

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.

APTEL rules on nature of right to open access

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 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

Ministry of Power
invites suggestions
for framing draft
National Electricity
Policy, 2021

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.

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.

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.

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

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

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

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.

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