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Legal Updates

Supreme Court holds that volume-based discounts are not anti-competitive under the Competition Law

In a landmark judgment passed in the matter of ***Competition Commission of India v. Schott Glass India Pvt. Ltd****. & Anr.*, Civil Appeal No. 5843/2014, the Supreme Court of India, vide its Judgement dated 13.05.2025, clarified that volume-based discounts offered by dominant enterprises do not, by themselves, constitute a violation of antitrust laws.

The Supreme Court dismissed the Appeal filed before it by the Competition Commission of India (CCI), which penalized Schott Glass India Pvt. Ltd. for alleged discriminatory pricing in the borosilicate glass tubing market, and upheld that success in a competitive market, which is reflected in scale, efficiency, or innovation, must be rewarded, not penalized.

The Supreme Court observed that the Competition Act is meant to protect competition, not competitors, and cautioned against heavy-handed regulatory enforcement that may stifle innovation. The Court held that Schott India's slabbed target-rebate scheme (i) employed a neutral, volume-based criterion uniformly applicable to all purchasers; (ii) was objectively justified by demonstrable efficiency considerations; and (iii) had not been shown to restrict rival output, limit imports, or distort downstream prices. Further, the Court emphasized that allegations of abuse of dominance must be assessed through an effects-based analysis, supported by concrete evidence of foreclosure or consumer harm. It rejected the argument that dominance or differential pricing alone constitutes a contravention, reiterating that competition law enforcement must be grounded in actual market impact.

This decision of the Supreme Court reinforces that anti-competitive conduct must be assessed based on tangible harm to the market and consumers and not merely on the basis of market dominance or pricing strategy. This decision offers the much-needed clarity and reassurance to businesses that rely on volume-based discounting, affirming that such strategies are legitimate when rooted in efficiency and the true purpose of antitrust laws is to preserve the process of competition, not penalize productivity.

Supreme Court has held that suit filed under the Commercial Courts Act, 2015 before 20.08.2022 without first exploring mediation may be kept in abeyance by the Court for the said purpose

In ***M/s Dhanbad Fuels Private Limited v. Union of India & Anr.,*** Civil Appeal No. 6846/2025, vide Judgement dated 15.05.2025, the Supreme Court has held that while pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 ("**the Act**") is mandatory and a suit instituted without complying with the same is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 [as held in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1], the said requirement applies prospectively to suits instituted on or after 20.08.2022. Suits filed before this cut-off date, unless they fall within specified exceptions (such as where the plaint has already been rejected, refiled, or filed after a High Court declared Section 12A mandatory), may be kept in abeyance while parties explore mediation.

The Supreme Court also held that a suit which contemplates an urgent interim relief may be filed without first resorting to mediation however, the Courts must also be wary of the fact that this must not be merely an unfounded excuse to bypass the mandatory requirement of Section 12A of the Act.

The issue arose from a suit filed in the year 2019 by the Union of India against M/s Dhanbad Fuels Private Limited without complying with Section 12A of the Act at a time when the mediation infrastructure in West Bengal was yet to be established. Taking note of the same, the Supreme Court upheld the decision of the Calcutta High Court directing that the suit be kept in abeyance for 7 months from the date of the order until the receipt of the report of the mediator, whichever is earlier. The High Court had referred the parties to a time-bound mediation under the Pre-Institution Mediation and Settlement Rules, 2018 ("**PIMS Rules**") and SOPs. The Supreme Court however directed that the mediation must be completed within a period of 3 months, extendable by 2 months if the need arises, as stipulated by Section 12 A of the Act and the PIMS Rules.

Supreme Court upholds the enforceability of employment bonds while observing that the minimum service clause is not a restraint on trade

In ***Vijaya Bank v. Prashant B Narnaware***, Civil Appeal No. 11708/2016, vide Judgment dated 14.05.2025, the Supreme Court has upheld the enforceability of an Employment Bond requiring a minimum service period and held that such clauses do not violate Section 27 of the Indian Contract Act, 1872. The Supreme Court permitted Vijaya Bank, a public sector entity, to recover Rs. 2 lakhs from a Senior Manager, who resigned before completing the stipulated three-year tenure.

The Supreme Court clarified that clauses mandating a minimum term of service are not in restraint of trade as they operate during the course of employment and do not restrict future professional opportunities. The Court emphasized that such provisions are a reasonable tool to retain talent and ensure efficiency, especially in competitive sectors where public sector institutions face pressure to match private players. The Court observed that since economic liberalization, public undertakings have been compelled to revise policies to reduce attrition and retain skilled staff. In that context, prescribing a minimum service requirement is neither harsh nor opposed to public policy and imposing a financial consequence for an early exit is a fair deterrent.

In this case, the Respondent had accepted the employment terms, including the bond, but later resigned to join another bank. The Respondent, who paid Rs. 2 lakhs under protest, challenged the clause as a restraint on trade. The Karnataka High Court decided in his favour however, the Supreme Court set aside the order of the High Court and affirmed the right of the bank to enforce the bond and recover Rs. 2 lakhs as liquidated damages.

Supreme Court holds that an Arbitral Tribunal has the power to award varying rates of interest for pre-reference and *pendent lite* under Section 31(7) of the Arbitration and Conciliation Act, 1996

In *M/s Interstate Construction v. National Projects Construction Corporation Ltd.*, Civil Appeal No. 3461/2025, vide Judgment dated 15.05.2025, the Supreme Court has held that an Arbitral Tribunal has the power to award varying rates of interest for pre-reference and *pendente lite* under Section 31 (7) of the Arbitration and Conciliation Act, 1996 ("**the Act**").

The Arbitral Tribunal allowed the claims of the Appellant and awarded different rates of pre-reference, *pendente lite* and future interest and directed that the *pendente lite* and future interest be paid on the principal amount and the interest component. Under Section 34 of the Act, the Single Bench of the Delhi High Court set aside the award with regard to the future interest and under Section 37 of the Act, the Division Bench set aside the directions issued *qua* the interest.

While setting aside the decision of the Division Bench of the High Court, the Supreme Court has observed as follows:

i. Section 31 (7) (a) of the Act reveals that the interest may be for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. In real terms, it means the period on which the cause of action arose till the filing of the claim and the period from filing of the claim till the date of the award.
ii. In *Sayeed Ahmed and Company v. State of Uttar Pradesh*, (2009) 12 SCC 26, the Court held that Section 31 (7) of the Act carves out two periods – period from the date on which the cause of action arose till the date on which the award is made and the period being from the date of award till the date of payment. With respect to the first period, the Bench clarified that it includes the pre-reference period plus pendente lite period. This decision does not say that interest should not be granted for the pre-reference period.
iii. The Arbitral Tribunal granted interest for 3 periods: pre-reference period, *pendente lite* and post award period. The first two periods are contemplated under Section 31 (7) (a) of the Act. Further, varying degrees of interest were awarded for the two sub-periods (excluding the period where the Appellant was found to be in default), which is permissible.
iv. In a recent decision in *Pam Developments Private Limited v. State of West Bengal*, (2024) 10 SCC 715, the Supreme Court has held that the power of the arbitrator to grant pre-reference interest, *pendente lite* interest and post award interest under Section 31 (7) of the Act is well settled. The said position has been reiterated in *North Delhi Municipal Corporation v. S.A. Builders Ltd.*, (2024) SCC OnLine SC 3768.
v. In *North Delhi Municipal Corporation* (supra), the Bench observed that under Section 31 (7) of the Act, the Arbitral Tribunal has the discretion to grant pre-award, *pendente lite* and post-award interest. The intention is to compensate the claimant for the pecuniary loss and to ensure that the arbitral proceedings is concluded within a reasonable period thereby promoting efficiency.
vi. The Arbitral Tribunal has the discretion to include the sum awarded: firstly, interest at such rate as it deems reasonable, and secondly, for the whole or any part of the period from the date on which the cause of action arose till the date the award is made. It can be composite period or it can be further sub-divided. Further, there can be one rate of interest for the whole period or one or more rates of interest for the sub-divided periods.

In *State of Haryana v. S.L. Arora*, (2010) 3 SCC 390, and *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa*, (2015) 2 SCC 189, the Supreme Court has clarified that the expression 'sum' includes the principal as adjudged together with the interest granted. This position was reiterated in several subsequent decisions, including in *Morgan Securities and Credits Private Ltd. v. Videocon Industries Limited*, (2023) 1 SCC 602.

In the matter of ***Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Company Ltd. & Ors***., the Supreme Court has affirmed that the Central Electricity Regulatory Commission **("CERC")** possesses wide-ranging regulatory powers

Supreme Court upholds CERC's power to grant compensation under Section 79 in absence of specific Regulations

under Section 79(1) of the Electricity Act, 2003, enabling it to issue case-specific orders, including awarding compensation, even in the absence of specific regulations under Section 178.

The issues arose from a dispute concerning delays in the operationalization of a completed inter-State transmission project at Indore. The delay was attributed to the Respondent Madhya Pradesh Power Transmission Company Ltd. **("MPPTCL")** for not completing the downstream intra-State transmission infrastructure. In 2020, CERC had allowed the petition filed by Power Grid Corporation of India Ltd. **("PGCIL")** and awarded compensation for the loss of revenue due to the delay caused by MPPTCL. The latter challenged the CERC's order by filing a writ petition before the High Court, arguing that the CERC lacked the jurisdiction to pass such an order in the absence of a specific regulation under Section 178.

Setting aside the High Court's decision, the Supreme Court held that CERC's actions under Section 79(1) do not require the prior existence of regulations framed under Section 178. The Court referred to the earlier rulings in *AERA v. DIAL* and *Energy Watchdog v. CERC*, to support this view.

It was further held that while a regulation cannot be enacted through a judicial order, this does not bar the Commission from exercising its regulatory jurisdiction under Section 79(1) in cases where a regulatory vacuum exists.

Accordingly, the Court allowed the appeal by PGCIL and upheld the orders of the CERC dated 21.01.2020 and 27.01.2020, noting that the challenge to CERC's regulatory power was without merit.

MoP amends the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022

The Central Government through the Ministry of Power (**MoP**) Notification dated 02.05.2025, has issued the Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2025 ("**MoP Amendment Rules**"). Vide the Amendment Rules, the MoP has amended the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ("**Principal Rules**"). Vide the MoP Amendment Rules, amendment has been brought to the provision regarding applicability of the Principal Rules whereby the words "generating companies inter-state transmission licensees" under sub-rule (3) of rule (1) has been substituted with the words "generating companies, transmission licensees".

The MoP Amendment Rules can be accessed from the following *link*.

UPERC issues UPERC (Captive and Renewable Generating Plants) Regulations, 2024

The Uttar Pradesh Electricity Regulatory Commission ("**UPERC**"), vide public notice dated 07.05.2025, has issued the draft UPERC (Captive and Renewable Generating Plants) Regulations, 2024 ("**UPERC Draft Captive Regulations**"), which will govern the operation of captive and renewable energy plants from 01.04.2024 to 31.03.2029. Stakeholders have been invited to submit their comments by 30.05.2025, and a public hearing is scheduled for 03.06.2025.

The UPERC Draft Captive Regulations aim to replace the existing Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2019.

The key provisions are as follows:

i. **Clean Development Mechanism (CDM) Proceeds:** Projects commissioned on or after 01.04.2009 will retain 100% of CDM proceeds during the 1st year of commercial operation. From the 2nd year onwards, the procurer's share will increase by 10% each year, capped at 50%.

ii. **Tariff for projects with multiple commissioning dates:** For generating projects with multiple units commissioned in different years, the tariff will be calculated using a weighted average based on contracted capacities.

iii. **Biomass and Bagasse Projects**: These projects must maintain a minimum 50 % plant load factor to recover full capacity charges. Further, the tariff must equal the variable cost during the period between unit synchronization and commercial operation.

iv. **Power Procurement and Open Access**: Distribution licensees must obtain approval for power purchase agreements ("**PPAs**") and furnish data on energy procured from various captive and renewable sources. Generators may supply power via open access or through the local distribution licensee.

v. **Procedure for declaration of commercial operation date ("COD"):**
   a) Developers must declare the COD as per approved PPAs and provide at least 7 days' prior notice to the state load dispatch centre ("**SLDC**") before conducting trial runs.
   b) Trial runs must demonstrate a minimum of 10 % project capacity (minimum 5 MW) for one 15-minute block on 3 days within a two-week window.
   c) Upon successful completion, developers may issue a COD or part-COD declaration.
   d) Captive projects availing open access must pay wheeling, transmission, and related charges as determined by the appropriate commission.

vi. Energy Banking:
   a. Captive projects that comply with the UPERC (Verification of Generating Plants and Captive Consumers) Regulations, 2022, may bank energy for captive or own use during the control period, subject to a wheeling and banking agreement with distribution licensees.

   b. For bagasse projects- banking ceilings are set at 49% of energy injected per quarter, whereas for other renewables, ceiling is 25% of monthly energy injected or 30% of total monthly electricity consumption.

vii. Power Evacuation:
   a. Electricity must be supplied to local distribution licensees through:
      - 11 KV lines for up to 3 MW
      - 33 KV for 3–20 MW
      - 132 KV for capacities above 20 MW
   b. Developers are responsible for constructing and maintaining evacuation systems and equipment, with operation and maintenance costs considered pass-through for tariff determination.
   c. Energy meters must comply with Central Electricity Authority standards.
   d. SLDC will oversee billing and accounting.

The UPERC Draft Captive Regulations can be accessed from the following *link*.

APTEL clarifies role of Trading Licensee under CEA Metering Regulations, 2006

The Appellate Tribunal for Electricity ("**APTEL**") vide judgment dated 14.05.2025, in the case of ***NTPC Ltd. v. Central Electricity Regulatory Commission & Ors.*** (Appeal No. 202 of 2022) partially allowed NTPC Ltd.'s appeal challenging certain observations made by the Central Electricity Regulatory Commission ("**CERC**") in its order.

The issue to be decided before APTEL was whether a trading licensee like NTPC, which does not own or operate any electrical infrastructure, can be held responsible for physical obligations like sealing of meters under CEA (Installation and Operation of Meters) Regulations, 2006 ("**CEA Metering Regulations**").

APTEL held that NTPC, being a trading licensee, cannot be classified as a "Buyer" since the said term under the CEA Metering Regulations refers to entities who receive electricity from the system of generating company or licensee. Therefore, a trading licensee cannot be characterized as a 'Buyer' under the CEA Metering Regulations as it does not maintain system to receive electricity.

Accordingly, APTEL held that the responsibility for sealing of meters lies with entities that operate and maintain systems for electricity flow namely the generator or transmission/distribution licensee not with a trader.

CERC issues Draft CERC (Deviation Settlement Mechanism and Related Matters) (Second Amendment) Regulations, 2025.

The CERC has issued the Draft Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) (Second Amendment) Regulations, 2025 ("**CERC Draft Second Amendment**"), vide notification dated 10.05.2025. The proposed amendment is slated to come into effect from 01.07.2025 and will amend the (Deviation Settlement Mechanism and Related Matters) Regulations, 2024 ("**DSM Regulations**").

The salient features of the Draft Second Amendment are as follows:

- Substitution of Clause (8) of Regulation 8 of the Principal Regulations to revise the framework governing charges applicable for the injection of infirm power into the grid. As per the revised clause, the default charge for injection of infirm power shall be zero, except in cases covered under sub-clauses (2) and (3).

- In terms of proposed Clause (2) under Regulation 8, in the case of thermal generating stations, any infirm power injected from the date of first synchronization up to the successful completion of the trial run shall be compensated at the Normal Rate of Charges for Deviation for each time block, subject to a ceiling of ₹2.86/kWh.
- In terms of proposed Clause (3) under Regulation 8, where infirm power is scheduled after the successful trial run (as defined in the Grid Code), any deviation from such scheduled infirm power shall attract deviation charges applicable to a general seller or WS seller, as the case may be.

- Additionally, it has been proposed that notwithstanding the provisions of sub-clauses (2) and (3) under Regulation 8, when the system frequency exceeds 50.05 Hz, the charges for injection of infirm power or for deviation of scheduled infirm power after the successful trial run by way of over-injection by a general seller or WS seller, as the case may be, shall be zero.

Stakeholders have been invited to submit their comments, suggestions, or objections on the Draft Second Amendment on or before 10.06.2025. Submissions are to be addressed to the Secretary, Central Electricity Regulatory Commission, World Trade Centre, 6th, 7th & 8th Floor, Tower-B, Nauroji Nagar, New Delhi - 110029 or may be sent via email to secy@cercind.gov.in and cerc.readvisor@gmail.com.

The Draft Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) (Second Amendment) Regulations, 2025 can be accessed from the following *link*.

NCLAT rejects the Insolvency Petition filed against PepsiCo India on the ground that the provisions of the Insolvency and Bankruptcy Code, 2016 cannot be used as a tool for debt recovery

In ***M/s SNJ Synthetics Limited v. M/s PepsiCo India Holdings Private Limited,*** Company Appeal (AT) (Insolvency) No. 386/2025, vide Judgment 08.05.2025, the National Company Law Appellate Tribunal ("**NCLAT**") dismissed an Insolvency Petition filed against PepsiCo India Holdings Private Limited on the ground that the provisions of the Insolvency and Bankruptcy Code, 2016 cannot be misused as a tool for debt recovery. NCLAT observed that to commend any such course of action would tantamount to pushing the Corporate Debtor to face the perils of corporate death instead of being rejuvenated and revived.

NCLAT affirmed the earlier decision of the Chandigarh Bench of NCLT, which had rejected the plea submitted by M/s SNJ Synthetics Limited to admit M/s PepsiCo India Holdaings Private Limited into the rigours of Corporate Insolvency Resolution Process (CIRP).

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