

# GATI - विधि

-LAW IN ACTION



## Legal Updates

### **Relief Measures granted to industries by the Telangana Electricity Regulatory Commission ("TERC")**

In view of the representations from industrial associations due to the nation-wide lockdown, the Government of Telangana extended certain relief measures for the industries in the state whereby they allowed the electricity bills during the lockdown period to be collected as per actual consumption only and the fixed charges for the same period shall be deferred till 31.05.2020 without any penalty and interest. Further, those industries which pay the bills within due date shall get 1 percent rebate of billed amount. The State Government further directed their Energy Department to take necessary action accordingly. The Energy Department, Government of Telangana State thereafter vide its letter dated 22.04.2020, conveyed the aforesaid decision of the Government of Telangana to TERC under the powers conferred under Section 108 of the Electricity Act, 2003 for necessary action

TERC, vide its Order dated 23.04.2020, directed that Telangana State DISCOMs and the Co-operative Electric Supply Society Ltd., Sircilla (CESS) shall give effect to the aforesaid orders of the government. TERC also noted that in view of the loss that is occasioned to the DISCOMs and CESS due to the aforesaid reliefs, the DISCOMs and CESS are permitted to raise the necessary funds for working capital required during the period for which the relief is extended. The details of the total expenditure incurred by the DISCOMs towards raising the additional working capital along with the loss sustained by them after expiry of the lockdown period shall be submitted before TERC, to be examined by TERC at a later date.

### **Extension of validity of Renewable Energy Certificates (RECs) by Central Electricity Regulatory Commission ("CERC")**

In order to avoid demand supply imbalance in the REC market, CERC while exercising its power under Regulation 15 of CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 has extended the validity of RECs which have expired on 01.04.2020 up to 31.10.2020. In addition, the validity of RECs which are likely to expire between 01.04.2020 and 30.09.2020, the same is also extended upto 31.10.2020.

**Non-Participation in Arbitral Proceedings Leads to Waiver of Right to Object on Jurisdiction after the Award**

The Hon'ble Supreme Court in *Quippo Construction Equipment Limited vs. Janardan Nirman Pvt. Ltd.* has reaffirmed that, failure to participate in the arbitration proceedings and not submitting objections with respect to the jurisdiction of the Ld. Arbitrator will amount to an automatic waiver of all such objections. Parties had entered into separate agreements having separate arbitration clauses, one of whose venue was 'Kolkata', while 'Delhi' was the stipulated venue in the others. While the Respondent approached various forums *inter alia* denying the existence of the agreements between the parties, at no stage were the objections regarding Ld. Arbitrator's jurisdiction raised before the Ld. Arbitrator and instead the Respondent without participation let the arbitral proceedings conclude and culminate in an ex-parte award. Reliance was placed on Sections 4, 16 and 20 of the Arbitration and Conciliation Act, 1996 to hold that the Respondent must be deemed to have waived all such objections.

The IBBI has notified the IBBI (Liquidation Process) (Second Amendment) Regulations, 2020 vide notification dated 20.04.2020 ("**LPSA Amendment Regulations**") to the IBBI (Liquidation Process) Regulations, 2016 ("**LPR Regulations**").

Vide the LPSA Amendment Regulations, Regulation 47A has been inserted in the principal LPSA Amendment Regulations which provides that subject to the provisions of the Insolvency and Bankruptcy Code, 2016, the lockdown period imposed by the Central Government due to the COVID-19 outbreak shall not be counted for computation of timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process. The amendment shall be deemed to have come into force with effect from **17.04.2020**.

The IBBI has also notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 vide notification dated 20.04.2020 ("**Third Amendment Regulations**") (*uploaded on website on 25.04.2020*) which amends IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**IRPCP Regulations**").

Vide the Third Amendment Regulations, Regulation 40C has been inserted in the principal IRPCP Regulations which provides that, notwithstanding the timelines contained in the IRPCP Regulations, but subject to the provisions of the Insolvency and Bankruptcy Code, 2016, the lockdown period imposed by the Central Government due to the COVID-19 outbreak shall not be counted for the purposes of the timeline for any activity that could not be completed due to such lockdown in relation to any corporate insolvency resolution process. The said amendment shall be deemed to have come into force from **29.03.2020**.

The rampant spread of the virus in the world and more specifically in India, has called for relaxations in corporate compliance requirements. Click here to access the Consolidated Note on Corporate Compliance relaxations amid COVID-19 [here](#).

The Ministry of Power, Government of India proposes to amend certain provisions of the Electricity Act, 2003 ("**EA 2003**"). Accordingly, the said Ministry has issued Notice on 17.04.2020 inviting comments from stakeholders on the draft Electricity (Amendment) Bill, 2020 ("**EA Amendment Bill**"), circulated along with the said Notice, within twenty one (21) days from 17.04.2020, i.e. 08.05.2020.

Pursuant to requests from various stakeholders, the Ministry of Power, vide letter dated 27.04.2020, extended the time period for submission of comments/ observations/ suggestions on the EA Amendment Bill from 08.05.2020 to 5.06.2020.

Salient features of the EA Amendment Bill are as under:

1. The Government of India has proposed to remove the specific exclusion originally provided for the State of Jammu and Kashmir and has proposed to extend the applicability of EA 2003 to the whole of India including the State of Jammu and Kashmir.

**Amendments notified by Insolvency and Bankruptcy Board of India ("IBBI") due to COVID – 19**

**Corporate compliance relaxations amid COVID-19**

**Ministry of Power invites comments to the Electricity (Amendment) Bill, 2020**

2. The Government of India vide the EA Amendment Bill proposes to establish a new regulatory authority i.e. Electricity Contract Enforcement Authority (“ECEA”) which will have the sole authority and jurisdiction to adjudicate upon the matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity, except for the matters related to regulation or determination of tariff or any dispute involving tariff.
3. In regard to the functioning of ECEA, the EA Amendment Bill proposes to incorporate Section 109 to EA 2003 and provides working mechanism which, *inter alia*, includes composition of ECEA, qualification, term of office & service, resignation and removal of Chairperson and members of ECEA. It also enumerates procedure and powers of ECEA, procedure for filing of application before ECEA and orders thereon. Further, the EA Amendment Bill provides that any appeal against the order passed by the ECEA shall be preferred before the Appellate Tribunal for Electricity (“APTEL”).
4. The EA Amendment Bill further proposes to incorporate a new section to the EA 2003, wherein, every contract executed between the generating company and a licensee shall be filed before the Appropriate Commission within thirty (30) days of its execution.
5. The EA Amendment Bill further proposes to modify Section 142 of EA 2003 to the extent that the Appropriate Commissions, on receipt of a complaint, are empowered to impose penalty on any person, who fails to purchase power from renewable or hydro sources of energy, as specified by such Commission in compliance of the provisions of the EA 2003.
6. The EA Amendment Bill proposes to introduce the concept of ‘Distribution Sub-Licensee’, wherein any person recognised and authorized by the distribution licensee after the approval of the State Commission, can undertake the distribution function of such licensee in his area of supply.
7. The EA Amendment Bill proposes to modify Section 49 of EA 2003 to the extent that a generating company and a licensee shall be allowed to execute an agreement with other licensee, at such terms and conditions as agreed upon by them (including tariff and adequate security of payment), for supply, purchase or transmission of electricity.
8. The EA Amendment Bill proposes to empower the Appropriate Commission under Section 62 of the EA 2003 to fix tariff for retail sale of electricity without accounting for subsidy, if any, shall be provided by the government directly to the consumer under Section 65 of EA 2003. Further, the EA Amendment Bill proposes to modify Section 65 of the EA 2003 to the extent that the subsidy as provided by the State Government to the consumers or class of consumers shall be paid directly by the government itself and the Distribution Licensee shall charge such consumers the tariff as decided by the Appropriate Commission.
9. The EA Amendment Bill proposes to prescribe a time limit of sixty (60) days for adoption of tariff by the Appropriate Commission under Section 63 of the EA 2003.

The EA Amendment Bill proposes to modify Section 121 of the EA 2003, to the extent that it empowers APTEL with the same jurisdiction, powers and authority to take action on willful disobedience to any of its judgment, decree, direction, order or other process or willful breach of an undertaking given to it, at par with powers given to High Courts under the provisions of the Contempt of Courts Act, 1971. Such proceedings can be initiated on its own motion or on a motion made by the Advocate General or such Law Officer as the Central Government may specify.



**Ministry of New and Renewable Energy (“MNRE”) issues order regarding “Time-Extension in Scheduled Commissioning Date of Renewable Energy (“RE”) Projects” considering disruption due to nationwide lockdown**

Pursuant to representations received from RE developers requesting a general time extension on account of lock down (due to COVID-19) and additional time required for normalization after such lockdown, the following directions have been issued by MNRE:

- a. All RE implementing agencies of the MNRE will treat lockdown due to COVID-19, as Force Majeure.
- b. The RE implementing agencies may grant extension of time for RE projects, on account of lockdown due to COVID-19, equivalent to the period of lockdown and an additional thirty (30) days for normalisation after end of such lockdown. This will be a blanket extension - there will be no requirement of case to case examination. There will be no need to ask for any evidence for extension due to lockdown.
- c. The State Renewable Energy Departments (including agencies under Power/ Energy Departments of States, but dealing in renewable energy) may also treat lockdown due to COVID-19, as Force Majeure and may consider granting appropriate time extension on account of such lockdown.
- d. The extension on account of disruption in supply of RE equipment prior to lockdown shall be dealt separately for additional Extension of Time as per the earlier O.M. dated 20.03.2020.

The Central Electricity Regulatory Commission (“**CERC/Commission**”) has issued draft of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (“**Regulations**”).

The last date for submission of comments to the Regulations is 28.05.2020.

Certain salient provisions of the Regulations are as follows:

1. The Regulations will come into force from 01.07.2020 and unless reviewed earlier will remain in force upto 31.03.2023. The control period under these Regulations will be from 01.07.2020 to 31.03.2023.
2. These Regulations will apply to cases where tariff for a grid connected renewable energy (“**RE**”) generating station or a unit thereof commissioned during the control period, is to be determined under Section 62 r.w. Section 79 of the Electricity Act, 2003 (“**Act**”). The Regulations will apply to certain RE projects, subject to the fulfilment of eligibility criteria specified in Regulation 4 of these Regulations.
3. Regulation 6 stipulates that the generic tariff shall be determined by the Commission on annual basis vide a generic tariff order at least a month before the commencement of the year for each control period, in accordance with these Regulations for the RE projects based on small hydro, biomass, non-fossil fuel-based cogeneration, biomass gasifier and biogas based power projects. The generic tariff will be determined on levelized basis, considering the year of commissioning of the project, for the tariff period of the project. For the purpose of levelized tariff computation, discount factor equivalent to post-tax weighted average cost of capital shall be considered.
4. Similarly, Regulation 7 provides for Project specific tariff for certain RE projects such as solar power projects, wind power projects, renewable hybrid energy projects and renewable energy storage projects. It further enumerates that financial and operational norms specified in these regulations, except for capital cost shall be the ceiling norms while determining the project specific tariff.
5. For determination of generic tariff and project specific tariff a loan tenure of 15 years shall be considered.

**Draft Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020**

6. The tariff for RE sources will consist of components, namely, return on equity, interest on loan, depreciation, interest on working capital and operation and maintenance expenses. It further states that single part tariff with two components, fixed cost component and fuel cost component, shall be determined for RE projects having fuel cost component. The total capital cost of the RE project will be inclusive of all capital work including plant and machinery, civil work, erection and commissioning, financing and interest during construction and evacuation infrastructure upto inter-connection point.
7. The tariff, may also be agreed between the generating company and beneficiary, in deviation from the norms specified in these Regulations provided that the levelized tariff of the project calculated on the basis of the norms specified in these regulations shall be the ceiling levelized tariff.

Hon'ble Supreme Court in the matter of *National Agricultural Cooperative Marketing Federation of India Vs. Alimenta S.A.* has determined the enforceability of the foreign award against National Agricultural Cooperative Marketing Federation of India (“NAFED”), directing it to pay damages for breach of contract, as NAFED failed to export leftover consignment owing to restrictions imposed by the Indian Government. Main objections for enforceability of the foreign award were: (i) whether NAFED was unable to comply with the contractual obligation to export groundnut due to the Government's restriction?; (ii) whether NAFED could have been held liable in breach of contract to pay damages particularly in view of Clause 14 of the Agreement?; and (iii) whether enforcement of the Foreign Award is against the public policy of India?

Held that the foreign award was *ex facie* illegal and in contravention of fundamental law, as no export of the commodity was possible without the permission of the Government. In the event NAFED had continued to export the commodity after categorical refusal from the Government, such export would have violated the law of the land. Thus, enforcement of the Foreign Award would be violative of the public policy of India. Further, the Hon'ble Supreme Court also disallowed directions to NAFED towards payment of damages, on the ground that, the agreement was contingent in nature and the same was rendered unenforceable/void under Section 32 of the Indian Contract Act, 1872 on the non-happening of the contingency.

**Unenforceability of Foreign Award if in violation of the Public Policy of India**

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