

GATI - विधि

-LAW IN ACTION



Legal Updates

Removal of Difficulty in Implementation of 'commercial arrangement' under MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019

Maharashtra Electricity Regulatory Commission (“**MERC**”), in accordance with the first proviso of Regulation 1(2) of MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, was required to notify ‘commercial arrangement’ alongwith related provisions of deviation charge, additional charge for deviation and penal actions, vide separate order on or before 01.04.2020.

However, as per Maharashtra State Load Dispatch Centre (“**MSLDC**”) the activities of the newly developed Deviation Settlement Mechanism (“**DSM**”) software such as trial run operations etc. will only be completed by 15.06.2020, in view of prevailing restrictions due to COVID-19 which are to continue till 30.06.2020.

MERC acknowledging the need to provide more time for further activities of the DSM development software for planning and implementing transition from existing final balancing and settlement mechanism to DSM mechanism, has notified that the date for coming into force of ‘commercial arrangement’ shall be 05.10.2020.

Mitigation of impact of COVID-19 on electricity distribution licensees and consumers of Rajasthan

Rajasthan Electricity Regulatory Commission (“**RERC**”), in continuation of its earlier order dated 15.04.2020 has issued another order regarding mitigation of impact of COVID-19 on electricity distribution licensees and consumers of Rajasthan. Vide its order dated 15.04.2020, RERC had issued directions to generating companies and transmission and distribution licensees w.r.t. delayed payments and applicable late payment surcharge. RERC, considering that the State Government has extended time period of relaxation to electricity consumers till 30.06.2020 from 31.05.2020, has held that some more time is required to mitigate the effect of COVID-19, and has accordingly, directed DISCOMS that reliefs given by RERC vide its order dated 15.4.2020 shall be extended till 30.6.2020.

MNRE issues extension for implementation of “One Sun One World One Grid”

Ministry of New and Renewable Energy (“**MNRE**”) had, on 26.05.2020, invited proposals from qualifying consulting firms for developing a long-term vision, implementation plan, road map and institutional framework for implementing One Sun One World One Grid (“**OSOWOG**”). The deadline for submission of the proposals has been extended to 11:59PM IST on 22.07.2020 for submission of online proposals and 17:59PM IST on 24.07.2020 for submission of hard copies.

Public hearing on draft CERC (Terms and Conditions for Tariff determination from RE Sources) Regulations, 2020

Central Electricity Regulatory Commission (“**CERC**”) would be holding a public hearing on the comments/ objections/ suggestions received on draft CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 on 19.06.2020 at 10.30 am through online video conferencing. In this regard, the Commission has requested the stakeholders to register the name of the proposed participant(s) on the SAUDAMINI Portal at least 2 days before the public hearing i.e. 19.06.2020.

UPERC lays down mechanism for seeking compensation for ‘Change in Law’ events

Uttar Pradesh Electricity Regulatory Commission (“**UPERC**”) in a petition bearing no. 1440 of 2019 which was filed to claim compensation for ‘Change in Law’ events due to government notifications resulting in increase in price of landed cost FSA grade coal and imposition of additional cost of washing of coal. UPERC, while allowing the petitioner to recover such increased cost due to imposition of levies, except evacuation facility charges, and allowing recovery of additional charge of washing, has laid down a general mechanism for seeking compensation for ‘Change in Law’ events, considering the fact that approaching the Commission every year for allowance of compensation for such ‘Change in law’ events, is a time consuming process. The mechanism will help any aggrieved party to seek compensation for the ‘Change in Law’ events limited to those dealt with in the order.

PNGRB issues clarification regarding establishment and operations of standalone Liquefied Natural Gas Stations

Petroleum and Natural Gas Regulatory Board (“**PNGRB**”) has issued public notice dated 02.06.2020 pursuant to receipt of communications from entities regarding establishment and operations of standalone Liquefied Natural Gas (“**LNG**”) Stations. The public notice addresses the concern as to “*Whether any entity can set up LNG stations and market LNG or only the entity authorised for developing a City or Local Gas Distribution Network is entitled to set up LNG stations and market LNG?*”

PNGRB, after examination of the issue, citing relevant portions of the existing legal frame work, concluded that the PNGRB Act 2006 already covers regulatory framework related to Compressed Natural Gas (“**CNG**”) stations, alongwith mode of granting authorisation to an entity that is desirous of establishing or operating a ‘City Gas Distribution Network’ which is essential for establishing or setting up a CNG station. However, the same neither provides such framework for LNG Stations nor provides a provision which states that the LNG Station can only be set up by an entity which has been authorized for developing a ‘City or Local Natural Gas Distribution Network’. PNGRB, thus, has issued a clarification that any entity can set up an LNG Station in any Geographical Area (“**GA**”) or anywhere else, even if it is not the authorized entity for that GA. PNGRB clarifies that such entity shall comply with the PNGRB Act and the extant regulations.

MoC Issues a scheme for Rationalisation of Coal Linkages/ Swapping of Coal

The Ministry of Coal (“**MoC**”) has issued the ‘Methodology for Rationalisation of Coal Linkages/ Swapping of Coal’ dated 05.06.2020 (“**Scheme**”). The Scheme has been formulated with a view to rationalise coal transportation by easing evacuation constraints resulting in reduction in landed cost of coal. Coal India Limited (“**CIL**”) is the appointed Nodal Agency for conducting the process of rationalisation. Salient features of the Scheme are as below:

Eligibility:

- Rationalisation of coal linkages/ swapping of coal (“**Arrangement**”) can be done across consumers of coal (public and private sectors) and across domestic coal linkages and imported coal;

- All sectors viz. regulated sector, i.e. Power and Non-Regulated Sector (public or private) are eligible for entering into this Arrangement;
- Arrangement only allowed between entities within the same sector for avoiding operational issues due to difference in pricing of coal and priority in movement of coal;
- Arrangement applicable only to non-coking coal;
- Arrangement not applicable on coal procured from e-auction schemes and mined from captive coal blocks;
- Arrangement not permitted for coal quantities subject to any pre-existing restrictions on rationalisation of linkage/swapping;
- Arrangement between linkage holders of CIL and The Singareni Collieries Company Limited (“**SCCL**”) permitted with a ‘price offset’ clause.

Impact:

- There will be no change in commercial terms of existing Fuel Supply Agreements (“**FSAs**”);
- Arrangement shall be bilateral and voluntary, where one party to this Arrangement has to be a domestic non-coking coal linkage holder;
- Minimum tenure of Arrangement shall be six (6) months, termination would be allowed with a notice of three (3) months;
- Maximum tenure of Arrangement for two linkage holders shall be lesser of remaining tenures under the two FSAs;
- Savings from reduction in transport cost must accrue to both parties in the Arrangement;
- The computation of savings is joint responsibility of both parties to the Arrangement;
- In case of regulated sector, i.e. Power Sector, savings will pass on to the respective DSICOMs/regulator in case of coal supplied under a Power Purchase Agreement.

Implementation:

- A committee consisting of representatives from CIL, SCCL, Central Electricity Authority, Indian Railways and the Ministry of Shipping (“**Committee**”) to oversee implementation;
- The Committee will monitor implementation of Scheme and address key issues;
- The Committee will scrutinise applications including the computed savings between both parties to the Arrangement and decision of the Committee will be final and binding on both parties;
- In case of material breach to the supplementary agreement annexed to FSA, after approval of Arrangement, Committee shall have power to recommend termination of FSA of a party who is a linkage holder;
- Penalties would be attracted for shortfall beyond 5% (calculated on quarterly average basis) in off-take of coal rationalised;
- No participant shall be allowed to set up a washery in the leasehold area of a coal mine.

MoC vide its order dated 28.05.2020 has issued “Methodology for Auction of Coal Mines/Blocks for sale of coal” under the Coal Mines (Special Provisions) Act, 2015 (“**CMSP Act**”) and the Mines and Minerals (Development and Regulation) Act, 1957 (“**MMDR Act**”). Through this methodology, applicable on auction of all fully explored coal blocks/mines and partially explored coal blocks/mines for sale of coal under the CMSP Act and MMDR Act, MoC, *inter alia* has ordered that the successful bidder:

- Shall be required to pay revenue share in the prescribed manner on monthly basis along with other statutory dues including taxes and levies;
- Shall be provided with incentives for early production and gasification of liquefaction of coal;
- Shall be free to sell/utilise coal in any manner;
- Shall produce coal amounting to at least 65% of scheduled production as per approved mine plan in the year and not produce coal less than 75% of the scheduled production as per approved mine plan in any block of three years;
- Shall be required to pay revenue share, in case of annual coal production being less than 65% of the scheduled production, for the production and shortfall, so that total revenue share paid is equal to 65%.

MoC issues methodology and for auction of coal mines

MoC issues modified Guidelines for Preparation, Formulation, Submission, Processing, Scrutiny, Approval and Revision of Mining plan for the coal and lignite blocks

MoC vide office memorandum dated 29.05.2020 issued amended Guidelines for formulation of Mining plan and Mine Closure plan. All coal (including lignite) mining operation shall henceforth be governed as per the modified guidelines. Salient features of the modified Guidelines are as follows, *inter alia*:

- Mining operations shall be undertaken in accordance with the duly approved mining plan. Once approved, the plan would be valid for the balance life of the mine, subject to modifications, if any;
- The stage plan for 1st, 3rd and 5th year, year of achieving rated capacity of the mine (as opposed to “*peak rated capacity*” as per erstwhile Guidelines), final year and post closure shall be submitted at the time of initial submission of mining plan;
- Project proponent shall submit a report/information consisting compliance status w.r.t. approval condition of mining plan, stage plan for next 5 years, revised balance life of mine and revised calculation of ESCROW amount w.r.t. revised balance life to Coal Controller, Kolkata;
- Mining plan submitted for approval shall have prior approval of the concerned board of the company;
- In case of allotted/auctioned coal/lignite blocks, mining plan may be revised for extraction of more coal on year to year basis. Provided that the mining plan shall be revised only if the remaining extractable reserve of the coal mine is less than 3 times of the rated capacity of the capacity of current approval mining plan or there is a change in method of mining from opencast to underground necessitated due to change in geo-mining conditions;
- The total cost for carrying out such activities shall be estimated for assessment of abandonment cost of the mine involving progressive and final mine closure activities such as barbed wire fencing all around the working area, dismantling of structures/demolition and cleaning of sites, rehabilitation of mining machinery, etc., for the specified post closure period;
- The action plan for carrying out all abandonment operations (progressive and final mine closure) should be furnished in the form of bar chart for a period of life of the mine plus post closure period.

IBBI issues the Guidelines for Insolvency Professionals

The Insolvency and Bankruptcy Board of India (“**IBBI**”) has issued the ‘Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020’ on 02.06.2020 (“**Guidelines**”). The Guidelines shall come into effect for appointment of insolvency professionals (“**IP**”) as interim resolution professionals (“**IRP**”), liquidator, resolution professional (“**RP**”) and bankruptcy trustee (“**BT**”) on 01.07.2020. The Guidelines have been issued in supersession of the earlier guidelines issued on 28.11.2019. To read more, [click here](#).

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

The Central Government, vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 issued on 05.06.2020 (“**Ordinance**”), has amended the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) effectively suspending the initiation of corporate insolvency resolution process (“**CIRP**”) under Sections 7, 9 and 10 of the IBC. The Ordinance has come into force as on 05.06.2020.

The Ordinance inserts Section 10A to the IBC which provides that no application for initiation of CIRP of a corporate debtor can ever be filed in respect of any default arising on or after 25.03.2020 for a period of six months, where such period may be extended for a further period not exceeding one year, from such date as may be notified. It has been clarified that such provision shall not apply to any default arising before 25.03.2020.

Further, the Ordinance amends Section 66 of the IBC to provide that no application shall be filed by a resolution professional under Section 66(2) of the IBC in respect of a default against which initiation of CIRP has been suspended as per Section 10A of the IBC. Section 66 of the IBC provides for filing of application by resolution professional before the adjudicating authority for passing of order that any persons, who were knowingly parties to the carrying on of the business of corporate debtor with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, shall be liable to make contributions to the assets of the corporate debtor.

The above Ordinance has been issued to prevent corporate persons experiencing financial distress, on account of the nationwide lockdown in force to combat the spread of COVID-19, being pushed into insolvency proceedings under the IBC.

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government has made rules to amend the Companies (Share Capital and Debentures) Rules, 2014. The newly amended second proviso to sub-rule 4 of Rule 8 lays down that a start-up Company, may issue sweat equity shares not exceeding 50% of its paid up capital, up to a period of ten years from the date of its incorporation or registration. Period, for which up to 50% of paid up capital can be issued as sweat equity shares, has been increased from five to ten years from the date of incorporation or registration of the notified companies.

Further in Rule 18, in sub rule 7, in clause (b) sub clause (v) is substituted as follows:

"(v) In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi);

Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on 31st day of March of that year."

The amended clause excludes privately placed debentures enlisted in item (B) of sub clause (iii) of clause (b).

**Companies (Share
Capital and
Debentures)
Amendment Rules,
2020**

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