December 24, 2021

Legal Updates

MoP invites comments from certain stakeholders on the draft amendment to the Guidelines for short-term procurement of power by distribution licensees through tariff based bidding

Ministry of Power ("**MoP**"), vide letter dated 22.12.2021, has invited comments from stakeholders like Central Electricity Authority, the Central Electricity Regulatory Commission ("**CERC**"), Chief Secretary of all State Governments and Union Territories, Secretaries/ Secretaries (Power/Energy) of all State Governments and Union Territories, Chairman and CMDs/MDs of all PSUs, Distribution Companies and Generating Companies as well as all State Electricity Regulatory Commissions, on the draft amendments to the 'Guidelines for short-term procurement of power i.e. for a period of more than one day to one year) by distribution licensees through tariff based bidding process' ("**the Guidelines**"). The last date of submitting comments on the draft amendment to the Guidelines is 12.01.2022.

The Guidelines, originally notified on 30.03.2016, were introduced to reduce the overall cost of procurement of power and promote competitive procurement of short-term power requirement by the Distribution Licensees resulting in significant benefits for consumers. They were subsequently amended on 30.12.2016 to implement auto-extension in the reverse auction process along with clarity on certain provisions of the Guidelines. Vide the draft amendment to the Guidelines, following additions are introduced after Clause 6.4 (vi)(f) of the Guidelines:

i. That in case the seller fails to offer the contracted power as per the Power Purchase Agreement ("**PPA**") to the procurer and sells this power without the procurer's consent to any other party, the Procurer will be entitled to claim damages from the seller. The quantum of damages would be equal to the higher amount between twice the agreed upon tariff as per PPA or the entire sale revenue accrued from third parties on account of sale of contracted power. These damages shall be in addition to liquidated damages mandated under 6.4(vi)(e) of the Guidelines for failure to supply the instructed capacity.

ii. Upon a complaint by the procurer to the load dispatch centre, the seller shall be debarred from participating in power exchanges and scheduling this power in any short/medium/long term contracts in a power exchange, for a period of three (3) months from the date of establishment of default which shall increase to six (6) months from the date of second default and one (1) year for each successive default.

MoP invites comments from certain stakeholders on the draft Electricity (Late Payment Surcharge and related matters) Rules, 2021

The MoP, vide communication dated 20.12.2021, has invited certain stakeholders and industry associations to provide their comments on the draft Electricity (Late Payment Surcharge and related matters) Rules, 2021 ("**Draft Rules**") by 10.01.2022. The Draft Rules, when notified, will repeal the Electricity (Late Payment Surcharge) Rules, 2021 notified on 22.02.2021 ("**2021 Rules**"). Anything done or any action taken under the 2021 Rules will be deemed to have been done or taken under the corresponding provisions of the Draft Rules. The salient features of the Draft Rules are as follows, inter alia:

1. Late payment surcharge ("**LPS**") will be payable on the payment outstanding after the due date at the base rate of LPS applicable for the period for the first month of default. The rate of LPS for the successive months of default shall increase by 0.5% for every month of delay provided that the LPS will not be more than 3% higher than the base rate at any time. The rate at which LPS will be payable will not be higher than the rate of LPS specified in the agreement, if any;

2. All payments by a distribution licensee to a generating company or a trading licensee for power procured from it or by a user of a transmission system to a transmission licensee will be first adjusted towards LPS and thereafter, towards monthly charges, starting from the longest overdue bill;

3. The outstanding dues including LPS up to the day of notification of the Draft Rules will be rescheduled and the due dates redetermined for payment by a distribution licensee in the following maximum number of equated monthly instalments:

Outstanding dues amount (in Rs. crore)	**Maximum no. of equal monthly installments (months)**
Up to 500	6
501 – 1000	10
1001 – 2000	14
2001 – 4000	17
4001 – 10000	20
> 10000	24

4. A distribution licensee will maintain unconditional, irrevocable and adequate payment security mechanism ("**PSM**"). In case of non-maintenance of PSM, generating companies, electricity trading licensees and transmission licensees will regulate power supply to the distribution licensee in accordance with the Draft Rules. The supply of power at any time will not be without the PSM or advance payment. In case the generating company supplies power without the PSM or without advance payment, it will lose the right to collect LPS from the distribution licensee;

5. In case of non-maintenance of PSM or non-payment of outstanding dues by the default trigger date, the obligation of the generating company to supply power will be reduced to 75% of the contracted power to distribution licensee and balance 25% of contracted power may be sold by the generating company through the power exchange;

6. If the distribution licensee does not establish PSM or continues to default in payment of outstanding dues for a period of 30 days from expiry of the notice, then the generating company will be entitled to sell 100% of the contracted power through power exchanges. During the period of default, the distribution licensee will continue to be liable for the payment of fixed charges or capacity charges as applicable under the agreement. The gains from the sale of such power will be calculated as the difference between selling price of such power in the power exchange and the expense borne by the generating company including energy charges, transmission charges and other incidental charges and will be adjusted in the following order: (i) recovery of fixed charges; (ii) liquidation of overdue amount; (iii) the balance will be shared in the ratio of 75:25 between the distribution licensee and the generating company;

7. In case of non-payment of dues even after 2.5 months from presentation of bill, the power supply to the defaulting entity will be regulated as follows:

    a. Short-term access - access to the power exchange will be regulated entirely;
    b. If, even one month after the regulation of the short-term access, the dues have remained unpaid for 3.5 months, then apart from the regulation of short-term access in its entirety, the long and medium term access will be regulated by 10%;
    c. Reduction or withdrawal of long-term access and medium-term open access will be in such manner that the quantum of reduction in drawl schedule increases progressively by 10% for each month of default;
    d. On payment of outstanding dues, such regulation will end at once;
    e. The National Load Despatch Centre is to issue detailed procedure to implement the regulation of access according to the Draft Rules;
    f. In case of such reduction of drawl schedule, the liability for payment of capacity charges for its original share in the generating station as also the inter-state transmission charges will remain with the regulated entity.

8. In case a generating company fails to offer the contracted power as per the agreement to a distribution licensee and sells the contracted power without its consent to any other party, the said generating company, on a complaint to this effect by the licensee to the load despatch centre concerned, wil be debarred from participating in power exchanges and scheduling of any new short term contracts from that generating station for a period of 3 months from the date on which the default has been taken cognisance of by the concerned load despatch centre. The period of debarment will increase to 6 months for second default and will be 1 year for each successive default. Such debarment of the generating company will be without prejudice to the rights of the distribution licensee for seeking compensation for the default by the generating company;

9. A distribution licensee will be required to intimate its schedule for requisitioning power for each day from each generating company with which it has an agreement for purchase of power at least 1 hour before the end of the time for placing proposals / bids in the Day Ahead Market for that day, failing which the generating company may sell the un-requisitioned power in the power exchange. The liability of payment of fixed charges towards the un-requisitioned power will remain with the distribution licensee;

10. In case a distribution licensee does not requisition power from a must-run power plant, the compensation will be payable by the licensee to the generating company owning the must-run power plant at the rate specified in the agreement for purchase of power, and if no rate is specified in the agreement, then in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021;

11. All the bills payable by a distribution licensee to a generating company / transmission company / trading company for power procured from it should be time tagged with respect to the date and time of submission of the bill and the payment should be made by the distribution licensee first against the oldest bill and then the second oldest bill and so on so as to ensure that payment against a bill is not made unless and until all bills older than it have been paid for.

MNRE issues O.M. dated 14.12.2021 regarding "Simplification of Guidelines for the implementation of PM-KUSUM"

The Ministry of New and Renewable Energy ("**MNRE**"), vide its O.M. dated 14.12.2021, has granted certain relaxations / directions w.r.t. PM-KUSUM Scheme after observing difficulties in the implementation of the same:

1. States are now additionally allowed to invite their own bids for empanelment of vendors for different regions in the State for installation of standalone solar pumps;

2. An extension of 24 months has been granted for implementation of the PM-KUSUM Scheme after receiving several requests for extension by States on the ground that the timelines prescribed for the completion of sanctioned capacities is not sufficient. Extension beyond 24 months will be considered as per provisions of PM-KUSUM Scheme guidelines;

3. It has been made optional for the farmers to avail incentives that are provided for consumption of less electricity than the benchmark consumption, after it was brought to MNRE's attention that not all farmers may be willing to install meters necessary for availing the said incentives.

MNRE issues letter dated 16.12.2021 regarding "Restoration of Bank Guarantees"

MNRE, vide its letter dated 16.12.2021, has informed the Renewable Energy ("**RE**") Implementing Agencies (Solar Energy Corporation of India ("**SECI**") / NTPC / NHPC) that an Earnest Money Deposit (EMD) of 2% of the estimated project cost and Performance Bank Guarantee of 4% of estimated project cost (in case of site specified by the procurer) and 5% of estimated project cost (in case of site selected by the generator) is to be kept in all RE tenders.

APTEL holds that a dispute arising between a Generating Company and a Solar Power Park Developer cannot be resolved under Section 86(1)(f) of the Electricity Act.

The Appellate Tribunal for Electricity ("**APTEL**"), vide its judgment dated 21.12.2021, in Appeal No. 69 of 2021 titled as *M/s Saurya Urja Company of Rajasthan Limited Vs. Rajasthan Electricity Regulatory Commission and Ors.*, held that the State Electricity Regulatory Commissions ("**SERCs**") have no jurisdiction under Section 86(1)(f) of the Electricity Act, 2003 ("**the Act**") to adjudicate a dispute between a generating company ("**Genco**")/ Solar Project Developer ("**SPD**") and a Solar Power Park Developer ("**SPPD**").

The APTEL observed that under Section 86(1)(f) of the Act, the SERCs are only empowered to adjudicate upon the disputes between the licensees and generating companies. The SPPD does not fall in the category of either a generator or a licensee as per the provisions of the Act. The APTEL further clarified that as per the 'Guidelines for Development of Solar Parks' issued by the MNRE, the SPPD is entrusted with the development of transmission network within a solar park as a captive / dedicated transmission system of the Genco/ SPD of the park and, therefore, will not qualify as a transmission licensee.

The APTEL also observed that the 'Guidelines for Development of Solar Parks' stipulate the signing of implementation and support Agreement ("**ISA**") between the Genco/SPD and SPPD containing clause w.r.t. 'Dispute Resolution and Arbitration'. The said clause enumerates that the disputes between the Genco/SPD and SPPD are required to be adjudicated by the SECI. Further, an appeal may be preferred before an arbitration tribunal in the event a party is aggrieved by the decision of SECI.

In view of above, the APTEL categorically held that the SERCs do not have the power to adjudicate the dispute between Genco/ SPD and SPPD under section 86 (1)(f) of the Act and that such dispute can only be resolved under the provisions of the ISA signed between them in line with the 'Guidelines for Development of Solar Parks'.

CERC notifies Draft Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2021

The CERC, vide notification dated 16.12.2021, has notified draft Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2021 ("**Draft Regulations"**). The Draft Regulations propose to provide the framework to facilitate non-discriminatory open access for use of inter-state transmission system ("**ISTS**") through General Network Access ("**GNA**"). The Draft Regulations shall come into force on date of its notification by the CERC. Some of the salient features of the Draft Regulations are as under:

1. Chapter 2 of the Draft Regulations stipulates the manner in which applications for grant of connectivity and GNA are required to be made;

2. Chapter 3 prescribes the eligibility for grant of connectivity or quantum enhancement of connectivity to ISTS. Chapter 3 further deals with the interconnection study by the nodal agency and Associated Transmission System ("**ATS**"). It provides that the nodal agency will grant in-principle approval of connectivity in the event no ATS is required pursuant to such interconnection study. The nodal agency shall intimate the final grant of connectivity within 15 days of receipt of Conn-BG2 and Conn-BG3, as applicable, and sign a connectivity agreement within 30 days of such intimation;

3. The Draft Regulations provide for development and operation of dedicated transmission lines in case connectivity grantee is a generating station or a captive generating plant or a standalone Energy Storage System ("**ESS**") and Renewable Power Park Developer.

4. The Draft Regulations permit the connectivity grantee to inject infirm power and draw start-up power in accordance with the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ("**Grid Code**").

5. Regulation 17.1 under Chapter 4 prescribes eligibility criteria for grant or quantum enhancement of GNA. Entities which are not covered under the said eligibility list and which, as on the date of coming into force of the Draft Regulations, are connected to the ISTS or for whom connectivity granted under connectivity regulations has become effective, shall be eligible for applying for grant of GNA to the ISTS for the quantum equal to the quantum of connectivity, which shall be processed as per Regulation 37.6 of the Draft Regulations.

6. Regulation 18.2 states that details of entities deemed to have been granted GNA under the Draft Regulations shall be published by the nodal agency on its website within one (1) month of coming into force of the Draft Regulations.

7. A GNA grantee covered under Regulation 17.1 will be entitled to authorise other GNA grantee(s) covered under Regulation 17.1, to use its GNA, in full or in part, with prior approval of the nodal agency, for a period not exceeding one (1) year at a time on mutually agreed terms and conditions.

8. Chapter 6, *inter alia*, deals with eligibility and grant of Temporary GNA ("**TGNA"**) and accompanied transmission charges. Regulation 27 provides for development of National Open Access Registry ("**NOAR**"), a platform for processing and auditing TGNA applications and generating periodic reports for market monitoring and surveillance.

9. Chapter 7 provides for allocation of transmission corridor under GNA and TGNA for scheduling power in terms of Grid Code.

10. The Draft Regulations direct the nodal agency to issue the detailed procedure for connectivity and GNA in line with these Draft Regulations after stakeholders' consultation within a period of three (3) months of notification of the Draft Regulations and submit the same for information of the CERC.

11. The Draft Regulations grant power to the CERC to relax any of the provisions of these regulations and to remove difficulty in order to remove the hardship arising out of the operation of these regulations. The CERC may also issue *suo moto* orders and practice directions with regards to implementation of these regulations and matters incidental or ancillary thereto.

The comments/ suggestions/ objections from the stakeholders and interested persons on the above Draft Regulations may be sent to the CERC on or before 17.01.2022.

RERC issues RERC (Renewable Energy Obligation) (Seventh Amendment) Regulations, 2021

The Rajasthan Electricity Regulatory Commission ("**RERC**"), vide its order dated 14.12.2021, has issued the RERC (Renewable Energy Obligation) (Seventh Amendment) Regulations, 2021. The amended regulation has introduced provisos for achieving 'Renewable Purchase Obligation' by adjusting the consumption of solar and non-solar energies for a particular year. Provisos indicating the requirements and liabilities relating to hydro power purchase obligations have also been laid down in the amended regulations. For further information please click 'here'.

The Supreme Court, vide judgment dated 15.12.2021 in Civil Appeal No. 2899 of 2021 titled as *Jharkhand Urja Vikas Nigam Limited Vs. The State of Rajasthan & Ors.*, has held that when conciliation proceeding under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**") fails and stands terminated, the dispute between the parties can be resolved by arbitration. A civil appeal was filed by Jharkhand Urja Vikas Nigam Limited ("**JUVNL**") challenging the order dated 11.12.2017 passed by the High Court of Judicature at Rajasthan, Jaipur Bench, wherein the order dated 06.08.2012 passed by the 2nd respondent, i.e., Rajasthan Micro & Small Industries Facilitation Council, Jaipur ("**the Council**") was brought under scrutiny.

Supreme Court holds that on failure of conciliation under Section 18(3) of the MSMED Act, the dispute between the parties shall be resolved by arbitration

Pursuant to initiation of conciliation proceedings, the Council issued summons to JUVNL on 18.07.2012 for appearance on 06.08.2012. Upon non-appearance of JUVNL, the Council passed an order/award on 06.08.2012 directing JUVNL to make the payment to the 3rd respondent, as claimed, within a period of thirty (30) days from the date of the order. The Supreme Court observed that as per Section 18(3) of the MSMED Act, if conciliation is not successful, the said proceedings stand terminated and thereafter, the Council is empowered to take up the dispute for arbitration on its own or refer it to any other institution. Section 18 of the MSMED Act stipulates that when an arbitration is initiated, all the provisions of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") will apply, as if the arbitration was in pursuance of an arbitration agreement referred under Section 7 (1) of the MSMED Act. The Supreme Court held that Section 18(2) and 18(3) of the MSMED Act clarifies that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the A&C Act would apply, as if the conciliation was initiated under Part III of the A&C Act. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the A&C Act, particularly under Sections 20, 23, 24 and 25.

The Supreme Court held that if JUVNL had failed to appear and submit its reply, the Council could, at best, have recorded the failure of conciliation and proceeded to initiate arbitration proceedings in accordance with the relevant provisions of the A&C Act, to adjudicate the dispute and make an award. It further held that proceedings for conciliation and arbitration cannot be clubbed. The Supreme Court observed that the order dated 06.08.2012 is a nullity and runs contrary not only to the provisions of MSMED Act but contrary to various mandatory provisions of A&C Act, and therefore, is patently illegal. Observing that there is no arbitral award in the eye of law in the instant case, the Supreme Court held that when an order is passed without recourse to arbitration and in utter disregard to the provisions of A&C Act, Section 34 of the A&C Act will not apply. Accordingly, the Supreme Court while setting aside the impugned order, proceeded to quash the order/award dated 06.08.2012 passed by the Council. The Supreme Court directed the Council to either take up the dispute for arbitration on its own or refer the same to any institution or centre providing alternate dispute resolution services, for resolution of dispute between the parties in terms of the provisions of A&C Act.

The Ministry of Corporate Affairs ("**MCA**"), vide notice dated 23.12.2021, invited public comments on the changes proposed to the 'Corporate Insolvency Resolution and Liquidation Framework under Insolvency and Bankruptcy Code, 2016' ("**Notice**"). Based on the issues raised in the Insolvency Law Committee ("**ILC**") and from various stakeholder consultations, the changes are proposed to the Insolvency and Bankruptcy Code, 2016 ("**the Code/ IBC**") to further its objectives of time bound resolution of stressed assets while maximising its value and balancing the interests of all stakeholders. The Notice, inter alia, proposes following changes:

1. For enabling swift admission of insolvency applications, the Notice mandates that the financial creditors as prescribed by the Central Government may be required to submit only Information Utility ("**IU**") authenticated records to establish default for the purposes of admission of initiating a Corporate Insolvency Resolution Process ("**CIRP**") under Section 7. It further proposes that the Adjudicating Authority ("**AA**") would only be required to consider IU authenticated records as evidence of default for Section 7 applications filed by such financial creditors. This will allow the AA to speedily admit the applications under Section 7 of the Code;

2. Section 19(1) is proposed to be amended to ensure that the Interim Resolution Professional ("**IRP**") or the Resolution Professional ("**RP**") can avail requisite cooperation for collection of information for the conduct of the CIRP and filing of applications against avoidable transactions and wrongful trading. The categories of persons who are required to cooperate under Section 19 may also include any other person deemed necessary by the IRP;

3. Section 25(2) is proposed to be amended to explicitly provide that RP will be responsible for investigating the affairs of the corporate debtor for identification of avoidable transactions or wrongful trading. Similar powers of the liquidator may also be provided for in Section 35(1)(1);

4. The provisions related to avoidable transactions and wrongful trading is proposed to be amended to permit creditors (individually or in groups) or the Committee of Creditors ("**CoC**") to apply to the AA for avoiding such transactions or trading, if the RP or liquidator fails to make such application;

MCA invites comments on proposed changes to the Corporate Insolvency Resolution and Liquidation Framework under Insolvency and Bankruptcy Code, 2016

5. Section 47 is proposed to be amended to disallow members or partners of the corporate debtor from filing applications to avoid an undervalued transaction;

6. Section 66 is proposed to be amended to expressly state that the liquidator is also permitted to file applications under the said section;

7. It has been proposed that Section 26 should clarify that proceedings for avoidance of transactions and wrongful trading can continue after the approval of a resolution plan by the AA in CIRP;

8. The resolution plan should mandatorily specify the manner of undertaking proceedings for avoidance of transactions and wrongful trading if such proceedings are to be continued after approval of the plan. The plan may also be required to specify if the resolution professional would pursue such transactions/ trading or if any other person would do so after the approval of the plan. Further, the resolution plan may also be required to provide the manner of distribution of expected recoveries from proceedings related to avoidance of transactions and wrongful trading;

9. The threshold for the look-back period under the provisions on avoidable transactions is proposed to be amended from the date of commencement of CIRP to the date of filing of the application for initiation of CIRP in respect of the corporate debtor that has been admitted. The period between the date of filing and the date of commencement of CIRP may additionally be included in the suspect period for such transactions;

10. The Notice suggests provision for a fixed time period of thirty (30) days for approval or rejection of a resolution plan by the AA. Where the resolution plan is not approved or rejected within this time period, the AA shall record reasons in writing for the same;

11. The closure of the voluntary liquidation process may be carried out by the corporate person subject to the same requirements as for initiation of the process, i.e., by way of a special resolution or members' resolution and approval of creditors representing two-thirds in value of the debt where the corporate person owes debt to any person. If such approvals are made, the liquidator may be required to make a public announcement of the closure of the process and intimate concerned authorities such as the IBBI and the registrar;

12. Section 224 is proposed to be amended to allow the Central Government to prescribe a detailed framework for contribution to and utilisation of the IBC fund.

The MCA has invited comments from the public along with a brief justification, latest by 13.01.2022.

Supreme Court holds that NCLT and NCLAT cannot compel a party to the proceedings before it to settle a dispute

The Supreme Court, vide judgment dated 14.12.2021 in *E S Krishnamurthy & Ors Vs. M/s Bharath Hi Tech Builders Pvt. Ltd.*, has held that National Company Law Tribunal ("**NCLT**") and National Company Law Appellate Tribunal ("**NCLAT**") cannot abdicate their jurisdiction to decide a petition under Section 7 of the IBC by directing the party to settle the claim within a definite time frame.

In the present case, NCLT in its order dated 30.07.2020, observed that the procedure under the IBC is summary in nature and the same cannot be used to manage /decide every individual claim separately. Instead of examining all individual claims, NLCT decided to dispose of the petition by directing the respondent to settle all the remaining claims within three (3) months and granting liberty to the original petitioners, if they are aggrieved by the settlement process, to move fresh proceedings before NCLT. The NCLAT upheld the NLCT's order on the grounds that the NCLT decided to dismiss the petition under Section 7 at the 'pre-admission' stage since the settlement process was underway.
The Supreme Court while analyzing whether the NCLT and NCLAT were correct in dismissing the appellant's petition under Section 7 of the IBC at the 'pre-admission stage', observed that the NCLT, being the adjudicating authority, is empowered only to verify whether a default has occurred or not occurred, and upon its decision, it must then either admit or reject an application. It further observed that though, settlements have to be encouraged in pursuance of the object of the IBC which is to

facilitate insolvency resolution "in a time bound manner" however, the adjudicating authority, in the present case, by compelling the parties to the proceeding, to settle the dispute, acted outside the terms of its jurisdiction under Section 7(5) of the IBC. Thus, while the adjudicating authority i.e. NCLT and appellate authority i.e. NCLAT can encourage settlements, they cannot direct them by acting as courts of equity.

Supreme Court set aside NCLAT's order dated 30.07.2020 and NCLT's order dated 28.02.2020 and restored the proceedings back to NCLT for fresh consideration.

Delhi High Court holds that power to attach property involved in money-laundering as conferred by Section 5 of the PMLA ceases to be exercisable once the measure to be implemented in the liquidation process under IBC is approved by the adjudicating authority

The Delhi High Court ("**the Court**"), in judgment dated 15.12.2021 in *Nitin Jain Liquidator PSL Limited Vs. Enforcement Directorate*, has held that power to attach property involved in money-laundering as conferred by Section 5 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") ceases to be exercisable once the measure to be implemented in the liquidation process specified in Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 is approved by the Adjudicating Authority. The petitioner in the present case is the liquidator appointed by the NCLT to administer the affairs and estate of the corporate debtor / PSL Ltd., who was compelled to approach the court upon a receipt of summons issued by the respondent / Enforcement Directorate who was investigating the affairs of the corporate debtor under the provisions of the PMLA.

The Court held that from a careful reading of Section 32A(2) of the IBC, it is evident that the legislature in its wisdom has provided that no action shall be taken against the properties of the corporate debtor in respect of an offense committed prior to the commencement of the CIRP and once either a resolution plan comes to be approved or when a sale of liquidation assets takes place. Section 32A legislatively places vital import upon the decision of the adjudicating authority when it approves the measure to be implemented in order to take the process of liquidation or resolution to its culmination. Such point in the statutory process must be recognised as the defining moment for the bar created by Section 32A coming into effect. Holding to the contrary would result in a right being recognised as inhering in the respondent to move against the properties of the corporate debtor even after their sale or transfer has been approved by the adjudicating authority which would clearly militate against the very purpose and intent of Section 32A. The Court noted that one of the primary objectives for the introduction of Section 32A was to assure the resolution applicant that its offer, once accepted, would stand separated from action for enforcement of outstanding claims against the corporate debtor or from penalties connected with offenses committed prior thereto. The approval of the measure to be implemented in the liquidation process by the adjudicating authority must be held to constitute the trigger event for the statutory bar enshrined in Section 32A coming into effect. The court noted that a close reading of Sections 32A (1) and (2) of the IBC establishes that the legislature in its wisdom has erected two unfaltering barriers: (a) that the offense, which may entail either prosecution of the debtor or proceedings against its properties, must be one which was committed prior to the commencement of the CIRP; and (b) cessation of liability for the offense committed is to occur the moment a resolution is approved by the adjudicating authority or upon sale of liquidation assets.

The Court also noted that the bar that stands created under Section 32A operates and extends only insofar as the properties of the corporate debtor are concerned, and does not apply or extend to the persons in charge of the corporate debtor or the rights otherwise recognised to exist and vested in the respondent to proceed against other properties. Further, the liquidator, though obliged to administer and oversee the affairs of the corporate debtor in accordance with the provisions of the IBC, cannot strike a position of not cooperating with the competent authorities under the PMLA. Upon appointment, the liquidator steps into the shoes of the erstwhile management and is the custodian of the properties and all relevant papers and documents relating to the corporate debtor and is thus obligated to provide any material that may be gathered and collated by him which may be of significance and import to the investigation being undertaken under the PMLA.

The court accordingly held that the liquidator is entitled in law to proceed further with the liquidation process in accordance with the provisions of the IBC and restrained the respondent from taking any further action, coercive or otherwise, against the liquidation estate of the corporate debtor or the corpus gathered by the liquidator in terms of the sale of liquidation assets as approved by the adjudicating authority under the IBC.

TRAI releases consultation paper on "Promoting Local Manufacturing in the Television Broadcasting Sector"

The Telecom Regulatory Authority of India ("**TRAI**") has, vide communication dated 22.12.2021, released consultation paper on "Promoting Local Manufacturing in the Television Broadcasting Sector" ("**Consultation Paper**"). TRAI has suo motu floated the Consultation Paper in view of the fact that digitalization of the Indian broadcasting sector was completed across the country by March, 2017 which provided a unique opportunity for the growth of local manufacturers to cater to the demand. However, even though the Government of India, vide recently launched initiatives such as 'Make in India' and 'Digital India', has accorded the highest priority to transform India into a global design and manufacturing hub, the share of locally manufactured equipment / devices in the broadcasting distribution networks remains quite low. The Consultation Paper aims to cover issues related to promotion of local manufacturing in television broadcasting sector and identify underlying challenges as well as enabling measures that can facilitate the local manufacturers in the television broadcasting sector to meet domestic demand and also pave the way for export-oriented growth.

Written comments on the Consultation Paper are invited from the stakeholders by 19.01.2022, and counter comments, if any, may be submitted by 02.02.2022, preferably in electronic form on the emails: advbcs-2@trai.gov.in and jtadvbcs-3@trai.gov.in.

Extension of last date to receive comments and counter-comments on the Consultation Paper on "Ease of Doing Business in Telecom and Broadcasting Sector" dated 08.12.2021 issued by TRAI

A Consultation Paper on "Ease of Doing Business in Telecom and Broadcasting Sector" was issued by the Telecom Regulatory Authority of India ("**TRAI**") on 08.12.2021 inviting comments from stakeholders by 05.01.2022 and counter-comments by 19.01.2022.

However, keeping in view the request of industry associations and stakeholders for extension of time for submission of comments, TRAI has decided to extend the last date for submission of written comments up to 19.01.2022 and for counter comments up to 02.02.2022. TRAI has stated that no further requests for extension would be considered hereafter.

MCA issues clarification for holding AGMs through VC and OAVM

MCA, vide circular dated 14.12.2021, allowed the companies who are proposing to organize annual general meetings ("**AGMs**") in 2022 for the financial year ended on or before 31.03.2022, through video conference ("**VC**") or other audio-visual means ("**OAVM**"). The circular has been issued in continuation of MCA's General Circular No. 20/2020 dated 05.05.2020, General Circular No. 02/2021 dated 13.01.2021 and General Circular No. 19/2021 dated 08.12.2021. The MCA clarified that the AGMs can be held through VC or OAVM by 30.06.2022 in accordance with the requirements laid down in para 3 and para 4 of the General Circular no. 20/2020 dated 05.05.2020.

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