

# GATI - विधि

-LAW IN ACTION



## Legal Updates

**MNRE issues notification regarding basic customs duty on import of solar photovoltaic cells and modules**

Ministry of New and Renewable Energy (“**MNRE**”) has issued a notification dated 12.02.2020 regarding “Basic Customs Duty (“**BCD**”) on import of solar photovoltaic cells and modules”. This has been issued pursuant to the Finance Minister’s recent speech for Union Budget for the Financial Year 2020-21, wherein it was mentioned that the Customs Tariff Act, 1975 was being amended to create a tariff item for “Solar Cells, not assembled” and “Solar Cells, assembled in modules or made up into panels”. As per the notification, solar cells have been split into two tariff items, viz. (i) solar cells - not assembled and (ii) solar cells - assembled in modules or made up into panels. Although the tariff rate on the new tariff items has been increased from Nil to 20%, the BCD on both the tariff items remains ‘Nil’.

**MOC invites comments on Report on the development of National Coal Index**

Ministry of Coal (“**MoC**”) has invited stakeholders and citizens to submit their comments on the report dated 24.10.2019 on development of the National Coal Index (“**Index**”) by 20.02.2020. The report suggests that the Index seeks to determine how premium from coal block auctions would vary with time and the same is intended to serve as the base indicator for the purpose of taxation. The Index is contemplated to encompass all transactions of raw coal in the Indian market, including coking and non-coking coal of various grades transacted in the regulated and non-regulated sectors.

**MOC issues Standard Operating Procedure for proportionate reduction of linkage to the coal block allocatees on the basis of requirement of coal being met**

MoC vide O.M. dated 14.02.2020 has issued “Standard Operating Procedure for proportionate reduction of linkage to the coal block allocatees on the basis of requirement of coal being met from allotted coal mines/blocks” (“**SoP**”). The SoP has been issued pursuant to the provisions of Coal Mines (Special Provisions) Rules, 2014 and the Coal Block Allocation Rules, 2017 and provides for the following procedure:

- Nominated Authority (“**NA**”) will furnish a copy of the vesting order to Coal Controller Organisation (“**CCO**”) and Coal India Limited (“**CIL**”) / Singareni Collieries Company Limited (“**SCCL**”) for all mine / blocks which have already been allocated. CIL / SCCL will be required

**from allotted coal mines/blocks**

to send to CCO a list of those coal block allottees which are already having linkages for the specified end use plant (“EUP”) along with the details of the linkage.

- Based on the above, CCO to work out the quantity of linkage reduction and the time from which linkage is to be reduced in every such case and forward such information to CIL/ SCCL for implementation.
- For the Non-Regulated Sector, the coal requirement of the EUP as given in the coal mine allotment order shall be taken into account for the purpose of proportionate reduction of coal linkage.
- For the purpose of linkage reduction, the quantity of coal from the allocated coal mine and the coal linkage which is more than the coal requirement of the EUP shall only be considered.
- The linkage to be reduced for the coal block allocatee shall be worked out by the CCO as per certain parameters specified in the SoP. In cases where there is delay in operationalization of coal mines, wherever reduction in quantity of linkage is to be imposed, an option may be given to the coal block allocatee and the existing linkage holder to pay a corresponding percentage of premium on linkage coal as the quantity proposed to be reduced.

**Supreme Court interprets Section 56(2) of the Electricity Act, 2003, allows distribution licensee to raise additional bills after 2 years**

Supreme Court vide order dated 18.02.2020 in *Ajmer Vidyut Vitran Nigam Limited & Anr. vs. Rahamatullah Khan alias Rahamjulla - Civil Appeal No. 1672 of 2020*, has allowed the distribution licensee to raise additional/supplementary bills after the expiry of 2 years provided under Section 56(2) of the Electricity Act, 2003. The said order was passed in view of the mistake committed by the distribution licensee, while raising invoices under a wrong tariff code and thereafter, upon discovering the mistake of billing, raising supplementary bills. The limitation period of two years under Section 56(2) had by then already expired. The Hon’ble Court held that the limitation period of 2 years as mentioned under Section 56(2), is only applicable to the extent of disconnection of power supply and the same nowhere restrains the distribution licensee from raising additional/supplementary bills. The Apex Court further held that the period of limitation would commence from the date of discovery of the mistake and the distribution licensee may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under Section 56(2).

**An improperly stamped instrument should be impounded and cannot be acted upon, holds Supreme Court**

Supreme Court vide order dated 14.02.2020 in *M/s Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram & Ors. vs. M/s Bhaskar Raju & Brothers & Ors.* has observed that if the instrument containing the arbitration clause is not properly stamped, it should be impounded and dealt with, in the manner specified in Section 38 of the Stamp Act and the Court cannot act upon such an insufficiently stamped document or the arbitration clause therein. The observation was made while setting aside an order of the High Court of Karnataka which had appointed an arbitrator on the basis of an insufficiently stamped lease deed. The Supreme Court set aside the appointment of the arbitrator, given that the appointment was on the basis of an arbitration clause in an insufficiently stamped agreement.

**GERC invites suggestions / objections to the discussion paper on “Determination of Tariff for Procurement of Power by Distribution Licensees and Others from Solar Energy Projects for the State of Gujarat”**

Gujarat Electricity Regulatory Commission (“GERC”) vide public notice dated 05.02.2020 has invited suggestions/objections to the discussion paper on “Determination of Tariff for Procurement of Power by Distribution Licensees and Others from Solar Energy Projects for the State of Gujarat”. The discussion paper includes the following:

- Determination of tariff for all prospective solar power projects, based on the rates discovered through competitive bidding, and discontinuation of the practice of determining the generic tariff for the solar power projects.
- Purchase of energy from small projects (below 5MW) by the distribution licensee having linkage with the tariff rate discovered under the competitive bidding process.
- Procurement price of energy from small scale solar projects at the rate of tariff discovered under the competitive bidding process in different time period of 6 months of the year.
- Additional 20 paise per kWh on tariff for the projects located outside the solar park.
- Applicability of average tariff, available as on 1st April (as discovered in the competitive bidding by Gujarat Urja Vikas Nigam Ltd (“GUVNL”) during previous six months October-March and adopted by GERC) for the project commissioned during April-September. Applicability of average tariff, available as on 1st October (as discovered in the competitive bidding by GUVNL during previous six months April-September and adopted GERC) for the project commissioned during October-March.

- Energy accounting and renewable purchase obligations.
- Applicability of transmission/ wheeling charges to be borne by the distribution licensee.
- Applicability of cross subsidy surcharge (“CSS”) for the solar project registered and not registered under renewable energy certificate mechanism with sale of power to third party (including sale of power under National Solar Mission), for project set up by Micro, Small and Medium (Manufacturing) Enterprise above 50% of its contracted demand and exemption of CSS for solar projects set up for captive consumption, for sale to distribution licensee and for sale outside the State.

The hearing will be held on 07.03.2020 and objections may be filed by the stakeholders by 04.03.2020.

Andhra Pradesh Electricity Regulatory Commission (“APERC”) vide notice dated 13.02.2020 has invited objections to the proposed amendments to the APERC (Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation) Regulations, 2017. The said amendments seek to ensure integrated grid operations and achieving maximum economy and efficient in the operation of power system in the state. APERC has stated that these amendments are based on report submitted by (“APSLDC”), consolidating the challenges faced by it in real-time operations.

A public hearing will be conducted in this regard on 10.03.2020.

Uttar Pradesh Electricity Regulatory Commission (“UPERC”) vide public notice dated 14.02.2020 has initiated *suo-motu* proceedings for amendment of Regulation 20 of UPERC (Multi Year Distribution Tariff), Regulations 2014 (“**2014 Regulations**”) and Regulation 16 of UPERC (Multi Year Tariff for Distribution and Transmission Tariff), Regulations 2019 (“**2019 Regulations**”). In the discussion paper issued along with the proposed amendments, UPERC has observed that there were certain difficulties in the implementation of mechanism for recovery of fuel surcharge (termed as incremental cost) under the 2014 Regulations and 2019 Regulations. Accordingly, in line with the Electricity Act, 2003, the mechanism of providing differential in power purchase cost has been termed as ‘fuel surcharge’ and a new procedure for recovery and computation thereof has been brought in by way of UPERC (MYT for Distribution Tariff) (First Amendment) Regulations, 2020 and UPERC (MYT for Distribution and Transmission Tariff) (First Amendment) Regulations, 2020.

UPERC has invited comments of stakeholders on the proposed amendments by 13.03.2020.

Rajasthan Electricity Regulatory Commission (“RERC”) vide order dated 18.02.2020 in *Indian Railways through North Western Railway vs. Rajasthan Vidyut Prasaran Nigam Ltd. - Petition No. 1574/19*, has directed the state transmission utility – Rajasthan Vidyut Prasaran Nigam Ltd. (“RVPN”) to accept the “Letter of Mandate” issued by Reserve Bank of India (“RBI”), to fulfil the requirement of ‘payment security’ provided under Regulation 24 (1) of the Open Access Regulations, 2016. RERC observed that payment security mechanism is established to secure the payment which is to be received from the open access customer to state transmission utility and in the present case, RVPN shall have the option to claim the default amount of the Indian Railways from the RBI. It was also observed that other regulatory commissions viz. Haryana, Delhi and Punjab have also accorded their approval for acceptance of the “Letter of Mandate” issued by RBI as payment security mechanism.

Tamil Nadu Electricity Regulatory Commission (“TNERC”) has issued a consultative paper, discussing the approach on procurement of solar power by the distribution licensee and other related issues. TNERC has observed that tariff discovered through competitive bidding is lower than cost plus tariffs. Consequently, it has proposed procurement of solar power by the distribution licensee through competitive bidding, following the guidelines issued by the central government or procure power from the projects contracted through competitive bidding process by SECI to comply with their renewable purchase obligation requirement. The paper also seeks to bring about changes in the current open access charges, cross subsidy surcharge (“CSS”), grid availability charges etc, which shall come into force from 01.04.2020 and will be applicable on all solar power generators irrespective of their date of commissioning.

TNERC has invited comments/suggestion on the consultative paper on or before 13.03.2020.

**APERC proposes amendments to Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulations, 2017**

**UPERC initiates *suo motu* proceedings for amendment of Multi Year Distribution Tariff, Regulations 2014 and Multi Year Tariff for Distribution and Transmission Tariff, Regulation 2019**

**RERC directs STU to accept RBI Letter of Mandate as ‘payment security mechanism’**

**TNERC issues consultative paper for procurement of solar power by distribution licensee and related issues**



**TNERC issues consultative paper for procurement of wind power and related issues**

TNERC has issued a consultation paper discussing the approach on procurement of wind power by the distribution licensee and other related issues. Similar to the approach for solar power procurement, TNERC has proposed procurement of wind power by the distribution licensee through competitive bidding. In addition to changes in transmission, wheeling, and system operation charges and CSS, TNERC has sought to restrict banking of wind power and such facility will be available as per the period of commissioning of wind energy generators (“WEGs”).

TNERC has invited comments/suggestion on the consultative paper on or before 13.03.2020 and the changes will come into force from 01.04.2020. The same will be applicable on all WEGs irrespective of their date of commissioning.

**PNGRB invites comments on amendment to PNGRB (Technical Standards and Specifications including Safety Standards for Retail Outlets dispensing Petroleum, Auto LPG and CNG), Regulations 2018**

Petroleum and Natural Gas Regulatory Board (“PNGRB”) has issued draft amendments on 17.02.2020 to the PNGRB (Technical Standards and Specifications including Safety Standards for Retail Outlets dispensing Petroleum, Auto LPG and CNG), Regulations 2018 (“Draft Amendments”). The Draft Amendments, among others, mandate the Board of the entity to appoint one of its directors within ninety days of the coming into force of the regulations to be responsible for ensuring compliance with the Regulations. Further, the Draft Amendments provide for the addition of the Schedule 4 titled “Storage, Handling and Dispensing at LNG/LCNG Dispensing Stations”.

All stakeholders including the general public may submit their views/comments on the Draft Amendments to the Board within 60 days from the date of issue of the public notice.

**PNGRB invites comments on draft Technical Standards and Specifications including Safety Standards for Refineries and Gas Processing Plants Regulations, 2020**

PNGRB vide public notice dated 17.02.2020, has issued draft PNGRB (Technical Standards and Specifications including Safety Standards for Refineries and Gas Processing Plants) Regulations, 2020 (“Draft Regulations”). The Draft Regulations aim to ensure uniform application of design principles in layout and to guide in the selection and application of materials and components, equipment and systems as well as ensure uniform operation and maintenance of refineries and gas processing plants. The Draft Regulations lay down minimum requirements of layout within the plant boundary for unloading or loading, storage, processing, transfer and handling of hydrocarbons/ other hazardous substances / chemicals in refineries and gas processing plants. The Draft Regulations also cover engineering considerations in design, installation, operation, maintenance, inspection including fire protection and safety systems.

Views/comments on the Draft Regulations are invited by PNGRB from stakeholders, to be submitted within 60 days from the date of issue of the public notice

**PNGRB invites comments to proposed amendments in Codes of Practices for Emergency Response and Disaster Management Plan (ERDMP) Regulations, 2010**

PNGRB vide public notice dated 17.02.2020, has invited comments on proposed amendments to PNGRB (Codes of Practices for Emergency Response and Disaster Management Plan (ERDMP)) Regulations, 2010 (“Draft Amendments”). The Draft Amendments, among others, specify changes to important definitions as well as provide for an emergency response plan with regard to construction/project activities. PNGRB has recognised that projects in oil & gas sector are accident prone activities and the size and complexity of projects possess various hazards associated with construction activities.

PNGRB has initiated consultation process and invited comments from all stakeholders within 60 days from the date of issuance of the public notice.

**MCA notifies Companies (Incorporation) Amendment Rules, 2020**

Ministry of Corporate Affairs (“MCA”) has notified the Companies (Incorporation) Amendment Rules, 2020, which will be effective from 15.02.2020. As per the amendment, two new web incorporation forms viz. SPICE+ and AGILE-PRO have been notified replacing the existing SPICEe and AGILE forms. The new forms shall provide all the services right from the name reservation for the company till opening of bank account post incorporation. Further, they will offer services by 3 central government ministries and departments i.e. the MCA, Ministry of Labour and Department of Revenue in the Ministry of Finance. These services shall include name reservation, incorporation, issue of PAN and TAN, issue of EPFO registration, issue of ESIC registration, professional tax registration (Maharashtra) and bank account opening among others.

**NCLAT approves  
Resolution Plan  
submitted by JSW  
for taking over  
Bhushan Steel &  
Power Ltd.**

The National Company Law Appellate Tribunal (“**NCLAT**”) approved the Resolution Plan submitted by JSW Steel Ltd./Resolution Applicant (“**JSW**”) for taking over the business of Bhushan Steel & Power Ltd./Corporate Debtor (“**CD**”) but with certain conditions. After the approval of the Resolution Plan when the Monitoring Committee was monitoring the change of management, the Enforcement Directorate (“**ED**”) passed an order attaching the assets of the CD. JSW challenged this order of attachment before NCLAT.

NCLAT held that Sec. 32A had been inserted by the Central Government vide IBC (Amendment) Ordinance, 2019 so that Corporate Debtors can be given immunity against prosecution and protection to its assets after the Resolution Plan is accepted. However, the ED further raised a contention that JSW will have to submit a declaration stating that they meet all the conditions laid down in Sec. 32A. The Ld. NCLAT held that no such declaration is required under Sec. 32A. The ED further contended that JSW is a ‘related party’ to the CD since they both are joint investors in an Associate Company. However, the Ld. NCLAT held that ED does not have the jurisdiction to decide the question of ‘related party’. The Ld. NCLAT also held that merely because JSW and the CD were investors in an associate company, JSW and the CD would not become related parties to each other. Hence, the order to declare the attachment of assets of the CD by the ED was held to be illegal and without jurisdiction.

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