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-LAW IN ACTION



Legal Updates

Arbitral Tribunal's fees cannot be challenged after unconditional acceptance by the parties.

The High Court of Madras, vide its judgment dated 31.08.2023, in the matter of '*EDAC Engineering Ltd v. M/s Industrial Fans (India) Pvt Ltd & Anr.*' (Application No. 2080 and 4609 of 2021), has held that once a party has unconditionally accepted the fees fixed by the Ld. Arbitral Tribunal during the arbitral proceedings, it cannot later challenge the said fees by filing a Petition under Section 39(2) of the Arbitration & Conciliation Act, 1996 ("**the Arbitration Act**")

The Court observed that as per Section 39(1) of the Arbitration Act, the Ld. Arbitral Tribunal also possesses a lien on the award to cover any outstanding arbitration costs, and it has the authority to withhold the award's delivery until these costs are settled. The Court further emphasized that a party cannot later object to the fees as being excessive/unreasonable and ask for the release of the lien under Section 39(2) of the Act once the party unconditionally accepts the fees determined by the Tribunal during arbitration

The High Court of Calcutta, by way of Judgment dated 06.09.2023, in the matter of '*Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd*' and connected petitions, has observed that the mandate of an Arbitral Tribunal stands terminated within the timelines prescribed under Section 29A of the Arbitration & Conciliation Act, 1996, ("**the Act**"), unless the same is extended during its subsistence, in the absence of which, an arbitrator would become *de jure* inadmissible.

Mandate of an Arbitral Tribunal terminates under Section 29A of the Arbitration & Conciliation Act, 1996 unless extended during its subsistence

The Court held that Section 29-A of the Act contemplates making of the award within the prescribed statutory timelines. The timelines are to be read as mandatory limits where the arbitrator and the parties are required to be conscious and vigilant of the cut-off dates for applying for extension of the mandate of the arbitral tribunal. The Court further observed that the application for extension must be made during continuation of the mandate and not thereafter and if the arbitral tribunal proceeds to make an award after expiry of the timelines, the award would suffer from a jurisdictional error. This is by reason of the fact that there is no provision for renewal of mandate of the tribunal once it stands terminated by operation of law.

The Court also observed that the mandate of the arbitral tribunal to make the award within 12 months after completion of pleadings under section 29-A(1) or within the extended time of 6 months under section 29-A(3) would stand terminated once the timelines are exhausted and the mandate would not remain in suspension till filing of the application for extension of the mandate under section 29-A(4) of the Act.

The Court observed that object of inserting Section 29-A was to expedite the arbitration process, the Court concluded that stakeholders in an arbitrations process ought to be vigilant in expediting the process in order to ensure that the arbitration process culminates into an award.

Ministry of Power Withdraws Guidelines Dated 22.03.2021 and Clarification dated 05.07.2021 Regarding the DISCOMS continuing to draw power after the completions of the term of the PPA.

The Ministry of Power (“**MoP**”) vide its notification dated 11.09.2023 has withdrawn the Guidelines dated 22.03.2021 and Clarification dated 05.07.2021 regarding the DISCOMS continuing to draw power after the completions of the term of the PPA and has issued implementation of the scheme notified vide letter dated 20.04.2023 for pooling of tariff of those plants whose PPAs have expired.

The MoP has stated that a PPA is a contract entered into by two parties and when the PPA expires both parties are free from the obligations of supplying or purchasing power from each other. The Government of India has decided that the Central generating Stations (“**CGS**”) of a Central Public Sector Undertaking whose PPAs have expired will be brought together in a pool, bundled with gas-based power, and sold to whoever wishes to buy it. Keeping the same view in mind, the MoP vide its letter dated, 20.04.2023 issued the scheme for Pooling of Tariff for those plants whose PPAs have expired, to replace the Guidelines dated, 22.03.2021 and the subsequent clarification dated 05.07.2021.

As per the Notification dated 11.09.2023 the above-mentioned Guidelines and Clarification stand superseded vide the MoP Scheme dated 20.04.2023.

NCLAT, Delhi holds that Proceedings under Section 13 of the Companies Act, 2013 cannot be questioned in Proceedings under Section 7 of the IBC, 2016

The National Company Law Appellate Tribunal, New Delhi Bench (“**NCLAT**”), vide Order dated 01.09.2023, in an appeal titled as *Ishan Singh vs. Spaze Towers Pvt. Ltd.* (Company Appeal (AT) (Insolvency) No. 226 of 2023), has held that the orders passed in the proceedings under Section 13 of the Companies Act, 2013 (“**CA 2013**”) cannot be questioned in proceedings under Section 7 of Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

The Appellant/Financial Creditor filed a application under Section 7 of the IBC seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against *Spaze Towers Pvt. Ltd.* (“**Corporate Debtor**”). The Corporate Debtor had filed an Application under Section 13(4) of the CA 2013 read with Rule 30 of Company (Incorporation) Rules, 2014 for shifting its registered office from Delhi to Haryana. Section 13(4) of the CA 2013 provides that changes in Memorandum of a company relating to the place of the

registered office from one State to another State shall not have any effect unless it is approved by the Central Government.

The Financial Creditor, in its application under Section 7 of IBC, prayed for taking on record the application filed by the Corporate Debtor under section 13(4) of the CA 2013 before the National Company law Tribunal (“NCLT”). The NCLT dismissed the application. Consequently, the Financial Creditor filed an appeal before the NCLAT contending that orders passed in the proceedings under section 13 of the CA 2013 cannot be questioned however, the documents may be relevant and has to be looked into by the Adjudicating Authority (NCLT).

The NCLAT held that the proceedings under Section 13 of the CA 2013 cannot be questioned in proceedings under Section 7 of IBC. However, whether the documents have any relevance or not has to be considered by the Adjudicating Authority after the document is seen. The NCLAT held that the Adjudicating Authority ought to have taken the document on record and thereafter examine the relevance of the document, if any, after hearing the parties.

The Central Electricity Regulatory Commission (“CERC”), vide notification dated 10.09.2023, has notified the Draft CERC (Terms and Conditions of Tariff) (Fourth Amendment) Regulations, 2023 (“**Fourth Amended Regulations**”). The Fourth Amended Regulations aims to omit Regulation 17 from the CERC (Terms and Conditions of Tariff) Regulations, 2019 (“**the Principal Regulations**”) which stipulated special provisions for Tariff for Thermal Generating Stations which have completed 25 years of operation from its commercial operation date (“**COD**”). The special provision allows the Generating Company and its beneficiary to enter into an arrangement upon expiry of 25 years from COD w.r.t. provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under the Principal Regulations are also allowed to be recovered based on scheduled generation. Under the Principal Regulations, the beneficiary has been granted first right of refusal pursuant to which the generating company has been allowed to sell the electricity to any third party as it deems fit. Regulation 17 reads as follows:

**CERC notifies the Draft
CERC (Terms and
Conditions of Tariff)
(Fourth Amendment)
Regulations, 2023**

“17. Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation:

(1) In respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, the generating company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation.

(2) The beneficiary shall have the first right of refusal and upon its refusal to enter into an arrangement as above, the generating company shall be free to sell the electricity generated from such station in a manner as it deems fit.

The Fourth Amendment Regulations shall come into force with effect from the date of their publication in the Official Gazette. The CERC has invited comments/ suggestions/ objections from the stakeholder and interested persons on the above Draft Fourth Amended Regulations. The comments/ suggestions/ objections may be sent at the email addresses, secy@cercind.gov.in and rpushkarna@cercind.gov.in on or before 01.10.2023.

TRAI extends the last date of receive comments on Consultation Paper on 'Review of Quality-of-Service Standards for Access Services (Wireless and Wireline) and Broadband (Wireless and Wireline) Services'.

The TRAI, vide notification dated 12.09.2023, has extended the date of receiving comments and counter comments on the Consultation Paper on 'Review of Quality-of-Service Standards for Access Services (Wireless and Wireline) and Broadband (Wireless and Wireline) Services'. The said Consultation Paper was issued on 18.08.2023 with an object to comprehensively review the existing standards for quality of wireline and wireless access services covering voice and broadband.

The said Consultation Paper *inter alia* makes provisions to simplify regulatory framework for Quality of Service (“QoS”). Accordingly, it is proposed to have single regulation dealing with QoS standards for all voice and data services irrespective of their access medium i.e., for both wireline and wireless services. The draft regulations propose monthly QoS performance reporting at State and UT level in addition to at LSA level. To monitor QoS of 5G services, the relevant terminology for 5G services has also been updated in draft regulations. Stringent performance benchmarks, especially related to call drops, are also proposed for 4G and 5G services to improve consumer experience. Lastly, performance against service provider's network availability is also proposed to be monitored at State and UT level to ensure that consumer get uninterrupted services.

TRAI has extended the last date for submission of written comments to 11.10.2023 and counter comments by 25.10.2023.

TRAI extends last date to receive comments and counter comments on the Consultation Paper on 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services'.

The Telecom Regulatory Authority of India (“TRAI”), vide notification dated 15.09.2023, has extended the last date to receive comments and counter comments on its consultation paper on ‘Review of Regulatory Framework for Broadcasting and Cable services.’ The said Consultation paper seeks to examine the issues related to regulatory mechanism for Over-The-Top (“OTT”) communication services, issues related to selective banning of OTT services, and also provides an overview of international practices on the subject. The last date for receiving counter comments on the issues raised in the Consultation Paper invited from stakeholders has now been extended to 29.09.2023.

TRAI issues the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulations, 2023.

The TRAI, vide notification dated 13.09.2023, has promulgated the Regulations on Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulations, 2023 (03 of 2023) dated 11.09.2023 (“QoS Regulations 2023”). The QoS Regulations 2023 shall be applicable to all the service providers having- (a) Unified Access Service License; or (b) Unified License with authorization for Access Service and shall come into force from the 01.04.2024. The earlier Regulations namely Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation, 2006, and its amendments issued on 25th March 2013 stand repealed.

The QoS Regulations 2023 have been issued with an object to balance the following two aspects:

1. To protect the interests of the subscribers by ensuring that service providers maintain fairness and transparency in their Metering and Billing System(s) ; and
2. To reduce compliance burden on the service provider to enhance Ease of Doing Business (“EODB”).

The QoS Regulations 2023 further simplifies the audit process, ensures to cover maximum tariff offerings under audit, covers critical tariff offerings like related to international roaming, even with low subscriber base, and emphasises on refund of maximum amount which have been overcharged from consumers in a definite time frame. The QoS Regulations 2023 contains provisions to discourage overcharging. In

order to facilitate EODB, the TRAI has also accepted some of major requests of the service providers which include;

1. Deletion of provision related to self-evaluation by service providers before start of audit by the auditor;
2. Giving flexibility to service provider in selection of LSAs to be audited in each quarter;
3. Enhancing the time limit to 30 days for providing the raw CDRs to the auditor from 15 days proposed in the draft regulations;
4. Introduction of graded financial disincentives; and
5. Modification in retention period for audit records etc

TRAI vide notification dated 30.08.2023 has notified the extension of last date to receive comments and counter comments on TRAI's consultation paper on 'Review of Regulatory Framework for Broadcasting and Cable services.' Recently, certain issues were raised by Distribution Platform Operators, Local Cable Operators, and broadcasters pertaining to TRAI's framework of 2020. The said framework was thereafter amended. To deliberate on the issues related to pending implementation of the amended framework, a committee consisting of members from Indian Broadcasting and Digital Foundation, All India Digital Cable Federation and DTH Association was constituted under the aegis of TRAI to facilitate discussions among various stakeholders for smooth implementation of Tariff Amendment Order 2020.

During certain subsequent meetings, the stakeholders inter alia advocated for the need of moving towards larger picture of forbearance. To address such and other issues pertaining to Tariff, Interconnection and Quality of Service of Broadcasting and Cable services, as identified by the stakeholders' committee and other stakeholders, TRAI issued a Consultation Paper pertaining to 'Review of Regulatory Framework for Broadcasting and Cable services.'

The updated submission dates of written comments and counter comments on the aforementioned Consultation Paper are 03.10.2023 and 17.10.2023 respectively.

The said Consultation Paper can be accessed here : <https://traigov.in/notifications/press-release/traireleases-consultation-paper-review-regulatory-framework> .

TRAI vide notification dated 14.09.2023 has released the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fifth Amendment) Regulations, 2023 (4 of 2023) ("**Amendment Regulations**"). TRAI had issued Consultation Paper on 'System Requirement for Digital Right Management ("**DRM**")' in the form of a draft amendment in the Interconnection Regulation 2017 on 09.09.2022.

Subsequently, with the aim of protecting the interests of service providers and consumers, TRAI has notified the said Amendment Regulations whereby it has sought to enable, technology neutral, light-touch regulatory regime, which facilitates growth and technological developments while protecting the consumer's interest, to foster overall growth as well as to introduce Schedule X for Digital Rights Management System Requirements, which include DRM requirements for

- (i) Conditional access by subscribers and encryption for Internet Protocol Television ("**IPTV**") services;
- (ii) IPTV services, in so far as they relate to subscriber management systems (SMS);
- (iii) IPTV services, in so far as they relate to fingerprinting; and

TRAI extends last date to receive comments and counter comments on the Consultation Paper pertaining to 'Review of Regulatory Framework for Broadcasting and Cable services.'

TRAI issues the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fifth Amendment) Regulations, 2023.

- (iv) DRM requirements in so far as they relate to STBs/unique consumer subscription.

The said Amendment Regulations of 2023 can be accessed here : [TRAI releases Telecommunication \(Broadcasting and Cable\) Services Interconnection \(Addressable Systems\) \(Fifth Amendment\) Regulations, 2023 | Telecom Regulatory Authority of India](#)

TRAI Vide Notification dated 14th September, 2023 has released draft “**Registration of Consumer Organisations (Amendment) Regulations, 2023**” (“**Draft Regulations**”) for stakeholders’ to send comments by 4th October, 2023.

The Draft Regulations seek to deal with the rapidly evolving digital landscape, emerging technologies like 5G, 6G, Artificial Intelligence (“**AI**”), Internet of Things (“**IoT**”) etc., since they hold immense potential for the betterment of the lives of consumers. The use cases of these technologies can be helpful for different sections of society. AI and IoT offer various opportunities to access real-time market information, optimise resource management, and enhance crop yields. AI-powered weather forecasts coupled with IoT sensor aids may help farmers to take informed agricultural decisions. 5G-enabled high-speed connectivity empowers businesses and startups with AI-driven analytics to improve production, supply chains, and customer experiences, fostering global competition. Online education and remote healthcare through 5G enhanced services in remote areas, while IoT-driven disaster prediction and response systems boost environmental sustainability and disaster resilience for vulnerable communities. These technologies, when harnessed effectively, can drive inclusive growth, enhance accessibility, and bridge socio-economic gaps.

Consumer organisations can play a supporting role in raising awareness about the benefits accrued out of these emerging technologies, particularly to the marginalised communities, people in rural areas for bridging the digital divide. For conducting theme-based events, these organisations can assist TRAI explaining the use cases of these technologies, educate consumers of different sections, such as women, farmers, fisheries, students etc. about their potential benefits, and also propagate cyber hygiene and make consumers aware of data privacy.

TRAI also felt the need to register national level consumer organisations, having presence in multiple states and union territories (UTs) having capability and experience in campaigning and conducting theme-based events by developing awareness material can provide an interface between consumers and TRAI. The proposed amendment would enable TRAI to register capable consumer organisations having wider reach to work in more than five states/UTs under national level registration. It simplifies the registration process for such consumer organisations.

**TRAI Releases Draft
Registration of Consumer
Organisations
(Amendment)
Regulations, 2023 for
comments**

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