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Legal Updates

Supreme Court upholds introduction of Evacuation Facility Charges as a Change in Law event

In a landmark judgment dated 23.05.2025, the Supreme Court of India in **Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. Adani Power Rajasthan Ltd. & Anr.**, Civil Appeal No. 4336 of 2025 (2025 INSC 770), has reaffirmed seminal jurisprudence relating to "Change in Law" provisions in Power Purchase Agreements (PPAs), specifically in the context of government price notifications.

The dispute arose out of a Power Purchase Agreement of 28.01.2010, executed between the Rajasthan Discoms (Appellants) and Adani Power Rajasthan Ltd. (Respondent No. 1) for the purchase of 1200 MW of power at a levelized tariff of ₹3.238 per unit. On 19.12.2017, Coal India Limited (CIL), a Government of India undertaking, issued a notification imposing Evacuation Facility Charges (**EFC**) of ₹50 per tonne from 20 December 2017(**CIL Notification**). Adani Power forthwith notified the Discoms that the introduction of the EFC was a "Change in Law" under Article 10 of the PPA.

When the Discoms failed to admit the claim, Adani moved a petition before the Rajasthan Electricity Regulatory Commission (**RERC**) under Section 86 of the Electricity Act, 2003, which provided partial relief. Adani then appealed before the Appellate Tribunal for Electricity (**APTEL**), which, in its judgment dated 18.04.2024, held the EFC to be a "Change in Law" and granted compensation with carrying cost computed at the rates of Late Payment Surcharge (LPS) on a compounding basis. The court also condoned delays in filing and re-filing the appeal, explaining that the delay should not rob the generator of fair compensation, even though it did prohibit carrying cost during the delayed period of 332 days.

On appeal, the Supreme Court of India restricted its ambit of consideration to the interpretation of PPA Articles 10.2.1 and 10.5, namely whether the clause applicable to fix the date of compensation would be 10.5.1(i) (change by notification) or 10.5.1(ii) (change by judicial interpretation). The Court held that the CIL Notification constituted an independent executive action on the part of a governmental instrumentality and therefore evidently came within Article 10.5.1(i). The notification did not entail any revision of interpretation of law and hence 10.5.1(ii) was held to be irrelevant.

The court relied considerably on such precedents as GMR Warora Energy Ltd. v. CERC, (2023) 10 SCC 401; UHBVNL v. Adani Power Ltd., (2019) 5 SCC 325; and UHBVNL v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624, which all stipulate the principle of economic restitution in Change in Law situations. The Court observed that the moment a Change in Law event is proven, compensation is to be calculated from the event date and not the adjudication date.
Regarding the matter of carrying cost, the Supreme Court sanctioned APTEL's use of LPS as equitable compensation for delayed payment even without a supplementary bill raised initially. The Court reaffirmed that raising of supplementary bills is not a prerequisite for seeking compensation in such instances, particularly when the procurers had shown adversarial attitude to the claim from the very beginning. It dismissed the appellants' invocation of Prem Cottex v. UHBVNL, (2021) 20 SCC 200, and held it irrelevant.

The Court accordingly rejected the appeal, holding that the obligation to pay EFC-related compensation with the carrying cost was from the date of the notice. It held that Adani Power had properly notified the Discoms forthwith on the issuance of the CIL Circular, and that the follow-up regulatory and appellate proceedings only reiterated what was already a qualifying event under the PPA.

Supreme Court upholds regulatory and adjudicatory powers of CERC

In a landmark judgment dated 15.05.2025, in the case of **Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors. 2025 SCC Online SC 1128,** the Supreme Court of India interpreted the regulatory and adjudicatory authority of the Central Electricity Regulatory Commission (CERC) under the Electricity Act, 2003. The Court determined whether the CERC was justified in awarding compensation to Power Grid Corporation of India Ltd. (PGCIL) for delay caused by the Madhya Pradesh Power Transmission Co. Ltd. (MPPTCL) in making commissioning of transmission infrastructure available.

The conflict was due to two intra-state regional transmission schemes—WRSS-XIV and WRSS-XVI—installed by PGCIL at the Indore substation at the request of MPPTCL. While PGCIL executed its portion of the inter-state infrastructure within time, MPPTCL did not commission the downstream intra-state transmission lines within time. As a result of which, PGCIL filed two tariff petitions with the CERC for recognition of the COD and determination of compensatory charges under Regulation 4(3) of the 2014 CERC Tariff Regulations.

CERC, by orders dated 21.01.2020 and 27.01.2020, partially granted PGCIL's application. It accepted the CODs under Regulation 4(3)(ii) but refused to condone the delay overrun, considering that it was the voluntary choice of PGCIL to synchronize the commissioning dates of both the central and state systems. Nevertheless, CERC permitted PGCIL to recover compensation from MPPTCL for the interim period as a regulatory adjustment—namely, liquidated damages, interest on construction, and incidental costs—whereas there was no express contractual provision that allowed for recovery of such an amount.

MPPTCL had challenged these orders before the High Court of Madhya Pradesh rather than opting for the statutory appellate relief before APTEL under Section 111 of the Electricity Act, contending that CERC had overstepped its jurisdiction and essentially rewritten contractual terms. The High Court accepted the writ petition, invoking the exceptions to the alternate remedy rule established in Whirlpool Corporation v. Registrar of Trademarks, (1998) 8 SCC 1, ruling that the challenge was not barred on grounds of jurisdictional overreach and denial of natural justice.

PGCIL appealed to the Supreme Court, contending that the High Court erred in circumventing the appellate process. The Supreme Court agreed, holding that the Electricity Act, 2003 is a self-contained code. It re-iterated the law settled in the case of PTC India Ltd. v. CERC, (2010) 4 SCC 603 that orders under Section 79 need to conform to regulations made under Section 178 but that the non-existence of a regulation does not mean that CERC cannot act under Section 79. Further, it held that CERC has regulatory and adjudicatory functions and can pass orders in the form of regulatory compensation in special cases, particularly where there are regulatory lacunas.

The Court ruled that decision regarding tariff under Section 62 and approval of COD under Regulation 4(3)(ii) of the Tariff Regulations directly came within the ambit of CERC's jurisdiction. In addition to this, the Court held that freedom provided to PGCIL to recover interim charges was not ultra vires or without legal sanction; instead, it was a valid regulatory action to ensure that infrastructure developer was not unfairly burdened due to delay caused by the beneficiary.

Significantly, the Court set aside the High Court's reliance on the exceptions to hear writ petitions in spite of an alternate remedy. It concluded that no constitutional question was involved, and no violation of natural justice had taken place, since MPPTCL had been a party before CERC. Accordingly, the admission of writ petition by High Court's was held to be wrong, and the appeals were allowed.

Calcutta High Court holds that the mere use of the word ‘*arbitration*’ in the heading of the clause is not sufficient to hold that the said clause was a binding arbitration clause

In ***BVEPL Bhartia (JV) v. State of West Bengal and Ors.*, AP-COM No. 991/2024**, the Petitioner filed an application for the appointment of an arbitrator in terms of the contract between the parties. The arbitration clause in the contract stipulated that in case of a dispute,

i. the parties shall attempt to resolve it amicably at the first instance in accordance with the conciliation procedure;
ii. if the mediation fails or in the absence of any intervention, either party can refer the dispute to the Chairman of the Authority and Board of Directors of the Contractor for amicable settlement;
iii. if this also fails, then a party may refer the disputes to arbitration.

According to the Petitioner, the arbitration clause was binding on the parties as the word ‘*shall*’ was used and the heading clearly indicated that arbitration was the ultimate dispute resolution mechanism if conciliation and amicable settlement failed. On the other hand, according to the Respondent, the process of conciliation had not been completed, and the use of the word ‘*may*’ indicated that the arbitration clause was not binding i.e., it was not mandatory for the parties to go to arbitration in case of failure of conciliation.

Vide Order dated 22.05.2025, the Calcutta High Court has observed that the mere use of the word ‘*arbitration*’ in the heading of the clause is not sufficient to hold that the said clause was a binding arbitration clause. The use of the words ‘*shall*’ and ‘*may*’ in the clause at different places was not casual, but a conscious act of the contracting parties and the terms of a contract must be strictly construed. Further, the Dispute Resolution Committee (DRC) is not an independent and impartial tribunal and an essential ingredient of arbitration is to have the dispute resolved by a private tribunal which would impartially decide the disputes, which requirement was absent in this case. The Court further held that an arbitration agreement has to be couched not in precatory, but obligatory words. Although, there is no particular form or universally practiced format in framing an arbitration agreement, but the words used must be certain, definite and indicative of a determination of the parties to go for arbitration and not a choice or a mere possibility. The use of the word '*may*' contemplates a consent or consensus of the parties before referring to arbitration.

Karnataka High Court stays operation of CEA and KERC Captive Status Verification Frameworks

In February 2025, the Central Electricity Authority **("CEA")** issued guidelines titled *"Procedure for verification of captive status of such generating plant, where Captive Generating Plant and its Captive User(s) are located in more than one state"*, under Rule 3(3) of the Electricity Rules, 2005. These guidelines introduced the formula for verification of captive status using a Unitary Qualifying Ratio **("UQR")**, which is calculated as the ratio of actual consumption by captive users (Y) to their total shareholding in the CGP (X), i.e., **UQR = Y ÷ X**. Each user's benchmark proportionate consumption is derived by multiplying their shareholding by the UQR, and a ±10% band is applied to determine compliance. Users falling outside this range are excluded, and the ownership and consumption criteria are reassessed using only the remaining qualified users.

Following the CEA framework, the Karnataka Electricity Regulatory Commission **("KERC")** also notified the **"***Procedure for Verification of Captive Status for Intra-State Captive Generating Plants and Captive Users in Karnataka"*, which largely mirrors the CEA's proportionality based approach and adopts the same methodology for calculating the Unitary Qualifying Ratio.

Both frameworks were challenged before the Karnataka High Court by the Distributed Solar Power Association vide Writ Petition No. 13316 of 2024**,** on the premise that they violate the Supreme Court's decision in *Dakshin Gujarat Vij Company Ltd. v. Gayatri Shakti Paper and Board Ltd.* [2023 SCC OnLine SC 1276]. The petitioners contended that the CEA and KERC methodologies impose a stricter proportionality requirement inconsistent with the Supreme Court's recognition of the 1:1.96 shareholding to-consumption test, which does not mandate exact proportionality among captive users as long as the minimum ownership (26%) and minimum consumption (51%) thresholds are met.

On 02.05.2025, a Single Judge Bench of the Karnataka High Court, presided over by Justice M. Nagaprasanna, passed an interim order staying the implementation and operation of both the CEA Guidelines and the KERC Procedure for captive status verification, until the final disposal of the writ petition. While granting the interim stay order, the Hon'ble Bench also observed that the issue appears to have been answered by the judgment of the Hon'ble Supreme Court in *Dakshin Gujarat Vij Company Ltd. v. Gayatri Shakti Paper and Board Ltd.*

APTEL dismisses industry appeals against HPERC's Mechanism for adjusting Infrastructure Charges

The Appellate Tribunal for Electricity (APTEL) on 28th May 2015, rejected a series of appeals made by large industrial consumers including **Ambuja Cement Ltd., S.P.S. Steel Rolling Mills Ltd., and Asian Concretes and Cement Pvt. Ltd.,** questioning the regulatory regime put in place by the Himachal Pradesh Electricity Regulatory Commission (HPERC) for varying infrastructure-related charges levied under the Himachal Pradesh Electricity Supply Code, 2009. The ruling, emanating from Appeal Nos. 287, 396 & 397 of 2017, provides guidelines on the extent of regulatory powers of State Commissions and the parameters of appellate jurisdiction in terms of the Electricity Act, 2003.

The controversy arose from Clause 3.2.2 of the Supply Code of 2009, where industrial consumers who seek Power Availability Certificates (PACs) are charged an Advance Cost Share (ACS) of ₹1,000/kVA of the contract demand as part of Infrastructure Development Charges (IDC). The Code, however, did not contain any clear provision for the reduction of these amounts against other dues or refund. In 2011, HPERC had made a clarificatory order suggesting a mechanism for such variations. Such an order was set aside by APTEL in 2015 (Appeal Nos. 188–195 of 2014) on the grounds of failure to seek stakeholder inputs and non-adherence to principles of natural justice.

To conform to APTEL's directions in 2015, HPERC started a new regulatory process with a public notice released in May 2016 and holding a public hearing in September 2016. Based on feedback from consumers, including the appellants, it made an order dated 5 October 2016, which approved the justification for charging the IDC and established a disciplined approach towards adjustment of the said charges against other charges. Most importantly, the Commission explained that this was a regulatory and not an adjudicatory exercise and was intended solely to fill a procedural lacuna in the 2009 Code.

Opposing this order, the appellants contended that the Commission's mechanism indirectly sanctioned illegal collections by the Himachal Pradesh State Electricity Board Ltd. (HPSEBL) and contravened both the spirit of the 2015 APTEL decision and the Recovery of Expenditure Regulations, 2005. They further alleged that the Commission did not supply detailed audited accounts and that the challenged mechanism constituted retrospective imposition of financial liabilities. Ambuja Cement specifically complained that the order was given mechanically, overlooked their objections, and illegally withheld interest on surplus sums paid under protest. The appeals were, however, rejected by APTEL on two major legal grounds. First, it found that the impugned mechanism did not add anything new as a charge, but only facilitated a method to reasonably adjust already collected amounts in light of the 2009 Code. Secondly, it held that the order was a regulatory order passed under Section 181 of the Electricity Act, 2003, and thus could not be challenged under Section 111, which allows appeals only against adjudicatory orders. Referring to the Supreme Court's ruling in PTC India Ltd. v. CERC (2010) 4 SCC 603, APTEL reaffirmed that legality or vires of rules framed by an Electricity Regulatory Commission could be challenged only through judicial review under Article 226 of the Constitution, and not by way of statutory appeal.

As far as procedural fairness is concerned, claims of non-establishment of due process were denied by the Tribunal. It noted that HPERC had in fact raised objections of all the stakeholders, including the appellants, by means of public notice dated 25 May 2016 and letters to individuals. The hearing was conducted in open court on 3 September 2016, and submissions presented by Ambuja Cement were specifically mentioned and responded to in the final order. Hence, the Tribunal held no breach of the principles of natural justice or the previous remand orders of APTEL.

The order terminates a long-pending regulatory controversy involving several industrial consumers in Himachal Pradesh. It confirms the restricted ambit of appellate review under the Electricity Act and upholds the independence of Electricity Regulatory Commissions to deal with intricate financial and infrastructural challenges by way of subordinate legislation. More significantly, it conveys a strong message that once a regulatory order is promulgated after proper consultative process, its validity needs to be challenged in writ jurisdiction and not avoided through appeals under the guise of statutory challenge.

APTEL rules in favour of Solar Developers on GST Compensation for Outsourced O&M Services

In a major development for the renewable energy industry, the APTEL vide judgement dated 27.05.2025, in series of appeals by solar power developers including **Azure Power Jupiter Pvt. Ltd. & Ors. v. Central Electricity Regulatory Commission & Ors** allows compensation on Outsourced O&M Services. The appeals questioned previous orders of the Central Electricity Regulatory Commission (CERC) refusing compensation under the "Change in Law" provision for higher Operation and Maintenance (O&M) expenses arising out of the enforcement of Goods and Services Tax (GST) legislation in 2017. The Tribunal overturned the CERC's decision while observing that outsourced O&M services were at par with such services for compensation under the Power Purchase Agreements (PPAs), even when such outsourcing was a commercial decision.

The factual backdrop of the case concerns several solar projects awarded under the National Solar Mission. After the enactment of GST laws on 1 July 2017, the appellants requested compensation under Article 12 of their respective PPAs for the incremental tax burden on both capital expenditure (EPC costs) and recurring O&M costs. Although the CERC identified GST as a "Change in Law" event and provided compensation for rising EPC costs during construction of the project, it did not grant relief for GST paid on O&M services. The CERC held that as O&M activities were outsourced, the cost arose out of the commercial choice of the developer and was therefore non-compensable.

In appeal, APTEL ruled that denial of compensation for O&M costs on the sole basis of outsourcing was not acceptable. Citing its earlier order in Parampujya Solar Energy Pvt. Ltd. v. CERC, passed in September 2022, the Tribunal reaffirmed that routine expenses like O&M costs squarely fall under the definition of "Change in Law" in Article 12 of the PPA. APTEL noted that the PPAs did not disallow outsourcing and that the practice was in accordance with normal industry practice for efficiency in operations. Hence, excluding outsourced expenses from compensation would impose arbitrary restrictions not envisaged in the agreement.

In addition, APTEL sustained the developers' right of carrying costs by invoking the rule of restitution and established case law like the South Eastern Coalfields case (2003) 8 SCC 648. It acknowledged that delay in giving compensation must be corrected by way of monetary restitution so that the aggrieved party is brought back to its initial economic situation.Notably, the Tribunal mentioned that even though the Parampujya judgment stands in appeal before the Supreme Court in Civil Appeal No. 8880 of 2022, the highest court has not suspended the order in toto. Therefore, the rationale in Parampujya holds with full vigor to the current batch of appeals. The Tribunal held that the CERC orders challenged hereunder, to the extent they disallowed GST compensation for outsourced O&M services, are against well-established law and deserve to be set aside.

APTEL dismisses FKCCI Appeal on Retail Tariff Fixation

In a landmark regulatory order of 28 May 2025, APTEL rejected Appeal No. 362 of 2017 filed by the **Federation of Karnataka Chambers of Commerce and Industry (FKCCI) against the Karnataka Electricity Regulatory Commission (KERC)**. The conflict was from KERC's tariff order of 11 April 2017, which calculated the Annual Performance Review (APR) for FY 2015-16 and the updated Annual Revenue Requirement (ARR) and retail supply tariff for FY 2017-18 through the Multi-Year Tariff (MYT) regime.

FKCCI, a leading industry association and representative of trade and industrial players in Karnataka, had objected to the validity and justice of KERC's tariff order. The petition claimed that the State Government had overstepped its mandate by reallocation of high-cost power purchase agreements (PPAs) to ESCOMs like BESCOM and MESCOM, even post the effectuation of the power sector reforming with the Transfer Scheme under Section 131 of the Electricity Act, 2003. FKCCI claimed that this allotment was arbitrary and outside the permissible jurisdiction of the Government, and the Commission also did not fulfil its statutory obligation under Section 86(1)(b) by simply approving these allotments without independent examination.

It was the contention of the Appellant that the disproportionate distribution of expensive power contracts disproportionately burdened consumers in BESCOM's area specially high-tension (HT) industrial consumers with a larger tariff burden despite the fact that BESCOM's average cost of power purchase remained relatively lower than other ESCOMs. FKCCI also contended that tariff increases, especially in fixed charges, were sanctioned without proper stakeholder consultation, contrary to the canons of natural justice and Section 64 of the Act.

In its detailed findings, APTEL rejected FKCCI's contention that the State Government lacked authority to allocate power among distribution licensees post-transfer scheme. The Tribunal held that Section 131(3)(b) of the Act specifically empowers the State Government to make binding decisions concerning power allocation under the notified transfer scheme, including decisions taken after its implementation, provided they remain consistent with the scheme's objectives. The Tribunal found no statutory bar on such allocation and clarified that the Commission's regulatory role under Section 86 is confined to approving and regulating procurement processes not initiating power allocations independently.

APTEL further observed that FKCCI's reliance on earlier case law and policy provisions failed to establish any overriding conflict with the Electricity Act's core provisions. The Tribunal brought out that the shifting of the trading functions from KPTCL to the five ESCOMs was legally carried out by way of Government Order dated 10 May 2005 and the later notifications revising PPA allocations were properly issued in exercise of the State's powers. Since no documentary evidence had been submitted by FKCCI to support its contentions of unlawful or discriminatory allotment, the Tribunal held that the allegations were speculative and unmeritorious.

On the larger tariff determination issues, FKCCI had contended that KERC had not followed Section 61(g) of the Electricity Act and the National Tariff Policy to ensure tariffs increasingly mirror real costs and eliminate cross-subsidies. FKCCI asserted that the HT-2(b) category was being imposed tariffs higher than 20% of the average cost of supply, contrary to the ±20% margin accepted by APTEL in judgments like SIEL Ltd. v. PSERC and Tata Steel Ltd. v. OERC. But APTEL drew a distinction in those judgments, observing that the data that were adopted by FKCCI were not binding and the Commission had taken into account cross-subsidy rationalization over time. Additionally, BESCOM had submitted a tariff petition specifically suggesting fixed charge changes, and the Commission had made a move on this after conducting public hearings.

Therefore, APTEL concluded that the Commission was correct in its endorsement of the tariff structure for FY 2017-18. It did not find any violation of statutory rules or principles of tariff regulation and refused to interfere with the impugned tariff order. The Tribunal also rejected as untenable the contention of FKCCI that the tariff of BESCOM was mechanically adopted from that of Karnataka Power Transmission Corporation Limited (KPTCL) without independent examination.

The appeal was thus dismissed in totality, with the Tribunal affirming the legitimacy of the Government's allocation of powers and KERC's tariff order.

APTEL grants relief to Laxmi Organics for non-compliance by MSEDCL under section 146 of the Electricity Act

APTEL in its decision on the contempt petition moved by **Laxmi Organics Industries Ltd. vs. Maharashtra State Electricity Distribution Co. Ltd. & Ors.).** The petition was a result of MSEDCL's claimed wilful non-compliance with APTEL's earlier binding order dated 23.10.2024 in Appeal Nos. 245 and 376 of 2018, which had unequivocally instructed MSEDCL not to charge wheeling and transmission charges on Laxmi Organics.

The origin of the issue was Laxmi Organics' captive power plant (CPP) installed in 2012, which was providing power from Unit-I to Unit-II through a dedicated line. In spite of explicit regulatory sanction and previous Commission observations affirming that the company was not using MSEDCL's distribution system, MSEDCL continued to levy wheeling and transmission charges from FY 2014–15 onwards. This charge was first challenged in front of the Maharashtra Electricity Regulatory Commission (MERC), followed by a series of appeals.

In its judgment dated 23.10.2024, APTEL rejected MSEDCL's Appeal No. 245 of 2018 and granted Laxmi Organics' Appeal No. 376 of 2018. The Tribunal upheld that the petitioner's premises were directly connected with the transmission system, rather than any component of the MSEDCL distribution system. Consequently, MSEDCL was not justified in charging wheeling charges or resultant losses.

Notwithstanding these clear instructions, MSEDCL still imposed wheeling and transmission charges in bills of October 2024 and subsequent periods giving rise to the current contempt proceedings under Section 146 of the Electricity Act, 2003. Laxmi Organics contended that not only were the charges illegal and against the judgment, but even MSEDCL had raised arbitrary arrears for ₹43.66 crores notwithstanding persistent objections and reminders.

MSEDCL, while defending itself, asserted that its conduct was justified under the MERC (Distribution Open Access) (First Amendment) Regulations, 2019, which it contended were outside the ambit of the earlier litigation. The utility also asserted that the contempt petition was an effort to re-litigate a fresh regulatory scheme that was never adjudicated upon.

APTEL, though recognizing that it does not possess express contempt jurisdiction as is the case with High Courts under the Constitution, ruled that the current petition was admissible under Section 146 that speaks about penal ramifications for disobedience of Tribunal orders. The Tribunal held that MSEDCL's actions most especially in the context of previous decisions and its after the fact explanations amounted to outright disobedience of the Tribunal's binding order. It reaffirmed that MSEDCL was not entitled to collect such charges without use of its distribution system and held that its reliance on post-2019 rules was an afterthought and without legal basis in view of the findings of fact regarding network usage.

In addition, the Tribunal observed that the implementation of its earlier order was being purposefully hampered by the invocation of inapplicable provisions of law, subverting the rule of law. MSEDCL's ongoing billing activities and failure to reduce or cancel the disputed charges in spite of a binding order were described as wilful disobedience.

APTEL Sets Aside CERC's Payment Directive in Samalkot Power Case: Transmission Charges Deemed Unenforceable Amid Project Frustration

APTEL on 27 May 2025 in the case of **Samalkot Power Limited v. Central Electricity Regulatory Commission & Ors.**, an appeal made by Samalkot Power Ltd. (SPL) and Spectrum Power Generation Ltd. (SPGL) had challenged an order made by the Central Electricity Regulatory Commission (CERC), whereby they had ordered the appellants to refund 80% of the purchase price received by Power Grid Corporation of India Ltd. (PGCIL) for the Vemagiri Transmission System Ltd. (VTSL) in the absence of the materialization of the pertaining transmission infrastructure.

The appeal followed a series of interrelated litigations relating to long-term access (LTA) and transmission service agreements (TSA) between the appellants and PGCIL, entered into in order to enable evacuation of power from gas-based generating stations in Andhra Pradesh. The main question was whether the appellants could be made to incur acquisition costs when the transmission system upon which they were supposed to use their power was never built mainly because of domestic gas non-availability and an advisory from the Ministry of Power stopping fresh gas-based generation projects.

SPL had spent around ₹8,900 crore on project infrastructure, such as commissioning gas turbines and a 400 kV switchyard. But because of PGCIL's inability to execute the transmission project along with a 2012 policy guideline cautioning against dependence on uncertain indigenous gas supply the viability of the project was thwarted. Nevertheless, CERC in 2015 had attached liability to SPL and SPGL to pay back PGCIL 80% of the cost of acquiring VTSL on the basis of restitutionary principles.

In its elaborate judgment, APTEL overruled CERC's order, holding that such reimbursement was neither contractually warranted nor statutorily viable. The Tribunal clarified that non-performance by PGCIL and RECTPCL (REC Transmission Projects Company Ltd., coordinator of the bid process) of their mutual obligations under the Bulk Power Transmission Agreement (BPTA) and TSA implied that SPL's inability to use the transmission system was not its default, but an outcome of contractual frustration.

The Tribunal recognized that SPL was still willing and capable of paying transmission charges as per the Point of Connection (PoC) Regulations. But as PGCIL had not established the necessary infrastructure, the very object of the contract had become impossible. Referencing seminal precedents on the doctrine of frustration under Section 56 of the Indian Contract Act, 1872, the Tribunal held that the initial agreements were discharged.

Significantly, APTEL noted that CERC had been in error in permitting recovery of acquisition expenses via an interim application while rejecting the main petition as infructuous because of project cancellation. Such relief, the Tribunal held, was beyond the Commission's jurisdiction under Sections 14 and 63 of the Electricity Act, 2003, dealing with license grant and tariff adoption, not restitutionary directions.

The Tribunal also dismissed PGCIL's argument that the expenses incurred, including a hefty success fee paid to RECTPCL, were recoverable under the TSA. It could find no actual transmission infrastructure development or system strengthening costs incurred by SPL and ruled that claims in restitution had to be well-pleaded and established, which PGCIL had not done so.

In a connected appeal made by PGCIL (Appeal No. 60 of 2017), against the review order of CERC dated 20 October 2016, the Tribunal rejected the maintainability of the appeal, holding that PGCIL was not an “aggrieved person” under Section 111 of the Electricity Act, 2003, as the review order had not prejudicially affected its interests.

Ministry of Coal notifies Mineral Concession (Amendment) Rules, 2025

The Ministry of Coal (“**MOC**”) vide notification dated 20.05.2025, in exercise of powers conferred by section 13 of the Mines and Minerals (Development) Act, 1957 has issued the Mineral Concession (Amendment) Rules, 2025 (“**Amended Rules”**) thereby making the following amendments to the Mineral Concession Rules, 1960 (“**Principal Rules”**):

- Proviso to sub-rule (4) of rule 22-B of the Principal Rules provided that the mining plan may cover an area beyond the block boundary not containing coal or lignite on a certificate issued to that effect by the State Government and that it intends to grant mining lease for such extended area. The said proviso has been substituted under the Amended Rules which provides that a non-objection certificate is issued by the State Government for such area after considering the certificate issued by the Central Mine Planning and Design Institute Limited for non-coal bearing area or non-feasibility of extraction of coal from coal bearing area. There is a further proviso which provides that in case of coal bearing area, the project proponent shall submit an undertaking to the effect that the overburden shall be re-handled within the period mentioned in the mining plan.

- Rule 22E of the Principal Rules provided that for modification of approved mining plan, the project proponent was required to submit the modified mining plan in accordance with Rule 22B for approval of the officer or authority notified under Sub-rule (6) of Rule 22B.

Further, sub-rule (2) of Rule 22E of the Principal Rules provided a list of 9 grounds on which modification under sub-rule (1) could be made. Sub-rule (3) provided a list of three minor changes which the project proponent may carry out in the approved mining plan to be submitted to the Coal Controller with a copy to the Central Government. Rule 22E has been substituted under the Amended Rules wherein sub-rule (1) provides that in case any modification is made in the approved mining plan, the project proponent shall submit the modified mining plan as per rule 22B. Proviso to sub-rule (1) provides that the project proponent may make minor changes with the prior approval of Board of Directors of the company and submit to the Coal Controller and the Central Government. Sub-rule (2) has expanded the list of minor changes which now include 13 changes. Proviso to sub-rule (2) mandates prior approval of the nominated authority referred to in sub-section (1) of section 6 of the Coal Mines Special Provisions Act, 2015 or the Central Government for any modification in the mining plan which result in changes in the terms and conditions or efficiency parameters mentioned in the agreement entered into between such nominated authority or the Central Government, and the project proponent, in case of allocated coal mines or coal blocks.

- In the principal rules, in rule 29A, in sub-rule (1), –
  (a) for the word “final”, the words “final or temporary” shall be inserted and
  (b) for the words “Regional Controller”, the words “Regional Controller of Mines or the Coal Controller” shall be inserted. In sub-rule (2), after the words “Regional Controller of Mines”, the words “or the Coal Controller” shall be inserted.

Copy of the amended rules can be accessed from this *link*.

MoC issues revised Scheme for Harnessing and Allocating Coal transparently in India (SHAKTI), 2025

The Cabinet Committee on Economic Affairs (“**CCEA”**) has accorded its approval for the Revised SHAKTI (Scheme for Harnessing and Allocating Koyala Transparently in India) Policy for Coal allocation to Power Sector. The Revised SHAKTI Policy, 2025 supersedes the provisions of the SHAKTI Policy, 2017 and its subsequent amendments in 2019 and 2023. General provisions of the Revised SHAKTI Policy are as follows:

1. Applicability of the existing SHAKTI policy to coal linkages already allocated under Pre-New Coal Distribution policy and New Coal Distribution Policy, 2007.
2. Upon expiry of coal linkages secured under old policies, power producers may apply under the Revised SHAKTI Policy, as applicable, to secure fresh linkages.
3. Sale of power by the Power Producers to be in accordance with concluded Power Purchase Agreements (“**PPAs**”) or as per extant rules notified by Government of India from time to time. Power generated using linkage coal for long term/medium term PPAs can be sold in the power market and the benefits accrued, if any, to be shared as per the rules notified by Ministry of Power (“**MOP”**).
4. A generator whose PPA with DISCOM has got terminated on account of default in payment, may be allowed to use existing linkage coal for sale of power through short term PPAs using DEEP Portal of Power Exchange for a period of maximum 2 years or until they find another buyer of power under long/medium term PPAs, whichever is earlier.
5. Rationalization of coal linkages shall be allowed as per the extant guidelines of Ministry of Coal.
6. Constitution of an “Empowered Committee” comprising of Secretary (Power), Secretary (Coal) and Chairperson, CEA to finalize methodology, timelines etc. pertaining to the Revised SHAKTI Policy.
7. Greenfield Thermal Power Projects are also eligible for coal linkages under the Revised SHAKTI Policy if established near pithead while the Empowered Committee may exempt any Greenfield power projects from the above condition, on a case-to-case basis.

8. The remaining capacity (about 1500 MW) which is presently eligible for coal linkage under Para B (ii) of the existing SHAKTI Policy and has not availed this facility till now, even alter six auction rounds, would not be eligible for coal / linkages under any Window of the Revised SHAKTI Policy and may secure coal from other available sources.
9. Minor changes of operational nature to expand the scope of SHAKTI Policy may be decided at the Ministry of Coal and Ministry of Power level and larger decisions would require the concurrence of the Cabinet Committee.
10. Provision of allocation of coal linkages:
    For grant of fresh coal linkages to Thermal Power Plants of Central Sector/State Sector/ Independent Power Producers (IPPs), following two windows have been approved under the Revised SHAKTI policy:

    Window-I (coal at notified price):
    - Existing mechanism for grant of coal linkage to Central Sector Thermal Power Projects (TPPs) including Joint Ventures (JVs) & their subsidiaries would continue.
    - Coal linkages to be earmarked to States and to an agency authorized by group of States as per existing mechanism, on the recommendation of Ministry of Power. Coal linkage earmarked to States may be utilized by States in its own Genco, IPPs to be identified through TBCB or existing IPPs having PPA under Section 62 of the Electricity Act, 2003 for setting up of a new expansion unit having PPA under Section 62.

    Window-II (premium over notified price):
    Any domestic coal-based power producer having PPA or untied and also Imported coal-based power plants, if they so require can secure coal on auction basis for a period up to 12 months or for the period of more than 12 months up to 25 years by paying premium above the notified price and providing the power plants the flexibility to sell the electricity as per their choice.

The revised SHAKTI Policy can be accessed from this *link*.

NCLAT holds that NCLT can exercise inherent powers to forward a copy of its order to relevant statutory authorities for necessary action

Vide judgment dated 15.05.2025, in ***Max Publicity & Communication Pvt. Ltd. v. Enviro Home Solutions Pvt. Ltd.,*** Company Appeal (AT) (Insolvency) No. 456/2025, the National Company Law Appellate Tribunal ("**NCLAT**") clarified the scope of the inherent powers of the National Company Law Tribunal ("**NCLT**") under Rule 11 of the NCLT Rules, 2016. NCLAT held that NCLT may, in the interest of justice, exercise its inherent powers to direct that a copy of its order be forwarded to relevant statutory authorities for necessary action, including the Ministry of Corporate Affairs, when it deems appropriate.

The Respondent had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 alleging debt and default by the Appellant. NCLT rejected the application however, it simultaneously directed that the order be forwarded to the Central Government the Ministry of Corporate Affairs and various other Central Authorities. Before the NCLAT, the Appellant challenged these additional directions given by NCLT.

While upholding the limited power of NCLT to forward its orders to relevant authorities for necessary action, NCLAT observed that NCLT had not itself directed any investigation under Section 213 of the Companies Act, 2013. NCLAT observed that the direction issued by NCLT cannot be read to mean that it directed the Ministry of Corporate Affairs or any other statutory authority to carry out any investigation under Section 213 of the Companies Act, 2013.

The Central Electricity Regulatory Commission **("CERC")** has issued draft guidelines for Virtual Power Purchase Agreements **("VPPAs")**, establishing a structured framework for long-term bilateral renewable energy **("RE")** procurement without physical delivery. The guidelines

CERC issues draft Guidelines for Virtual Power Purchase Agreements (VPPAs)	are intended to facilitate compliance with Renewable Energy Consumption Obligations **(“RCOs”)** under the Energy Conservation Act, 2001. Salient features: • A VPPA is defined as a Non-Transferable Specific Delivery based Over-the-Counter contract between a consumer and an RE generator. The RE generator sells electricity in the market such as through the Day-Ahead Market or Real-Time Market while the consumer pays a pre-agreed VPPA price. The difference between the VPPA price and the market price is settled bilaterally, allowing renewable procurement without physical power delivery. • VPPAs may be executed directly with RE generators, through traders, or via OTC platforms registered with CERC. • VPPA contracts shall remain non-tradable, non-transferable, and binding for their full term, ensuring predictability and enforceability. • Consumers to notify the REC Registry upon receipt of RECs, enabling their extinguishment and preventing further trading. By introducing VPPAs, the CERC seeks to provides commercial and industrial consumers with a viable option to meet their RCO obligations, while offering renewable energy developers the benefit of price certainty. CERC has invited comments, suggestions, and objections from stakeholders on these Draft Guidelines. Submissions may be sent on or before 20th June, 2025 to *secy@cercind.gov.in* and *chiefeco@cercind.gov.in*. The draft Guidelines for Virtual Power Purchase Agreements can be accessed from the following *link*.
RERC issues Statement of Reasons for the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2025	The Rajasthan Electricity Regulatory Commission (“**RERC**”), vide its order dated 21.05.2025 in Petition No. 2264/2024, issued the Statement of Reasons accompanying the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2025 (“**RERC GEOA Regulations**”) The RERC GEOA Regulations enable consumers with a contracted demand of 100 kW or above to procure renewable energy through open access while captive users are exempt from any minimum demand. The definition of green energy under the regulations is comprehensive, encompassing solar, wind, hydro, hybrid systems, biomass, waste-to-energy technologies, energy storage solutions, and the production of green hydrogen and green ammonia. The regulations classify open access into short, medium, and long-term categories and grant priority to GEOA consumers over others. Key provisions include banking mechanisms, standby charges, and the ability to install renewable energy capacity up to 200% of the consumer’s contract demand, subject to the installation of mandatory battery storage systems for excess capacity. Importantly, surplus green energy procured beyond an entity’s Renewable Purchase Obligation can be retained by the consumer for carbon credit trading and net-zero compliance, rather than being transferred to the distribution licensee. Additionally, the regulations provide for clear roles of State and Central Nodal Agencies, mandate timely processing of open access applications, and allow existing agreements to be migrated to the new GEOA framework. The RERC SOR to GEOA Regulations can be accessed from the following *link*.
	RERC vide its order dated 19.05.2025 in the case of ***Ratedi Wind Power Ltd. Vs. Rajasthan Urja Vikas Nigam Limited*** (Petition No. RERC/2106/2023 and batch) has observed that the Order dated 19.04.2021 and 21.04.2022 passed by the Supreme Court in the case of *M.K.*

	Ranjitsinh & Ors. Vs. Union of India & Ors. (WP(C) no. 838 of 2019) ("**SC Orders**") by way of which the Petitioners were directed to install Bird Diverters on transmission lines as a Change in Law event. The SC orders resulted in an increase in the cost implication of the projects due to additional cost incurred for installation of bird diverters in priority area on transmission lines which was not factored into the tariff as determined by the RERC. RERC placed its reliance on Supreme Court's order dated 20.04.2024 passed in the case of *GMR Warora energy Limited & Ors. Vs. Central Electricity Regulatory Commission,* 2023 SCC Online SC 464 and held that all the additional charges occurred due to installation of Bird diverters with respect to SC orders have to be considered as Change in Law event after the cut-off date i.e. after the date of PPAs. The Petitioners are entitled to get compensation towards additional expenditure occurred on account of installation of Bird Diverters on the transmission line in compliance of SC Orders. It was also observed that the Petitioners shall be eligible for carrying cost starting from the date when the actual payments were made qua procurement and installation of Bird Divertors till the date of issuance of the instant Order, at the actual rate of interest paid by the Petitioner for arranging funds or the rate of interest on working capital as per applicable RERC Tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest and the discount rate of annuity payments shall be 9% towards the expenditure incurred by the Petitioners on account of Change in Law.
RERC observes that installation of the bird diverters on transmission lines in compliance of the Supreme Court's directions is a Change in Law event	
BERC approves 8th Amendment to the Bihar Electricity Supply Code, 2007	Bihar Electricity Regulatory Commission **("BERC")** vide its Suo-Motu Order dated 21.05.2025 in SMP-18/2024 has approved the 8th amendment in Chapter 4 of the Bihar Electricity Supply Code, 2007 ("**BESC**"). As per the erstwhile clause 4.1, the licensee on an application by the owner or occupier of any premises, located in his area of supply was required to give supply of electricity to such premises within one month after receipt of completed application and requisite charges. Provided where such supply required extension of distribution mains, or commissioning of new sub-stations, the distribution Licensee was required to supply the electricity to such premises immediately after such extension or commissioning. As per the amended Clause 4.1, after submission of application is complete in all respects, the distribution licensee shall provide new connection or modify an existing connection within a period not exceeding three days in metropolitan areas, seven days in other municipal areas and fifteen days in rural areas. Provided that where such supply requires extension of distribution mains, or commissioning of new substations, the distribution licensee shall supply the electricity to such premises immediately after extension or commissioning within a period not exceeding ninety days. As per the erstwhile Clause 4.11, application for a new connection of electricity supply or for enhancement/reduction of load was required to be made in duplicate in the appropriate prescribed form, copies of which would be available free of cost from the local office of the licensee. As per the amended Clause 4.11 application for new connection, Enhancement/ Reduction of load, change of name, change of category, shall be made online via web portal of the concerned Discoms. The application may also be made offline, in duplicate in the prescribed form, copies of which shall be available free of cost from the local office of the Licensee. BERC Amendment to the Bihar Electricity Supply Code, 2007 can be accessed from the following *link*.
	The Karnataka Electricity Regulatory Commission ("**KERC**"), vide its public hearing notice dated 16.05.2025, has announced a public hearing on the subject of "Determination of Tariff

KERC issues a public hearing notice for Determination of Tariff and norms in respect of Solar Power Projects (including Solar Rooftop Photovoltaic Projects) for FY 2025-26	and Norms in respect of Solar Power Projects (including Solar Rooftop Photovoltaic Projects) for FY 2025-26." A discussion paper related to this matter has been made available on the Commission's official website. The public hearing is scheduled to be held on Friday, 06.06.2025, at 11:30 A.M. in the Court Hall of the Commission, located on the first floor of 16 C-1, Miller Tank Bed Area, Vasanthanagar, Bengaluru. The public notice can be accessed from the following *link*.
APERC issues a public notice to invite comments/suggestions in the matter of draft APERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2025.	Andhra Pradesh Electricity Regulatory Commission ("**APERC**"), vide its public notice dated 29.05.2025, has proposed to introduce the APERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2025 A draft of the said Regulation has been prepared and made available on the Commission's website. In accordance with sub-section (3) of Section 181 of the Electricity Act, 2003, read with the Electricity (Procedure for Previous Publication) Rules, 2005, the Commission has invited comments, suggestions, and objections from stakeholders and interested parties. The finalisation of the draft Regulation will take place after the completion of a 21-day period from the date of the notice. The draft regulations can be accessed from the following *link*.
UPERC issues Draft UPERC (Fees & Charges of State Load Despatch Centre and other related matters) Regulations, 2025	The Uttar Pradesh Electricity Regulatory Commission ("**UPERC**") has issued draft regulations concerning fees and charges for the State Load Despatch Centre ("**SLDC**"). These regulations shall be called the Uttar Pradesh Electricity Regulatory Commission (Fees & Charges of State Load Despatch Centre and other related matters) Regulations, 2025 ("**Draft Regulations**") intended to replace the UPERC (Fees & Charges of State Load Despatch Centre and other related matters) Regulations, 2020 ("**2020 Regulations**"). These Draft Regulations will be effective from 01.04.2025 to 31.03.2030. UPERC has invited comments and objections from stakeholders and the public by 12.06.2025, with a public hearing scheduled for 16.06.2025 at UPERC's office. Copy of the Regulations can be accessed from the following *link*.

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