

GATI - विधि

-LAW IN ACTION



Legal Updates

Based on the yearly targets fixed by the Government of Tamil Nadu, 'agricultural services' are being effected by the distribution licensee under the Distribution Code for energisation of agricultural pump-sets and under various schemes notified by the Government. Thus, Tamil Nadu Electricity Regulatory Commission ("TNERC") has proposed to amend *inter alia* sought to specify a detailed procedure for effecting agricultural services and shifting of area of service of the intending consumer and related services. The objective of the proposed amendment is:

- (i) to provide that any supply from the agricultural category of service can be used for allied purposes as stipulated by the Commission from time to time, by installing a change-over switch approved and sealed by the distribution licensee.
- (ii) to regulate the conditions for agricultural connections where the consumer requires a separate service connection for utilizing energy for radios and other appliances including domestic lighting in the farmhouse.
- (iii) to lay down a time limit of two years from the date of issue of supply availability notice for the intending agricultural consumer to avail the supply, failing which the application shall be treated as lapsed and cancelled. Since shifting of an existing agricultural service connection is not covered in the Supply Code, necessary amendments thereto have also been recommended to make a provision for shifting of agricultural services.

Comments are invited by 06.04.2020 and draft amendment will be taken into consideration after expiry of thirty days from the date of publication of the Notification on the TNERC website and any objection or suggestion, which may be received from any person before the expiry of the aforesaid period will be considered by the TNERC.

TNERC proposes amendments to the Tamil Nadu Electricity Distribution Code & Tamil Nadu Electricity Supply Code

The Mineral Laws (Amendment) Act, 2020 (“**Amendment Act**”) issued vide Gazette Notification dated 13.03.2020 seeks to amend the Mines and Minerals (Development and Regulation) Act, 1957 (“**Mines Act**”) and to amend the Coal Mines (Special Provisions) Act, 2015 (“**Coal Mines Act**”).

Amendment Act seeks to modify the Mines Act towards:-

- (i) prescribing conditions for commencement and continuation of production by the holders of mining leases who have acquired rights, approvals, clearances and the like under Section 8B to ensure sustained production of minerals in the country;
- (ii) provisions regarding previous approval of the Central Government for grant of reconnaissance permit, prospecting licence or mining lease;
- (iii) providing State Governments with power to take an advance action for auction of the mining lease before the expiry of the lease period;
- (iv) conditions with regard to mining leases;
- (v) provisions with respect to non-exclusive reconnaissance permit who carries out the prescribed level of exploration in respect of deep seated minerals or such minerals as may be notified by the Central Government.

Amendment Act seeks to modify the Coal Mines Act towards:-

- (i) grant of reconnaissance permit, prospecting licence, mining lease or prospecting licence-cum-mining lease in respect of Schedule I coal mine to such company as selected through auction by competitive bidding under this section;
- (ii) provisions for termination of vesting order or allotment order by the nominated authority;
- (iii) compensation for land and mine infrastructure in relation to a Schedule I coal mine;
- (iv) provisions for use the coal mine from a particular Schedule I coal mine, by a successful bidder or allottee in any of its plants or plant of its subsidiary or holding company engaged in same specified end-uses in such manner as may be prescribed.

Amendment Act shall be deemed to have come into effect from 10.01.2020 and shall remain in force for a period of 60 days from the date of assent of the President i.e., 13.03.2020 and shall be deemed to have been repealed after the expiry of the said period. Moreover, the earlier Mineral Laws (Amendment) Ordinance, 2020 issued on 10.01.2020 which was published in the official gazette on 15.01.2020, now stands repealed.

Amendment to the Mines and Minerals (Development and Regulation) Act, 1957 and Coal Mines (Special Provisions) Act, 2015 issued

APERC invites comments on the amendments proposed by Distribution Companies to the Modalities (Guidelines) for Implementing Solar Roof Top Policy, 2018

The Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) has invited comments/suggestions of stakeholders on the amendments proposed by Southern Power Distribution Company of Andhra Pradesh Limited and Eastern Power Distribution Company of Andhra Pradesh Limited (“**Discoms**”) to the Modalities (Guidelines) for Implementing Solar Roof Top Policy, 2018 (“**Guidelines**”) issued by APERC vide order dated 25.05.2019. The proposed amendments seek to modify, *inter alia*, (i) the metering method, (ii) applicable tariff for solar rooftop projects for either net metering/gross metering, (iii) period of agreement etc.

Comments/suggestions may be submitted by the stakeholders by 5:00 PM on 23.03.2020. A public hearing on the same shall be conducted on 24.03.2020.

GERC proposes determination of Tariff for procurement of power from Biomass based power projects and Bagasse based co-generation projects

The Gujarat Electricity Regulatory Commission (“**GERC**”) has proposed to determine the tariff for FY 2020-21 to FY 2022-23 for procurement of power by the Distribution Licensees and Others in Gujarat from biomass based power projects and bagasse based co-generation projects in line with its generic tariff order (Order No. 1 of 2018) passed on 15th March, 2018 (“**Order**”). The GERC proposes to continue with the same ‘Levelized Fixed Component of Tariff for 20 years’ as determined in the Order for the power projects to be commissioned during next three years of control period i.e. up to 31st March 2023. GERC has invited comments from the potential stakeholders for fixation power procurement tariff for Biomass and Bagasse based co-generation power projects for the new control period, on or before 27.03.2020.

TSERC proposes determination of Variable Costs for existing Biomass, Bagasse and Industrial Waste based power projects

The erstwhile Andhra Pradesh Electricity Regulatory Commission determined the indicative variable cost for Biomass, Industrial Waste and Bagasse projects for FY 2014-15 to FY 2018-19 with indicative fuel price escalation of 6% and actual fuel price escalation based on indexation method. Accordingly, Telangana State Electricity Regulatory Commission (“**TSERC**”) vide suo-moto orders determined the Fuel Price and Variable Cost for Biomass, Bagasse and Industrial Waste projects for FY 2015-16, FY 2016-17, FY 2017-18 and FY 2018-19 respectively. TSERC now for the period 01.04.2019 to 31.03.2020 proposes to determine the Variable Cost for the existing Biomass, Bagasse and Industrial Waste projects in the State of Telangana, and having Power Purchase Agreements with the Distribution Licensees, for FY 2019-20. Suggestions and comments are invited from all the stakeholders and public at large on or before 24.03.2020 by 5.00 P.M.

APTEL issues directions to regulate institution of Appeals before it

The Appellate Tribunal for Electricity (“**APTEL**”) in *M/s. Sudhakara Infratech Private Limited vs Uttar Pradesh Electricity Regulatory Commission & Ors.*, observed that the Commission, while dismissing the prayers of the Appellant, had failed to hold a proper inquiry into the questions of fact which arose in the dispute adjudicated by it. Accordingly, while determining the issue of the propriety of the approach of the State Commission to the process of adjudication, APTEL has passed certain directions to regulate the filing of appeals before it in future, in relation to the impleadment and participation of the State Electricity Regulatory Commissions in a matter filed before APTEL.

NCLAT observes that proceedings initiated under SARFAESI & DRT will not extend the period of limitation for CIRP

The National Company Law Appellate Tribunal (“**NCLAT**”) in *Bimalkumar Manubhai Savalia vs. Bank of India & Anr.*, dealt with appeal proceedings filed by shareholder and director of the Corporate Debtor (Radheshyam Agro Products Pvt. Ltd.) (“**CD**”) on the ground that the Corporate Insolvency Resolution Process (“**CIRP**”) initiated by the Financial Creditor was beyond limitation. Based on the facts, the Financial Creditor had submitted that the application filed for initiating of CIRP proceedings was within the Limitation period and his claim cannot be regarded as time barred debt. It is to be noted that, the Corporate Debtor defaulted in making payment and therefore proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“**SARFAESI**”) and Debt Recovery Tribunal (“**DRT**”) were initiated in 2017. NCLAT opined that SARFAESI and DRT proceeding will not extend the period of limitation since those proceedings are independent and as per Section 238 of Insolvency and Bankruptcy Code (“**IBC**”), which is a complete Code and will have overriding effect on other laws. Thus, the proceedings initiated or pending in DRT, either initiated under SARFAESI or under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 cannot be taken into account for the purposes of limitation. Further, NCLAT while considering the issue relating to effect of part payment on the limitation period, relied upon Section 19 of the Limitation Act and *B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates* (passed in Civil Appeal No. 23988 of 2017 reported in (2019) 11 SCC 633) and held that: “Article 19 of the Limitation Act will fall under the category of first division of schedule which applies to the suits. However, Section 7 of the IBC is not a suit and as held by Hon’ble Supreme Court, Section 7 is an Application under the IBC which falls under the category of Application in para II of 3rd division. Therefore, the Hon’ble Supreme Court held that the Article 137 will apply to the Applications filed under Section 7 & 9 of the IBC.” Accordingly, the appeal was allowed by the NCLAT and the CD was released from the rigor of the CIRP.

Kerala High Court grants Interim Stay on the amendment to Regulation 18(4) of the Principal Regulations issued by TRAI

The Hon'ble High Court of Kerala in *All India Digital Cable Federation and Anr. vs. Telecom Regulatory Authority of India* has stayed the operation of the amendment to Regulation 18(4) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (“**Principal Regulations**”) issued by the Telecom Regulatory Authority of India (“**TRAI**”) which provides that the channel number once assigned to a particular television channel would not be altered by the distributor without prior approval of TRAI. The Hon'ble Court observed, on consideration of the consultation papers issued by TRAI, that there was lack of a transparent consultative process undertaken by TRAI in relation to requirement for prior permission of TRAI to be taken for changing the placement of a channel and that further, no criteria / guidelines had been framed for consideration of request for change of channels. Further, it was observed that the issue whether placement of channel is part of “interconnection” and falls within the purview of TRAI’s jurisdiction was pending before the Hon'ble Supreme Court of India; however, even if it was admitted that TRAI had powers to regulate placement of channels under Section 36 of the TRAI Act, 1997, the proposal with respect to freezing of placement of channel and requirement of permission for change was an incursion into the right of distributors to carry on trade or business under Article 19(1)(g) of the Indian Constitution, and since it was not preceded by any specific consultation, it was impermissible.

Companies (Amendment) Bill, 2020 introduced in Lok Sabha

Central Government has introduced the Companies (Amendment) Bill, 2020 in Lok Sabha with the objective of facilitating greater ease of living to law-abiding corporates, the overall objective being to decriminalize some more provisions of the Companies Act, 2013 based on their gravity and to take other necessary measures to provide further ease of living for corporates in the country.

Relaxation on the requirement of holding board meetings with physical presence – COVID-19

Considering the need to take precautionary steps to overcome the outbreak of the coronavirus (**COVID-19**), the Government has in-principle decided to relax the requirement of holding board meetings with physical presence of directors under section 173 (2) read with rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the annual financial statements, Board’s report, etc. Such meetings may till 30.06.2020 be held through video conferencing or other audio visual means by duly ensuring compliance of rule 3 of the aforesaid rules. The necessary changes in the rules are expected to be notified soon

COVID-19 Advisory

The Central as well as State Governments and authorities vide various notifications are prescribing several restrictions with respect to the containment of the COVID-19 pandemic. Owing to these there is a likely impact on the deadlines, disruptions in supply of goods and services, smooth and continuous performance of projects/agreements etc. The Department of Expenditure, Ministry of Finance has classified the COVID-19 as a ‘natural calamity’, as a result of which ‘Force Majeure Clause’ can be invoked in applicable situations. Keeping in mind the clarification issued by the Ministry classifying COVID-19 as a natural calamity and a force majeure event, it is advisable that where projects/agreement are being impacted due to COVID-19 restrictions imposed in respective States/Centre, relevant notices invoking Force Majeure situation, as per the terms of the agreements/contracts, may be issued to the other party to prevent any contractual liability being made applicable on the affected party at a later stage.

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