

# GATI - विधि

-LAW IN ACTION



## Legal Updates

**TRAI seeks stakeholders views on Tariff related issues for Broadcasting and Cable services**

TRAI noted that certain issues related to Broadcasting and Cable services have come up post implementation of the new regime under 'New Regulatory Framework' for Broadcasting and Cable services. To deliberate upon the same, a Consultation Paper on Tariff related issues for Broadcasting and Cable services has been floated on 16.08.2019 ('CP') seeking stakeholders' views. The CP primarily discusses issues related to discount given in the formation of the bouquet, ceiling price of channels for inclusion in bouquet, need for formation of bouquet by Broadcasters and DPOs, Variable NCF and discount on long term plan.

**TRAI issues Draft Regulation to facilitate consumer choice of TV channels using Application Program Interface**

TRAI has issued draft (Second Amendment) to the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017 on 09.08.2019 seeking comments of the stakeholders on the issue of developing of app by third parties for Channel Selection System to facilitate easy channel selection by consumers. Development of such third-party app would be followed by sharing of information between Distribution Platform Operators and consumers using Application Program Interface for expedient selection of channels of consumers' choice and to reduce TV viewing charges by optimizing consumers' subscription.

**Non-signatory bound by Arbitration Agreement**

The Hon'ble Supreme Court in Mahanagar Telephone Nigam Limited v. Canara Bank & Ors. deliberated upon the "Group of Companies" doctrine vide which a non-signatory can be bound by an arbitration agreement. The doctrine has been invoked in circumstances where an arbitration agreement is entered into by one of the companies in the group; and the non-signatory affiliate, or sister, or parent concern, is held to be bound by the arbitration agreement, if the facts and circumstances of the case demonstrate that it was the mutual intention of all parties to bind both the signatories and the non-signatory affiliates in the group. What is required is a direct relationship with the party which is a signatory to the arbitration agreement, direct commonality of the subject matter and a composite nature of the transaction between the parties. The Group of Companies.

doctrine has also been invoked in cases where there is a tight group structure with strong organizational and financial links, so as to constitute a single economic unit. This will apply in particular when the funds of one company are used to financially support or re-structure other members of the group.

The Ministry of Law and Justice has notified the Arbitration and Conciliation (Amendment) Act, 2019. Some of the key features of this Amendment are as follows:

- Sec. 2(1)(ca) - Formal recognition of 'arbitral institutions'.
- Sec. 11(3A) - Supreme Court and High Courts have been granted the power to designate arbitral institutions which have been graded by the Arbitration Council of India. Where no graded arbitral institution is available then the Chief Justice of the concerned High Court may maintain a panel of arbitrators.
- Sec. 11(4), (5) & (6) - Arbitral Institutions designated by the respective High Courts given power to appoint arbitrator in case parties fail to agree to appoint an arbitrator.
- 2<sup>nd</sup> Proviso to Sec. 29(4) - Mandate of arbitrator to continue till the Application for extension is pending.
- Sec. 43A to 43M - Features of the Arbitration Council of India.
- Sec. 87 - The provisions of the Arbitration & Conciliation (Amendment) Act, 2015 shall not be applicable upon arbitration proceedings which have been initiated before 23.10.2015, unless the parties have agreed to the same.

Ministry of Corporate Affairs vide its Circular has clarified that companies may choose the "appointed date" of the merger/amalgamation based on occurrence of an event, which is relevant to the scheme. Further, the term "appointed date" used in Sec. 232(6) shall be deemed to be the "acquisition date" for the purpose of conforming to IndAS 103 standard dealing with business combinations.

Ministry of Power ('MoP') issued the Clarification after it was brought to its notice that some Discoms have opened conditional Letters of Credit ('LC') which requires approval from concerned Discom for encashment etc. The MoP has clarified that the Discoms are obliged to provide unconditional LC for power purchases to be made from 01.08.2019 onwards and the Load Despatch Centres shall get confirmation that such *unconditional* LC has been opened. Further, Discoms have to ensure that the amount of the LC equals the power purchase requirement for the billing cycle.

The Central Electricity Regulatory Commission ('CERC') has proposed a framework for Real-Time Market for electricity and invited comments / suggestions / objections on the proposed amendment by 05.09.2019. The following amendments will come into force from 01.01.2020 or such other date as may be notified:

- **Central Electricity Regulatory Commission (Power Market) (Second Amendment) Regulations, 2019:** The CERC inserted certain definitions in the Principal Regulations. The draft amendment *inter alia* inserts the definitions of "Day Ahead Market (DAM)" which means a market for collective transactions of Day Ahead Contracts through Power Exchange(s), "Gate Closure" referring to the time after which the bids submitted to the Power Exchange cannot be modified for a specified delivery period and "Real-Time Market" denoting a market for collective transactions of Real time Contracts through Power Exchange(s).
- **The Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Sixth Amendment) Regulations, 2019:** The CERC inserted new definitions of terms "Intra-Day Transaction / Contingency Transaction" and "Real-time transactions". The draft amendment further states that existing intra-day segment of power exchange would continue to clear the continuous transactions except for the time blocks for which the real-time market operates and lays down the procedure for scheduling of transaction in Real Time Market as well as for Bidding and offering on the Power Exchanges for purchase and sale of power.
- **The Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Sixth Amendment) Regulations, 2019:** The draft amendment includes the provision for selling power in the day-ahead market and real-time market by ISGS alongwith scheduling of real-time collective transactions for respective Power Exchanges as per the Commission's directive and gate closure for trading in real-time market after which the bids submitted to the Power Exchange cannot be amended for a specified delivery period. The amendment caters the right

### Arbitration & Conciliation (Amendment) Act, 2019 passed by the Parliament

### Ministry of Corporate Affairs Circular dated 21.08.2019

### Ministry of Power issues Clarification dated 09.08.2019 regarding "Opening and Maintaining of Adequate LCs"

### Proposed Framework for Real-Time Market for Electricity

for revision of schedule and confers power on RLDC to revise the schedule on the basis of revised declared capability in case of forced outages.

- Buyer/sellers would have the option of placing bids for each fifteen-minute time block in the half hourly Real Time Market ('RTM') for the delivery of power.
- The RTM shall commence with the end of the Discoms and generators right to revise the schedule or declared capability and end with gate closure.
- Price discovery mechanism will be double sided closed auction with uniform price.
- The generators having long-term contract and participating in this market will be required to share the net gains (after accounting for the energy charge) with the Discoms in the ratio of 50:50 as per the stipulation of the Tariff Policy, 2016.
- RTM would be financially and physically binding. If the utilities fail to follow the dispatch instruction post RTM, it will attract charges under Deviation Settlement Mechanism.
- With RTM in place, the Discoms would have a revolving reserve available in the form of half hourly trading opportunity.
- All generators connected to the grid will be able to participate in the RTM.
- In case of forced outages, the generator can participate in the RTM and buy power for the beneficiary to honour its commitment.

### Effect of Proposed Framework for Real-Time Market for Electricity

The Ministry of Corporate Affairs has published the Insolvency and Bankruptcy Code (Amendment) Act, 2019 in the Gazette of India. Some of the key features are as follows:

- Sec. 7(4) Proviso – Reasons have to be given in writing if NCLT doesn't pass an order ascertaining the existence of a default and pass an order under Section 7(5).
- Sec. 12(3) Proviso - The Corporate Insolvency Resolution Process ('CIRP') has to be mandatorily completed within a period of 330 days which includes any extension granted u/s 12(3) and also the time taken in legal proceedings in relation to the CIRP.
- Sec. 12(3) Proviso - If the CIRP has not been completed within 330 days and is still pending, the same has to be completed within a period of 90 days from the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.
- Sec. 25-A (3A) - The authorized representative u/s 21(6A) shall cast his vote on behalf of all financial creditors being represented by him in accordance with the decision taken by a vote of more than 50% of the voting share of the financial creditors he represents who have cast their vote.
- Section 25A (3A) Proviso - For a vote to be cast for an application u/s 12A, the authorized representative has to cast his vote as per 25A(3).
- Sec. 30(2)(b) - A resolution plan must allow for payment to operational creditors of an amount which shall not be less than: (i) liquidation value of their debt or (ii) amount that would have been received if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Sec. 53 of the Insolvency and Bankruptcy Code.
- Sec. 31 - The resolution plan approved by NCLT will not only be binding upon the employees, members, creditors, guarantors and other stakeholders but also will be binding upon the Central Government, State Government or any local authority to whom such a debt is owed as per any statutory laws in force.
- Sec. 33(2) Explanation - The Committee of Creditors may take the decision to liquidate the corporate debtor at any time after its constitution u/s 21(1) and before confirmation of the resolution plan including at any time before the preparation of the information memorandum.

### Insolvency and Bankruptcy Code (Amendment) Act, 2019

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