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-LAW IN ACTION



Legal Updates

Supreme Court holds that an Arbitration Award cannot be set aside under Section 37 of the Arbitration and Conciliation Act, 1996 on grounds which cannot form basis of challenge under Section 34 of the Act

The Supreme Court of India in the matter of *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking*, Civil Appeal No. 2903 of 2023 vide judgment dated 17.08.2023 has observed that the scope of interference by a Court in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (“**the Act**”) in examining an order, setting aside or refusing to set aside an Arbitral Award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

While setting aside the observations of the Division Bench which reversed the Award, the Hon’ble Court observed that the principle of interpretation of contracts that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. This principle of interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, a Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal’s view is perverse or manifestly arbitrary. The question of reinterpreting the contract on an alternative view does not arise, as this principle is not applicable to exercise of jurisdiction under Section 34 of the Act and an Award cannot be reversed in exercise of jurisdiction under Section 37 of the Act.

Allahabad High Court observes that an Application under Section 11 of the Arbitration & Conciliation Act, 1996 is not maintainable after rejection of objection to jurisdiction of Arbitrator by the Arbitral Tribunal

The Hon'ble Allahabad High Court in the matter of *Purvanchal Vidyut Vitaran Nigam Ltd (PUVVNL) v. M/s Prabha Mvomni (JV)*., Arbitration and Concili. Appl. u/S 11(6) No. 137 of 2022 vide order dated 11.08.2023 has observed that where objection to the jurisdiction of an Arbitrator is rejected by the Arbitral Tribunal, the only way in which such challenge can be pursued is by challenging the award, as and when it is made by the arbitrator.

The Court observed that a party cannot be permitted to circumvent the statutory scheme by invoking the jurisdiction of a Court under Section 11 of the Arbitration and Conciliation Act, 1996 (“**the Act**”), on the premise that the appointment of arbitrator itself is bad

MNRE issues strategy for Establishment of offshore Wind Energy Projects

The Ministry of New and Renewable Energy (“**MNRE**”) vide its notification dated 17.08.2023 has issued the strategy for Establishment of Offshore Wind Energy Projects. The same has been done in pursuance of the already notified National Offshore Wind Energy Policy 2016 (“**The Policy**”). The Policy provides the framework for offshore wind power development up to a seaward distance of 200 nautical miles from the baseline, i.e., up to the country's Exclusive Economic Zone (“**EEZ**”). As per policy, MNRE is the Nodal Ministry, and the National Institute of Wind Energy (“**NIWE**”) is the Nodal Agency for the development of Offshore Wind Energy in India.

Bearing in mind the preliminary reports carried out by NIWE across the coastline of India highlight the good potential of both the Southern tip of the country and the West coast for offshore wind farm development in India. In pursuance of the above, MNRE has suggested three models for the requirement of the holistic development of offshore wind farms in the country. The strategy can be accessed vide the link attached herewith, [LINK](#)

MNRE in pursuance of its notification No. 353/35/2022-NT has approved the National Green Hydrogen Mission (“**Mission**”) and as per the present office memorandum (“**OM**”) dated 18.08.2023, it has set out the Green Hydrogen Standard for India.

As per the said OM the MNRE has specified the following for the purpose of the mission and its ensuing policies:

“

(1) “**Green Hydrogen**” shall mean Hydrogen produced using renewable energy, including, but not limited to, production through electrolysis or conversion of biomass. Renewable energy also includes such electricity generated from renewable sources which is stored in an energy storage system or banked with the grid in accordance with applicable regulations.

Whereas, for Green Hydrogen produced through electrolysis: The non-biogenic greenhouse gas emissions arising from water treatment, electrolysis, gas purification and drying and compression of hydrogen shall not be greater than 2 kilogram of carbon dioxide equivalent per kilogram of Hydrogen (kg CO₂ eq/kg Hydrogen), taken as an average over last 12-month period.

Whereas, for Green Hydrogen produced through conversion of biomass:-The non-biogenic greenhouse gas emissions arising from biomass processing, heat/steam generation, conversion of biomass to hydrogen, gas purification and drying and compression of hydrogen shall not be greater than 2 kilogram of carbon

MNRE issues Green Hydrogen Standard for India

dioxide equivalent per kilogram of Hydrogen (kg CO2 eq/kg Hydrogen) taken as an average over last 12-month period.

- (2) *A separate methodology for measurement, reporting, monitoring, onsite verification, and certification of green hydrogen and its derivatives must be highlighted by the MNRE.*
- (3) *The Bureau of Energy Efficiency shall be the Nodal Authority and shall be responsible for accreditation of agencies for the monitoring, verification, and certification for Green Hydrogen production projects.”*

TRAI extends last date for comments and counter comments on the Supplementary Consultation Paper pertaining to 'Data communication services between aircraft and ground stations for services provided by organisations other than Airports Authority of India'.

TRAI vide notification dated 17.08.2023 has notified the extension of last date to receive comments and counter comments on TRAI's Supplementary consultation paper on 'Data communication services between aircraft and ground stations for services provided by organisations other than Airports Authority of India'. The said Supplementary Consultation Paper was released for soliciting comments of stakeholders on suitable regulatory regime for data communication services between aircraft and ground stations provided by organizations other than the Airport Authority of India.

The updated submission dates of written comments and counter comments on the aforementioned Supplementary Consultation Paper are 24.08.2023 and 31.08.2023 respectively.

The said Supplementary Consultation Paper can be accessed here, [LINK](#)

TRAI vide notification dated 08.08.2023 has released its recommendations on 'Introduction of Digital Connectivity Infrastructure Provider Authorization under Unified License (“UL”)’.

The salient features of the recommendations are as follows: -

- i) Creation of a new category of License called as 'Digital Connectivity Infrastructure Provider (“DCIP”) License has been recommended which would allow for creation of both active as well as passive digital connectivity infrastructure.
- ii) The scope of DCIP authorization does not include provisioning of end-to-end bandwidth using transmission systems to any customer or for its own use. However, DCIP will be allowed to install wired transmission link (but not wireless) to connect to its own BBU (Baseband Unit)/RU (Radio unit)/Antenna.
- iii) Entry fee for DCIP authorization should be kept at Rs. 2 lakhs and application processing fee at Rs. 15,000. The penalty for violation be kept at the level that is prescribed for ISP Category 'B' Authorization. No Performance Bank Guarantee be imposed on DCIPs.
- iv) Several conditions of Part-I of Unified license have been exempted from applicability to DCIP Authorization.
- v) Principal - agent relationship between DCIP and licensed entities has been used for self- regulation.
- vi) The DCIP Licensees have been allowed to share all infrastructure owned, established, and operated by them under the scope of their Authorization with

TRAI releases recommendations on 'Introduction of Digital Connectivity Infrastructure Provider Authorization under Unified License’

other Licensees under UL (excluding DCIPs) and also with ISPs (not in UL), subject to certain conditions.

- vii) DCIP Licensees shall provide DCI items, equipment, and systems on lease/rent/sale basis to any entity (excluding other DOIPs) having a valid license under section 4 of Telegraph Act 1885, and entities notified by the Government for this purpose.
- viii) DCIP Licensee should be eligible to apply for and issue of licence under the Indian Wireless Telegraphy Act, 1933 to possess such wireless telegraphy apparatus (without assignment of any spectrum) that is permitted under the scope of DCIP authorization.
- ix) DCIPs should be forbidden from entering into legally binding contractual agreements conferring inalienable Right of Use (IRU) of its DCI to specific eligible entity(ies), which may lead to the exclusion of others.

The said Recommendations can be accessed here : www.trai.gov.in.

TRAI vide notification dated 18.08.2023 has released the Consultation Paper on 'Review of Quality-of-Service Standards for Access Services (Wireless and Wireline) and Broadband (Wireless and Wireline) Services' 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. Currently, there are three regulations which govern the said subject-matter:

- (i) The Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone service regulations, 2009
- (ii) Quality of Service of Broadband Service Regulations 2006 and
- (iii) The Standards of Quality of Service for Wireless Data Services Regulations 2012. These regulations have been amended from time to time based on induction of new technologies like 4G.

The said three regulations are now proposed to be merged into single regulation. 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 invited the comments of stakeholders by 20.09.2023 and counter comments by 05.10.2023. The said Consultation Paper can be accessed here : [LINK](#)

**TRAI releases
Consultation Paper on
'Review of Quality-of-
Service Standards for
Access Services
(Wireless and
Wireline) and
Broadband (Wireless
and Wireline)
Services'**

RERC invites objections/ suggestions on the draft Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Third Amendment) Regulations, 2023

The TRAI, on 03.04.2023, released a consultation paper on “Assignment of Spectrum for Space-based Communication Services” on which stakeholder comments have been invited by 04.05.2023, and counter-comments by 18.05.2023.

The Department of Telecommunications (“DoT”), through its letter dated 13.09.2021, had requested the TRAI to provide recommendations on auction of spectrum in the frequencies identified for International Mobile Telecommunications (“IMT”) 5G. TRAI was also requested to provide recommendations, on appropriate frequency bands, band plan, block size, applicable reserve price, the quantum of spectrum to be auctioned, and associated conditions for the auction of spectrum for space-based communication services.

The TRAI, through consultations, seeks to assess the demand for space-based communication services and accordingly provide recommendations on the quantum of spectrum in each band required to be put to auction. It has been envisaged to auction the Space Spectrum on exclusive basis. Accordingly, the TRAI seeks to explore feasibility and procedure of sharing auctioned spectrum among multiple service licensees may provide suggestions on how satellite networks and terrestrial networks should share frequency bands that were auctioned off, along with the guidelines for sharing and the best ways to prevent interference when doing so. Since the service providers may require spectrum both in user link as well as in feeder link, the TRAI seeks inputs from the stakeholders in order to recommend the appropriate auction methodology so that the successful bidder gets appropriate spectrum. In the present consultation paper, TRAI has considered all the spectrum bands relevant for space-based communication services as indicated by DoT.

The Karnataka Electricity Regulatory Commission (“KEREC”) vide Notification No: KEREC/6/DDD/F-1335/2023-24/462 dated 04.08.2023, KEREC has issued the Draft Karnataka Electricity Regulatory Commission (Pre-paid Smart Metering), Regulations, 2023 (**Draft Regulations**). The Draft Regulations shall come into force from the date of publication in the official gazette of Karnataka and shall be applicable to the whole of the State of Karnataka.

Regulation 3 provides that the Draft Regulations shall be applicable to all categories of consumers (new and existing consumers). Further, Regulation 3 provides for the procedure for availing facility under pre-paid meters.

Regulation 4 of the Draft Regulations provides for Security Deposit which states that in case of new connection with pre-paid smart meter, the licensee shall not collect any security deposit, in pursuance of sub section (5) of Section 47 of the Electricity Act. In case of existing consumer migration to pre-paid smart metering arrangement, the security amount deposited with the licensee shall be adjusted against the last bill including arrears, if any, and the balance, if any, payable to / by the consumer shall be settled in full, at once. Further, in case of conversion pre-paid to post-paid conversion, again security deposit shall be paid by the consumer in addition to other formalities, if any.

Regulation 5 of the Draft Regulations deals with the provisions relating to metering. Regulation 5.1 provides that the pre-paid smart meters purchased by the consumers conform to the technical requirements of relevant regulations / guidelines of CEA. Regulation 5.2 states that the facility for recharge of the credit in the consumers’ account through various online modes. Regulation 5.3 provides that pre-paid smart meter shall be compatible with AMI application of the licensee and communicate the data. Regulation 5.4 provides that the AMI software application of the licensee shall initiate auto reconnection after successful recharge of the meter so that the connection is restored automatically/ immediately.

Regulation 6 provides for the billing of electricity charges. Regulation 6.1 provides that the pre-paid smart meter billing system by the licensee shall have the provision for ensuring recovery of monthly minimum charges, fixed charges, FPPCA charges, ToD tariff and the

KERC issues Draft Karnataka Electricity Regulatory Commission (Pre-paid Smart Metering), Regulations, 2023:

consumption charges, taxes or any other applicable charges, as per the applicable tariff schedule / specific orders of the Commission. Regulation 6.2 provides that the consumer may recharge his prepaid smart meter account in multiples of Rs.100/-, subject to a minimum amount equivalent to one week's average consumption charges as recorded in the immediately preceding month or when one week's clear consumption is available, as per the multi recharge facilities/options provided by the Distribution Licensees. There shall be no maximum limit for recharge amount. Regulation 6.3 requires a consumer to maintain monthly minimum balance of fixed / demand charges as per the prevailing approved tariff for different category of consumers on the basis of connected load on per KW/HP basis. Regulation 6.4 states that the computation of charges shall take place on a daily basis, as per tariff schedule / specific orders of the Commission and shall be deducted on the daily basis from the consumer recharged amount. Regulation 6.5 provides that in case of non-communication of smart prepaid meters, daily energy charges shall be calculated on the basis of estimated daily consumption calculated from average of last 7 days daily recorded consumption. The prepaid balance shall be immediately updated on the basis of actual consumption once the reading is received from such pre-paid smart meter. Regulation 6.6 provides for a communication system that will notify the consumers to recharge the prepaid account in case the consumers exhaust 75% of the cumulative recharged amount (excluding fixed charges) in a billing month. Regulation 6.7 provides for the disconnection provisions on failure on part of the consumers to recharge their prepaid meter account.

Regulation 7 provides that Electricity Tax / Duties, as per the Government Rules / Orders, shall be payable by the consumers at the time of recharge of his pre-paid account for which the licensee shall maintain separate account.

Regulation 8 provides for migration of existing post-paid consumers to pre-paid smart meters. The existing Consumer may be allowed to migrate to prepaid mode subject to clearing all arrears or after adjustment of the Security Deposit. There shall not be any previous arrears outstanding in the name of the consumer before switching to prepaid metering mode. In case after migration to pre-paid smart meter, any demand/refund is discovered at later stage, a notice on the revised billing account shall be sent to consumer on mobile application / SMS / email, etc., giving 15 days to remit the amount. Upon expiry of the 15 days, the amount of arrears or amount of interest or refund, if any, payable by / to consumer shall be adjusted to pre-paid balance of consumer. In case of insufficient balance, the installation shall stand disconnected temporarily, till recharge by the consumer.

Regulation 9 provides for physical disconnection of pre-paid smart meters. It states that the consumers does not recharge their account after temporary disconnection the account may reach negative balance on account of applicability of Monthly Minimum Charges or Fixed Charges or any other charges as decided by the Commission, even if there is no electricity consumption by the consumers. The temporary disconnection will be restored only if the pre-paid meter account is recharged with an amount adequate to recover the monthly minimum charges or fixed charges or any other charges decided by the Commission within 6 months from the date of temporary disconnection. If the consumer fails to recharge the account within a period of 6 months, the connection shall be disconnected permanently, and the meter shall be physically removed from the consumer premises.

Regulation 10 provides for replacement of meters. It provides that in case the pre-paid smart meter gets damaged or burnt out, the same shall be replaced at the cost of the consumer duly testing the meter in Licensee's Lab or any NABL accredited labs. If the meter is burnt out due to technical reasons like voltage fluctuation etc., attributable to the system constraints, the depreciated cost of burnt out meter shall be paid to the consumer, through adjustment to pre-paid account.

The KERC has invited for the comments/views/suggestions/objections of the Stakeholders, general public and interested persons and the same can be submitted within 30 days from the date of the publication in the official gazette, to the Secretary, Karnataka Electricity Regulatory Commission, No.16, C-1, Miller Tank Bed Area, Vasanthanagara, Bengaluru-560052. The Draft Regulations can be viewed [here](#) for reference.

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