



This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

REGULATORY & POLICY UPDATES

SEBI issued the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2023.¹

Securities Exchange Board of India ("SEBI") by its notification dated 15.06.2023 has issued the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2023 ("Amendment Regulations"). The key amendments are as follows:

- (i) Corporate Debt Market Development Fund ("CDMDF"): Further to SEBI's decision in March 2023 to set up a corporate debt market development fund in the form of an AIF with an initial corpus of Rs. 3,000 crores to act as a backstop facility for purchase of investment grade corporate debt securities during times of stress, the Amendment Regulations introduce Chapter III-C setting out the procedure for registration and investment in CDMDF, conditions for investment in CDMDF, disclosures requirements and governance mechanism for the CDMDF;

¹ SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2023 dated 15.06.2023.

- (ii) **Introduction of Liquidation Scheme:** Regulation 29A has been introduced which allows an AIF nearing the completion of its term, which has unsold investments on account of lack of liquidity, to either sell such investments to a new scheme of the same AIF or distribute such unliquidated investments in-specie. SEBI has also issued a circular dated 21.06.2023 detailing the modalities for launching a liquidation scheme and for distributing investment in-specie.²
- (iii) **Compliance Officer:** The Manager is now required to appoint a compliance officer who shall be responsible for monitoring the compliances with the provisions of the SEBI Act, 1992, and all rules, regulations, notifications, etc. issued by SEBI. The compliance officer shall have an independent obligation to report any non-compliance observed to SEBI no later than 7 days from the date of becoming aware of such non-compliance.
- (iv) **Valuation process:** The Amendment Regulations mandate the appointment of an independent valuer, who will undertake valuation of investments by a scheme in the manner specified by SEBI. In this regard, SEBI has issued a circular dated 21.06.2023 with rules relating to standardization of the approach to valuation of an AIF's portfolio.³
- (v) **Issuance of units of AIFs in dematerialized ("Demat") form:** The Amendment Regulations mandate the issue of units by an AIF in Demat form. In this regard, SEBI has issued a circular with the following timelines for implementation of this rule:
 - (a) For AIF schemes with corpus of more than Rs. 500 crores, all the units already issued shall be in Demat form by 31.10.2023 and the new units issued shall be in Demat form from 01.11.2023 onwards;
 - (b) For AIF schemes with corpus of Rs. 500 crores or less, all the units issued shall be in Demat form by 30.04.2024 and the new units issued shall be in Demat form from 01.05.2024 onwards.⁴

SEBI issued press release on its Board Meeting held on 28.06.2023.⁵

SEBI by its press release dated 29.06.2023 has shared the important decisions taken in its board meeting held on 28.06.2023. The highlights of the important decisions taken by the Board of directors of SEBI ("SEBI Board") are summarized as below:

- (i) **Primary Market:** The SEBI Board has approved a reduction of timeline for listing of shares in a public issue from 6 days to 3 days calculated from the date of closure of the public issue;
- (ii) **Provisions in relation to listing and delisting of non-convertible debt securities:** The SEBI Board has approved an amendment requiring listed entities having outstanding listed Non-Convertible Debentures ("NCDs") as on 31.12.2023, to list all their subsequent issuances of NCDs at the stock exchange, except the following:
 - (a) Issuance of capital gains tax debt securities issued under Section 54EC of Income Tax Act, 1961;
 - (b) NCDs issued pursuant to an agreement with multilateral institutions requiring such NCDs to be locked-in till maturity;
 - (c) NCDs issued pursuant to an order of any Court or Tribunal, or any regulatory requirements stipulated by a financial sector regulator;

Additionally, where an entity with listed debt securities having outstanding NCDs as on 31.12.2023, such entity will have the option to list such NCDs;
- (iii) **Revision of minimum unitholding requirement for Sponsors of Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs"):** The SEBI Board has approved a proposal requiring the sponsor of InvIT / REIT to hold a minimum locked-in and unencumbered unitholding on a reducing scale for the entire life of the InvIT/ REIT;
- (iv) **Introduction of Board nomination rights REIT/ InvIT:** The SEBI Board has approved a proposal allowing unitholders holding 10% or more units of a REIT/ InvIT, either individually or collectively, to nominate a director on the board of the investment manager of such InvIT/REIT;

² Modalities for launching Liquidation Scheme and for distributing the investments of Alternative Investment Funds (AIFs) in-specie.

³ Standardised approach to valuation of investment portfolio of Alternative Investment Fund.

⁴ Issuance of units of AIFs in dematerialized form dated 21.06.2023.

⁵ SEBI issued press release on its Board Meeting dated 28.06.2023.

- (v) **Disclosure provisions for Foreign Portfolio Investors (“FPIs”)**: The SEBI Board has approved a proposal mandating additional disclosures regarding ownership, economic interest, control etc. for certain categories of FPIs. Further, it has also approved an amendment to the SEBI (FPI) Regulations, 2019 to align the ineligibility threshold (for investors from United Nations Sanctions List) from existing 25% to 10% for companies and trusts and 15% for partnerships and unincorporated entities, in line with the Prevention of Money Laundering Rules;
- (vi) **Strengthening of SEBI Complaints Redress System (“SCORES”) Platform**: The SEBI Board has approved revamping of the SCORES platform to *inter-alia* provide reduced timelines for resolution of complaints, recognition of designated bodies for monitoring and handling disputes, two levels of review- first by the designated body and then by SEBI and linking SCORES to online dispute resolution platform.

RBI issued notification on the status of Mumbai Interbank Forward Outright Rate as a significant benchmark.⁶

The Reserve Bank of India (“RBI”) by its notification dated 23.06.2023 has notified that the Modified Mumbai Interbank Forward Outright Rate (“MIFOR”) administered by Financial Benchmarks India Private Limited (“FBIL”) will cease to be a ‘significant benchmark’ after 30.06.2023. Further, RBI has provided the updated list of ‘significant benchmarks’ administered by FBIL which shall be effective from 01.07.2023, which are as follows:

- (i) Overnight Mumbai Interbank Outright Rate;
- (ii) USD/INR Reference Rate;
- (iii) Treasury Bill Rates;
- (iv) Valuation of Government Securities;
- (v) Valuation of State Development Loans; and
- (vi) Modified Mumbai Interbank Forward Outright Rate

This notification has been issued in furtherance to RBI’s press release and notification dated 12.05.2023 wherein it was notified that RBI will cease the publication of MIFOR after 30.06.2023, as per the provisions of the Financial

⁶ RBI notification dated 23.06.2023 on the status of MIFOR as a significant benchmark.

⁷ RBI issued notification on remittances to International Financial Services Centres under the Liberalised Remittance Scheme dated 22.06.2023.

Benchmark Administrators (Reserve Bank) Directions, 2019 due to cessation of US Dollar London Interbank Offered Rate.

RBI has allowed remittances to International Financial Services Centres under the Liberalised Remittance Scheme.⁷

The Ministry of Finance (“MoF”) by its notification no. SO 2374(E) dated 23.05.2022⁸ had notified courses offered in financial management, fintech, science, technology, engineering and mathematics by foreign universities or foreign institutions in the International Financial Services Centre (“IFSCs”), as financial service (“MoF Notification”).

In furtherance to such notification, RBI has issued directions dated 22.06.2023 to authorised dealer banks to facilitate remittance by resident individuals under the purpose ‘studies abroad’ as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing specified courses mentioned in MoF Notification.

MoF issued a notification on changes with respect to Liberalised Remittance Scheme and Tax Collected at Source.⁹

The MoF by its notification dated 28.06.2023 has postponed the implementation of the revised Tax Collected at Source (“TCS”) rates which were introduced through the Finance Act, 2023 and the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 which removed the differential treatment for credit cards *vis-à-vis* other modes of drawl of foreign exchange under the Liberalised Remittance Scheme (“LRS”). The MoF has taken the following key decision in the aforementioned notification:

- (i) the transactions through International Credit Cards while being overseas would not be counted as LRS and hence would not be subject to TCS;
- (ii) the threshold of Rs. 7 lakhs per financial year per individual will be restored for TCS on all categories of LRS payments, through all modes of payment, regardless of the purpose. Beyond the Rs. 7 lakhs threshold, TCS shall be: a) 0.5% (if remittance for

⁸ MoF notification dated 23.05.2022.

⁹ MoF issued a notification on important changes w.r.t Liberalised Remittance Scheme and Tax Collected at Source dated 28.06.2023.

education is financed by education loan); b) 5% (in case of remittance for education/ medical treatment); c) 20% for others;

- (iii) the revised TCS rates which were to come into effect from 01.07.2023 shall now come into effect from 01.10.2023.

CERC notified draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023.¹⁰

The Central Electricity Regulatory Commission (“CERC”) by its notification dated 12.06.2023 has issued draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023, (“Draft Regulations”) to amend the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (“Principal Regulations”). Regulations 5(3)(d) and 6(1)(a) of the Principal Regulations provide national component and regional component for all the High Voltage Direct Current (“HVDC”) transmission systems, except for “back-to-back HVDC” transmission system, Biswanath-Chariali/ Alipurdwara to Agra HVDC transmission system and Mundra-Mohindergarh 2500 MW HVDC transmission system. Under the Draft Regulations, following has been proposed:

- (i) In Regulation 5(3)(d), a proviso is proposed to be added to the effect that percentage of yearly transmission charges shall be 30% or more in accordance with Regulation 6(1)(a) of the Principal Regulations.
- (ii) In Regulation 6(1)(a), a proviso is proposed to be added providing treatment and calculation formula in the event where an inter-regional HVDC transmission system planned to supply power to a particular region is operated to carry power in reverse direction due to system requirements. As per the proposed proviso, in cases where Regional HVDC (“HVDCr”) is more than 30%, the yearly transmission charges corresponding to HVDCr shall be considered in the national component and balance shall be considered in regional component and in cases where HVDCr is less than or equal to 30%, then 30% of yearly transmission charges shall be considered in the national component and balance shall be considered in regional component.

¹⁰ Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023.

¹¹ MCA notification under Section 14 of IBC.

GOVERNMENT NOTIFICATIONS

MCA notified that moratorium under IBC will not apply to agreements/ transactions/ arrangements entered under the Oilfields (Regulation and Development) Act, 1948.¹¹

The Ministry of Corporate Affairs (“MCA”) by its notification dated 14.06.2023 has notified that moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) would not be applicable to (i) the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases under the Oilfields (Regulation and Development) Act, 1948, and (ii) any other transactions or agreements including Joint Operating Agreements which are ancillary or connected to transactions, arrangements or agreements mentioned in (i).

MoP notified Electricity (Rights of Consumers) Amendment Rules, 2023.¹²

The Ministry of Power (“MoP”) by its notification dated 14.06.2023 has implemented Electricity (Rights of Consumers) Amendment Rules, 2023 (“Amendment Rules, 2023”) amending Electricity (Rights of Consumers) Rules, 2020 (“2020 Rules”)¹³. Under the Amendment Rules, 2023, Rule 5 (5) of 2020 Rules which provides for smart metering has been substituted, and further, new Rules 5 (5A), 5 (5B), 8A and 8B have been inserted in 2020 Rules.

The substituted Rule 5 (5) provides that smart meters shall be read remotely at least once a day and other pre-payment meters shall be read by an authorised representative of the distribution licensee (“DISCOM”) at least once in every 3 months. Further, data regarding energy consumption shall be made available to consumers by DISCOMs, through its website or mobile application or SMS or through other similar modes.

New sub-rule (5A) restricts imposition of penalty on consumers based on maximum demand recorded by the smart meter for the period before the installation date. New sub-rule (5B) provides procedure for revision of sanctioned load, if in a month the maximum demand recorded by the smart meter exceeds the sanctioned load.

New rule 8A, *inter-alia*, prescribes that Time of Day (“ToD”) Tariff for consumers with smart meters will be made effective immediately after installation of smart meters, for

¹² Electricity (Rights of Consumers) Amendment Rules, 2023.

¹³ Electricity (Rights of Consumers) Amendment Rules, 2020.

commercial and industrial consumers having a maximum demand of more than 10 kW, ToD Tariff will be made effective from a date not later than 01.04.2023, and for other consumers, except for agricultural consumers, ToD Tariff will be made effective before 01.04.2025. Further, as per new Rule 8B, tariff for each category of consumers shall be displayed on DISCOM’s website and consumers shall be notified of change in tariff, excluding fuel surcharge and other charges, at least 1 month ahead of time, through DISCOM’s website or mobile application or SMS or through other similar modes.

MoP extended waiver of inter-state transmission charges on transmission of the electricity to electricity generated from solar and wind sources of energy¹⁴

MoP by its order dated 09.06.2023 has substituted Para 3.1 (vii) of its order dated 23.11.2021 which deals with waiver of Inter-State Transmission (“IST”) Charges on transmission of the electricity generated from solar and wind sources of energy under Para 6.4 (6) of the Tariff Policy, 2016. Para 3.1 (vii) was initially added through an order dated 30.11.2021 which dealt with the solar and/ or wind sources used by Hydro Pumped Storage Plant (“HPSP”) and Battery Energy Storage System (“BESS”) projects (provided at least 51% of the annual electricity requirement for pumping of water or charging of battery, as the case be, is met through such HPSP/ BESS) and the energy supplied and generated through them. Further, as per Para 3.1 (vii), in case where an HPSP/ BESS eligible for waiver of IST charges, is granted an extension in date of commissioning (“COD”) (initial COD being on or before 30.06.2025), by Ministry of New and Renewable Energy (“MNRE”) but the plant is commissioned before the extended date, it will get benefit of waiver of IST Charges on the transmission of electricity generated by such power plant as if the said plant had been commissioned on or before 30.06.2025. Para 3.1 (vii) covers those HPSP/ BESS who have been granted extension of COD by MNRE on account of force majeure, delay on the part of the transmission provider in providing transmission even after having taken the requisite steps in time or the delay on the part of the Government Agency.

By the substituted Para 3.1 (vii), the above-mentioned provision has also been extended to solar and wind energy sources set up by any person/ entity where power generated by such source is being self-consumed or sold to any entity either through competitive bidding, power exchange or

¹⁴ Waiver of Inter-State Transmission Charges on transmission of electricity generated from solar and wind sources of energy – consolidated orders.

through bilateral agreement. Further, a new proviso has been inserted to the effect that extension in COD shall be granted for a period of 6 months at a time and for not more than 2 times.

MoP issued amendment to the Standard Bidding Documents for procurement of Inter-State Transmission Services through Tariff Based Competitive Bidding process.¹⁵

MoP by its letter dated 21.06.2023 has issued amendment in the Standard Bidding Documents (“SBDs”) for procurement of Inter-State Transmission Services (“ISTS”) through Tariff Based Competitive Bidding (“TBCB”) process, comprising the Request for Proposal (“RFP”) and Transmission Service Agreement (“TSA”) dated 13.08.2021. MoP has amended Para 2.1.2 of the Standard RFP which provides technical requirement to be met by the bidding company or lead member of bidding consortium which *inter-alia* includes meeting the required aggregate capital cost of projects/ aggregate payments received for projects. The amended Para 2.1.2 provides that in case of High Voltage Direct Current (“HVDC”) Systems, the required aggregate capital cost of projects/ aggregate payments received for projects shall be calculated as per the table provided below:

Voltage Level	For transmission line (irrespective of conductor per phase)	For HVDC terminal station
88 kV (LCC)	3.8 crores/ Km	1.45 crores/ MW

MoP has issued report titled as National Energy Data: Survey and Analysis 2021-22.¹⁶

The Energy Data Management Unit set up under Bureau of Energy Efficiency, MoP in collaboration with NITI Aayog has released the first ever comprehensive energy sector report titled ‘National Energy Data: Survey and Analysis 2021-22’ (“Report”) on 23.06.2023 which provides sector specific analysis of energy demand, supply, and consumption patterns across various sectors of Indian economy.

The Report has collated fuel wise energy consumption data from FY 2016-17 to FY 2021-22 in major end use sectors such as iron & steel, textile, aluminium, cement, etc. It provides a sector specific energy product consumption and

¹⁵ Amendment in the SBDs for procurement of ISTS through TBCB process.

¹⁶ MoP has issued energy sector report titled as ‘National Energy Data: Survey and Analysis 2021-22’.

concludes that electricity is the most important energy source in the agriculture and commercial sector. It further notes the impact of various energy conservation and pollution control policies on monetary savings.

The key recommendations in the Report are:

- (i) International Standard Industrial Classification (“ISIC”) code should be used for classification of industries globally. Standardization of energy data reporting can enable better comparison of India’s energy landscape with other countries;
- (ii) availability of better data can help in understanding the energy profile of the country and the robust energy data can be utilized by the policy makers in formulating data driven policies;
- (iii) the energy data must be linked with policies and initiatives taken by the government which will help in tracking the progress of the targets set by the government. The detailed data collection will also help in monitoring the policy implementation associated with the energy efficient technologies and the use of green fuels in different energy consuming sectors.

MoP issues Guidelines for Resource Adequacy Planning Framework for Power Sector.¹⁷

MoP by its press release dated 28.06.2023 has issued the Guidelines for Resource Adequacy Planning Framework for India (“Guidelines”), in consultation with Central Electricity Authority (“CEA”). The Guidelines, issued by MoP have been framed under the Rule 16 of Electricity (Amendment) Rules, 2022. The Guidelines will ensure that sufficient electricity is made available to power the country’s growth, by putting in place a framework for advance procurement of resources by DISCOMs to meet the electricity demand in a cost-effective manner. The Guidelines also provide for an institutional mechanism for Resource Adequacy from national to DISCOM level to ensure availability of resources to meet demand at each level.

The Guidelines also suggest a share of at least 75 % of long-term contracts in total capacity required by DISCOMs as per long-term National Resource Adequacy Plan (“LT-NRAP”) or as specified by respective State Electricity Regulatory Commission, 10-20% shares of medium-term contracts and the balance through short-term contracts. The Guidelines also provide for a timeline for completion of the procurement

¹⁷ MoP issues Guidelines for Resource Adequacy Planning Framework for Power Sector dated 28.06.2023.

process for each type of generation by the DISCOMs. CEA will publish LT-NRAP to provide the Planning Reserve Margin (“PRM”) required at national level, to reliably meet the demand, while the National Load Dispatch Centre (NLDC) shall prepare the Short-term National Resource Adequacy Plan (ST-NRAP).

Based on LT-NRAP, each DISCOM shall prepare their own plans to contract the capacity required to meet the PRM at national level, for a 10-year period. Similarly, State Load Dispatch Centres will also prepare detailed annual operational plans called Short Term Distribution Resource Adequacy Plans (ST-DRAP), for their respective states, based on actual availability of generating stations. These plans shall also factor in the (Renewable Purchase Obligations) mandated to promote renewable energy capacity addition.

JUDICIAL PRONOUNCEMENTS

High Court of Calcutta held that petition under Article 227 of Constitution of India will not be maintainable against an order of arbitral tribunal rejecting challenge to its jurisdiction, since alternative remedy lies under Section 16 of the A&C Act.

The High Court of Calcutta in its judgment dated 09.06.2023 passed in the matter of *M.D. Creations & Ors. v. Ashok Kumar Gupta*¹⁸ has held that in case the arbitral tribunal rejects challenge to its jurisdiction under Section 16 of the Arbitration & Conciliation Act, 1996 (“A&C Act”), a remedy lies with the party under Section 16 (6) of the A&C Act. Since an alternative remedy is available under the A&C Act, a petition under Article 227 of Constitution of India against the order of arbitral tribunal rejecting challenge to its jurisdiction, will not be maintainable. Further, remedy under Article 227 challenging the jurisdiction of the arbitrator can be invoked only on the ground of the arbitrator’s patent lack of inherent jurisdiction, or in exceptional circumstances or bad faith on account of the other party.

CERC held that in disputes of inter-state nature it has the jurisdiction to adjudicate the disputes raised notwithstanding the arbitration agreement entered between the parties.

CERC by its order dated 26.06.2023 in the matter of *Arunachal Pradesh Power Corporation Private Limited v. Saranyu Power Trading Private Limited & Ors.*¹⁹ has held

¹⁸ C.O. No. 2545 of 2022

¹⁹ Petition No. 265/MP/2022

that power banking agreement between inter-state generating and/ or transmission entities is governed by the provisions of the Trading Licence Regulations, 2020 (“Trading Licence Regulation”), and CERC has the jurisdiction to adjudicate the disputes that arise out of such banking agreement notwithstanding the arbitration agreement entered between the parties.

CERC held that the banking agreement executed between the parties shows that the delivery point was in the regional periphery of the exporting utility for both legs of the banking transaction. Thus, the arrangement for exchange of electricity is inter-state in nature and governed by the provisions of the Trading Licence Regulations.

Further, since both the parties were granted trading licences by CERC and the alleged dispute was with respect to violation of Trading Licence Regulations and terms and conditions of such licence, CERC had the necessary jurisdiction to adjudicate such disputes.

NCLAT held that RP is empowered to keep claim of a creditor in abeyance where arbitration proceedings involving counter claim of the CD against such creditor is pending adjudication.

NCLAT Chennai Bench in its judgment dated 12.06.2023 in the matter of *Anheuser Busch InBev India Limited v. Mr. Pradeep Kumar Sravanam*²⁰ has held that the Resolution Professional (“RP”) is empowered to keep the claim(s) raised by the creditors in abeyance in the event arbitral proceedings are ongoing and counter claim of the Corporate Debtor (“CD”) is pending adjudication before the arbitral tribunal. NCLAT observed that the outcome of determination of the CD’s counter claim may set off claims of the creditor and therefore, the action of RP in keeping the claims of Financial Creditor in abeyance till the final disposal of the arbitration proceedings is within its powers under IBC.

UPERC held that if despite the occurrence of a particular event, the contract can be performed by other means, such an event will not amount to force majeure event.

The Uttar Pradesh Electricity Regulatory Commission (“UPERC”) in its judgement dated 19.06.2023 in the matter of *Rihand Floating Solar Private Limited v. Solar Energy Corporation of India Limited & Anr.*²¹ has held that if despite an event affecting performance of a party to contract,

the performance can be implemented through other avenues, such events cannot be construed as a *force majeure* event.

In the instant case, Solar Energy Corporation of India Limited (“SECI”) had encashed a performance bank guarantee upon termination of a Power Purchase Agreement (“PPA”) by Rihand Floating Solar Private Limited (“RFSPL”). To justify termination of the PPA, RFSPL contended that implications of Covid-19 before imposition of lockdown as well as imposition of lockdown and other difficulties faced by the RFSPL post lockdown, being a direct consequence of Covid-19 are force-majeure events, and also relied on the Office Memorandums (“OM”) issued by MNRE in respect of extension of Scheduled Commissioning Date (“SCD”) of Renewable Energy Projects (“REP”) on account of spread of Covid-19.

Relying on the judgment of the Supreme Court in *Energy Watchdog vs CERC*, UPERC observed that force majeure clauses are to be narrowly construed. UPERC further observed that in cases where despite an event affecting RFSPL, the performance can be implemented through other avenues, the same cannot be construed as a force majeure event within the scope of the PPA.

In the instant case, the PPA was signed on 17.12.2019 and SCD was on 03.02.2022, thus, RFSPL had sufficient time both before and after Covid-19 period to perform its obligations and arrange the plant machinery, material required for setting up of solar power plant. Even though Covid-19 has caused hindrance/ prevented implementation of the project, but *ipso-facto*, it cannot be considered as a force majeure event for RFSPL to justify non-performance or breach of contract.

UPERC held that the provisions of Limitation Act, 1963 are applicable to the proceedings before Electricity Commissions.

UPERC in its judgement dated 19.06.2023 in the matter of *Sahasdhara Energy Pvt. Ltd. v. U.P. Power Corporation Ltd.*²² has held that if claims arising out of any change in law event are not filed within the prescribed limitation period of 3 years, such claims will be time barred.

Relying on the judgment of Supreme Court passed in *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.* [(2016) 3 SCC 468], UPERC observed that the legislative intent is that the Electricity Act, 2003 and the Limitation Act, 1963 shall co-exist, except in case of any inconsistency, the provisions of the Limitation Act should not be annulled or detracted. A harmonious construction of

²⁰ Comp. App (AT) (CH) (INS.) No. 12 / 2023

²¹ Petition No. 1748 of 2021

²² Petition No. 1890 of 2022

Sections 174 and 175 of the Electricity Act, 2003 holds that if there is no conflict between the provisions of these legislations, express and implied, they should be read together.

JERC held that captive power plants are entitled to bank power during any 10 months of a financial year but carry forward of unutilized banked energy during a financial year, to the next financial year is not allowed even by way of mutual agreement.

The Jharkhand State Electricity Regulatory Commission (“JERC”) in its order dated 12.06.2023 passed in *M/s Usha Martin Ltd. v. Jharkhand Urja Vikas Nigam Limited & Ors.*²³ has held that under the JERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010 (“Surplus Capacity Utilization Regulations”) captive power plants are fully entitled to bank power during any 10-month period of a financial year.

JERC held that Regulation 9.2 of Surplus Capacity Utilization Regulations which *inter-alia* provides that period of banking shall start from 1st of May of every year, is not binding on parties and the parties can mutually decide the non-banking months by way of mutual consent as per their convenience for maintaining integrated grid operations along with economy and efficiency in the operation of power system. Further, if the parties mutually decide to revise the period of banking, then such agreement must be done in a prospective manner.

JERC further held that the term ‘subsequent year’ in Regulation 9.4 means ‘subsequent calendar year’ in same ‘financial year’. Thus, the banked energy as on 31st March of the financial year shall be treated as sold to the licensee at 65% of the applicable purchase rate. If parties mutually agree to carry forward the unutilized banked energy during a financial year, to the next financial year, such agreement would be against the provision of the applicable regulations.

²³ Case No. 10 of 2022

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