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-LAW IN ACTION



Legal Updates

Supreme Court reaffirms that Earnest Money forfeiture must be reasonable and cannot amount to a Penalty under Section 74 of the Contract Act

The Hon'ble Supreme Court, in the case of *Godrej Projects Development Ltd. v. Anil Karlekar & Ors.*, Civil Appeal No. 3334 of 2023 has vide judgement dated 03.02.2025 reaffirmed that the forfeiture of earnest money in real estate contracts must be reasonable and should not amount to a penalty under Section 74 of the Indian Contract Act, 1872. The Hon'ble Supreme Court held that forfeiture beyond 10% of the Basic Sale Price ("BSP") is excessive and arbitrary.

The flat buyers of the 'Godrej Summit' project in Gurgaon, Haryana, sought cancellation of their bookings due to a decline in market prices. The builder, relying on the Apartment Buyer Agreement ("ABA"), forfeited 20% of the BSP as earnest money. The buyers challenged this forfeiture, arguing that it was unfair and arbitrary. The Hon'ble Supreme Court upheld the order passed by National Consumer Disputes Redressal Commission ("NCDRC"), limiting the forfeiture of earnest money to 10% of BSP, citing fairness and judicial precedents. The Hon'ble Supreme Court also found that the agreement was heavily biased in favor of the builder, reinforcing the need to protect consumers from unfair contractual clauses. While allowing the refund of excess amounts, the Hon'ble Supreme Court rejected the award of 6% interest, and held that it was unjustified and arbitrary.

The Hon'ble Supreme Court relied on *Maula Bux v. Union of India* (1969) 2 SCC 554, wherein it was held that only reasonable forfeitures are enforceable. The Court held that if the forfeiture of earnest money under a contract is reasonable, it does not fall within the ambit of Section 74 of the Indian Contract Act, 1872, as such forfeiture does not amount to imposing a penalty. However, if the forfeiture is in the nature of a penalty, Section 74 would apply. Furthermore,

the Court held that if a contract stipulates that the party in breach must pay or forfeit a sum already paid to the aggrieved party, such an undertaking is considered penal in nature. Consequently, the Hon'ble Supreme Court upheld the impugned order passed by the NCDRC, affirming that the forfeiture of 10% of the BSP constitutes a reasonable and enforceable earnest money forfeiture.

The Hon'ble Supreme Court, in *Surendra G. Shankar & Anr. v. Esque Finamark Pvt. Ltd. & Ors.* (Civil Appeal No. 928 of 2025) and *Dilip Kumar v. Esque Finamark Pvt. Ltd. & Ors.* (Civil Appeal No. 929 of 2025), has held that when an appeal before the High Court is limited to the issue of condonation of delay, it should not delve into the merits of the case. The Hon'ble Supreme Court emphasized that once the delay is condoned, only then can the appellate court examine the substantive issues involved.

The case arose from complaints filed before the Maharashtra Real Estate Regulatory Authority (“**RERA**”), Mumbai, seeking possession of flats. These complaints were dismissed, and in a separate order, the developer was discharged from the proceedings. The complainants subsequently challenged both orders before the Maharashtra Real Estate Appellate Tribunal (“**MREAT**”). However, since one of the orders was appealed beyond the prescribed time limit, a delay condonation application was filed. The MREAT rejected the appeals on limitation grounds, stating that no sufficient cause was shown for condoning the delay. The complainants then approached the Bombay High Court in second appeals, it acknowledged that the delay should have been condoned under normal circumstances. However, while making this observation, the Ld. High Court went on to decide the case on the basis of its merits and ultimately dismissed the appeals. Aggrieved by this decision, the appellants approached the Hon'ble Supreme Court.

The Hon'ble Supreme Court held that the Ld. High Court erred in deciding on the merits of the case, especially since the MREAT had not examined the substantive issues. The Hon'ble Supreme Court held that in such cases, the High Court should strictly limit itself to deciding whether the delay ought to be condoned.

Accordingly, the Hon'ble Supreme Court allowed the appeals, set aside the High Court's order, and condoned the delay. It restored the appeals before the MREAT, directing it to decide the matter purely on its merits without being prejudiced by any of its previous observations.

The Ministry of New and Renewable Energy (“**MNRE**”) vide gazette notification dated 27.01.2025 has notified the Solar Systems, Devices, and Components Goods Order, 2025 (“**2025 Order**”) superseding the existing Solar Photovoltaics, Systems, Devices, and Components Goods (Requirements for Compulsory Registration) Order, 2017 (“**2017 Order**”). The 2025 Order is aimed at ensuring availability of safe, high-performance solar products in India's growing renewable energy market.

The 2025 Order has been notified under the Bureau of Indian Standards Act, 2016 and will come into effect 180 days from the date of publication. Key highlights:

1. The 2025 Order seeks to set standards of safety and performance in respect of solar PV modules, inverters to be used in solar PV applications and storage batteries.
2. It is applicable to manufacturers, importers, distributors, retailers, sellers and lessor of solar PV systems and components and the products exclusively meant for export are exempted from the application of the 2025 Order.
3. The Bureau of Indian Standards (“**BIS**”) will oversee grant of licence and market surveillance to ensure enforcement of the order.

Supreme Court observes that High Courts must refrain from examining merits while deciding Condonation of Delay Appeals

MNRE notifies the Solar Systems, Devices, and Components Goods Order, 2025

- Existing licenses under the 2017 Order shall remain valid, with renewals and new registrations governed by the 2025 Order.

The Solar Systems, Devices, and Components Goods Order, 2025 can be accessed from the following [link](#).

The Central Electricity Regulatory Commission (“**CERC**”) has issued CERC (Terms and Conditions of Tariff) (First Amendment) Regulations, 2025, effective from 01.04.2024. These amendments introduce several changes impacting generation tariffs, cost calculations, and operational procedures, in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 (“**principal regulations**”) as under:

- A new definition for “Bank Rate” has been introduced which links it to the one-year Marginal Cost of Lending Rate (“**MCLR**”) specified by the State Bank of India plus 100 basis point. Amendments to Regulations 9, 10, 37, and 51 have been made to replace the SBI MCLR-linked rate with the new "bank rate" for calculating interest on charges and payments.
- Regulation 36 now mandates transferring self-insurance premiums to a separate fund, with the premium cap increased from 0.09% to 0.12% and Regulation 37 allows generating companies to request an interim coal price, which the Commission may grant up to 90% after the first hearing. The difference will be adjusted later.
- Under Regulation 50, which provides the formula for recovery of input charges, the words and expressions in the proviso “*based on the notified price of Coal India Limited for the commensurate grade of coal in a month, prior consent of the beneficiary(ies) shall be required to be obtained by the generating company*” has been substituted with “*based on the price of alternative coal available to the station in a given month, the generating company shall obtain prior consent from the beneficiary(ies)*” “Alternative coal” is defined as the least-cost option in case of shortages.
- Further, Regulation 51 has undergone a major revision, providing a new methodology for adjusting costs related to shortfalls or excesses in overburden removal during coal mining. A formula has been introduced to calculate the “OB Adjustment,” though it does not apply to integrated mines allocated through auctions.
- Additionally, under Regulation 70, sub clause (G) has been inserted to provide for Compensation for the operation of generating station below normative plant availability factor, for generating stations that experience operational inefficiencies due to deviations from the normative plant availability factor (PAF). This includes compensation for increased degradation in station heat rate, auxiliary energy consumption, and secondary fuel oil use.
- Regulation 71 has been amended to correct the Normative Annual Plant Availability Factor (NAPAF) for Rangit, Dulhasti and Karcham Wangtoo stations from 90% to 87%.
- The changes in overburden removal adjustments and compensation for below-normative PAF operation are important and could have a big impact on the financial performance of generating companies. Additionally, the move towards market-based coal pricing and focusing on alternative coal sourcing underlines the current dynamic nature of the coal market.

CERC issues Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2025

The CERC (Terms and Conditions of Tariff) (First Amendment) Regulations, 2025 can be accessed from the following [link](#).

The Maharashtra Electricity Regulatory Commission (“**MERC**”) has issued the Explanatory Memorandum for the Draft MERC (Transaction of Business and Fees and Charges) (Second Amendment) Regulations, 2025 (“**2nd Amendment Regulations, 2025**”). These amendments build on the MERC (Approval of Capital Investment Schemes) Regulations, 2022 (“**Capex Regulations**”), which were notified on 12.07.2022. The Capex Regulations outline the framework for State entities to obtain the MERC’s in-principle approval for proposed capital investments, as well as approval for the final completed cost.

According to Regulation 4.21 of the Capex Regulations, applicants are required to pay fees as specified by MERC. The 2nd Amendment Regulations, 2025, propose adding a fee structure to the Schedule of MERC (Transaction of Business and Fees and Charges) Regulations, 2022, for seeking approval of Capital Expenditure Schemes.

The fee structure is based on the value of the Capital Investment Scheme, exceeding the DPR (“**Detailed Project Report**”) cost as specified under Regulation 4.1 of the Capex Regulations. The fee is categorized into the following slabs:

- Rs 1 Crore
- Rs 25 Crore to Rs 100 Crore
- Above Rs 100 Crore to Rs 300 Crore
- Above Rs 300 Crore

In the Explanatory Memorandum, MERC explained that the number of Schemes/DPRs it receives from generating companies and licensees has increased, resulting in a higher workload. The complexity of these reports requires expert involvement and additional resources for thorough review. To cover the costs of evaluating and approving these reports, including technical assessments, financial scrutiny, third-party verifications, and resource deployment, MERC has introduced the fee. This will ensure careful analysis of capital investment schemes, minimizing tariff impacts and preventing unnecessary costs for consumers. The fee will come into effect from the date the amendment is published in the Official Gazette.

The Explanatory Memorandum for the Draft MERC (Transaction of Business and Fees and Charges) (Second Amendment) Regulations, 2025 can be accessed from the following [link](#).

Assam Electricity Regulatory Commission (“**AERC**”) dated 24.01.2025, invited comments / objections / suggestions from the public and stakeholders on the “Draft AERC (Grant of Connectivity to the Intra-State Transmission System) Regulations, 2025.” The draft regulations propose a comprehensive framework for granting connectivity to the intra-state transmission system (“**InSTS**”) in Assam. Key highlights of the Draft Regulations are as follows:

1. Regulation 1 & 2: Scope and Applicability – The regulations shall apply to all applications for connectivity to the InSTS submitted on or after 01.04.2025.
2. Regulation 5: Eligibility Criteria – Generating stations, standalone Energy Storage Systems (ESS), renewable power parks, captive generating plant, renewable energy generating station, and drawee entities with a load of 25 MW and above shall be eligible for general connectivity to InSTS.
3. Regulation 6: Application Process – Prospective applicants shall submit applications to the State Transmission Utility (STU), accompanied by a processing fee of Rs. 1 lakh along with

MERC issues Explanatory Memorandum for Draft MERC (Transaction of Business and Fees and Charges) (Second Amendment) Regulations, 2025

AERC invites stakeholder comments on Draft AERC (Grant of Connectivity to the Intra State Transmission System) Regulations, 2025

applicable taxes. The draft regulations outline detailed procedures for processing applications, including timelines for scrutiny and rectification of deficiencies.

4. Regulation 9: Bank Guarantee – Applicants are required to submit Bank Guarantees (BG) as a security measure, structured in three parts i.e., Conn-BG1, Conn-BG2, Conn-BG3, depending on the quantum of connectivity sought and the need for augmentation [with or without Associated Transmission Systems (ATS)].
5. Regulation 11: Connectivity Agreement – The draft regulations stipulate that connectivity grantee must enter into connectivity agreements with the Nodal Agency (STU) and ensure compliance with relevant grid codes and technical standards. The Nodal Agency will oversee interconnection studies and augmentation of transmission systems as necessary.
6. Regulation 19 & 20: Relinquishment and Revocation – The draft regulations include mechanisms for voluntary relinquishment of connectivity and conditions under which connectivity may be revoked due to non-compliance or delays in project commissioning.

Interested stakeholders may submit their comments/ suggestions by post to the Secretary, Assam Electricity Regulatory Commission, ASEB Campus, Dwarandhar, G.S. Road, Sixth Mile, Guwahati – 781 022, and also by email to aerc_ghy@hotmail.com on or before 13.02.2025.

The Draft AERC (Grant of Connectivity to the Intra-State Transmission System) Regulations, 2025 can be accessed from the following [link](#).

The Gujarat Electricity Regulatory Commission (“**GERC**”) has issued Draft Gujarat Electricity Regulatory Commission (Terms & Conditions for Green Energy Open Access) (Second Amendment) Regulations, 2025 (“**draft Regulations, 2025**”). The draft Regulations, 2025 amends provisions related to banking of energy in the GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024 (“**principal regulations**”).

An amendment to Clause 1(4) of the principal regulations has been proposed which states that the banking charges under Regulation 17.6 will apply from the date of notification until September 30, 2025, or until the Commission issues further changes through a separate regulation. Further, Clause 17.6(viii) of the principal regulations has been revised to specify a banking charge of ₹1.50 per unit for availing energy banking under the regulations.

These changes aim to simplify the banking charge framework and offer clarity to stakeholders involved in green energy open access in the state.

The Draft Gujarat Electricity Regulatory Commission (Terms & Conditions for Green Energy Open Access) (Second Amendment) Regulations, 2025 can be accessed from the following [link](#).

GERC issues Draft Gujarat Electricity Regulatory Commission (Terms & Conditions for Green Energy Open Access) (Second Amendment) Regulations, 2025.

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4659 4466 F: +91 11 4359 4466
E: mail@neetiniyaman.com
W: www.neetiniyaman.com

Office No. 501, 5th Floor,
Rehman House Premises CHS,
Nadirsha Sukhia Street, Fort,
Mumbai-400001, India

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