

# GATI - विधि

-LAW IN ACTION



## Legal Updates

The Hon'ble High Court of Delhi ("**Delhi High Court**") in the matter of *Gateway Investment Management Services Ltd. Vs. Reserve Bank of India* bearing W.P. (C) 13278/2024, has held that the Court is not enjoined upon to exercise its power of judicial review thereby usurping upon the powers of the National Companies Law Tribunal ("**NCLT**") to inquire into the commercial wisdom of the Committee of Creditors ("**CoC**") whereby the Resolution Plan of the petitioner was rejected.

The Petitioner's case was that being of the Resolution Applicants, it was the highest bidder in the Corporate Insolvency Resolution Process ("**CIRP**") w.r.t. Corporate Debtor ("**CD**") i.e. Helios Photo Voltaic Pvt. Ltd. but its bid was rejected by the CoC comprising of Respondent No. 2, 4, and 5. The Petitioner submitted that the CoC betrayed a lack of commercial prudence by rejecting the highest bid. It was further argued that in a revised the Petitioner promised to give 75 crores in second instalment within 90 days was also not accepted despite being a superior proposal. The Petitioner relied on the judgement delivered by a coordinate bench of the Hon'ble Court in *Kunwar Sachdev v. IDBI Bank & Ors* W.P. (C) 10599/2021 in which fiduciary duties of the CoC was emphasised. It was further contended that decision of the CoC while exercising its commercial wisdom must align with the objectives of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") that is to revive the company and maximise the assets value. The Respondent No. 2 being National Asset Reconstruction Company Ltd. on the other hand has argued that when it comes to the domain of private contract and bidding process, it is not always mandatory that the highest bidder should be preferred for Resolution Plan. The resolution plan approved by the CoC shall be placed before NCLT for final acceptance where petitioner can raise its grievances, and it cannot approach the High Court under writ jurisdiction.

**Delhi High Court observes that power of Judicial Review is not to be exercised to usurp the power of the NCLT to enquire into the commercial wisdom of the CoC while accepting or rejecting a Resolution Plan**

The Hon'ble Court while dismissing the Writ Petition *inter alia* held that it is not proper to issue notice in the writ filed by the Petitioner when it already has an efficacious and alternative remedy before the NCLT where it can air its grievances with respect to action or inaction of the CoC. Furthermore, the Hon'ble Court held that the NCLT alone has jurisdiction to regulate the conduct of the CoC and take any decision in relation to resolution plan and it is the duty of the NCLT to also whether the CoC is functioning in accordance with provisions of the IBC therefore the court is not a proper authority to raise grievances against the conduct and functions of the CoC.

The Hon'ble High Court of Bombay in the case of *Uttam Value Steels Ltd. & Anr. v. Assistant Commissioner of Income Tax & Ors.* has observed that a Resolution Plan approved under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 shall be binding on the Central Government including tax authorities. The Petitioner is a company which was successfully resolved under a CIRP under the IBC. The dispute arose when the Revenue initiated proceedings under Section 153 C of the Income Tax Act, 1961 in respect of Assessment Year 2013-14 to 2018-19 after a period of about one year from the date of approval of the resolution plan. Notices were also issued under Sections 143(2) and 142(1) of the Income Tax Act for the assessment year 2019-20.

The Petitioner invoked the writ jurisdiction of the High Court seeking quashing and setting aside of impugned proceedings and notices issued under the Income Tax Act. The Petitioner submitted that the law declared by the Supreme Court interpreting Section 31 of the IBC fully covered the position that a corporate debtor after being resolved cannot be pursued for past tax claims. Whereas the Revenue contended that tax liabilities, crystallized after commencement of CIRP, would not be past tax claims and would constitute future liabilities because these liabilities were not crystallized prior to the CIRP and therefore such liabilities would not stand resolved by the resolution plan.

The Bombay High Court relied on the judgement of the Supreme Court in *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Ltd. (2021) 9 SCC 657* which comprehensively summarizes the import of various judgments on the effect of approval of resolution plan under Section 31 of the IBC. In para 94 of the said judgment the Supreme Court holds that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities and further pointed out that the IBC was amended in 2019 to cure the mischief caused by certain tax authorities by not abiding by the mandate of the IBC and continuing with the proceedings under tax laws. Considering the aforementioned ruling of the Supreme Court, the Bombay High Court quashed and set aside the proceedings and notices issued against the Petitioner under the Income Tax Act and reiterated the position that Resolution Plan approved under Section 31(1) of the IBC shall be binding all including tax authorities.

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 ("the 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 Respondent objected to the contention of the Petitioner *inter alia* on the ground that the facts stated in the plaint as well as the application for interim injunction would show that there was great urgency in obtaining the relief prayed.

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

**Bombay High Court holds that a Resolution Plan approved under Section 31(1) of IBC shall be binding on Central Government including tax authorities**

**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**

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 Hon'ble High Court in the case of *V. Sreenivas Reddy v. B.L. Rathnamma*, dismissed a Civil Revision Petition (**CRP**) and ruled that the Arbitral Tribunal is central to the process under Section 27 of the Arbitration and Conciliation Act ("**the Act**"). The court clarified that only the Arbitral Tribunal has the authority to make representations before a court under Section 27(5) of the Act. Section 27 deals with court assistance in taking evidence, allowing either the Arbitral Tribunal or a party, with prior tribunal approval, to seek such assistance. The Arbitral Tribunal, by its order dated 07.04.2024, permitted the Petitioner to approach the Principal Special Court at Hyderabad under Section 27 of the Act.

The Petitioner had preferred the CRP before the High Court against the order of City Civil Court, Hyderabad under Section 27 of the Act seeking issuance of summons to the witnesses in terms of the order passed by the Arbitral Tribunal, whereby the Arbitral Tribunal had directed the Petitioner to approach the Principal Special Court, Hyderabad to summon two witnesses. The Civil Court however closed the petition noting that the evidence could not be taken.

In the challenge to the order of the Civil Court, the High Court noted that Section 27(5) of the Act relates to the Arbitral Tribunal seeking the court's assistance in recording evidence when a witness fails to attend or refuses to give evidence. Order XVI Rule 10 of the CPC applies when the court issues processes or punishes for disobedience. The court emphasized that the Arbitral Tribunal is central to initiating the process of taking evidence under Section 27 and must first make a representation to the court or grant approval to a party to seek assistance. Additionally, the tribunal remains the authority over the evidence and any default or refusal by witnesses. The court further observed that only the Arbitral Tribunal, not the parties, can initiate a complaint under Section 27(5).

The Hon'ble High Court of Calcutta vide its order dated 30.09.2024 in the case of *Porel Dass Water & Effluent Control Private Limited Vs. The West Bengal Power Development Corporation Limited and Ors. AP -COM No. 789 of 2004* has given an observation that the 90-day timeline given under Section 18(5) of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act**") for completion of the arbitral proceeding is directory and not mandatory and does not terminate or affect the validity of mandate of the MSME Facilitation Council as an Arbitrator.

The issue before the Bench was whether Section 62 of the newly enacted Mediation Act, 2023 ("**Mediation Act**"), would have the impact of amending Section 18 of the MSME Act which provides that every reference under Section 18 shall be decided within a period of ninety (90) days from the date of making such a reference. Upon consideration of various arguments, the Bench made the following observations:

In response to Issue no. 1- Whether Section 18 of the MSME Act stands amended by Section 62 of the Mediation Act, the Bench answered in negative and took judicial notice of Notification No. S.O.4384(E) dated 09.10.2023 issued by the Ministry of Law and Justice. The said Notification declares that several provisions of the Mediation Act came into force on 09.10.2023. However, Section 62 of the Mediation Act was conspicuous by its absence from the said array of Sections. As such, Section 62 of the Mediation Act had not yet been notified and thus, was not yet

**Telangana High Court observes that Arbitral Tribunal holds Central role in facilitating Evidence collection under Section 27 of the Arbitration and Conciliation Act**



**Calcutta High Court  
clarifies the applicability of  
Section 18 of the Micro,  
Small and Medium  
Enterprises Development  
Act, 2006**

implemented, which signified that the amendments under the said Section, as contemplated in the Seventh Schedule of the Mediation Act, had not yet come into force. Therefore, the Court held that Section 18 of the MSME Act would stand in its original form, unamended by the Mediation Act.

In response to Issue No. 2- Whether the Court having jurisdiction over an arbitral proceeding under the MSME Act has the authority/jurisdiction to substitute the Council or its designated nominee as Arbitrator in an arbitration under Section 18 of the MSME Act, the Bench observed that Section 18(3) of the MSME Act in unequivocal terms, confers jurisdiction exclusively on the Facilitation Council to either take up the arbitration by itself or refer it to any institution or centre providing alternative dispute resolution services as per the Council's decision, upon the termination of a conciliation proceeding. Sub-section (1) of Section 18 of the MSME Act includes a *non obstante* clause which provides that notwithstanding anything contained in any other law for the time being in force, a reference can be made to the MSME Council in respect of situations covered under Section 17 of the said Act. Sub-section (4) of Section 18 of the MSME Act contains a separate *non obstante* clause and provides that the Council or its nominee shall have jurisdiction to act as an Arbitrator or Conciliator under the said Section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. The court therefore observed that exclusive jurisdiction to conduct the arbitration under the MSME Act is conferred on the Council or its nominee and no other authority. It would be acting *de hors* the specific provisions of the MSME Act if the Council or its nominee is substituted as Arbitrator and a third entity is so appointed to conduct the arbitral proceeding under the MSME Act.

In response to Issue No. 3- Whether the mandate of the Council or its nominee under Section 18(3) of the MSME Act terminates after the expiry of ninety days from the date of making the reference, the Court observed that sub-section (1) of Section 29A of the Arbitration Act, being similar to sub-section (5) of Section 18 of the MSME Act, uses the expression "shall" while fixing the timelines, respectively 12 months from completion of pleadings and 90 days from the reference being entered into. However, in case of Section 29A of the Arbitration Act, an additional provision is introduced in sub-section (4), which stipulates that if the award is not made within the period specified in sub-section (1) or the extended period under sub-section (3) of Section 29-A of the Arbitration Act, the mandate of the Arbitrator shall terminate unless the court extends the same. There is no sanction for non-completion of the arbitral proceeding within the stipulated period of 90 days in Section 18(5) of the MSME Act. On a mere comparison of the two provisions, the timelines in both cases being hedged by the expression "shall", shows that whereas Section 29A of the Arbitration Act needed a further provision to provide that in case of non-completion within the timeline the mandate shall terminate, the said additional provision was intentionally left out in Section 18 of the MSME Act. Thus, as opposed to Section 29A (3) of the Arbitration Act, Section 18 (5) of the MSME Act does not carry any sanction or adverse consequence for non-adherence to such outer time-limit. The Court therefore observed that the timeline stipulated in Section 18(5) is not mandatory but directory.

The Hon'ble High Court of Calcutta vide its order dated 23.09.2024 in the case of *Jayashree Electromech Private Limited Vs. The West Bengal State Electricity Transmission Company Limited* (AP-COM No. 751 of 2024) has observed that compliance with pre-arbitration formalities is not mandatory and can be waived by consensus.

The brief factual matrix of the case is that Jayashree Electromech Private Limited ("**Petitioner**") had filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") for a composite reference in respect of six Letters of Award of Contract issued by the West Bengal State Electricity Transmission Company Limited ("**Respondent**") in favour of the Petitioner pursuant to a tender floated by the Respondent for construction of various electrical transformers and allied projects. The contracts were executed between 26.05.2016 and 06.04.2018. As per the contracts, the parties were to be governed by the General Conditions of Contract ("**GCC**") and Special Conditions of Contract ("**SCC**").

**Calcutta High Court  
observes that compliance  
with pre-arbitration  
formalities is not  
mandatory and can be  
waived by consensus**

After disputes arose between the parties, the Petitioner issued a notice invoking the arbitration clause on 22.05.2024, requesting the appointment of an Arbitrator from the options given in the said invocation notice. The Respondent replied to the said notice by an e-mail dated 26.06.2024, raising objections, inter alia, to one of the names suggested by the Petitioner and insisting upon compliance of the pre-arbitration stages in terms of Clause 6 of the GCC. A second invocation notice under Section 21 of the Arbitration Act was issued by the Petitioner on 26.06.2024, which was followed up by an e-mail dated 29.06.2024. Considering the Respondent's refusal to accede to the Petitioner's request for appointment of Arbitrator, the Petitioner was constrained to file an application under Section 11 of the Arbitration Act.

It is relevant to note that the issue before the court was whether the Section 11 application was premature because of the Petitioner's non-compliance with pre-arbitral formalities. In this regard the court gave an observation that the law does not mandate the compliance of prior formalities as a pre-condition for reference to arbitration. Such prior conditions emanate entirely from agreement between the parties. Thus, by necessary implication, what is agreed on consensus can also be waived by consensus.

The Court further observed that the Petitioner in its first notice dated 22.05.2024, issued under Section 21 of the Arbitration Act, referred to a "relatively small amount" being involved in the current dispute. In the subsequent notice dated 26.06.2024, the Petitioner referred to its previous letters seeking to know the name of the Project Manager and also to request letters to the Managing Director and Chief Engineer of the Respondent informing them of the dispute. As per the allegation in the second Section 21 notice, despite such efforts, no decision was taken at the end of the Respondent. Thus, the Petitioner, in its invocation of the arbitration clause, clearly referred to previous correspondence between the parties where the dispute had been enumerated.

Further, relying on the case of *Demerara Distilleries Private Limited and another vs. Demerara Distillers Limited (2015) 13 SCC 610*, the court observed that since multiple correspondences yielded no result, it would be an "empty formality" to relegate the parties back to the rigmarole of pre-arbitration formalities. Reference was further made to the case of *Backend Bangalore Private Limited 2022 SCC OnLine HP 1044*, which held that since the Respondent had failed to refer the dispute to an Adjudicator, an Arbitrator could be appointed even if there was no prior reference to the Adjudicator. The court in this regard gave an observation that it would be a useless formality to force the Petitioner to return to the paraphernalia of red-tapism by re-starting the dispute resolution exercise from any prior stage than arbitration. The Court further observed that a request for appointment of an Arbitrator under Section 11 of the Arbitration Act is a pre-arbitral formality and should be interpreted in a lenient manner as compared to a notice under Section 21 of the Arbitration Act which marks the commencement of the arbitral process. The court in the said case held that there had been a valid invocation of the arbitration clause. Thus, the said application was allowed.

**APERC passes Order on  
Pooled Cost of Power  
Purchase for FY 2022-23 to  
be considered for FY 2023-  
24**

The Andhra Pradesh Electricity Regulatory Commission ("APERC") has passed the Order dated 26.09.2024, determining the Pooled Cost of Power Purchase for the FY 2022-23, to be considered for FY 2023-24. This order, passed in the petitions filed by the State DISCOMs, APEPDCL, APCPDCL, and APSPDCL, aims to establish a clear and standardized pooled cost of power purchase. This pooled cost is critical for complying with the Renewable Power Purchase Obligation (RPO) set under the applicable APERC Regulations, 2022.

The pooled cost, expressed in Rs/kWh, refers to the weighted average price at which electricity was purchased by the DISCOMs from all long-term energy suppliers, excluding liquid fuel and market purchases. This cost forms the basis of the financial obligations of the DISCOMs in procuring power, especially from renewable energy sources.

After evaluating the petitions filed by the DISCOMs, which proposed pooled costs ranging from Rs. 4.88/kWh to Rs. 4.89/kWh, and considering the objections raised by stakeholders, the APERC

has approved the final pooled cost of Rs. 5.12/kWh. This revision incorporates data on energy purchases, cost structures, and exclusions based on previous regulatory guidelines.

**Control Period and Applicability:** The control period for this pooled cost is from 01.04.2023 to 31.03.2024 and will apply to all long-term power purchase agreements and transactions made by the DISCOMs, ensuring financial consistency and regulatory compliance.

**Financial Adjustments:** The difference between the provisional pooled cost paid by the DISCOMs and the final approved pooled cost will be adjusted in three equal monthly instalments, beginning from October 2024. This adjustment ensures equitable settlement of financial obligations between the DISCOMs and power generators.

The Odisha Electricity Regulatory Commission ("**OERC**") has issued draft OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2024 ("**draft regulations**"). The said regulations outline essential elements of tariff determination for power generation in Odisha, applicable to both existing and future power stations, while excluding plants with tariffs set through competitive bidding or those regulated separately based on renewable energy sources. These regulations address operational aspects of power generation, including guidelines for calculating tariffs, implementing emission control systems, and managing auxiliary energy consumption. The control period of these regulations shall extend up to 31.03.2029. The salient features include:

1. The draft regulations specify the management of capital costs for both new and existing projects. Regulations 15, 16, 20 and 25 prescribe capital costs including expenditures incurred up to the commercial operation date, interest during construction, financing charges, and costs associated with emission control systems for new projects. Existing projects are similarly evaluated, with considerations for renovation and modernization costs factored into the overall capital cost assessment.
2. Regulation 25 provides for additional capitalization on account of revised emission standards while Regulation 36 provides for computation of capacity charge & energy charge on account of the implementation of the revised emission standards.
3. Regulation 49 under Chapter 8 deals with norms of operation, it sets the Normative Annual Plant Availability Factor ("**NAPAF**") for thermal power stations at 85%. Regulation 50 deals with norms of operation for hydro based generating stations. Further, Secondary fuel oil consumption for all existing coal based thermal generating stations who have achieved Commercial Operation Date ("**COD**") before 01.04.2014 below is 1 ml/kWh, while for those who have achieved CoD on or after 01.04.2014 it has been set at 0.50 ml/kWh. Regulation 55 deals with late payment surcharge ("**LPS**"), beyond a period of forty-five (45) days, LPS becomes applicable at the rate of 1.25% per month.
4. Regulation 61 lays down the mechanism for sharing the proceeds of carbon credit from approved emission reduction project under Clean Development Mechanism ("**CDM**").

Along with the issuance of the draft regulations, OERC has also issued notice inviting suggestions and objections from the interested persons/ institutions/ associations/ consumers and other stakeholders. The objections and suggestions shall reach the Secretary of the OERC by 14.10.2024.

The Rajasthan Electricity Regulatory Commission ("**RERC**") has issued the draft RERC (Green Energy Open Access) Regulations, 2024. These regulations aim to enhance accessibility to green energy for eligible consumers, promoting the use of renewable resources. Green Energy Open Access ("**GEOA**") allows for the use of renewable energy for both personal consumption and third-party sales within the state. The criteria focus on consumers with a minimum load of 100 kW, while captive consumers are exempted from load restrictions, ensuring broader access. Salient features include:

**OERC issues draft OERC  
(Terms and Conditions for  
Determination of  
Generation Tariff)  
Regulations, 2024**

**RERC issues draft RERC  
(Green Energy Open  
Access) Regulations, 2024**

1. Regulation 5 lays down the eligibility criteria for these regulations, it categorizes consumers by energy needs, allowing industrial and commercial users with a load of 100 kW or more to access green energy through open access. Smaller consumers can now participate, thereby promoting inclusivity. Captive consumers can transmit their self-generated renewable energy to the grid without restrictions.
2. Regulation 6 states that the Rajasthan State Transmission Utility (“STU”) will serve as the State Nodal Agency (“SNA”) for granting long-term and medium-term green energy open access. Meanwhile, the Rajasthan State Load Despatch Centre (“SLDC”) will take on the role of SNA for facilitating short-term GEOA. This division of responsibilities has been proposed to ensure a streamlined process for consumers seeking access to renewable energy, fostering an organized framework for managing both short- and long-term energy transactions within the state.
3. Regulation 9 emphasizes that in case, short-term open access consumers cannot utilize their allocated capacity for more than four hours, they must notify the SLDC with an explanation and surrender any unused capacity. Regulation 11.3 deals with cross subsidy charges, it provides that cross-subsidy surcharge will not be applied if green energy open access is granted to an individual who has set up a captive generation plant to deliver electricity for their own use.
4. Regulation 13 deals with metering requirements, it mentions that GEOA consumers must install Special Energy Meters (“SMEs”) or other meters that can account for energy consumption in 15-minute intervals. Further, Regulation 14 refers to Reactive Energy Charges payable as per directions issued by the commission.
5. Regulation 22 introduces the concept of green certification on yearly basis to the consumers while Regulation 23 introduces a consumer rating system based on the percentage of green energy purchased, with higher ratings for greater procurement, promoting responsible consumption.
6. The draft regulations specify that the tariff for green energy will be determined independently by the RERC, ensuring a fair pricing structure that reflects the various costs associated with renewable energy generation.
7. Regulation 11.6 deals with Banking of energy, it permits consumers to bank up to 30% of their monthly energy consumption. This feature allows consumers to utilize stored energy during periods of high demand or when renewable energy generation is low, enhancing flexibility and reliability in energy use.
8. The draft regulation also provides for a clear grievance redressal mechanism for issues related to GEOA. Regulation 24 states that all disputes and complaints should be directed to the SLDC which will investigate and attempt to resolve the grievances. If the SLDC cannot address the issue, it will be escalated to the State Power Committee, which will try reach a resolution within 30 days. Should the matter remain unresolved, it will be put up before RERC for a final, binding decision.

RERC has also issued notice inviting suggestions and objections from the interested persons/ institutions/ associations/ consumers and other stakeholders. The comments/suggestions if any should reach the Receiving Officer of RERC on or before 18.10.2024.

**Maharashtra Electricity  
Regulatory Commission  
notifies the MERC  
(Transaction of Business  
and Fees and Charges)  
(First Amendment)  
Regulations, 2024**

Maharashtra Electricity Regulatory Commission has notified the MERC (Transaction of Business and Fees and Charges) (First Amendment) Regulations, 2024 which outline significant changes to the licensing framework for distribution licensees. The regulations primarily target the adjustment of the Annual License Fee, as detailed in Regulation 2.1, Sr. No. 3 (ii) of the Schedule of Fees and Charges. It. The annual license fees will increase from 0.05% to 0.1% of revenue generated from wheeling and selling electricity, excluding taxes and duties. Moreover, the minimum license fee has been revised upwards from INR 2 lakh to INR 5 lakh.

MSEDCL raised concerns about their license fee, which has surged from INR 14.7 crore in FY 2022-23 to over INR 45 crore this year. With the proposed amendment, it could reach INR 100

crore. They requested the Commission to either keep the previous fee structure or cap the maximum fee at INR 50 crore.

However, MERC has clarified that although the fee increase may seem significant initially, it aligns with historical trends. Fees were lowered to 0.02% in 2017 but have since been increased to 0.05%. The current increase to 0.1% is essential to address MERC's escalating expenses, such as rent, consultancy fees, and legal costs.

The new regulations will take effect immediately, but the revised fee structure will apply from the beginning of the FY 2025-26.

The Gujarat Electricity Regulatory Commission (“**GERC**”) has issued Draft GERC (Procurement of Energy from Renewable Sources) Regulations, 2024 (“**Draft RE Regulations**”). The Draft RE Regulations provide a new framework for the procurement of energy by obligated entities from renewable sources. These Regulations have been framed in accordance with the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010, and its subsequent amendments along with the provisions of the CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022.

The Draft RE Regulations mandate that the obligated entities must comply with the Renewable Power Purchase Obligations (“**RPPO**”) as provided by the Ministry of Power for FY 2024-25 to FY 2029-30. These Regulations provides that all designated consumers, including open access and captive users, comply with RPPO targets.

The Draft RE Regulations also provide minimum quantum percentages for renewable energy procurement, which also includes procurement from wind energy, hydro energy, distributed renewable energy, and storage obligations.

The Draft RE Regulations provides that the obligated entities must meet their RPPO by procuring energy directly from renewable sources or through the purchase of Renewable Energy Certificates (“**RECs**”). The compliance with the renewable energy consumption targets will be monitored and enforced through quarterly and annual reports, with penalties imposed for shortfalls as per the Energy Conservation Act, 2001.

Draft GERC (Procurement of Energy from Renewable Sources) Regulations, 2024 can be accessed from the following [link](#).

The Telangana State Electricity Regulatory Commission (“**TSERC**”), vide its Order dated 30.09.2024, has determined the Additional Surcharge payable by Open Access consumers for the period from 01.10.2024 to 31.03.2025. This Order was passed in response to the petitions filed by the Southern Power Distribution Company of Telangana Limited (TSPDCL) and the Northern Power Distribution Company of Telangana Limited (TNPDCL) (collectively “**DISCOMs**”). The Order is effective from 01.10.2024 and will remain in force until 31.03.2025.

1. The Additional Surcharge has been determined in accordance with Section 42(4) of the Electricity Act, 2003, and the Tariff Policy, 2016. TSERC considered the data submitted by the DISCOMs, stakeholder submissions, and held Public Hearings on 18.09.2024 and 27.09.2024 to gather further inputs. After careful consideration, TSERC determined that the Additional Surcharge for Open Access consumers shall be INR 1.09/kWh for the period from 01.10.2024 to 31.03.2025.
2. The Additional Surcharge has been levied to recover the stranded capacity costs due to Open Access consumption. TGERC found that the stranded capacity for the six-month period (October 2023 to March 2024) averaged 25.19 MW. The fixed charges for this stranded capacity amounted to INR 16.69 crore, and after adjusting for demand charges recovered from Open Access consumers, the net stranded charges recoverable stand at INR 7.22 crore.

### **GERC issues Draft GERC (Procurement of Energy from Renewable Sources) Regulations, 2024**

### **TERC determines Additional Surcharge for Open Access Consumers for October 2024 to March 2025**



3. TSERC has also approved the transmission and distribution charges, which together amount to INR 0.8396/kWh. These charges will be payable by Open Access consumers for the energy consumed from the DISCOMs, which was projected to be 66.05 MU for H2 of FY 2024-25.
4. The Additional Surcharge shall be levied on Open Access consumers who procure power from sources other than the DISCOMs. However, consumers wheeling power from their own Captive Power Plants and certain categories of Green Energy Open Access consumers, among others, are exempted from imposition of such charges.

The Andhra Pradesh Electricity Regulatory Commission ("**APERC**") vide its Order dated 27.09.2024, has approved the Wheeling Tariffs for the Distribution Business for the 5<sup>th</sup> Control Period (FY 2024-25 to FY 2028-29). The Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), Andhra Pradesh Central Power Distribution Corporation Limited (APCPDCL), and Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL) (collectively "**DISCOMs**") filed their respective Aggregate Revenue Requirements (ARR) and Proposed Tariffs (FPTs) for this period.

After considering the public objections and conducting hearings, APERC determined the Wheeling Tariffs for the period from 01.04.2024 to 31.03.2029 basis the following considerations:

#### 1. Capital Investment Plan

The DISCOMs proposed a capital expenditure of INR 46,275 Crore for the 5<sup>th</sup> Control Period. The approved investments will help strengthen the network infrastructure and cater to the projected load growth. APSPDCL has been allocated INR 20,087 crore, APCPDCL INR 9,318 crore, and APEPDCL INR 16,870 crore.

#### 2. Wheeling Charges

The approved Wheeling Tariffs for long-term open access and short-term open access consumers have been set for various voltage levels (33 kV, 11 kV, and LT). The charges have been determined in accordance with the network usage and the projected demand at each voltage level.

#### 3. Distribution Loss Trajectory

APERC has set a distribution loss trajectory for each DISCOM, with losses at various voltage levels to be reduced progressively over the Control Period. APSPDCL, APCPDCL, and APEPDCL have undertaken steps to reduce losses through network improvements and energy audits.

The Gujarat Electricity Regulatory Commission ("**GERC**"), vide Order No. 07 of 2024, has determined the Additional Surcharge payable by Open Access consumers for the period from 01.10.2024 to 31.03.2025. GERC has determined Additional Surcharge of INR 0.93/ kWh. This order follows the methodology established by GERC in its previous Order dated 30.08.2022 ("**2022 Order**"), which revised the process for calculating the Additional Surcharge based on stranded generation capacity caused by Open Access consumers.

In compliance with the 2022 Order, GUVNL and the four State-owned Distribution Companies (DGVCL, MGVCL, PGVCL, and UGVCL) submitted the required data, certified by the State Load Despatch Centre ("**SLDC**") and a Chartered Accountant, for the period from 01.10.2023 to 31.03.2024. After analysing the submitted data and applying the formula prescribed in the 2022 Order, GERC passed Order No. 07 of 2024. The surcharge will be levied on consumers of the four State-owned DISCOMs who avail power through Open Access from sources other than their respective DISCOMs.

The Karnataka Electricity Regulatory Commission ("**KERC**"), vide Notification No. KERC/F-30/Vol-10/690 dated 23.09.2024, has issued the KERC (Framework for Resource Adequacy) Regulations, 2024 ("**RAF Regulations**"). The RAF Regulations shall cover a mechanism for

### APERC approves Wheeling Tariffs for the 5<sup>th</sup> Control Period (FY 2024- 25 to FY 2028-29)

### GERC determines Additional Surcharge for Open Access Consumers for October 2024 to March 2025



**KERC notifies KERC  
(Framework for Resource  
Adequacy) Regulations,  
2024**

demand assessment and forecasting, generation resource planning, power procurement planning, and monitoring and compliance.

The primary objective of the RAF Regulations is to establish a structured mechanism for resource adequacy planning, applicable to distribution licensees, generating companies, the State Load Despatch Centre (SLDC), STU, transmission licensees, and other grid-connected entities operating within the state of Karnataka. Salient features include:

1. Regulations 6.1 to 6.3 provides for a detailed approach in assessing electricity demand, planning generation resources, and ensuring adequate power procurement. It mandates that all relevant entities develop both short-term and long-term demand forecasts, ensuring that power supply consistently meets demand across various timeframes.
2. Regulation 9 of the RAF Regulations stipulates the methodology of preparation of the Resource Adequacy Plan.
3. Regulation 10 has introduced capacity credits for renewable energy projects, recognizing the variability of renewable generation. Furthermore, Regulation 10.3 provides the method for calculating how much of these resources can be reliably counted towards meeting the state's electricity demand, given the intermittent nature of renewable sources such as wind and solar power.
4. Regulation 14 requires the Distribution licensees to plan an optimal mix of generation resources through long-term, medium-term, and short-term contracts. Furthermore, Regulation 14.2 states that the power procurement strategies shall be based on least-cost modelling techniques to avoid the risk of stranded assets.

KERC (Framework for Resource Adequacy) Regulations, 2024 can be accessed from the following [link](#).

**KERC issues Draft (Intra-  
State Deviation  
Settlement Mechanism and  
Related Matters)  
Regulations, 2024**

The primary objective of the DSM Regulations issued by KERC is to ensure, through a commercial mechanism, that grid users adhere to their schedule of drawal and injection of electricity in the interest of grid security and stability. DSM Regulations will apply to all inter/ intra-state entities connected with the State Transmission Utility (STU) in the state of Karnataka.

Regulations 3.1 to 3.50 of the DSM Regulations define key terms and concepts necessary for implementation, such as "Actual Drawal," "Actual Injection," "Deviation," and "Deviation Charges," among others.

Regulation 4, 5.1 to 5.4 of the DSM Regulations establishes a framework for Availability Based Tariff (ABT) and Deviation Settlement Mechanism which are applicable to all grid-connected entities engaged in intra-state purchase and sale of electricity, including generating companies, captive generating plants, distribution licensees, and open access consumers.

KERC issues Draft (Intra-State Deviation Settlement Mechanism and Related Matters) Regulations, 2024 can be accessed from the following [link](#).

**WBERC issues draft  
WBERC (Grid Interactive  
Rooftop Solar PV System  
for Prosumers)  
Regulations, 2024**

The West Bengal Electricity Regulator Commission vide notice dated 03.08 2024 invited comments on the draft WBERC (Grid Interactive Rooftop Solar PV System for Prosumers) Regulations, 2024

The primary objective of the draft is to promote the installation of Roof top PV system and to facilitate the consumer intended to install by way of net metering, net billing and gross metering and balancing the interest of consumer and the licensees.

Regulation 2 (1) To (21) of the regulation defines key terms and concepts necessary for implementation such as "feed in tariffs" "net metering" "prosumer" among others.

Part B C and D of the Regulation states the eligibility criteria for different metering arrangements, accounting, settlement mechanisms, licensee duties, and prosumer rights are clearly defined within the draft regulations ensuring transparency and accountability in the implementation process.

The Central Electricity Regulatory Commission (“**CERC**”), vide Notification No. L-1/260/2021/CERC, has issued the Draft CERC (DSM and Related Matters) (First Amendment) Regulations, 2024 along with explanatory memorandum, effective from 01.12.2024. Key amendments include:

**CERC invites comments/ suggestions/ objections from the stakeholders and interested persons on the provisions of Draft CERC (DSM and Related Matters) (First Amendment) Regulations, 2024**

1. Regulation 3- The amendment provisions limiting the quantum of power generation to the connectivity granted for power generators. New clause introduces controls on various types of sellers, including those using open access for renewable energy sources like wind and solar (WS seller), and municipal solid waste (MSW) generators.
2. Regulation 8-The amended regulation provides that charges for infirm power injections will be zero, provided the injection aligns with Grid Code stipulations. It also introduces penalties for over-injection during high-frequency periods (above 50.05 Hz).

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](mailto:secy@cercind.gov.in) and [advisor-re@cercind.gov.in](mailto:advisor-re@cercind.gov.in) by 01.11.2024. The draft regulations can be accessed via this [link](#).

The Tamil Nadu Electricity Regulatory Commission (“**TNERC**”), vide Notification No. TNERC/DSM&RM/22, has issued the draft TNERC (DSM and related matters) Amendment Regulations, 2024. The amended DSM Regulations will apply to all open access buyers and sellers, including Open Access generating stations, and State-owned generating stations, excluding wind, solar, and State-owned hydro-based generation stations. Key aspects of the draft regulations include.

**TNERC invites comments/ suggestions on Draft TNERC (DSM and related matters) Amendment Regulations, 2024**

1. Frequency Control Mechanism: The draft introduces a revised operating frequency range of 49.90 Hz to 50.05 Hz and no deviation shall be allowed beyond such operating range of frequency.
2. Settlement Period and Loss Allocation: The settlement of State Deviation Pool Accounts will be conducted on a weekly basis, and the results will be published on the State Load Dispatch Centre (SLDC) website. Additionally, transmission and distribution losses will be applied to entities based on their scheduled power draw, with the SLDC maintaining records of actual losses for each time block.
3. Penalties for Deviation and Gaming: Sellers and buyers will be penalized for non-compliance with their scheduled energy commitments, particularly if they fail to adjust the sign of their deviations within six consecutive time blocks. An additional charge of 20% will be levied for violations.

The TNERC has invited stakeholders to submit their suggestions or objections on the draft regulations. Submissions can be made through written communication addressed to the TNERC Secretary by 01.11.2024. The draft regulations can be accessed via this [link](#).

**BERC invites comments/ suggestions/ objections from general public and stakeholders on determination of Tariff for FY 2024-25 from RE sources**

The Bihar Electricity Regulatory Commission (“**BERC**”), vide Notice No. 17 dated 20.09.2024, issued public notice inviting comments/ suggestions/ objections from general public and stakeholders on determination of Tariff for FY 2024-25 from RE sources.

The BERC, under Regulation 8 of BERC (Terms & Conditions for Tariff Determination from Renewable Energy Source) Regulations, 2022, has initiated Suo-Motu proceeding No. SMP

22/2024 for determination of generic levelled tariff for power generated from RE sources for FY 2024-25.

The BERC, in the draft, has proposed the generic tariff of different RE projects for the FY 2024-25. The tariff for non-Fossil fuel-based Co-generation projects (Bagasse) is proposed as Fixed Cost at Rs. 2.69/ kWh, Variable Cost at Rs. 4.83/ kWh, Tariff (without accelerated depreciation) at Rs. 7.52/ kWh, and Tariff (with accelerated depreciation) (applicable for projects commissioned in FY 2024-25) at Rs. 7.40/ kWh. It has also proposed generic tariff for other RE based projects which includes Biomass power projects, and others.

The BERC has invited general public and stakeholders to submit their comments or suggestions or objections on the proposed generic levelled tariff. Submissions can be made through written communication addressed to the BERC Secretary by 01.10.2024.

Further, interested persons/ organizations/ companies may also appear in the Public Hearing scheduled to be held on 08.10.2024 at 11:30 A.M in the Court Room of the BERC. The proposed generic levelled tariff can be accessed via this [link](#).

The Joint Electricity Regulatory Commission for Goa and Union Territories (“**JERC**”), vide Notification No. JERC-21/2017, has notified the JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) (Third Amendment) Regulations, 2024 to JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 (“**Principal Regulations**”), which significantly impacts renewable energy operations. The amendment introduces changes to encourage the growth and integration of Green Energy Open Access while maintaining compliance with inter-state transmission and distribution requirements. Key amendments include:

1. Regulation 2 of the Principal Regulations has been amended to expand the definition of “Open Access” to include “Green Energy Open Access.”
2. A proviso has been added after the 1<sup>st</sup> proviso to Regulation 2.1 of Principal Regulations which provides that consumers with a contract demand or sanctioned load of 100 kW or more are eligible for Open Access.
3. A proviso has been added after Regulation 3.2(1) of the Principal Regulations which designates a Central Nodal Agency to handle applications for Green Energy Open Access. As per Regulation 3.5.2, applications shall include a bank guarantee based on the total power to be transmitted.
4. A new provision, namely Regulation 3.7(A), has been added which provides for the procedure for grant of Green Energy Open Access, including timelines.
5. A new provision, namely Regulation 3.7(B), has been added which provides for the procedure for applying for Day Ahead Green Energy Open Access Transactions.
6. The term “Green Energy Open Access” has been added to Regulation 4.4(1).
7. Additionally, provisions regarding the cross-subsidy surcharge have been established, stipulating that this surcharge for Green Energy Open Access consumers will not exceed 50% of the surcharge fixed in the year open access is granted for the first twelve years of operation of renewable energy plants. Moreover, no cross-subsidy surcharge will apply to power supplied from non-fossil fuel-based Waste-to-Energy plants. Consumers using captive generation plants for self-use will also be exempt from this surcharge. Further exemptions apply if green energy is utilized for the production of green hydrogen or green ammonia.
8. A new provision under Regulation 4.6 has also been introduced, stating that the Additional Surcharge will not be applicable to Green Energy Open Access consumers if they are paying fixed charges to the distribution licensee for the quantum of Green Energy Open Access availed up to the contracted demand. If consumers exceed this contracted demand, the surcharge will apply only to the additional quantum. Further exemptions include no surcharge for power supplied from Waste-to-Energy plants to Green Open Access consumers and no

**JERC notifies JERC  
(Connectivity and Open  
Access in Intra-State  
Transmission and  
Distribution) (Third  
Amendment) Regulations,  
2024**

additional charges for electricity generated from offshore wind projects commissioned by December 2032.

9. Additionally, standby charges will not apply if consumers provide notice at least one day in advance before the closure of the Day Ahead Market, with a cap on standby charges set at 25% of the energy charges applicable to the consumer's tariff category.
10. A new provision, namely Regulation 4.10, has been added which outlines the charges applicable to Green Energy Open Access consumers. The applicable charges include transmission charges, wheeling charges, cross-subsidy surcharges, additional surcharges (where applicable), standby charges (where applicable), reactive energy charges (where applicable), banking charges (where applicable), and other fees, such as Load Despatch Centre fees and scheduling charges.
11. The JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) (Third Amendment) Regulations, 2024 can be accessed via this [link](#).

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