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-LAW IN ACTION



Legal Updates

Delhi High Court holds that a party cannot restrict limitation period for invoking arbitration contrary to Limitation Act, 1963

The Delhi High Court while hearing the Appeal under Section 37 of Arbitration and Conciliation Act, 1996 (“A&C Act, 1996”) in the case *Municipal Corporation of Delhi vs. Natraj Construction Co. FAO 432/2010* has held that the limitation period for invoking arbitration under A&C Act is three (3) years, as prescribed under Article 137 of the Limitation Act, 1963 hence, the contention by Appellant that the clause of the contract which restricts the period of limitation for invoking arbitration to 120 days is ill-founded in view of the amended Section 28(b) of the Contract Act, 1872 which provides that a party, by a contract, cannot limit the limitation period which is otherwise provided by law. Furthermore, the Court while referring to Supreme Court’s decision in *Swiss Timing Ltd. vs. Commonwealth Games 2010 Organizing Committee (2014)*, reiterated that there is no inherent risk of prejudice to the parties in permitting arbitration to proceed parallelly with the criminal proceedings.

Allahabad High Court holds that when arbitration clause covers all disputes, the scope of the arbitrator cannot be restricted

The Allahabad High Court vide its judgement dated 24.03.2023 in *Agra Development Authority Agra v. M/s Baba Construction Pvt. Ltd.* held that when an arbitration clause covers all the disputes arising out of the contract within its ambit, then the scope of arbitrator cannot be limited to a particular dispute.

The Appellant had issued a tender for developments of flat in Agra. The Respondent emerged as the successful bidder. The parties entered into an agreement in which the clause relating to disputes and arbitration encompassed all disputes arising out of the agreement. A sole arbitrator was appointed when a dispute regarding payment of service tax arose between the parties. However, in the letter of appointment of the arbitrator, no reference was made with regard to the nature of dispute for which he was appointed.

The Appellant aggrieved by the fact that the arbitrator had proceeded to adjudicate upon and had passed an award with respect to other disputes between the parties in addition to the dispute relating to payment of service tax, had approached the Court on the ground that the arbitrator being appointed for the specific dispute relating to service tax, cannot expand its scope after entering upon reference for such specific dispute.

The High Court observed that the letters relating to appointment of the arbitrator does not contain any material referring to the scope of reference and only mentioned adjudication of disputes arising out of the agreement. Moreover, the disputes decided by the arbitrator were ones which the Respondent had been continuously raising from before the invocation of the arbitration clause. The High Court drew support from the judgements of the Supreme Court and other High Courts and held that an arbitrator can adjudicate on all disputes which the agreement provides it can adjudicate upon and accordingly rejected the appeal as it was devoid of merit.

Please find the judgement attached for reference [here](#).

The Delhi High Court while hearing the Appeal under Section 37(1)(c) of the A&C Act, 1996 in the case of *Goyal Mg Gases Pvt. Ltd. vs. Panama Infrastructure Pvt. Ltd. & Ors.* bearing no. FOA(OS) (COMM) 217/2019 dealt with the issue of whether the Arbitral Tribunal's order rejecting the claimant's application seeking impleadment of parties being non-signatory to the arbitration agreement, can constitute as an 'interim award'. The Court while relying on the judgment of *Rhiti Sports Management Pvt. Ltd. vs. Power Play Sports & Events Ltd.* (2018), held that the Arbitral Tribunal's order rejecting the application for impleadment of parties does not decide any substantial question of law nor it deals with the merits of the case hence, the same would not constitute as an 'interim award'.

The Ministry of Power (“**MOP**”) vide its notification dated 24.03.2023, has proposed amendments to the Electricity (Rights of Consumers) Rules 2020 (“**Principal Rules**”). The draft Electricity (Rights of Consumers) Amendments Rules, 2023 (“**Amendment Rules**”) provides for the following amendments:

1. Rule 5 (5) of the Principal Rules has been proposed to be substituted to provide that the smart meters shall be read remotely at least once in a day. The Principal Rules provide smart meters to be read at least once a month.
2. Rules 5 (5) (A) and 5 (5) (B) are proposed to be inserted which provide as follows:
“5(A) After the installation of smart meters, no penalty shall be imposed on the consumer based on the Maximum Demand recorded by the smart meter for the period before the installation date.
5(B) In case Maximum Demand recorded by the smart meter exceeds the Sanctioned Load in a month, the bill, for that billing cycle, shall be calculated based on the actual recorded Maximum Demand:
Provided also that the revision of the Sanctioned Load, if any, based on the actual recorded Maximum Demand shall be as under:
 - (a) *In case of increase in Maximum recorded Demand, the lowest of the Maximum Demand of three months, where the recorded Maximum demand has exceeded the sanctioned load limit during a calendar year, shall be considered as the revised Sanctioned Load, and the same shall be automatically reset from the billing cycle in next calendar year.*
 - (b) *In case of reduction of Maximum Demand, the revision of Sanctioned Load shall be done in accordance with the Supply codes/SOPs issued by respective Regulatory Commission.”*
3. Where Rule 6 (1) of the Principal Rules only provides that tariff for each category of consumers shall be displayed on distribution licensee's website and consumers shall be notified of change in tariff including fuel surcharge and other charges, a full billing cycle

Delhi High Court holds that Arbitral Tribunal's Order rejecting the application for impleadment of party does not constitute as an 'Interim Award'

MoP amends Electricity (Rights of Consumers) Rules 2020

ahead of time, through the distribution licensee's website as well as through energy bills. The same is proposed to be substituted to provide as follows:

“1(a) Time of Day (ToD) tariff shall be made effective immediately after installation of Smart meters, for the particular category of consumers with smart meters.

Time of Day (ToD) tariff for Commercial and Industrial (C&I) consumers having Maximum Demand up to 10kW shall be made effective from a date not later than 1st April, 2024 and for other consumers except agricultural consumers, the ToD tariff shall be made effective not later than 1st April, 2025:

Provided further that the ToD Tariff specified by the State Commission for C&I consumers during peak period of the day shall not be less than 1.20 times the normal tariff and for other consumers, it shall not be less than 1.10 times the normal tariff:

Provided further that tariff for solar hours of the day, specified by the State Commission shall be at least 20% less than the normal tariff for that category of consumers:

Provided also that the duration of peak hours shall not be more than solar hours as notified by the State Commission of SLDC.

1(b) Tariff for each category of consumers shall be displayed on distribution licensee's website and consumers shall be notified of change in tariff including fuel surcharge and other charges, a full billing cycle ahead of time, through distribution licensee's website as well as through energy bills / SMS / Mobile App etc.”

MoP vide notification dated 27.03.2023 has issued draft Carbon Credit Trading Scheme (“**CCTS**”). The draft CCTS has come into light after the Parliament has passed the Energy Conservation (Amendment) Bill, 2022 (“**Amendment Bill**”). One of the provisions of this Amendment Bill includes empowering Central Government to “*specify Carbon Trading Scheme*”, in consultation with Bureau of Energy Efficiency (“**BEE**”). MOP has requested stakeholders to share their comments on the draft CCTS at the earliest before 14.04.2023. The salient features of the draft CCTS, are as follows:

1. The CCTS provides that an Accredited Carbon Verifier (“**ACV**”) means an agency accredited by the BEE to carry out validation or verification activities in respect of the CCTS.
2. The Carbon Credit Certificate (“**CCC**”) means the certificate issued to the registered entity by the central government, or any agency authorised by it, in the CCTS where each certificate issued shall represent reduction or removal of one tonne of CO² equivalent (tCO_{2e}).
3. The CCTS means the scheme for reduction or removal of greenhouse gas (“**GHG**”) emissions notified by the central government.
4. The scheme provides for setting up of the Indian Carbon Market Governing Board (“**ICMGB**”).
5. The governance of the Indian Carbon Market (“**ICM**”) and direct oversight of its administrative and regulatory functioning shall vest in the ICMGB. Some of the major functions of ICMGB includes:
 - a. Recommending procedures for institutionalising the ICM for the approval of the Central Government.
 - b. Recommending guidelines regarding sale of CCC to outside India to the central government.
 - c. Approving projects under the voluntary mechanism and recommend the central government or its designated agency for issuance of CCC.
 - d. Approving the process/conditions for crediting period/renewal/ retirement of CCC have oversight of the administrative and regulatory functions of ICM. ICMGB will and constitute any committee or working group as required in connection with ICM.
6. The BEE shall be the administrator for the ICM and shall also work as the secretariat for the ICMGB. Also, the Grid Controller of India Limited shall be the registry for the ICM.

**MOP issues draft
Carbon Credit
Trading Scheme**

The Central Electricity Regulatory Commission (“**CERC**”) shall be the regulator for the trading activities under the ICM.

CERC, vide its suo-moto order dated 27.03.2023 in Petition No. 03/SM/2023, while exercising its power under Regulation 1(2) of the Renewable Tariff Regulations, 2020 (“**RE Tariff Regulations**”), has extended the period of the RE Tariff Regulations for a period of 6 months up to 30.09.2023. The levelised generic tariff for FY 2022-23 under Regulation 8 of the RE Tariff Regulations, notified vide the order dated 07.11.2022 in Petition No. 14/SM/2022, is directed to continue to be in force until further orders.

CERC, vide notification dated 01.04.2023 has issued the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023 (“**Amendment Regulations**”) to the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (“**Principal Regulations**”). Following are some of the key amendments:

- 1 The Amendment Regulations provide for the definitions of General Network Access-renewable energy (“**GNARE**”), Host State, Temporary General Network Access energy (“**T-GNARE**”).
- 2 Regulation 11A has been inserted to provide that the applicant which is Renewable Energy Generating Stations (“**REGS**”), or Energy Storage System (“**ESS**”) or Renewable power park developer shall submit the documents within 180 days from grant of connectivity. The bank guarantee shall be returned within 7 days from the date of submission of documents as proof of ownership or lease right or land use right. The Auditor’s certificate, certifying the release of at least 10% of the project cost including the land acquisition cost through equity shall be submitted within 12 months from date of connectivity.
- 3 Under Regulation 11A entities granted connectivity under these regulation shall have to achieve the financial closure for the capacity of such Connectivity, (a) within a period of 12 months or (b) a period equivalent to 50% time period between issue of final grant of Connectivity and start date of Connectivity, if the start date of Connectivity is more than 2 years from date of issuance of final grant of connectivity. Such an applicant shall submit proof of Financial Closure of the project to CTU within 15 days of achieving the financial closure.
- 4 Regulation 11B has been inserted to provide that in case of failure to submit the documents, the connectivity would be revoked, bank Guarantee of Rs 10 lakh/MW submitted in lieu of land shall be encashed and Conn-BG1, Conn-BG2 and Conn-BG3 shall be treated in terms of Regulation 24.2 or Regulation 24.3 of these regulations.
- 5 Regulation 20.4, 20.5 and 20.6 have been inserted to provide those entities covered under clause (ii) and (iii) of Regulations 17.1 may apply for GNARE indicating bifurcation of GNARE within the region and from outside the region, from specified date, for specified quantum, for period of more than 11 months. The entities must furnish consent of concerned State Transmission Utility (“**STU**”). In order for the entities who intend to draw power from sources other than specified under Regulation 13(2), may get power with payment of transmission charges at transmission deviation rate or convert full GNARE into GNA by making an application to the Nodal Agency. The entities covered under Regulation 20.4 may apply for additional GNARE or T-GNAR. The entity which is a GNA grantee shall not be eligible to obtain GNARE or T-GNARE however, entity may seek additional GNA or T-GNA for additional drawal requirement.
- 6 The Amendment Regulations also introduce Annexure-II, which provides methodology to determine ‘Direct drawal’ by a State from a regional generating station.

The Amendment Regulations may be accessed vide this [link](#).

CERC extends the period for the applicability of RE Tariff Regulations, 2020 for a period of 6 months

CERC notifies Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023

CERC directs power exchanges to implement the new bidding range in the light of reduced price of imported coal and natural gas

CERC, vide its suo-moto order dated 31.03.2023 in Petition No. 04/SM/2023 has directed power exchanges to re-design their bidding software for the period from 04.04.2023 until further orders, in such a way that the members can quote the price in the range of (a) Rs.0/kWh to Rs.10/kWh for all contracts, and (b) Rs.0/kWh to Rs.20/kWh in the High Price Day Ahead Market (“**HP-DAM**”) segment in order to allow members to bid within the range as provided by Commission.

CERC has taken into consideration the significant reduction in the price of imported coal and natural gas and reviewed the existing price ceiling in Day Ahead Market, including Green Day Ahead Market, HP-DAM, Real Time Market, Intra-day, Day Ahead Contingency and Term Ahead Market including Green Term Ahead Market contracts traded at the power exchanges.

Power exchanges are directed to submit the compliance of the above directions within two days from the date of issue of this order. CERC further directed its staff to examine and propose measures to bring predictability on market intervention for CERC’s consideration.

MPERC notifies amendment to MPERC (Terms and Conditions for Determination of Tariff for Supply and Wheeling of electricity and Methods and Principles for Fixation of charges) Regulations, 2021

Madhya Pradesh Electricity Regulatory Commission (“**MPERC**”) vide the MPERC (Terms and Conditions for Determination of Tariff for Supply and Wheeling of electricity and Methods and Principles for Fixation of charges) (1st Amendment) Regulations, 2023 (“**MPERC Amendment Regulations**”) has notified amendments to the Madhya Pradesh Electricity Regulatory Commission (Terms and conditions for Determination of Tariff for supply and Wheeling of Electricity and Methods and Principles for Fixation of Charges) Regulations, 2021 (“**MPERC Principal Regulations**”).

The MPERC Amendment Regulations provides for the insertion of definition of Fuel and Power Purchase Adjustment Surcharge (“**FPPAS**”) which means the increase in cost of power, supplied to consumers, due to change in fuel cost and power purchase cost with reference to cost of supply approved by the Commission.

The MPERC Amendment Regulation provides for the substitution of Regulation 9 of the MPERC Principal Regulations wherein, the Fuel Cost Adjustment (FCA) formula is replaced with FPPAS formula as specified in terms of Section 62(4) of the EA.

The MPERC Amendment Regulations provides for the substitution of Regulation 47 in the MPERC Principal Regulations. As per the amended Regulation 47, a consumer situated within the area of supply of the Distribution Licensee availing open access as per the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021 shall be liable to pay cross surcharge as determined by the Commission. Further, the surcharge determined by the Commission under Section 86(1)(a) of the Electricity Act, 2003 shall not exceed twenty (20) percent of the Average cost of Supply.

The MPERC Amendment Regulations which provides for the FPPAS formula may be accessed vide this [link](#).

TRAI extends the last date to receive comments/counter-comments on Consultation Paper

The Telecom Regulatory Authority of India (“**TRAI**”) vide press release dated 27.03.2023, extended the last date to receive comments and counter-comments on TRAI’s Consultation Paper on “Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services from 27.02.2023 and 13.03.2023 to 03.04.2023 and 17.04.2023, respectively.

TRAI issues recommendations

TRAI on 22.03.2023 issued recommendations on issues related to Community Radio Stations (“**CRS**”). The recommendations have been issued pursuant to a request from the Ministry of information and broadcasting (“**MIB**”) on the following issues:

1. Inclusion of not-for-profit companies, registered under Section 8 of Companies Act 2013, in the list of eligible organizations.

**on issues related to
Community Radio
Stations**

2. Increasing of permission period from existing period of 5 years to 10 years.
3. Maximum duration of advertisement per hour of broadcast on CRS
4. Number of CRS operated in each district of operation by Not-for-profit organizations, operating in multiple districts.

In this regard, TRAI had issued a consultation paper on 21.07.2022 for seeking comments of the stakeholders on the issues related to CRS. After considering all comments/counter-comments received from stakeholders during consultation process and further analysis of the issues, the Authority has finalised its recommendations.

The salient features of the recommendation are as follows:

1. Not-for-profit companies established under Section 8 of Companies Act 2013 are already covered in the extant eligibility criteria for CRS.
2. The initial period of permission should be increased from five years (5) to ten (10) years.
3. Community Radio Stations will be required to obtain continued service reports from the SDM of the concerned District for grant of the license extension.
4. The duration of advertisement on a CRS should be increased from seven (7) minutes per hour to twelve (12) minutes per hour.
5. Not-for-profit organizations, operating in multiple districts, should be allowed to set up multiple CRS in their area of operation.
6. An organisation seeking to set up multiple stations should submit an undertaking confirming that the programs will be prepared locally and not sent from other CPS.
7. All the universities of Central/State Governments may be provided budgetary support to establish and operate Community Radio Stations.

Standing Advisory Committee on Frequency Allocation (SACFA) clearance should be granted within one month of application

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