neeti niyaman
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Legal Updates

Supreme Court observes that individuals are not required to file separate cases to obtain relief already granted to similarly situated individuals in matters involving government departments, unless extension of relief is expressly prohibited by the Court.

The Hon’ble Supreme Court, in the matter of ***Lt. Col. Suprita Chandel v. Union of India & Ors***., Civil Appeal No. 1943 of 2022 has held that individuals are not required to file separate cases to obtain relief already granted to similarly situated individuals in matters involving government departments.

The appellant, commissioned as a Short Service Commissioned officer in 2008, sought parity with similarly situated officers who were granted permanent commission following a one-time age relaxation provided by the Ld. Armed Forces Tribunal (“Ld. AFT”). However, she was denied this benefit as she was not a party to the original case, primarily due to personal circumstances, including maternity leave at the time.

The Hon’ble Supreme Court set aside the Ld. AFT's order denying her relief, holding that the benefit of the AFT’s decision granting permanent commission to other similarly situated officers should have been extended to the appellant automatically. It held that it was unnecessary and unjust to compel her to file separate cases on the same issue. The Hon’ble Supreme Court relied upon precedents set by this Hon’ble Court in Amrit Lal Berry v. Collector of Central Excise (1975) 4 SCC 714 and K.I. Shephard v. Union of India (1987) 4 SCC 431 wherein it had held that individuals who have not pursued litigation should not be penalized when others in identical circumstances have obtained relief. The Hon’ble Supreme Court observed that such benefits must flow to all similarly situated individuals as a matter of fairness and parity. However, in exceptional cases, where a court expressly prohibits the extension of relief or where the grievance pertains strictly to the individual, the government may be justified in denying the benefit to others.

Accordingly, the Supreme Court allowed the appeal and directed that the appellant be granted permanent commission with all consequential benefits, aligning her with the relief granted to other officers in the original case.

Supreme Court upholds the Jurisdiction of Statutory Authorities over Arbitrable Disputes

The Hon'ble Supreme Court in the case of **Dushyant Janbandhu v. M/s Hyundai AutoEver India Pvt. Ltd.** in Civil Appeal No. 14299 of 2024 has held that disputes relating to the non-payment of wages under the Payment of Wages Act, 1936 ("**PW Act**"), and challenges to termination under the Industrial Disputes Act, 1947 ("**ID Act**"), falls exclusively within the jurisdiction of statutory authorities and it cannot be referred to arbitration. The Hon'ble Supreme Court emphasized that statutory remedies under the PW Act and ID Act take precedence over arbitration agreements, as these disputes are inherently non-arbitrable by virtue of the express provisions of the statutes.

Furthermore, the Hon'ble Supreme Court clarified that the jurisdiction of statutory forums such as the Payment of Wages Authority and Industrial Tribunal are exclusive and cannot be displaced by arbitration proceedings. It relied on the principle of subject-matter arbitrability as laid down in the landmark judgement passed in the matter of Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1, which excludes disputes governed by mandatory statutes from the purview of arbitration. It also criticized the respondent's reliance on an arbitration clause to raise a new claim regarding a confidentiality breach, i.e., Clause 19 of the employment contract. It found this to be an afterthought, as such claims were neither raised during disciplinary proceedings nor reflected in the termination order. It held this approach as an abuse of process, therefore, the Hon'ble Supreme Court set aside the Impugned Order passed by the Ld. High Court appointing an arbitrator and awarded costs of Rs. 5,00,000 (Rupees five lakhs) against the respondent.

This judgment relies upon the exclusivity of statutory remedies in employment disputes and reiterates that arbitration cannot override the jurisdiction of statutory authorities.

Madras High Court holds that ineligibility of the Arbitrator cannot be challenged for the first time in a Section 34 petition

The Madras High Court in the case of ***VR Dakshin Private Limited v. SCM Silks Private Limited & Ors.*** being O.S.A. (CAD) No. 62 of 2023 and in ***VR Dakshin Private Limited v. Prime Store & Ors.*** being O.S.A (CAD) No. 63 of 2023 dealt with Appeals under Section 37 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act"**) seeking setting aside of common order dated 20.04.2023 ("**Impugned Order"**) passed in Arb. O.P. No. 257 of 2021 and 209 of 2022. By the said impugned order, the Ld. Single Judge set aside the arbitral award dated 22.03.2021, passed by the Sole Arbitrator *inter alia* on the grounds of the appointment of the Sole Arbitrator purportedly being foul of the Seventh Schedule read with Section 12 of the Arbitration Act.

During arbitration proceedings between the parties arising from disputes under a lease deed, the Respondents did not raise any objection to the appointment of the Sole Arbitrator at any stage nor did they raise any objection to the appointment of the Sole Arbitrator in the counter affidavit and participated in the entire proceedings without even any whisper of any protest or objection. The disputes between the parties were finally adjudicated by the Sole Arbitrator and an award dated 22.03.2021 came to be passed, whereby the Appellant was awarded a sum of Rs. 11,88,16,397/- along with interest and costs in favour of the Appellant. Being aggrieved by the said award, the Respondents filed petitions under Section 34 of the Arbitration Act and for the first time raised an objection to the appointment of the Sole Arbitrator. The Respondents argued that the Sole Arbitrator was appointed unilaterally and ought to be disqualified as per Section 12(5) read with Seventh Schedule of the Arbitration Act. The Respondents contended that no express consent was obtained from the Respondents in appointment of the Sole Arbitrator. The Ld. Single Judge by the Impugned Order set aside the arbitral award *inter alia* on the grounds of appointment of the Sole Arbitrator purportedly being foul of Section 12(5) read with Seventh

Schedule of the Arbitration Act. The Ld. Single Judge thereafter proceeded to appoint a new arbitrator without the consent of the Appellant to hear afresh and adjudicate the disputes between the parties.

While setting aside the order of the single bench, the division bench analysed Sections 4 and 12 of the Arbitration Act. It was observed that the dispute resolution clause in the agreement provided that the reference shall be to a Sole Arbitrator to be appointed by the Lessor. The bench further observed that the Respondents had also joined in the application dated 19.01.2021 whereby the parties by consent extended the tenure of the Sole Arbitrator by a further period of six months. There is no template in the Arbitration Act as to how the waiver should be worded. Further, the High Court observed that under Section 4 of the Arbitration Act, when a party knows that any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating objection to such non-compliance, then such a party shall be deemed to have waived off its right to so object. When the Appellant issued notice of reference, Respondents ought to have objected, but they chose not to object. Respondents not only failed to object, but also actively participated and even consented for extending the time limit under Section 29A of the Act by joint memo dated 19.1.2021. Therefore, there will be a deemed waiver under Section 4 of the Act. The High Court observed that in the case of *TRF Ltd v. Energo Engineering Projects Ltd*. and *Perkins Eastman Architects DPC and another v. HSCC (India) Ltd*., which were relied upon by the single bench to set aside the award, the parties had objected to the appointment of the arbitrator during the arbitral proceedings, which was not the case here. In the present case, it was only after receiving the arbitration award containing adverse findings, respondents in the petitions under Section 34 of the Act, for the first time, raised a dispute/objection with respect to the appointment of the Sole Arbitrator. The High Court further observed that in the present case, the arbitrator does not fall into any of the disqualifications described in the Seventh Schedule and the Respondents never raised any doubt as to the arbitrator's independence or impartiality until the petitions u/s. 34 were filed. With the above observations, the High Court allowed the appeals, and the impugned Order was set aside.

Bombay High Court holds that a court cannot conflate the concepts of maintainability and jurisdiction while deciding application under Section 20 of the Arbitration Act, 1940

The Bombay High Court recently in the matter of **Deepak Manaklal Katariay v. Ashok Motilal Katariya & Ors**., bearing Writ Petition No. 2315 of 2015, dealt with a challenge to an Order passed by a Trial Court on an application filed under Section 20 of the Arbitration Act, 1940 ("**Act**") whereby the Trial Court held that it lacked the jurisdiction to entertain the application. The application under Section 20 of the Act was filed after multiple rounds of litigation before various Courts including the Hon'ble Supreme Court.

The case of the Petitioner was that the Respondent was barred by the principle of estoppel from raising objections regarding the applicability of the Act. It was pointed out that in the earlier proceedings including the one before the Supreme Court, the Respondents had pleaded that the subject arbitration agreement dated 28.05.1995 and the subsequent disputes were governed by the provisions of the Act. It was argued that the doctrine of estoppel, as enshrined in Section 115 of the Indian Evidence Act, 1872, precludes a party from denying or going back on its prior statements, especially when such statements were relied upon by the petitioner to initiate proceedings under the Act. It was further argued that the Trial Court erred in conflating the issues of maintainability and jurisdiction. The Petitioner asserted that maintainability pertains to procedural compliance, whereas jurisdiction involves the Court's legal authority to adjudicate. The Petitioner argued that the Trial Court prematurely concluded on jurisdiction without analysing the broader context of Section 20 of the Act.

The Respondents supported the impugned order by emphasizing on the transition in the statutory regime governing arbitration. The Respondents argued that the Arbitration and Conciliation Act, 1996, explicitly repealed the Arbitration Act, 1940, through Section 85(1). The savings clause under Section 85(2)(a) provides that the provisions of the Act would only apply to arbitration proceedings that had commenced before the enactment of the 1996 Act, i.e., before 22.08.1996. The Respondents argued that since no arbitration proceedings had commenced under the Act before its repeal, the Petitioner cannot invoke its provisions. The Respondents argued that the Trial Court correctly framed and decided the preliminary issue of jurisdiction under Order XIV Rule 2 of the Code of Civil Procedure, 1908, as it pertains to the foundational competence of the Court to entertain the matter.

After hearing the arguments of both the parties, the High Court observed that the Trial Court had evidently conflated the concepts of jurisdiction and maintainability. The High Court observed that the terms "jurisdiction" and "maintainability" are often mistakenly used interchangeably, yet they hold distinct legal connotations. The High Court observed that jurisdiction refers to the power and authority of a Court to adjudicate a dispute and render a binding decision. The High Court observed that jurisdiction derives its authority from statutes, and its absence renders the court incompetent to decide the matter. Jurisdiction does not depend on the correctness of the decision; a court may decide rightly or wrongly, yet its jurisdiction remains unaffected. It is foundational to the legitimacy of judicial proceedings, as it embodies the legal capacity to entertain a suit and adjudicate on the merits. Whereas, maintainability pertains to whether a legal proceeding is competent to be entertained, factoring in procedural and substantive requirements. Maintainability relates to whether the suit is procedurally valid and not inherently barred. Some of the factors affecting maintainability include bar under statutes, limitation period, locus standi etc. The High Court observed that jurisdiction derives its authority from statutes conferring power on the court. Maintainability arises from procedural and statutory compliance requirements for initiating proceedings. Lack of jurisdiction results in the nullity of proceedings, as the court inherently lacks authority to adjudicate. Non-compliance with maintainability bars leads to dismissal without deciding the merits of the case but does not affect the court's inherent power.

The High Court while concluding observed that a perusal of the impugned order reveals that the Trial Court framed the issue of jurisdiction. However, while recording its findings, it concluded that the proceeding was not maintainable due to the inapplicability of Section 20 of the Act. This approach demonstrates a fundamental misunderstanding of the distinction between jurisdiction and maintainability. The Trial Court improperly conflated the provisions of Section 20 with maintainability. The Trial Court, while concluding that it lacked jurisdiction, proceeded to consider the maintainability of the petitioner's claim under Section 20 of the Act. This consideration was beyond the scope of the Trial Court's authority, as a finding of lack of jurisdiction precludes further deliberation on the merits or maintainability of the case. With the above observations, the High Court quashed and set aside the impugned Order of the Trial Court.

Calcutta High Court observes that Order passed under Section 11 of the Arbitration and Conciliation Act, 1996 cannot be recalled if valid Arbitration Agreement exists to justify reference of parties to Arbitration.

The Hon'ble High Court of Calcutta **("Calcutta High Court")** vide its order dated 06.12.2024 in the case of ***Bankat Garodia vs. Adityo Poddar***, passed in AP-COM/17/2023, has observed that an order passed under Section 11 of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")** cannot be recalled if valid Arbitration Agreement exists to justify reference of parties to Arbitration.

The Petitioner filed an application before the Calcutta High Court seeking recall of order dated 30.08.2024 passed under Section 11 of the Arbitration Act. The Petitioner urged three points on which the said order ought to be recalled: i) agreement-in-question did not contain a valid arbitration clause in the eyes of law and the reference under Section 11 of the Arbitration Act could not have been made ii) there was a material suppression in the Application under Section 11 of the Arbitration Act as the Respondent herein (applicant in the Section 11 application) had averred that the Petitioner did not give any reply to the notice served by the Respondent under Section 21 of the Arbitration Act whereas a reply was actually given iii) the Petitioner was unrepresented on the date of passing of the order under recall.

The Petitioner placed reliance on the case of ***Bihar State Mineral Development Corporation & Anr. Vs. Encon Builders (I)(P) Ltd.*** (2003) 7 SCC 418 where the Supreme Court laid down the essential ingredients of an Arbitration Agreement. An Arbitration Agreement must contain reference to a present or a future difference in connection with some contemplated affair, an intention of the parties to settle such difference by a private tribunal and an agreement in writing by the parties to be bound by the decision of the Arbitral Tribunal. It was further held by the Supreme Court that although the term “arbitration” is not required to be specifically mentioned therein a broad consensus between the parties that the disputes and differences should be referred to a domestic tribunal must appear in the arbitration clause/agreement. The Counsel for the Petitioner further placed reliance upon the judgment of ***Blue Star Limited Vs. Rahul Saraf*** 2023 SCC Online Cal 1406 and submitted that there should be a clear intention emanating from the arbitration clause that the matter would be referred to the arbitration by the parties which was not the case in the present case.

The Respondent contended that the instant Application was not maintainable in law and further argued that while adjudicating a Section 11 Application the Courts just have to ascertain existence of a valid Arbitration Clause. With regards to the allegation that a reply was given to the Notice under Section 21 of the Arbitration Act, the Respondent contended that no proof of service had been annexed to the recall application. The Respondent further argued that existence of the arbitration clause was never denied by the Petitioner. The Counsel for the Respondent relied on the case of ***Budhia Swain and Others vs. Gopinath Deb and Ors*** (1999) 4 SCC 396 wherein it was held that courts have inherent power to recall and set aside an order obtained by fraud practised upon the court, when the court is misled by a party or when the court itself commits a mistake which prejudices a party. A judgment rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died, and the estate was not represented would also be a sufficient ground for recall. The Counsel for the Respondent further placed reliance on the case of ***Aslam Ismail Khan Deshmukh Vs. ASAP Fluids Pvt. Ltd. & Anr.*** 2024 SCC Online SC 3191 where it was held by the Supreme Court that the referral court (under Section 11 of the 1996 Act) shall only examine the existence of a prima facie Arbitration Agreement and no other issues.

In this regard Calcutta High Court observed that the first of such grounds as discussed by the Supreme Court in ***Budhia Swain*** (Supra) for recalling an order is that the court was misled by a party and the second that hearing was not given to one of the parties. Based on these two grounds the court decided to consider the said Application and proceeded to analyse the arguments of the Petitioner on merits. The Calcutta High Court observed that the Reply which was given by the Petitioner to the Section 21 notice did not dispute the very existence of the Arbitration Agreement. The Calcutta High Court further gave an observation that even if it is assumed that the same was actually served on the Respondent, it is obvious that the very issuance of such Reply and denial of reference to arbitration, on whatever grounds, is a refusal to the appointment of arbitrator, bringing the present case within the ambit of Section 11(4) and Section 11(6) of the Arbitration Act which empowers the court to take up an Application under Section 11 of the Arbitration Act. It further noted that in ***Blue Star Limited*** (Supra) the Court observed that for a reference under Section 11 of the Arbitration Act there has to be an intention or understanding between the parties which can be gleaned from the agreement which specifically and mandatorily requires a reference of future disputes to arbitration.

The Court noted that the instant case is not a case of distinction between a clause which keeps open an option to the parties to refer the disputes to arbitration as opposed to a mandatory clause to refer such disputes to arbitration. Calcutta High Court further observed that the use of the expression ‘arbitration’ clearly indicates that the parties intended to refer the disputes to arbitration as the chosen alternative dispute resolution mode. Clause 21 of the Agreement, stated that such Dispute Resolution and Arbitration shall be *“Subject to Kolkata Jurisdiction.”* In this regard the Calcutta High Court observed that instead of restricting the scope of the referable disputes by using specific words such as disputes relating to particular components of the agreement, Clause 21 was of wide amplitude and threw the scope of reference wide open. The expression “dispute” was as wide as possible since it did not restrict the parties to differences arising out of particular facets of disputes arising out of the agreement but speaks about a blanket reference to arbitration in case of any dispute relating to or arising out of the agreement-in question. Thus, Clause 21 amply caters to the “prima facie satisfaction” element which is the root of the jurisdiction of the Section 11 Court. Calcutta High Court in this regard lastly gave an observation that on a bare perusal of Clause 21 and Clause 22 which is the jurisdiction clause confining the jurisdiction exclusively to courts at Kolkata, it cannot be said that the decision given by the was patently bad in law or an error apparent on the face of the record and dismissed the instant Application.

APTEL clarifies Transmission Licensing and Tariff Liabilities

The Appellate Tribunal for Electricity (**APTEL**), by its judgment dated 02.12.2024, adjudicated two appeals, being Appeals Nos. 210 and 279 of 2016, filed by Chhattisgarh State Power Distribution Company Limited (CSPDCL) concerning the 400 kV D/C Jindal Power Limited (JPL) Tamnar-PGCIL, Raipur Transmission line and the 400/220/33kV JPL Tamnar-switchyard established by Jindal Power Limited (JPL). These appeals arose from CSPDCL’s challenges to (i) the transmission license granted to JPL and (ii) the determination of transmission tariffs for the said assets.

In Appeal No. 210 of 2016, CSPDCL challenged the order dated 18.12.2015 whereby the Central Electricity Regulatory Commission (CERC) dismissed the petition filed by CSPDCL seeking cancellation of the transmission license granted to JPL in 2011. The primary contention was that the transmission license was issued for a dedicated transmission line, which does not qualify for licensing under Section 14 of the Electricity Act, 2003 (“Act”). APTEL dismissed this appeal, holding that CSPDCL failed to challenge the 2011 order, vide which the transmission license was granted to JPL, within the statutory period. APTEL observed that the petition filed before CERC seeking cancellation of the license was an improper attempt to revisit a concluded order under the guise of cancellation. APTEL further clarified that the terms “cancellation” and “revocation” are synonymous within the meaning of the Act and that cancellation of a license can only be sought under the grounds specified in Section 19 of the Act, none of which were satisfied in this case. Additionally, CSPDCL itself started to use the said transmission line from 20.10.2023 rendering the challenge to grant of license irrelevant.

In Appeal No. 279 of 2016, CSPDCL contested the determination of annual fixed charges and transmission tariffs for JPL’s transmission assets for the period 2011-2014, arguing that it should only be liable for charges from 20.10.2023, when it began using the transmission line. APTEL partly allowed this appeal, holding that CSPDCL could not be burdened with charges for a period during which it did not utilize the transmission assets. APTEL directed that CSPDCL’s liability for transmission charges shall commence only from 20.10.2023.

The APTEL, in its judgment dated 03.12.2024 passed in Appeal No. 339 of 2018, addressed a dispute concerning the methodology for energy accounting when a consumer utilizes electricity from multiple sources, including captive wind turbines and short-term open access (“**STOA**”). The appeal was filed by Paschim Gujarat Vij Company Limited (“**PGVCL**”) challenging the methodology prescribed by the Gujarat Electricity Regulatory Commission's (“**GERC**”) in its order dated 15.07.2015.

APTEL clarifies Energy Accounting Methodology for Consumers sourcing power from multiple sources	The case involved Investment & Precision Casting Ltd., a consumer operating two captive wind turbines while sourcing additional power through STOA and maintaining Contract Demand with PGVCIL. The methodology under challenge prioritized accounting STOA energy over energy generated by the consumer's captive wind turbines simply because energy purchased through STOA had to be accounted for in 15 minutes time blocks. PGVCL argued that this approach was flawed, as it allowed the consumer to bank surplus wind energy while consuming cheaper STOA power, increasing the financial burdens of PGVCL which are ultimately borne by its consumers. In its ruling, APTEL found the GERC methodology to be inconsistent with the principles of the Electricity Act, 2003, which emphasizes protecting consumer interests and promoting renewable energy. APTEL noted that prioritizing STOA energy undermines the intent of captive power use and could lead to misuse of banking facilities. APTEL noted that the primary purpose of the consumer's captive wind turbines was self-consumption and not to profit from banking arrangements or force the distribution licensee to procure surplus wind energy at a higher cost. APTEL prescribed a revised energy accounting methodology wherein energy generated from captive wind turbines had to be accounted first to maintain the integrity of captive use. It was held that the STOA energy should only be considered after fully adjusting wind energy, with any remaining consumption to be supplied by the distribution licensee. APTEL upheld GERC's prioritization for energy adjustments between multiple wind turbines, favouring newer turbines with shorter banking periods.
APTEL upholds CERC's exclusive jurisdiction in matters of fixation of Trading Margins for Interstate Electricity Transactions	The Appellate Tribunal for Electricity **("APTEL")** dealt with the contentious issue of whether the Punjab State Electricity Regulatory Commission **("PSERC")** can fix trading margins for interstate electricity transactions. The case involved PTC India Ltd., an interstate trading licensee, which supplied power from the Malana-II Hydro Electric Project in Himachal Pradesh to the Punjab State Power Corporation Limited **("PSPCL")** under a long-term arrangement. The trading margin was initially agreed upon in the Power Sale Agreement **("PSA")** at Rs.0.05/kwh**,** and the parties subsequently executed a Tripartite Agreement reserving the power of fixation of trading margin by the PSERC. Subsequently, PSERC also passed an order reducing the trading margin to Rs. 0.01 per kWh, which prompted PTC India to challenge PSERC's jurisdiction, arguing that such matters are solely within the purview of the Central Electricity Regulatory Commission **("CERC").** The primary issue before APTEL was whether PSERC at all had the jurisdiction and power to determine trading margins for interstate electricity trading when CERC Interstate Trading Margin Regulations, 2005 were already in force when the PSA was executed and which capped the margin at Rs.0.04/kwh. APTEL unequivocally held that jurisdiction to fix trading margins for interstate trading is exclusively vested with CERC under Section 79(1)(j) of the Electricity Act, 2003. It emphasized that Section 86(1)(j) of the Act, which grants certain regulatory powers to SERCs, is confined to intra-state trading activities. APTEL further underscored the principle that *jurisdiction must be exercised strictly in accordance with the provisions of the Act.* The Tribunal held that statutory provisions clearly delineate the scope of authority between CERC and SERCs. In this case, PSERC's act of fixing trading margins for an interstate transaction directly contravened the jurisdictional framework established under the Electricity Act. APTEL reasoned that allowing a regulatory body to exceed its jurisdiction undermines the statutory scheme and creates regulatory uncertainty. The Tribunal also highlighted that the Tripartite Agreement between PTC India, PSPCL, and Everest Power, which attempted to confer jurisdiction on PSERC for fixing trading margins,

was void. APTEL clarified that jurisdiction cannot be conferred through agreement or consent if it is not already established under the statute. The Tribunal referred to CERC's 2010 Regulations, which deliberately left trading margins for long-term interstate contracts to market forces, reflecting the view that competitive dynamics adequately address risks and returns. Additionally, under the 2020 Regulations, trading margins for long-term contracts are to be mutually agreed upon by the parties, further solidifying CERC's exclusive role in such matters. APTEL's judgment reaffirms the statutory framework of the Electricity Act, 2003, emphasizing that regulatory jurisdiction for interstate trading resides solely with CERC.

CERC notifies date of coming into effect of Clause 8 of Regulation 8 of the CERC DSM Regulations, 2024

CERC, vide notification bearing No. L-1/260/2021/CERC dated 29.11.2024, has notified that Clause 8 of Regulation 8 of the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2024 ("CERC DSM Regulations, 2024") shall, unless notified otherwise, come into effect from 00.00 hours of 23.12.2024. It also notified that until the period ending 24.00 hours of 22.12.2024, para 27 (3) (a) of the Order dated 06.02.2023 in Petition No. 01/SM/2023 shall continue to be in operation.

The said notification can be accessed from the following *link.*

CERC extends date for seeking comments/ suggestion on Draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024

CERC, vide Public Notice dated 11.12.2024, has extended the date for seeking comments/ suggestions on Draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024 till 31.12.2024.

The comments/ suggestions/ objections may be sent to the Secretary, CERC, 7th Floor, Tower-B, World Trade Centre, Nauroji Nagar, New Delhi 110029 or may be mailed to secy@cercind.gov.in; rashmi@cercind.gov.in and debashish.roy39@cercind.gov.in or may also be uploaded through SAUDAMINI Portal after login and clicking: e-Regulation link on the e-filing Home Page.

he said notification can be accessed from the following *link*.

CERC issues Explanatory Memorandum to the Draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024

CERC has issued Explanatory Memorandum to the Draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024.

The draft regulations aim to create a framework for the exchange of Carbon Credit Certificates for the Obligated and the Non-Obligated entities on Power Exchanges, facilitating compliance and offset mechanisms under the Carbon Credit Trading Scheme, 2023.

For the purpose of exchange of Carbon Credit Certificates, the Grid Controller of India is appointed as Registry shall establish the necessary framework in accordance with Section 6 of Carbon Credit Trading Scheme, 2023.

The Explanatory Memorandum and the draft regulations can be accessed from the following *link.*

CERC vide Order dated 29.11.2024 passed in Petition No. 4/SM/2024 (Suo-Motu), has introduced significant revisions to the mechanism for the recovery of costs incurred due to the installation of Emission Control Systems ("**ECS**"), as issued vide Order dated 13.08.2021 in Petition No. 6/SM/2021, in compliance with the Environment (Protection) Amendment Rules, 2015. This revised mechanism addresses several challenges faced by coal-based thermal power plants operating under tariff-based competitive bidding agreements pursuant to Section 63 of the Electricity Act, 2003.

CERC revises mechanism for recovery of emission control expenditures for projects whose tariff is determined through competitive bidding under section 63 of the Electricity Act, 2003	The revised framework introduces updated norms for key parameters such as depreciation, operation and maintenance (O&M) expenses, and the cost of debt and equity related to the ECS installations. The mechanism also provides interim relief in the form of provisional tariffs to ease the financial burden on generating companies during the ECS installation period. The Commission, in its order dated 13.08.2021 in Petition No. 6/SM/2021, had specified the treatment of depreciation of the emission control system based on the 2019 Tariff Regulations which have since been revised by the Commission vide the 2024 Tariff Regulations. The revised mechanism introduces an accelerated schedule for recovering depreciation costs for ECS installations, allowing generating companies to recover a higher portion of their capital expenditure in the initial years. Further, the framework/ mechanism for cost recovery has been revised to include more favourable norms for debt and equity financing. Adjustments have been made to interest rates and returns on equity to align with market conditions as the CERC has decided to allow the margin of 280 basis points (as against the proposed 250 basis points) over the SBI MCLR (1 year tenor) which shall remain valid for the control period ending 31.03.2029. Moreover, the CERC has revised the norms for O&M expenses. The CERC has allowed @2.0% of the additional capital expenditure (ACEe) for installation of ECS and to be escalated at the rate of 5.25% per annum till 31st March 2029. These revisions account for the higher costs of specialized maintenance, energy consumption by ECS components, and other operational requirements, ensuring that generating companies can adequately manage these expenses over the system's lifecycle. The CERC has emphasized the restitution principle, which seeks to restore the economic position of generating companies as if the change-in-law event (installation of ECS) had not occurred, while avoiding the blending of restitutionary and compensatory principles. The Order dated 29.11.2024 can be accessed from the following *link*.
BERC notifies BERC (Terms and Conditions of Green Energy Open Access) Regulations, 2024	The Bihar Electricity Regulatory Commission ("**BERC**"), vide its Order dated 25.11.2024 passed in Case No. 06/2024, has adopted the BERC (Terms and Conditions of Green Energy Open Access) Regulations, 2024 ("**BERC GEOA Regulations, 2024**"). BERC GEOA Regulations, 2024 is aimed at promoting the adoption and consumption of green energy by streamlining the framework for green energy open access, aligning with the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022, as amended. One of the significant changes introduced is the reduction in the threshold for open access transactions from 1 MW to 100 kW, making it easier for smaller consumers to participate. Further, the BERC GEOA Regulations, 2024 mandate time-bound processing of open access applications, ensuring a smoother and more efficient approval process. It also enshrines the provision of banking for renewable energy, where surplus energy can be stored for later use, subject to specific banking charges. The Final Tariff Order can be accessed from the following *link*.
	Madhya Pradesh Electricity Regulatory Commission ("**MPERC**") has issued Practice Directions for Smart Prepaid Billing of Consumers, 2023. The Practice Direction has been issued to guide the implementation of smart prepaid billing for electricity consumers.MP Power Management Company and three Discoms filed a petition for issuance of these directions. The Commission published a draft on 14.09.2023, with feedback

MPERC issues Practice Directions for Smart Prepaid Biling of Consumers, 2023

sought by 03.10.2023. The Commission also held Public hearing conducted on 10.10.2023 with stakeholders' suggestions incorporated.

Key provisions have been summarised as under:

1. General Provisions
   It will be applicable across Madhya Pradesh. It Covers consumers using prepayment smart meters, with phased implementation under the RDSS plan. The Consumers can opt-in or out of the prepaid metering system.

2. Definitions
   Terms like Advance Metering Infrastructure (AMI), Prepaid Account, and Automatic Cutoff are defined in line with the Electricity Act, 2003, and MPERC regulations.

3. Applicability
   Extends to new and existing consumers where infrastructure allows for prepayment meters. Smart prepaid meters enable automated disconnection upon negative balance, exempting standard notice requirements.

4. Metering and Migration
   a. Migration to Prepaid Billing:
      Implemented in phases for specified areas or consumer classes. Existing postpaid meters may be retained or replaced.

   b. Consumer Notification:
   – Advance notice is mandatory for migration.
   – Standard Operating Procedures (SOPs) and FAQs must be prepared.

   c. Meter Installation & Maintenance:
   – Distribution Licensees must maintain stock for new installations and replacements.
   – Meters must conform to updated technical standards and have real-time recharge capabilities.

5. Billing and Payments
   a. Daily Provisional Billing:
   – Daily charges for energy and fixed costs are deducted from the prepaid balance.
   – Balance updates are accessible via mobile apps, SMS, and web portals.

   b. Final Monthly Billing:
      Reconciles provisional deductions with actual monthly charges. Adjustments made for discrepancies.

   c. Recharge Facilities:
   – No maximum recharge limit; available through multiple modes (online/offline).
   – Rebates, Incentives, and Deposits Consumers receive rebates for all recharge modes. Existing security deposits for postpaid consumers are adjusted as initial prepaid balance. Outstanding arrears are resolved through deductions or instalment plans.

6. Disconnection and Grace Periods

   a. Grace Period:
   – Consumers have 3 days post-zero balance to recharge.

- LT domestic consumers receiving government subsidies are exempt from automatic disconnection under specific conditions.

b. Disconnection Rules:
- Automatic cutoff occurs after the grace period, except between 6 PM to 10 AM.
- -Temporary disconnection can be reversed within 6 months, failing which the connection is permanently removed.
- -Record-Keeping and Revenue Recognition
- -Recharge records and past billing data (6 months) must be maintained and accessible to consumers.
- -Revenue is recognized upon final billing each month.

7. Key Implementation Guidelines
   - Distribution Licensees must ensure transparency, consumer education, and adherence to all regulatory standards.
   - SOPs and FAQs must detail migration, disconnection, billing, and recharging processes.

This framework establishes a comprehensive approach to managing prepaid electricity billing, ensuring consumer convenience, transparency, and regulatory compliance.

The MPERC Practice Directions for Smart Prepaid Billing of Consumers, 2023 can be accessed from the following *link*.

KSERC affirms its exclusive authority under the Electricity Act, 2003, to determine consumer categories and tariffs

Kerala State Electricity Regulatory Commission ("**KSERC**") in OP No. 34/2024 vide Order dated 04.12.2024 reviewed a demand notice issued by the Kerala State Electricity Board Ltd ("KSEB Ltd.") to a consumer, Mr. Sreekumar for Rs. 1,36,718. The issue arose from a tariff reclassification dispute concerning a catering unit operated by the petitioner under Consumer No. 1156293023879. The Consumer challenged the demand cum disconnection notice issued to him for the period from 09/2017 to 11/2022 on misclassification of tariff of LT-IV (A) instead of LT VIIA

An inspection in November 2022 alleged misuse of the connection for commercial purposes, leading to a reclassification to LT-VII (A) Commercial tariff and a retrospective demand for Rs. 1,36,718 for the period between September 2017 and November 2022.

The KSERC identified three primary questions to resolve:

1. Can KSEB Ltd. Assign or Reassign Tariffs?
   The Commission affirmed its exclusive authority under the Electricity Act, 2003, to determine consumer categories and tariffs. However, KSEB Ltd. can assign tariffs based on the Commission's tariff orders. It can also reclassify consumers if errors in categorization are discovered but must strictly follow regulations.

2. Can the Tariff Order of October 31, 2023, Have Retrospective Effect?
   KSERC concluded that tariff orders cannot be applied retrospectively, as this would disrupt established revenue frameworks and contravene judicial precedents. The 2023 clarification categorizing non-retail catering units under LT-IV (A) Industrial tariff is effective only from November 1, 2023, and does not apply to prior periods.

3. Is the Short Assessment Bill Legally Valid?
   The Commission determined that the short assessment bill was not legally sustainable. It noted inconsistencies in how KSEB Ltd. assigned tariffs to similar catering units and highlighted procedural lapses, including the delayed reassignment of tariff after five years

The KSERC set aside the demand notice declaring it invalid. It further reasserted its authority as the sole entity to define consumer categories and emphasized that any retrospective tariff adjustments violate regulatory and legal principles.

KSERC issues Schedule of Tariffs and Terms and Conditions for Retail Supply of Electricity by KSEB Ltd. and all other Licensees in case no. APR®-44/24-25 revisiting its orders as directed by the Hon'ble APTEL

Kerala State Electricity Regulatory Commission ("**KERC**") Thiruvananthapuram has issued Schedule of Tariffs and Terms and Conditions for Retail Supply of Electricity applicable to consumers served by the Kerala State Electricity Board Limited (**KSEBL**) and other licensees in Kerala from December 5, 2024, to March 31, 2027. It outlines specific tariff rates, fixed charges, and conditions for various consumer categories, including low tension (LT), high tension (HT), and extra high tension (EHT) consumers. Key highlights are:

1. General Conditions:
   All rates exclude taxes, duties, and other governmental charges, which are additional. The minimum charge payable includes fixed or demand charges, even during disconnection periods.

2. Low Tension Tariff (LT):
   Categorized for domestic, agricultural, industrial, commercial, and general purposes. Specific tariffs and conditions are prescribed for each category.
   Domestic consumers are charged based on consumption slabs, with concessions for below-poverty-line (BPL) families, cancer patients, and other specified groups.
   Industrial and agricultural consumers are incentivized to install ISI-certified capacitors for power factor improvement, failing which charges increase by 20-30%.

3. High Tension (HT) and Extra High Tension (EHT) Tariffs:
   Applicable for higher voltage supply (11,000 volts or more for HT, and above 33,000 volts for EHT).
   HT and EHT consumers are categorized into industrial, commercial, and domestic sectors with detailed tariff structures, including peak and off-peak pricing under Time of Day (ToD) rates.
   Incentives for improved power factors are offered, and penalties apply for deviations.

4. Special Tariffs:
   Public lighting, temporary connections, and electric vehicle charging stations have separate tariffs.
   Street lighting is divided into metered and unmetered connections, with varying charges based on lamp type and burning hours.
   Electric vehicle charging stations are encouraged with differentiated rates for solar and non-solar hours.

5. Seasonal and Temporary Connections:
   Seasonal consumers must register and are subject to higher demand charges during active periods.
   Temporary connections have tariffs based on usage type and duration.

6. Energy Efficiency and Subsidies:
   Rebates are provided to consumers adopting energy-efficient practices.
   Special provisions are made for social welfare schemes, such as water supply projects and charitable institutions.

The said Order aims to rationalize electricity consumption and ensure equitable distribution of energy costs while promoting energy efficiency and supporting specific consumer groups through targeted subsidies. KERC's order can be accessed from the following *link.*

NCLAT held that raising money by issuance of convertible debentures with an option to be later converted into equity shares can be classified as a financial debt

The National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi has held that raising money by issuance of convertible debentures with an option to be later converted into equity shares can be classified as a financial debt if a default is committed by the corporate debtor.

The brief facts leading to the present dispute is that financial assistance was provided by the Appellant to the Corporate Debtor. An application was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC,2016") by the Appellant when the Corporate Debtor defaulted in repaying the amount. The Adjudicating Authority admitted the corporate debtor into insolvency. The Respondent filed its claims before the RP on basis of an arbitral award, Debenture Subscription Agreement ("**DSA**") and related documents.

The status of the Respondent by the RP as a financial creditor was initially accepted but later rejected on the ground that the award had not attained finality.

The Appellant submitted that there was no provision for redemption of the Compulsory Convertible Debenture ("**CCD**") under the DSA. The transaction of conversion into equity shares was not a 'financial debt'. The DSA does not support any mechanism for the redemption of the CCDs and it only provided for compulsory conversion into equity. It further argued that even if the failure to redeem the CCD was considered as an event of default, it is in the form of damages or penalty for breach of terms of DSA and the said payment in the form of penalty, in no manner, can be construed as a financial debt in terms of Section 5, sub-section (8).

In response, it was the case of the Respondent that debenture is a 'financial debt' as defined under Section 5, sub-section (8) of the IBC. The CD has obtained financial assistance from Respondent No.1 under the DSA, which is a mode of taking money.

Hon'ble NCLAT observed that by issuing debenture, the Issuer has raised money for its capital and on plain reading of definition of 'financial debt', the debentures are fully covered under Section 5, sub-section (8) (c).

It further noted that various clauses of DSA indicate that Investor has option to request for conversion of CCD into equity, which option was to be exercised within a period of 65 months from the date of allotment. Hon'ble NCLAT further observed that the Issuer has raised the amount by issuance of debenture, which was clearly a 'financial debt' within the meaning of Section 5, subsection (8). Finally, Hon'ble NCLAT opined that there is no ground to interfere with the order of the Adjudicating Authority, allowing the Application of Respondent No.1. Accordingly, the present appeal was dismissed.

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