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Legal Updates

Bombay High Court observes that a dispute will not qualify as a commercial dispute under the Commercial Courts Act in the absence of a contractual relationship

In the case of *New India Assurance Co. Ltd. & Ors. vs. Janus Aviation Pvt. Ltd. (Commercial Appeal No. 03 of 2024)*, the Nagpur Bench of the Hon'ble High Court of Bombay dismissed a commercial appeal filed by insurance companies seeking the recovery of \$31.77 million from Janus Aviation Pvt. Ltd., a company providing ground handling services. The case arose from an incident where step ladders belonging to Janus were blown by a storm, causing damage to an Indigo aircraft, which was insured by the Appellant insurance companies. The insurers sought to recover damages from Janus, claiming the accident resulted from negligence.

The Hon'ble High Court while upholding the decision of the Commercial Court observed that there was no direct agreement between the insurance companies and Janus Aviation, and even the Appellants' counsel conceded that no privity of contract existed. In view of the same, it was further held that the suit did not qualify as a commercial dispute under the Commercial Courts Act, 2015 (CC Act), specifically under Section 2(1)(c)(xx), which relates to disputes arising from insurance and reinsurance agreements.

The Hon'ble High Court of Bombay in the case of *Tata Capital Limited vs Priyanka Communications (India) Pvt. Ltd. And Ors., Commercial Arbitration Application No.168 of 2023* has observed that the scope of examination by the Referral Court under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) is limited to *prima facie* determining whether an Arbitration Agreement exists as required by the provisions of Section 7 of the Act.

A Working Capital Demand Loan (WCDL) Agreement was initially executed between the parties for grant of financing facilities to the Respondent to meet its daily business requirements. Subsequently a Consortium Agreement was executed between the various lenders of the Respondent and the Applicant was inducted to the Consortium Agreement by Deed of Accession.

Bombay High Court holds that the scope of examination by the Referral Court under Section 11 of the Arbitration Act is limited to determination of existence of a valid Arbitration Agreement

The sanctioned limits of the WCDL Agreement were modified on various occasions and upon the request of the Respondent, the Applicant sanctioned one time temporary limit finance for Rs. 5.6 Crores. As the Respondent failed to repay the outstanding amounts to the Applicant, the Applicant issued upon the Respondent, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**), following which it also filed a Commercial Summary Suit before the High Court. Thereafter, the Applicant invoked the Arbitration clause under the Sanction Letter whereby the Applicant had sanctioned the one time temporary limit finance of Rs. 5.6 Crores.

The Applicant filed the present Application under Section 11 of the Act for appointment of Arbitrator, which was objected on the ground that the disputes are barred by the provisions of the SARFAESI Act and the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (**RDDB Act**), DRT being the appropriate forum. Applicant's attempt to pursue SARFAESI proceedings, the Commercial Summary Suit and Arbitration constitutes impermissible forum shopping and would lead to multiplicity of proceedings.

The Hon'ble High Court observed that as per the doctrine of competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court and that the Referral Court is not the appropriate forum to conduct a mini trial by allowing the parties to adduce evidence in regard to the existence or validity of an arbitration agreement. The Bombay High Court observed that the issues raised by the Respondents are not regarding the existence of an arbitration agreement on the basis of Section 7 of the Act nor are they regarding validity of the arbitration agreement.

Telangana High Court observes that when cause of action pleaded in plain reflects urgency, separate application or leave of the court not mandatory for dispensation of statutory mandate under Section 12A of the Commercial Courts Act, 2015

The Hon'ble High Court of Telangana in the case of *Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd. & Anr.*, Civil Revision Application No. 2297 of 2024, has held that when the nature of the Suit pre-supposes urgency, separate application or leave of the court is not mandatory for dispensation of the statutory mandate under Section 12 A of the Commercial Courts Act, 2015 ("**Commercial Courts Act**"). The Petitioner before the High Court, challenged the Order dated 10.04.2024 whereby the Commercial Court rejected the objection of the Petitioner. It was argued that a Suit which does not contemplate any urgent interim relief cannot be instituted unless the Plaintiff therein exhausts the remedy of pre-institution mediation.

The High Court while deciding the matter before it observed that Section 12A of the Act does not specify the mode and manner in which the Plaintiff must satisfy the requirement i.e., whether a Plaintiff is required to file a separate application for dispensing with pre-institution mediation or incorporate a prayer for dispensation in the plaint itself. Section 12A does not contemplate any requirement for obtaining any leave from the Court for instituting a Suit which needs urgent intervention. The High Court further referred to the decision of the Supreme Court in *Yamini Manohar v. T.K.D. Keerthi (2024) 5 SCC 815* wherein the Supreme Court held that the application *per se* is not a condition under Section 12A of the Act and that the pleadings and oral submissions would be sufficient for deciding whether the Commercial Suit can be filed without exhausting the remedy of pre-institution mediation. The High Court further held that the question that whether the Suit requires urgent interim relief must be answered by the Court based on the substance of the dispute and the relief claimed. The Plaintiff must discharge the onus by proving to the Court that the Suit indeed contemplates urgent interim relief and hence needs to be instituted without waiting for pre-institution mediation.

The Appellate Tribunal for Electricity ("**Hon'ble APTEL**") vide order dated 08.10.2024 in the matter of *Madhya Pradesh Power Management Company Ltd. Vs Damodar Valley Corporation & Ors* has re-emphasized that the practise of arbitration can serve as an effective route for resolution of non-tariff related disputes between the licensees and generating companies which have been conventionally exclusively covered under the Electricity Act 2003. This principle had been previously laid down by the Hon'ble APTEL vide its judgment dated 28.08.2024 in *Madhya Pradesh Power Management Company Ltd. v. Damodar Valley Corporation & Anr* ("**Damodar**

APTEL reiterates the principle of law upheld by the Supreme Court regarding arbitrability of non-tariff related disputes under the Electricity Act 2003

Valley Judgement”) and subsequently upheld by Hon’ble Supreme Court’s through its recent decision dated 23.09.2024 in the same matter.

This latest ruling Hon’ble APTEL is another essential addition to the evolving jurisprudence of consistently referring non-tariff related disputes between the licensees and generating companies to arbitrators for resolution. While upholding the Damodar Valley Judgement , the Hon’ble Supreme Court in its decision dated 23.09.2024 had categorically supported this practise and delineated that although the tariff related disputes—those directly impacting a generating company's tariff due to factors like change in law, delayed project completion, or force majeure—fall exclusively within the regulatory framework under Section 86(1)(f) of the Electricity Act, However the disputes that relate to contractual issues, such as termination or breach that do not affect the tariff, can be considered as non-tariff related disputes and resolved through arbitration under the Arbitration & Conciliation Act 1996.

The practice of resolution of non-tariff related disputes through arbitration would also give better effect to the arbitration clauses of the respective PPAs between the licensees and generating companies, which have been relatively underutilized for dispute resolution. It would also serve as an important effort towards harmonising and balancing the two statutes that are the Electricity Act, 2003 and Arbitration & Conciliation Act, 1996.

The Ministry of Power has issued the Guidelines for Installation and Operation of Battery Swapping and Charging Stations (“**Guidelines**”). Battery swapping is a method of quickly replacing an Electric Vehicle’s (“**EV**”) fully or partially discharged battery with a charged one. Salient features of the Guidelines include:

MoP issues Guidelines for Installation and Operation of Battery Swapping and Charging Stations

1. These Guidelines are applicable to swappable battery providers, and owners and operators of battery charging stations and battery swapping stations.
2. Installation and operation of battery swapping stations is a de-licensed activity and anyone can establish the same in adherence to the Guidelines.
3. The distribution licensees are required to provide connection to station operators under strict timelines prescribed under the Electricity (Rights of Consumers) Rules, 2020.
4. Government/ public entities shall offer land for battery charging stations at a subsidized rate under a revenue sharing model on bidding basis with a floor price of Rs. 1/ unit.
5. The power tariff for charging stations shall be single part and shall not exceed Average Cost of Supply (“**ACoS**”) till 31.03.2028. The distribution licensees shall charge 0.7 times of the ACoS during solar hours (9.00 AM to 4 PM) and 1.3 time ACoS during non-solar hours (remaining hours of the day).
6. By 2030, it is envisaged that there will be at least one charging/swapping station within a 1 km x 1 km grid in urban areas and every 20 km on both sides of highways, expressways, and major roads. Additionally, the charging stations may be installed at group housing societies, shopping malls, office complexes, educational institutions, hospitals etc.
7. For power connectivity to the charging stations, supply by distribution licensee, open access and integration with renewable power are allowed.
8. For implementation of the Guidelines, the Bureau of Energy Efficiency is designated as the Central Nodal Agency and at the state level, the state government have the flexibility to choose their own State Nodal Agencies.
9. Owners of charging/swapping stations shall be permitted to use an existing electricity connection with or without seeking an increase in the connected load, for charging the swappable batteries.
10. Liquid-cooled swappable batteries for larger vehicles such as trucks and buses are allowed.

The MoP Guidelines on Installation and Operation of Battery Swapping and Charging Stations can be accessed from the following [link](#).

HPERC notifies Draft Supply Code (Sixth Amendment) Regulations 2024

The Himachal Pradesh Electricity Regulatory Commission (“**HPERC**”) vide notification dated 10.10.2024 has proposed to amend the Supply Code, 2009 as per the draft Himachal Pradesh Electricity Supply Code (Sixth Amendment) Regulations, 2024 (“**draft HPERC regulations**”). The following amendments have been proposed:

1. Definition of Resident Welfare Association has been inserted which includes all the property owners within a co-operative Group, Housing society, Multi Stories Building, Residential Colony or a similar Body has been inserted.
2. Draft HPERC regulations provide for revision in standards for supply voltage and contract demand across different feeder types and voltage levels, including low tension (LT) and high tension (HT) supplies.
3. Draft HPERC Regulations provide reduced time frame for providing new electricity connections in various areas -3 days in metro areas 7 days in urban areas and up to 30 days in hilly terrain.
4. Association of property owners in residential colonies have been permitted to choose between single point connection or individual connections for each household.
5. Enhanced provisions for smart meters, including no penalties for load violation prior to meter installations.
6. Association or an owner of the flat or house in an Association or any other consumer entitled to apply to distribution licensee for provision of separate connection for supply of electricity for Electric Vehicle charging system as per relevant applicable provisions.

The draft HPERC Regulations published on 10.10.2024 will be taken into consideration after the expiry of thirty (30) days from the date of publication together with any objections or suggestions which may, within the aforesaid period, be received by the HPERC.

The draft HPERC regulations can be accessed from the following [link](#).

The Karnataka Electricity Regulatory Commission (“**KERC**”) has issued a notification regarding the implementation of Rooftop Aero Turbine (“**RAT**”) with or without solar energy under the KERC (Implementation of Rooftop Aero Turbine with Solar or without Solar) Regulations, 2024.

RAT is a small-scale wind energy system designed for urban areas and can be combined with solar panels for electricity generation. The regulations provide for both net and gross metering arrangements for eligible consumers who install RAT systems. These regulations aim to encourage the integration of RAT plants with solar power systems into the state's electricity grid. Salient features include:

1. RAT is a wind energy system designed to generate electricity on rooftops. It can be installed with or without solar panels and is intended for urban areas with lower wind speeds.
2. Eligible consumers can install RAT plants with or without solar panels for generating electricity. Both net metering (where surplus energy is fed into the grid after consumption) and gross metering (where all generated energy is supplied to the grid) are allowed. The capacity for RAT installation must not exceed the sanctioned load of the consumer's premises.
3. RAT systems need to comply with technical standards as specified in various regulations and codes such as the KERC Grid Code and the Central Electricity Authority (CEA) regulations. RAT plants can connect to the grid at different voltage levels depending on their installed capacity.
4. Consumers with existing rooftop solar systems can install RAT systems, ensuring that the total installed capacity does not exceed 1.25 times the sanctioned load. The distribution licensee is responsible for the technical evaluation of grid connectivity for each installation.
5. Tariffs for RAT systems are determined by KERC based on factors such as capacity utilization, capital cost, and operation & maintenance expenses. The tariffs are subject to

KERC notifies KERC (Implementation of Rooftop Aero Turbine with Solar or without Solar) Regulations, 2024.

revision during control periods, and any power purchase agreements (PPA) signed under these regulations will be honoured for the agreed tariff period.

6. Consumers are responsible for the safety and maintenance of their RAT systems. RAT systems must be equipped with safety mechanisms to prevent accidents, especially in the event of back feeding into the grid. Distribution licensees are required to monitor the installation process and submit quarterly reports to KERC.
7. Consumers interested in installing RAT systems need to follow a structured application process. The installation must be completed within 180 days of approval, and failure to do so may result in a reduced tariff.
8. Energy accounting for RAT systems will be based on either net or gross metering arrangements. Consumers will be billed for net energy consumption if the electricity supplied exceeds the amount generated.
9. Any disputes arising under these regulations will be addressed by KERC. KERC reserves the right to modify or amend the regulations as needed.

This notification outlines a framework for integrating small-scale wind energy systems into Karnataka's power grid, promoting renewable energy in residential, commercial, and industrial buildings. KERC (Implementation of Rooftop Aero Turbine with Solar or without Solar) Regulations, 2024 can be accessed from the following [link](#).

Delhi Electricity Regulatory Commission ("**DERC**") on 07.10.2024 has notified the "DERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024" ("**DERC 2024 Regulations**") for facilitating open access to green energy, thereby promoting the use of renewable energy in the region.

The DERC 2024 Regulations introduce a streamlined procedure for granting open access to green energy sources, catering to consumers with a sanctioned load of 100 kW or more. It allows entities to source electricity from renewable sources, including solar, wind, and biomass, through a non-discriminatory open access system. The framework ensures integration of green energy with the grid in compliance with the Electricity Act, 2003. Salient features include:

1. **Types of Green Energy Open Access:** The DERC 2024 Regulations categorize green energy open access into three distinct types—Long-Term, Medium-Term, and Short-Term. Long-Term open access is available for a period exceeding five years but not more than twenty-five years. Medium-Term spans from eleven months to five years, while Short-Term covers a period of up to eleven months. Each category is subject to specific conditions regarding application procedures, approval timelines, and priority criteria.
2. **Eligibility Criteria:** Consumers seeking green energy open access must have a sanctioned load of 100 kW or more. However, no load limitation applies to consumers setting up green energy projects for captive use, offering flexibility for larger entities aiming to optimize their energy procurement. Additionally, the DERC 2024 Regulations highlight that captive consumers do not face load restrictions, supporting the development of self-sustaining green energy facilities.
3. **Banking and Wheeling Charges:** The DERC 2024 Regulations provide for the banking of surplus green energy, allowing consumers to bank and draw energy, subject to compensatory charges to the distribution licensee. Banking is permitted on a 15-minute time block basis, ensuring precise accounting of energy usage. Wheeling charges are determined as per the prevailing tariff orders, with certain exemptions to encourage green energy adoption, including waivers for captive consumers and projects supporting green hydrogen production.
4. **Priority and Charges:** The DERC 2024 Regulations establish a clear priority order, favoring green energy consumers over other open access consumers within the same category. Charges applicable under the DERC 2024 Regulations include transmission fees, cross-subsidy

**Delhi Electricity
Regulatory Commission
notifies DERC (Terms
and Conditions for
Green Energy Open
Access) Regulations,
2024**

surcharges, and standby charges, all determined by the Commission's tariff orders. Notably, green energy consumers are exempt from cross-subsidy surcharges to the extent of their Renewable Purchase Obligation ("RPO") compliance, thereby incentivizing the shift towards renewable energy sources.

5. **Application and Approval Process:** The application for green energy open access must be submitted to the Central Nodal Agency, which will forward it to the State Nodal Agency for further processing. The State Nodal Agency, in collaboration with the transmission licensees and distribution licensees, is required to verify and approve applications within stipulated timeframes, ensuring efficiency and transparency. Applicants must adhere to metering standards and provide appropriate payment security mechanisms to secure their application.
6. **Dispute Resolution:** The DERC 2024 Regulations emphasize a structured dispute resolution mechanism. Applications cannot be denied without giving the applicant an opportunity to be heard, and any denial must be accompanied by a detailed order stating the reasons. Disputes arising from the implementation of these Regulations can be escalated to the DERC, which serves as the final appellate authority, ensuring fair and impartial adjudication.

The Orissa State Electricity Regulatory Commission ("**OERC**") has published the Draft OERC Distribution (Conditions of Supply) (3rd Amendment) Code, 2024 ("**Distribution amendments**") on its website inviting suggestions/views from the interested parties by 04.11.2024.

The Distribution amendments have been brought subsequent to the review meeting held on 27.06.2024 under the chairmanship of Hon'ble Minister of Road, Transport and Highways ("**RT & H**"), Government of India wherein it was decided that Secretary, Energy, Government of Odisha may issue directions for levying supervision charges at 2.5% for all National Highway Authority of India ("**NHAI**") projects. The Energy Department, Government of Odisha had requested the DISCOMs to take necessary steps for implementing the decision, pursuant to which the DISCOMs requested OERC to make necessary changes in the existing framework of the OERC Distribution (Conditions of Supply) Code, 2019 to accommodate the newly proposed threshold of supervision charges.

To implement imposition of supervision charges of 2.5% over all NHAI projects, OERC has decided to amend the existing Regulation 27 of the OERC Distribution (Conditions of Supply) Code, 2019 which specified for levying of supervision charges at 6% for calculation of capital cost. The proposed amendment provides that for Central Government projects where the infrastructure developer takes up the shifting work of electrical installations of the distribution network under the supervision of the utility, the supervision charges shall be levied at 2.5% of the total approved estimated cost of the capital work and where the utility takes up the work on deposit basis, the supervision charges shall be levied at 6% of the total approved estimated cost of the capital work.

Uttar Pradesh Electricity Regulatory Commission ("**UPERC**") has issued the Tariff Order dated 10.10.2024 in the petition filed by Uttar Pradesh Power Transmission Corporation Limited ("**UPPTCL**") for the True Up of Financial Year ("**FY**") 2022-23, Annual Performance Review for FY 2023-24, and Aggregate Revenue Requirement ("**ARR**") & Tariff for FY 2024-25.

UPERC vide the said order has approved the Transmission Tariff of Rs. 0.2326/unit for FY 2024-25 against Rs. 0.2909 /unit as claimed by UPPTCL. UPERC has also approved 1,50,731.78 MUs as energy to be handled by UPPTCL for FY 2024-25. UPERC has reduced the Transmission Tariff for the FY 2024-25 by approximately 12% than previous year (FY 2023-24). Additionally, UPERC has approved Rs. 0.2326/ unit for Intra-State Open Access transmission charges applicable for long-term and short-term users for FY 2024-25.

**Orissa Electricity
Regulatory Commission
publishes Draft OERC
Distribution (Conditions of
Supply) (3rd Amendment)
Code, 2024.**

**UPERC determines the
Transmission Tariff for
Financial Year 2024-25**



Most pertinently, UPERC has directed the licensees to work on innovative solutions based on reactive power compensation of intra-state transmission protection systems and to emphasize its focused efforts on Advanced Monitoring and Control Systems, Smart Grid Technologies and Grid Modernization among other technological advancements.

Uttar Pradesh Electricity Regulatory Commission has issued tariff order dated 10.10.2024 for the state DISCOMs for the Financial Year (“FY”) 2024-25, wherein it has kept the tariffs payable, by all consumer categories, unchanged for the fifth consecutive year. UPERC has aligned the distribution loss trajectories with the trajectories approved by the Ministry of Power (“MoP”), Government of India under the Revamped Distribution Sector Scheme.

According to the tariff order, Electronic Vehicles (“EV”) tariff rates of Public Charging Stations has been made applicable to the State Road Transport EV charging stations also. The Green Energy tariff has been reduced from Rs. 0.44/unit to Rs. 0.36/unit. Further consumers with contracted load from 3-5 KW have been enabled to apply for a 3-phase connection.

Furthermore, certain essential additions have been made through this tariff order including the introduction of an enabling provision created for implementing policy decision of Government of Uttar Pradesh regarding the applicability of industrial tariff, applying the same tariff to the Regional Rapid Transit System (“RRTS”) as applicable to the Metro Rail Services, and alignment of the provisions of automatic revision of sanctioned load by licensee with the Electricity (Rights of Consumer) Rules, 2020.

Uttar Pradesh Electricity Regulatory Commission has passed Tariff Order dated 10.10.2024 in the Petition filed by Uttar Pradesh State Load Despatch Centre (“UPSLDC”) for True Up of Financial Year (“FY”) 2022-23, Annual Performance Review (“APR”) for FY 2023-24 and Determination of Aggregate Revenue Requirement (“ARR”) & State Load Despatch Centre (“SLDC”) Charges for FY 2024-25.

Vide the Tariff Order dated 10.10.2024, UPERC has approved the monthly Load Despatch Centre Charges of Rs. 536.81/MW/ Month for FY 2024-25. It has considered 55,649.60 MW of contracted/ tied up commissioned capacity handled for determination of LDC Charges for FY 2024-25. UPSLDC has been directed to conduct meetings of the State Power Committee (“SPC”) regularly and ensure that a separate link of UP-SPC is created on the homepage of UPSLDC's website where relevant data/ documents are uploaded regularly.

Additionally, UPSLDC being the nodal agency for Power System Development Fund (“PSDF”) has been directed to process the proposals under PSDF and submit the same before the Commission for approval in accordance with UPERC (Power System Development Fund) Regulations, 2023.

The Central Electricity Regulatory Commission (“CERC”) has issued the Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2024 (“Draft 4th Amendment”). Key amendments include:

1. Sub-clauses (aa-i) and (aa-ii) have been added to Regulation 2 as ‘Tariff Regulations, 2024’ and ‘Terminal Bay’ for clarity and consistency with the General Network Access (GNA) Regulations.
2. Regulation 12 is proposed to be amended to provide that for generating stations with dual connectivity (both inter-State and intra-State), transmission deviation shall be computed based on net metered ex-bus injection, considering GNA to inter-State and connectivity with the STU system.
3. The Draft 4th Amendment further proposes modifications to the waiver of transmission charges under Regulation 13. For Hydro Pumped Storage Plants (PSP) Energy Storage Systems (ESS) that award the construction contract on or before 30.06.2025, a 25-year waiver is being

UPERC determines the Distribution Tariff for FY 2024-25 for Uttar Pradesh Power Corporation Limited

UPERC determines Load Despatch Centre charges for FY 2024-25 based on the petition filed by Uttar Pradesh State Load Despatch Centre

CERC notifies CERC (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2024

proposed, provided specific conditions are met. Similarly, offshore wind Renewable Energy Generating Stations (REGS) that achieve commercial operation before 31.12.2032, would be eligible for a 25-year waiver from the COD.

4. It further revises the eligibility periods for waivers based on various energy projects, such as Battery ESS, hydro projects, and green hydrogen plants, detailing variation according to the COD and the construction work award dates.
5. Under Regulation 13(2)(h), in cases where REGS projects are eligible for waivers and are scheduled for commissioning by 30.06.2025, projects may receive an extension of up to six months, on account of Force Majeure events, provided COD is achieved within the extended period.
6. Under Regulation 13(3), the Connectivity Grantee or the Renewable Power Park Developer shall pay Yearly Transmission Charges for the Terminal Bay(s) corresponding to the Connectivity capacity which has not achieved COD, in situations where augmentation occurs without an Associated Transmission System (ATS) and where the Terminal Bays at ISTS substations have already achieved COD.
7. A new clause, namely Regulation 13(13), has been introduced which specifies that the availability of transmission systems shall be calculated in accordance with the Tariff Regulations.
8. The CERC has invited stakeholders to provide comments, suggestions, or objections on the draft regulations. Submissions can be made online via the SAUDAMINI Portal, or through written communication addressed to the secy@cercind.gov.in and shilpa@cercind.gov.in by 11.11.2024.

The Public Notice can be accessed via this [link](#), and the draft regulations can be accessed via this [link](#).

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