence of directors under Section 173(2) read with Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 has been amended to the extent that the meetings are allowed to be conducted through video conferencing or other audio-visual means by duly ensuring compliance of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 till 30.06. 2021.

Further, the MCA in continuation of its earlier general circulars no. 14/2020 dated 08.04.2020, no. 17/2020 dated 13.04.2020, no. 22/2020 dated 15.06.2020 and no. 33/2020 dated 28.09.2020 has further allowed companies to conduct their Extraordinary General Meetings through Video Conferencing or Other Audio -Visual Means or transact items through postal ballot in accordance with the framework provided under the said circulars, till 30.06. 2021.

**Calcutta High
Court holds that the
amendments to the
Companies Act,
2013 are prospective
in nature**

The Calcutta High Court vide its order dated 05.01.2021 in W.P.O No. 493 of 2019 held that the Companies (Amendment) Act, 2014 (“**2014 Amendment Act**”) amending Section 164(2) of the Companies Act, 2013 (“**Companies Act**”) and the Companies (Amendment) Act, 2018 (“**2018 Amendment Act**”) incorporating proviso to Section 167(1)(a) of the Companies Act are prospective in nature.

The Calcutta High Court on this account passed an observation that if retroactive effect is given to the said provisions, previous defaults would attract operation of the amendments and entail the directors suffering violation of their fundamental right under Article 19(1)(g) of the Constitution of India without any possibility of the directors having been able to predict such consequences on the date of such default. The Court further opined that the retrospective operations of the said amendments are fatal to small and medium scale businesses which form the backbone of the economy.

Taking into account the above factors the Calcutta High Court held that the operation of the 2014 Amendment Act and 2018 Amendment Act are prospective in nature and shall not apply retrospectively.

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

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