

# GATI - विधि

-LAW IN ACTION



## Legal Updates

The High Court of Orissa in the matter of *Rajdhani Coir, Bhubaneswar vs. Micro, Small Enterprises Facilitation Council, Nagpur & Anr. WP (C) No. 22514 of 2022* has observed that the violations of the provisions of the Arbitration Act and/or the Micro, Small and Medium Enterprises Development Act, 2006 (**MSMED Act**) can be effectively adjudicated by the competent Court u/s. 34 of the Arbitration Act. The Petitioner had filed the Writ Petition challenging an *ex-parte* Order dated 25.11.2020 passed by the Micro, Small Enterprises Facilitation Council, Nagpur.

**Orissa High Court holds that violation of provisions of the Arbitration Act and/or the MSMED Act can be effectively adjudicated by the competent court u/s. 34 of the Arbitration Act**

The grievance of the Petitioner was that Respondent No. 2 made a reference under Section 18(1) of the MSMED Act before the MSME Council in Nagpur despite the parties mutually agreeing to resolve their disputes within the jurisdiction of Bhubaneswar. No sufficient notice was served upon the Petitioner and the provisions under Section 23 and 24 of the Arbitration Act and Sections 18(2) and 18(3) of the MSMED Act were not followed. The petition was opposed on the ground that a petition under 34 of the Arbitration Act read with Section 19 of the MSMED Act was alone maintainable and writ jurisdiction could not have been invoked.

The High Court observed that the issues raised in the present Writ Petition could have been raised by the Petitioner in the proceedings before the Council. Further relying on the judgement of the Hon'ble Supreme Court in the case of *Kusum Ingots and Alloys Limited vs. Union of India & Anr. (2004) 6 SCC 254* the Hon'ble High Court observed that in the instant case it is appropriate not to exercise the Court's extraordinary jurisdiction by invoking doctrine of *Forum Conveniens*. Further, relying on the judgement of the Hon'ble Supreme Court in the case of *M/s. India Glycols Limited and another vs. Micro and Small Enterprises Facilitation Council* observed that the jurisdiction of the Court under Article 226 of the Constitution after

commencement of arbitration proceedings is limited and more particularly the Court cannot exercise power under Article 226 against an award passed under the Arbitration Act. The Court held that violations of the provisions of the Arbitration Act and/or the MSMED Act can be effectively adjudicated by the competent Court u/s. 34 of the Arbitration Act read with Section 19 of the MSMED Act. With the above observations, the High Court dismissed the Writ Petition with liberty to the Petitioner to avail statutory remedy in accordance with law.

The Uttar Pradesh Electricity Regulatory Commission (“**UPERC**”) has issued Draft (Terms and Conditions of Generation Tariff) Regulations 2024 (“**Draft Regulations**”), which will be in effect from 01.04.2024 to 31.03.2029 for cases where tariff for a generating station or a unit is required to be determined by the Commission under Section 62 read with Section 86 thereof.

1. The Draft Regulations do not apply to generating station whose tariff has been discovered through tariff based Competitive Bidding and to generating stations based on Renewable Sources of Energy.
2. Regulation 14 deals with determination of tariff and Regulation 15 provides for the application for determination of tariff for new projects and existing ones. The capital cost, prudence check and structure for determination of tariff is provided for under Regulation 18.
3. The components of fixed charges provided for under Regulation 26 includes return on equity at the rate of 15% per annum, the operation and maintenance expenses have been provided as Rs Lakhs/MW according to varying capacities of coal plants. The norms for operation of coal based generating station and hydro based generating stations have been provided for under Regulations 29 and 30 respectively.
4. Regulation 31 provides for energy charges for coal generating stations, cost of alternative coal supply, landed cost of coal and energy charges for hydro generating stations. Regulation 33 provides for scheduling, hydro power plants of capacity below 25 MW have been exempted from scheduling. Regulation 39 provides for incentive charges which will be payable at prescribed rates during TOD (peak) hours as per UPERC MYT Distribution Tariff Order of the relevant year.
5. Regulation 40 provides that the deviation charges shall be governed by CERC (Deviation Settlement Mechanism and Related matters) Regulation, 2024, till Deviation Settlement Mechanism Regulation of UPERC are notified.
6. Regulation 42 states that in case payment of capacity charges and energy charges is delayed beyond 45 days from the billing date, a late payment surcharge will be imposed by the generating company, as specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time.
7. These regulations aim to ensure transparency, accountability, and fairness in the tariff-determination process, balancing the interests of generating companies, licensees, and consumers, while also encouraging competition and improving efficiency in Uttar Pradesh’s electricity sector.
8. The public hearing in the matter of these regulations is scheduled to be held on 12.02.2025 and all stakeholders have been informed to submit their written comments by 07.02.2025 through hard copy to the secretary of UPERC.

The Draft (Terms and Conditions of Generation Tariff) Regulations 2024 can be accessed from the following [link](#).

**UPERC issues Draft Regulations for Terms and Conditions for Generation Tariff, 2024**

**APTEL directs compliance in long-standing power dispute between Ratnagiri Gas and MSEDCL**

In Execution Petition 12 of 2023, the dispute between Ratnagiri Gas and Power Private Limited (**RGPPL**), a subsidiary of NTPC, and the Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) revolved around capacity charges under a Power Purchase Agreement (**PPA**). The case has traversed through the Central Electricity Regulatory Commission (**CERC**), the Appellate Tribunal for Electricity (**APTEL**), and the Supreme Court over the years, primarily focusing on MSEDCL's refusal to pay fixed charges for RGPPL's declared capacity based on Re-gasified Liquefied Natural Gas (**R-LNG**).

The PPA, executed in 2007, stipulated a 25-year term, with MSEDCL obligated to pay capacity charges irrespective of scheduling power. However, when domestic gas supply declined in 2013, RGPPL switched to R-LNG as a primary fuel, a move contested by MSEDCL, citing cost concerns and the absence of its consent. Despite CERC's ruling in Favor of RGPPL in 2013, MSEDCL challenged the decision in APTEL and subsequently sought to terminate the PPA in 2014.

The Hon'ble Tribunal in 2015 judgment upheld CERC's decision, affirming MSEDCL's liability to pay fixed charges based on RGPPL's declared availability, even if it chose not to schedule power. Further appeals by MSEDCL to the Supreme Court were dismissed, with the Court reiterating Tribunal's findings.

In subsequent execution proceedings, RGPPL sought recovery of approximately ₹7,000 crores in dues, including capacity charges and late payment surcharges. The Hon'ble Tribunal vide order dated 17.01.2025 directed MSEDCL to comply with its earlier judgment and cleared the way for RGPPL to recover its dues. The Hon'ble Tribunal emphasized that RGPPL had fulfilled its contractual obligations, and MSEDCL could not avoid payments based on cost considerations. The case highlights the importance of honouring contractual commitments and regulatory directives in ensuring the financial viability of critical power infrastructure.

**CERC directs CERC's staff to process a proposal for amendment to the GNA Regulations for the grant of additional GNA by STUs with different start dates in a financial year or through different applications for each start date**

The Central Electricity Regulatory Commission ("**CERC**"), vide Order dated 11.01.2025 passed in Petition No. 434/MP/2024, addressed the issue raised by Gujarat Energy Transmission Corporation Limited ("**GETCO**") regarding the relaxation of the timeline stipulated under Regulation 19.2 of the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 ("**CERC GNA Regulations**").

GETCO highlighted difficulties in submitting additional GNA applications through the NSWS portal, which only permitted one effective start date per financial year. This limitation conflicted with GETCO's phased GNA requirements for FY 2025-26, FY 2026-27, and FY 2027-28. GETCO sought relaxation of the 30.09.2024 deadline and the ability to submit applications reflecting differing start dates.

The CERC upheld GETCO's submissions and granted the requested relaxation under its power to remove difficulties and relax provisions, recognizing the technical and procedural challenges. The CERC directed CTUIL to process GETCO's revised application and ensure compliance with GNA Regulations.

It further directed it's staff to process a proposal for amendment to the GNA Regulations for the grant of additional GNA by STUs with different start dates in a financial year or through different applications for each start date and the number of such applications that can be considered for applying additional GNA in a financial year, etc.

The Order dated 11.01.2025 can be accessed from the following [link](#).

**CERC relaxes the provision of Regulation 11A(2) of the GNA Regulations and allows Tata Power Renewable Energy Limited to submit the Financial Closure document in the name of its subsidiary**

The CERC, vide an Order dated 16.01.2025 passed in Petition No. 503/MP/2024, addressed the petition filed by Tata Power Renewable Energy Limited (“TPREL”) seeking relaxation under Regulation 11A(2) of the GNA Regulations for the submission of financial closure documents for its 198 MW wind project at Karur Pooling Station, Tamil Nadu, which was delayed by 3 days. Additionally, TPREL sought acceptance of a financial sanction letter issued to its subsidiary, TP Vardhman Surya Limited, as it was implementing the project.

The CERC condoned the 3-day delay and relaxed the provision of Regulation 11A(2) of the GNA Regulations, considering the substantive steps taken towards implementation of the project and, the project was nearing completion. The CERC allowed the submission of financial documents issued to the subsidiary, aligning with Regulation 15.1, which permits a subsidiary to utilize its parent entity’s connectivity. The Order dated 16.01.2025 can be accessed from the following [link](#).

**JERC invites suggestions/ comments/ inputs/ objections from Public/ Stakeholders on the Consultation paper on Determination of the Generic Levelised Tariff for the Renewable Energy Technologies as specified under Regulation 8 of the JERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024**

The Joint Electricity Regulatory Commission for the State of Goa and Union Territories (“JERC”), vide Public Notice, has invited suggestions/ comments/ inputs/ objections from Public/ Stakeholders on the “Consultation paper on Determination of the Generic Levelised Tariff for the Renewable Energy Technologies as specified under Regulation 8 of the JERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024”. The Consultation paper for the control period FY 2024-25 to FY 2026-27 outlines proposed tariffs for various renewable technologies, including:

- **Small Hydro Projects (SHP):** Tariffs for projects below 5 MW and between 5-25 MW, categorized separately for mainland and island areas.
- **Biomass Projects:** Tariff differentiation based on condenser types (water/air-cooled) and boiler technologies (traveling grate/AFBC).
- **Bagasse and Non-Bagasse Cogeneration Projects:** For mainland and island areas.
- **Biogas and Biomass Gasifier-based Projects:** For mainland and island areas.
- **Municipal Solid Waste (MSW) Projects:** For mainland and island areas.

The Key financial principles include:

- **Debt-Equity Ratio:** Normative 70:30.
- **Return on Equity (RoE):** 14% for RE Projects in Mainland areas (except small hydro projects), 15% for small hydro projects in Mainland area, 16% for Renewable Energy Projects in Island areas (except small hydro projects, 17% for small hydro projects in Island area. RoE shall be grossed up by the Minimum Alternate Tax (MAT) rate for the first 20 years of the Tariff Period and by the latest available notified Corporate Tax rate for the remaining Tariff Period.
- **Normative Interest Rates:** 12% for Mainland Areas, and 13% for Island Areas.

The comments/ suggestions may be forwarded to the JERC by post or by email addressed to the Secretary, Joint Electricity Regulatory Commission (for the State of Goa & Union Territories), 3rd & 4th Floor, Plot No. 55-56, Udyog Vihar, Phase- IV, Sector 18, Gurugram, Haryana 122015 (email: [secy.jercuts@gov.in](mailto:secy.jercuts@gov.in)) latest by 14.02.2025.

The Public Notice and Consultation paper can be accessed from the following [link](#).

**APERC notifies draft Third Amendment to Andhra Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulation, 2013**

The Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) has notified the draft Third Amendment to Andhra Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulation, 2013 (“**2013 Regulations**”). This amendment addresses the adoption and implementation of Smart Meters in compliance with the CEA (Installation and Operation of Meters) Regulations, 2006 and notification dated 17.08.2021 of the Ministry of Power (MoP).

The amendment proposes substitution of Clause 7(2) of the 2013 Regulation, introducing the following changes:

- All distribution licensees are now required to install smart meters, including the display unit, conforming to the technical specifications outlined in the CEA (Installation and Operation of Meters) Regulations, 2006, and its subsequent amendments.
- The smart meters must support both communication modes and be compatible with Advanced Metering Infrastructure (AMI) and Automated Meter Reading (AMR) applications.
- The cost of the meter and allied equipment to be either borne by the distribution licensee or the consumer.
- If the licensee bears the cost, the licensee may collect the cost as rent (approved by the APERC under Section 45 of the Electricity Act, 2003, or as per Tariff Orders). Alternatively, if the consumer bears the cost, the licensee cannot collect any meter rent.

The draft Third Amendment to Andhra Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulation, 2013 can be accessed from the following [link](#).

**APERC notifies draft Fourth Amendment to the Andhra Pradesh Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2004**

APERC has notified the draft Fourth Amendment to the Andhra Pradesh Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2004 (“**2004 Regulations**”). This amendment aims to amend the provisions related to the implementation of Smart Meters and prepaid metering services, in alignment with the CEA (Installation and Operation of Meters) Regulations, 2006 and notification dated 17.08.2021 from the MoP.

The amendment proposes to insert several clauses in the 2004 Regulations as follows:

- **Clause 3.3:** An e-wallet mechanism shall be implemented for prepaid/smart metering services, allowing consumers to recharge their accounts based on their energy consumption needs. Multiple recharge options will be available, including through online portals, mobile apps, and local retailers.
- **Clause 4.1.6:** Physical bills shall not be issued for smart meters. Instead, e-bills shall be sent via mobile apps, SMS, WhatsApp, or will be available on DISCOMS' web portals in both English and Telugu.
- **Clause 4.3.9:** The first recharge for prepaid or smart meters shall include minimum charges, fixed charges, customer charges, and applicable taxes. The mandatory minimum recharge amount is set at Rs. 500, with subsequent recharges available in multiples of Rs. 100.
- **Clause 4.8.3:** Consumers with prepaid or smart meters shall be provided an emergency credit equivalent to their one-day average consumption before disconnection. Consumers

shall receive advance notifications when their balance is low, and disconnections will only occur after the emergency credit is exhausted.

The draft Fourth Amendment to the Andhra Pradesh Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2004 can be accessed from the following [link](#).

**APERC extends the  
timeline for submission of  
comments/ suggestions/  
objections on various  
amendment regulations**

The Andhra Pradesh Electricity Regulatory Commission (“**APERC**”), vide Public Notice dated 21.01.2025, has extended the timeline for submission of comments/ suggestions/ objections on Third Amendment to the APERC (Licensee’s Duty for Supply of Electricity on Request) Regulation, 2013, the draft fourth Amendment to the APERC (Electricity supply code) Regulation, 2004, the draft third amendment to the APERC (Security Deposit) Regulation, 2004, and the draft amendments to the General Terms and Conditions of Supply (GTCS) up to 29.01.2025.

The Public Notice can be accessed from the following [link](#).

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