

GATI - विधि

-LAW IN ACTION



Legal Updates

The Division Bench of the Hon'ble Supreme Court ("SC") vide judgement dated 04.01.2024 in Civil Appeal No. 8067 of 2019 titled S.V. Sumudram v. State of Karnataka has reiterated the settled position of law that the Courts, while exercising their power under the Section 34 or Section 37 of the Arbitration & Conciliation Act, 1996 ("**Arbitration Act**"), are not permitted to modify the arbitral award.

A contract was entered into between the Appellant and the Respondent for construction of office and residence of the Chief Conservator of Forests. On account of disputes between the parties, the Appellant engaged in the construction activity invoked the arbitration clause, alleging delay on the part of Respondent in clearance of bills, change of site and delay in delivery of material for construction. Amongst 11 claims, the Arbitrator allowed only 9 claims totalling to Rs. 14,68,239/- with interest payable @ 18%. The Arbitral Award was assailed before the Civil judge under section 34 of the Arbitration Act, who modified the Award passed by the Arbitrator and reduced the claim to Rs. 3,71,564 with interest @ 9% vide a reasoned order. The Appellant filed an appeal under Section 37(1) of the Arbitration act before High Court of Karnataka, which dismissed the said appeal.

The Hon'ble Supreme Court reiterated the position of law that has been affirmed in National Highways Authority of India v. M. Hakeem (2021) 9 SCC 1, Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited (2021) 7 SCC 657 and Larsen Air Conditioning and Refrigeration Co. v. Union of India 2023: INSC:708 to observe that:

- merits of the award are only to be gone into if the award is demonstrated to be contrary to the public policy of India as per Arbitration Act. In the instant matter, the Court in proceedings under section 34 has not only re-appreciated the evidence but had also assigned reasons for arriving at its conclusion.

SC Reiterates the Settled Position of Law that Modifying the Arbitral Award Under Section 34 or Section 37 of The Arbitration Act is Not Allowed

-High Court failed to keep themselves with the contours of Section 37 of the Act by confirming the modification of the award.

-The Arbitration Act does not allow modification of the award and the court may either set aside or remand the matter to the arbitrator under Section 34 of the Arbitration.

-Only the Supreme Court of India, while exercising its powers under Article 142 of the Indian Constitution, can modify an arbitral award to do complete justice to the parties.

Basis the above observations, the Hon'ble Supreme Court restored the Award passed by the Arbitrator and set aside the order of Civil Judge and the High Court as it found both the orders to be contrary to public policy.

The National Company Law Appellate Tribunal (“NCLAT”), Chennai Bench vide Judgment dated 21.12.2023 passed in V O Chidambaranar Port Authority vs. Shri Rajesh Chillale, bearing no. Company Appeal (AT) (CH) (Ins.) No. 412 of 2023, has held that the Port Authority has no actual lien to invoke Section 171 of the Indian Contract Act, 1872, as there are no goods in its possession. Hence, the claim of the Appellant cannot be treated as a Secured Creditor for distribution of liquidation assets under Section 53 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”).

The facts leading to the present case are that the V.O. Chidambaranar Port Authority (“Appellant”) submitted its claim of Rs. 27.39 Crores before the Liquidator to treat it as a Secured Creditor under Section 53 of IBC, 2016 for the purposes of distribution of liquidation assets but Liquidator categorized it's claim as an Operational Creditor claim.

The Appeal challenged the Order dated 12.10.2023 (“Impugned Order”) passed by NCLT by which an application filed under Section 42 of the IBC, 2016 by the Appellant for setting aside the email dated 21.06.2023 sent by the Liquidator and further to direct the liquidator to treat the Appellant as a secured creditor for the purpose of distribution of liquidation assets as per Section 53 of IBC, 2016, was dismissed by Ld. National Company Law Tribunal (“NCLT”).

Hon'ble NCLAT while dismissing the Appeal against the Impugned Order and upholding the decision of NCLT, and after perusing Section 3(30), Section 3(31), Section 3(4) of the IBC, 2016 and Section 171 of the Indian Contract Act, 1872, held that there is no actual lien to invoke Section 171 of the Indian Contract Act, 1872 which stipulates a provision for General lien of bankers, factors, wharfingers, attorneys and policy brokers, when the goods are not in actual possession of the Appellant. Hence, the claim of the Appellant cannot be treated as a Secured Creditor for distribution of liquidation assets under Section 53 of IBC.

The Central Electricity Regulatory Commission (“CERC”) vide Notification No. L-1/268/2022/CERC dated 04.01.2024, issued draft CERC (Terms and Conditions of Tariff) Regulations, 2024. (“Draft Regulation”). The Draft Regulation provides for a control period from 01.04.2024 to 31.03.2029. The Draft Regulations shall be applicable to all cases where tariff for a generating station or a unit thereof and a transmission system or an element thereof is required to be determined by the Commission under section 62 of the Act read with section 79 provided that any generating station have executed agreement for the supply of electricity to the beneficiaries on or before 5.1.2011 and the financial closure for the said generating station has not been achieved by 31.3.2024, such projects shall not be eligible for a determination of tariff under these regulations unless fresh consent of the beneficiaries is obtained and furnished.

The Draft Regulations are also applicable to the generating companies which have arrangement for the supply of coal or lignite from the integrated mine allocated to it, for one or more of its specified end-use generating stations and whose tariff is to be determined under section 62 read with section 79 of the Electricity Act (“the Act”).

The Draft Regulation is not applicable to –

1. Generating stations or transmission system which falls under Section 62 of the Act.
2. Renewable generating stations whose tariff is determined as per CERC(Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020.

CERC has invited comments on the Draft Regulation from the stakeholders and interested persons. The 3 hard copies plus one soft copy of the comments has to be sent Secretary CERC, 3rd & 4th Floor, Chanderlok Building, 36, Janpath, New Delhi -110001 or may be mailed to secy@cercind.gov.in and tariffreg@cercind.gov.in on or before 10th February, 2024. The comments/suggestions may also be uploaded by 10.02.2024 through SAUDAMINI Portal with effect from 15.01.2024.

NCLAT, Chennai held that Appellant cannot be treated as the Secured Creditor as the goods are not in possession of the Appellant.

CERC issues draft CERC (Terms and Conditions of Tariff) Regulations, 2024.

Public Hearing on the Draft Regulations is expected to be held in the second week of February 2024. The person or organization interested to participate in the Public Hearing may convey advance intimation to the undersigned latest by 05.02.2024

The Karnataka Electricity Regulatory Commission (“**KERC**”) vide its Notification no. KERC-7 CON-2022-23/1276/1191 dated 10.01.2024 has set out the methodology of Time of Day (“**TOD**”) Settlement Procedure in the State of Karnataka. The Forum of Regulators (“**FoR**”) has finalized the methodology for various Open Access (“**OA**”) charges, wherein the FoR has specified implementation of TOD charges for settlement of energy injected/drawn. Subsequently, KERC vide its Order dated 08.06.2023 inter alia had levied additional banking charges in line with the methodology developed by FoR and held that 2% of the banked energy in kind in addition to the 8% banking charges should be charged for drawal of off-peak energy during peak hours.

Accordingly, KERC directed the office to draft procedures for implementation of ToD in the State of Karnataka keeping in view the ToD settlement procedures issued by other States and the methodology set out by FoR determination of charges under Green Energy OA. KERC had held a public hearing for deciding upon the objections/suggestion/views on the Discussion Paper on ToD Settlement Procedure. During the hearing, the SLDC requested KERC to provide an example illustrating the ToD settlement of energy involving multiple consumers and/or multiple generators under different regimes. In this regard, KERC noted that slot wise generation schedule/wheeling schedule/consumption schedule of all generators/consumers is a precursor for effective implementation of ToD settlement procedure and implementation of AMR facilities is necessary for effective implementation of the ToD settlement procedure.

With respect to computation of banked energy, the Commission has held that its directions issued vide Order dated 29.03.2023 in Rithwik Energy Generation Private Limited & Ors. vs. Karnataka Power Transmission Corporation Limited & Ors. shall be followed for slot-wise consumption till AMR is put in place. Accordingly, if the net energy sourced through open access under GEOA regime in any slot third party/captive/Power exchanges is more than the total quantum of energy consumed by the Open Access consumer, the entire consumption of such Open Access consumer should be treated as wheeled energy. The balance quantum of energy remaining, after wheeling has to be treated as banked energy. Computation of banking charges and settlement of banked energy considering the energy consumed by the consumers under different OA regimes shall be done as per the regulations and charges under the respective regimes.

KERC, in its tariff orders specifies peak and off-peak ToD slots applicable to all HT consumers. However, the GEOA Rules issued by the Ministry of Power specifies that LT consumers having contract demand of 100 kW and above can opt for Open Access and as such, the ToD slots shall be applicable to such consumers also for settlement of energy and charges. KERC further provides an illustration depicting the monthly settlement of energy and daily settlement of charges thereof. It is further pointed out that at the end of the month if there is net drawal during peak hours, the same has to be first set off against the net banked energy (if any) at the end of the month during off-peak hours and to the extent of such energy set off additional 2% charges to be levied.

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