

GATI - विधि

-LAW IN ACTION



Legal Updates

The Hon'ble National Company Law Appellate Tribunal, Chennai (NCLAT) in the matter of *IFCI Chennai Ltd vs Sutanu Sinha & Ors.*, Company Appeal No. 108/2023 vide order dated 05.06.2023 has upheld the observations of NCLT that fully Convertible Debentures can only be treated as 'Equity' and not as a 'Financial Debt' under the IBC.

In the said case, Industrial Finance Corporation of India (IFCI) in a bid to provide financial assistance to the Corporate Debtor subscribed to Compulsorily Convertible Debentures (CCDs) followed by a Debenture Subscription Agreement (DSA) and Share Buy Back Agreement. The Corporate Debtor went into liquidation following which the Resolution Professional rejected the claim of the IFCI thereby not treating it as a Share Holder or a Financial Creditor. The National Company Law Tribunal ("NCLT"), observed that while there is no express definition or interpretation regarding whether CCDs are to be treated as 'Debt' or 'Equity', however an 'RBI Master Direction' on Foreign Direct Investment clarifies that Debentures which are fully, compulsorily and mandatorily convertible are to be treated as 'Equity Instrument'. Observing further, the NCLT Bench clarified that all of the involved agreements including Concession Agreement, DSA, Share Pledge Agreement and the Share Buy Back Agreement executed between the Parties treat the CCDs as 'Equity' and there is no condition in any of the Agreements which changes the nature of the CCDs in the 'happening of any event'.

Upholding the said observations & findings, the Appellate Tribunal also concluded even though the CCDs in the present case had matured before the Admission into CIRP, however since the investment was in the form of Debentures, the Debentures were at best convertible into Equity. The terms and conditions of the CCD and the intention of the Parties does not

**NCLAT, Chennai
upholds NCLT's
observation that
Convertible
Debentures cannot be
treated as Financial
Debt**

anywhere specify that the instrument would take the character of a Financial Debt, in the happening of any event.

Hon'ble NCLAT while deciding the I.A. No. 2587 for Condonation of Delay in the case titled as *Sandeep Anand vs. Gopal Lal Baser* bearing no. Comp.App. (AT) (Ins.) No. 767 of 2023, vide Order dated 03.07.2023, has held that the while computing limitation in filing of an Appeal against the order of NCLT, the benefit of excluding public holiday is only available with respect to 30 days limitation period given under Section 61(2) of Insolvency and Bankruptcy Code, 2016 (“IBC”) and this benefit shall not apply to the discretion based condonable period of 15 days provided under proviso to section 61(2) of IBC, 2016. In the said case, the Appeal was filed beyond the statutory limitation period of 30 days as well as the discretion based condonable period of 15 days under IBC, hence the delay was not condoned.

The Ministry of Power (MoP) vide Notification No. G.S.R. 467(E) dated 30.06.2023 has issued the **National Electricity Plan Notification (Amendment) Rules, 2023 (Amendment Rules)**, thereby amending the **National Electricity Plan Notification Rules, 2004 (Principal Rules)**.

Rule 3 - Notification of Electricity Plan of the Principal Rules stands amended as under:

“3. Notification of draft National Electricity Plan.- (1) A draft National Electricity Plan prepared under the provisions of sub-section (4) of Section 3 of the Act shall be published on the website of the Authority for inviting suggestions and objections of licensees, generating companies and general public and notice to this effect shall be published in at least two daily newspapers;

(2) For inviting suggestions and objections, a period of sixty days, from the date of publication of such draft Plan, shall be provided by the Authority.”

(3) The final National Electricity Plan shall be notified on the website of the Authority.

To summarize, the amendment reduces the time limit for submitting suggestions/objections from ninety days to sixty days and that the final National Electricity Plan shall be notified on the website of the Authority.

Gujarat Electricity Regulatory Commission (GERC) vide notification dated 04.07.2023 has initiated the process of preparation of the ‘Multi Year Tariff Regulations for the 4th Control Period (“MYT Regulations”) with an objective of initiating discussion on various aspects of Multi Year Tariff Determination Process and soliciting inputs of the stakeholders in this regard.

The Commission has now invited the comments of stakeholders by **26.07.2023**. The Draft Regulations can be accessed here: [LINK](#)

NCLAT, Delhi holds that holidays can be excluded only from limitation period of 30 days provided under Section 61(2).

MOP issues National Electricity Plan (Amendment) Rules, 2023

GERC notifies the Multi Year Tariff Regulations for the 4th Control Period.

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4659 4466 F: +91 11 4359 4466
E: mail@neetiniyaman.co
W: www.neetiniyaman.co

Office No. 501, 5th Floor,
Rehman House Premises CHS,
Nadirsha Sukhia Street, Fort,
Mumbai-400001, India

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