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-LAW IN ACTION



Legal Updates

The Hon'ble High Court of Delhi (Single Judge) in the matter of *Raj Kumari Taneja vs. Rajinder Kumar & Anr.*, ARB.P. 862/2023, has held that the court's role in appointing an arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 ("**the Arbitration Act**") is limited to verifying the existence of an arbitration agreement between the parties and ensuring that the petition has been filed within three years of serving the Section 21 notice.

The principal question for consideration before the Ld. Single Judge was whether to appoint an arbitrator to resolve disputes arising from a Partnership Deed dated 25.02.2017. The Petitioner sought invocation of arbitration as per Clause 14 of the Partnership Deed, which provided for dispute resolution through arbitration. The Respondents, however, opposed the petition, claiming that the disputes had already been settled.

The Ld. Single Judge, relying on the Supreme Court's decision passed in *SBI General Insurance Co Ltd v. Krish Spinning* (2024 SCC OnLine SC 1754), held that the court's examination under Sections 11(5) and 11(6) of the Arbitration Act is limited to two aspects:

1. The existence of an arbitration agreement between the parties.
2. Whether the petition has been filed within three years of serving the Section 21 notice.

The court found that both conditions were satisfied in the present case and thus, appointed an arbitrator. Regarding the Respondents' claim of a prior settlement, the court observed, that since the same was a disputed question of fact it cannot be decided under Section 11 of the Arbitration Act and was, therefore, left open to be decided by the arbitrator.

This judgment upholds the principle that courts should not delve into the merits of the dispute when appointing an arbitrator under Section 11 of the Arbitration Act. It reinforces the limited scope of

Power of Court under Sections 11(5) Or 11(6) of the Arbitration Act is limited to verifying the validity of Arbitration Agreement and timely filing

judicial intervention at the stage of arbitrator appointment, leaving substantive issues to be decided by the arbitrator.

The Hon'ble Supreme Court, in its judgment dated 14.08.2024, in the matter of *Mineral Area Development Authority v. SAIL*, issued the following key rulings:

States can recover past tax dues on Mineral Rights, but not for period before April 1, 2005

1. **Rejected the Prospective Application Argument:** The Court rejected the contention that its earlier judgment dated 25.07.2024, which upheld the States' power to tax mineral rights and mineral-bearing lands, should apply only prospectively from the date of the judgment.
2. **Retrospective Recovery of Tax Dues:** The Court permitted the States to recover tax dues for the period prior to the judgment.
3. **Non-Applicability to Pre-April 1, 2005, Transactions:** The Court clarified that the levy of taxes by the States, as validated by this judgment, shall not apply to transactions conducted before 01.04.2005.
4. **Staggered Payment of Tax Arrears:** The Court allowed the payment of tax arrears over a staggered period of 12 years, starting from 01.04.2026.
5. **No Interest or Penalty on Pre-Judgment Period:** The Court held that no interest or penalty shall be imposed on the tax demands related to the period prior to 25.07.2024.

The Ministry of Power, (“MOP”) Government of India, vide Office Memorandum No. 9/5/2017-Trans-Part (1) dated 12.08.2024 has issued amendments to the Guidelines for Import/Export (Cross Border) of Electricity, 2018 (“IECBE Guidelines, 2018”). The amendments modify clause 5.2(a) and clause 8.9 of the IECBE Guidelines, 2018. Following are the salient features of the amendments to the IECBE Guidelines, 2018:

MOP issues amendment in the Guidelines for Import/Export (Cross Border) of Electricity, 2018 - Regulation

1. Under clause 5.2(a), regarding the export of electricity:
 - a. Generating Companies/Distribution Companies of India may export electricity generated from coal, renewable energy, or hydropower-based plants to entities of neighbouring countries, either directly or through Indian trading licensees, after obtaining approval from the Designated Authority.
 - b. For coal-based electricity exports, the power must be generated using imported coal, spot e-auction coal, coal from commercial mining, or other sources specified by the Government of India. However, these restrictions do not apply to collective transactions through Indian Power Exchanges.
 - c. For gas-based electricity exports, the power must be generated using imported gas or gas from sources specified by the Government of India.
2. Clause 8.9 has been amended to allow Indian Generating Station(s) supplying electricity exclusively to neighbouring countries to build dedicated transmission lines connecting to the neighbouring country's transmission system, subject to technical and strategic considerations and approval from the Designated Authority.
3. The cost of constructing such dedicated transmission lines must be incorporated into the contract agreement between Indian entities and the neighbouring countries.
4. The Government of India may permit connection of these generating stations to the Indian Grid (inter-State or intra-State) to facilitate power sales within India in cases of sustained non-scheduling of full or part capacity, or if the Generator issues a default notice for any default, including delayed payment under the Power Purchase Agreement.
5. All other contents of the IECBE Guidelines, 2018 remain unchanged.

These amendments aim to clarify and expand the guidelines for cross-border electricity trade, particularly focusing on the export of electricity from various sources and the construction of dedicated transmission lines for exclusive supply to neighbouring countries. The guidelines can be accessed via this [link](#).

The MOP, Government of India, vide its Notification No.42-26/1 /2022-RCM-Part (3) dated 22.08.2024 has issued the Draft Tariff based competitive bidding guidelines for procurement of storage capacity/stored energy from Pumped Storage Plants ("**Draft Guidelines**"). The Draft Guidelines aim to facilitate India's energy transition and enhance energy security as the country shifts from fossil fuel to non-fossil fuel sources by promoting development of Pumped Storage Plants ("**PSPs**") and providing a transparent, fair, standardized procurement framework based on open competitive bidding.

These guidelines have been issued under Section 63 of the Electricity Act, 2003 and will apply to developers, procurers (End Procurers or Intermediary Procurers), and are applicable for procurement of capacity or energy from existing, under-construction, or new PSP projects.

The Draft Guidelines envisage two modes of procurement; firstly, procurement from a PSP developed on a site identified by the Procurer and secondly, procurement from a PSP developed on a site identified by the Bidder or already commissioned.

The Draft Guidelines also provide a detailed bidding process which will be a single stage, two-part bidding process (containing separate Technical Bid & Financial Bid). The Procurers have been given the option of conducting E-bidding or e-reverse auction. It has also been provided that the minimum number of qualified Bidders should be two.

As per the Draft Guidelines the Bidding Parameters would include Storage charge (Rs/{MW/kW}/{year/month}), Storage charge with pre-specified VGF/Annuity support and Composite Tariff (Rs/kWh) for electricity including input power and storage costs.

Further, while the minimum bid capacity of the ISTS connected projects would be 50 MW the minimum bid capacity for InSTS connected projects would be 10 MW (can be lower for specific regions)

The bidders to meet the Technical Eligibility Criteria should have experience in developing infrastructure sector projects within the past five years. Further, for meeting Financial Eligibility Criteria the bidders should have net-worth equivalent to at least 20% of the estimated capital cost of the contracted capacity.

It is pertinent to note that while Contract Period for Mode 1 (BOOT basis) would be 25 to 40 years, the contract period for Mode 2 (FOO basis) would be 15 to 25 years

The Draft Guidelines envisage Commencement of Supply ("**SCSD**") for off-river PSPs as 48 months after Effective Date of PPA and 66 months after Effective Date of PPA for on-river PSPs. The Guidelines also allow early commencement and part commissioning with specific conditions

The Draft Guidelines obligate the Developer for obtaining connectivity to ISTS network under GNA regulation and the End Procurer for inter-state transmission charges and losses beyond the Delivery Point

These guidelines aim to standardize the procurement process for PSPs, promote transparency, and ensure fair risk-sharing between stakeholders. They provide a comprehensive framework for the development and operation of PSPs in India, addressing various aspects from project selection to dispute resolution. The Draft Guidelines can be accessed via this [link](#).

MOP issues draft tariff-based competitive bidding guidelines for procurement of storage capacity/stored energy from Pumped Storage Plants

MOP issues clarification on banking provisions of Electricity (Promoting Renewable Energy

1. Ministry of Power ("**MoP**") has issued clarification regarding Rule 8 under The Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 which deals with banking of Electricity.
2. MoP has issued this clarification pursuant to the questions raised by stakeholders regarding the interpretation of permitted quantum of banked energy and whether the 30% minimum quantum

Through Green Energy Open Access) Rules, 2022

applies solely to energy consumed from the distribution licensee or includes open access consumption as well.

3. MoP has clarified that the minimum permissible quantum of banked energy shall be calculated as 30% of the total monthly consumption of energy directly procured from the distribution licensee.
4. Further, it has stated that the Electricity obtained via Open Access arrangements, including supply from third-party providers or captive generation utilizing the distribution network, is excluded from this calculation. Thus, only the energy directly acquired from the distribution licensee is to be considered for determining the minimum banked energy quantum.

PNGRB notifies PNGRB (Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Networks) Third Amendment Regulations, 2024

The Petroleum and Natural Gas Regulatory Board (“**PNGRB**”), vide notification bearing F. No. PNGRB/Auth/1-CGD (04)/2023 (E-4451), has notified the PNGRB (Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Networks) Third Amendment Regulations, 2024 (“**Technical Standards Regulations**”).

The Technical Standards Regulations introduce key changes to the existing framework by amending Regulation 2(1)(g) of the PNGRB (Technical Standards and Specifications including Safety Standards for city or Local Natural Gas Distribution Networks) Regulation, 2008. As per the erstwhile provision, the authorized entity was eligible to set up and operate compression facilities along with CGS for an initial period of 2 years from the date of authorization subject to prior approval from PNRGB. However, upon the expiration of 2 years period, the authorized entity had to immediately cease the operation of compression facilities. By the new amendment an entity may set up and operate compression facilities along with CGS subject to mutual agreement signed with the authorized entity of the respective Geographical Area and that the authorized entity of respective Geographical Area should not withhold the request unreasonably.

PNGRB notifies PNGRB (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Amendment Regulations, 2024

PNGRB vide notification bearing F. No. PNGRB/Auth/1-CGD(5)/2024 (E-5303), has notified PNGRB (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Amendment Regulations, 2024, thereby amending the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to lay, build, operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 (“**2008 Regulations**”). The following significant amendments have been carried out:

1. The definition of “*piped natural gas*” under Regulation 2(1)(i) of the 2008 Regulations has been amended. The erstwhile definition has been extracted for the ease of reference:

“piped natural gas” (hereinafter referred as PNG) means natural gas transported through pipelines [or cascades or any other permitted mode] in a CGD network for consumption by any customer in domestic, commercial or industrial segments and includes natural gas supplied to an online CNG station before its compression.

In the abovementioned definition, the words “*or cascades or any other permitted mode*” after word “*pipelines*” and before the word “*in*” has been deleted.

2. The erstwhile regulation 3(2)(b)(ii) 2008 Regulations has been supplemented as under:

“A CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the requirements, namely, customers having requirement of natural gas more than 50,000 SCMD and upto 100,000 SCMD shall be supplied ,through a high -pressure natural gas pipeline, authorized by the PNGRB under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to lay, build, operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, not forming part of the CGD network.”

3. The erstwhile regulation 3(2)(c) of the 2008 Regulations has been substituted as under:

“ a CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the requirements, namely: Customers having requirement of natural gas to an extent of

more than 100,000 SCMD (not covered by the Explanation to Regulation 3(2)(b), shall be supplied through a high pressure natural gas pipeline, authorised by the PNGRB under the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008, not forming part of the CGD network.”

4. After Regulation 3(2) (c) of the 2008 Regulations, the following proviso has been inserted:

“Provided that in case if any customer falling in a tariff zone of any authorised Natural Gas pipeline then supply of such customer shall be governed by Regulation 2(1)(h) of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008.”

The Third Amendment Regulation can be accessed via this [link](#)

The Karnataka Electricity Regulatory Commission (“**KERC**”) vide its Notification No. KERC/S/03/1/561 has issued the KERC (Implementation of Peer-to-Peer Solar Energy Transaction) Regulations, 2024 (“**2024 Regulations**”), which are to be read in conjunction with KERC (Implementation of Solar Rooftop Photovoltaic Power Plants) Regulations, 2016 and other orders on solar energy issued by KERC.

The objective of these 2024 Regulations is to promote rooftop solar, efficient utilization of existing assets and to implement innovative technologies by facilitating transactions of rooftop solar energy through blockchain/ any other technology-based Peer-to-Peer (“**P2P**”) platform besides ensuring reasonable returns on the investments. They will be applicable to the registered domestic consumers and SRTPV domestic Prosumers having net metering or gross metering arrangement, who opt to transact energy among themselves through online platform of Service Providers in the State of Karnataka.

1. Regulation 5 provides the conditions for P2P participants, Service Providers, Distribution Licensee for Implementation of P2P Solar Energy Transaction through blockchain/ any other technology-based platform.
2. Regulation 6 provides for the Procedure for Implementation & Reporting and it states that every distribution licensee shall adopt a transparent and uniform procedure for enabling an Eligible Consumer, on first come first served basis for the transaction duly indicating time frame for each of the activities involved in such process.
3. Regulation 7 provides for the Metering System and it specifies that a P2P Prosumer/ Consumer shall have to install post-paid smart meter/time of the day, compliant energy meter as per the Standards specified by the CEA.
4. Regulation 8 establishes the energy accounting and settlement process for P2P platform, ensuring alignment with the Distribution Licensee's billing cycle. The Service Provider will collect meter data daily to account for energy generated by Prosumers and consumed by Consumers, with billing conducted by the Distribution Licensee based on agreed transaction prices and KERC tariffs. Payments are proportionally allocated, and any energy imbalances are adjusted through specified mechanisms. Transaction charges are set by the Commission, with interim rates applicable until further notice.

The Regulation can be accessed via this [link](#).

Madhya Pradesh Electricity Regulatory Commission (“**MPERC**”) has issued the draft MPERC (Ancillary Services) Regulations, 2024 (“**Ancillary Service Regulations**”). These regulations establish procedures for the procurement, deployment, and payment of Ancillary Services at the state level, aiming to minimize state deviations and assist the State Load Despatch Centre (“**SLDC**”) in maintaining grid frequency near 50 Hz. They also address relieving intra-state transmission congestion to ensure the efficient operation, safety, and security of the state’s power system. The salient features include:

1. Ancillary Service Regulations categorize Ancillary Services into Primary Reserve Ancillary Service (“**PRAS**”), Secondary Reserve Ancillary Service (“**SRAS**”), Tertiary Reserve

**KERC issues the KERC
(Implementation of Peer-to-
Peer Solar Energy
Transaction), Regulations,
2024**

**MPERC issues draft
MPERC Ancillary Services
Regulations, 2024**

Ancillary Service (“**TRAS**”), and any additional services as specified in the M.P. Electricity Grid Code. The procurement, deployment, and payment mechanisms for SRAS are governed by these regulations, mandating that the Nodal Agency establish procedures for SRAS providers, including requirements for standing consent, technical declarations etc.

2. As per Regulation 6 and 7, the Nodal Agency is responsible for estimating and publishing SRAS requirements at the state level, employing specified methodologies and updating the requirements on a day-ahead and real-time basis as necessary. Entities eligible to provide SRAS must include generating stations or other capable entities with energy storage or demand response capabilities connected to the intra-State transmission system. To qualify, these entities must have bi-directional communication with the SLDC, be Automatic Generation Control (“**AGC**”)-enabled (for generating stations), provide at least 1 MW of response, possess appropriate metering and Supervisory Control and Data Acquisition (“**SCADA**”) telemetry, and comply with response time requirements.
3. As per Regulations 8, SRAS is activated by the Nodal Agency in response to significant deviations or congestion in the transmission system. Further as per Regulation 10, SRAS Providers are selected based on merit order of variable and compensation charges, and SRAS dispatch is managed through secondary control signals sent every 4 seconds. Regulation 11 states that Payments for SRAS are made from the State DSM Pool Account and the Performance is monitored via SCADA data while regulation 13 provides the nodal agency with powers of disqualification for performance below 20% over two consecutive days and potential penalties for non-compliance.
4. Regulation 14 mentions that generating stations with tariffs determined under Section 62 of the Act are deemed available for Secondary Reserve Ancillary Service (SRAS), subject to technical constraints. Regulation 15 mandates that Such stations will be compensated at the energy charge rate for SRAS-Up dispatch and must reimburse the Deviation and Ancillary Service Pool Account for SRAS-Down dispatch. In emergency conditions, as dictated by grid security needs, the Nodal Agency may procure Ancillary Services and provide compensation at rates established by the Commission.
5. Regulation 17 mandates the Nodal agency to submit a detailed procedure with gist of all the applications before the commission within three months of the publication of these regulations and then the commission shall ask the agency for publishing the gist of applications on a weekly basis in widely circulated newspapers.
6. Regulation 18 and 19 provide the commission with powers to relax, issue directions and remove difficulties.

The Ancillary Service Regulations can be accessed via this [link](#).

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