

**VERITAS LEGAL**  
ADVOCATES & SOLICITORS

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# VERSEED



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# COMPETITION

## Enforcement Matters

### Delhi High Court holds that the Patents Act will prevail over the Competition Act

On 13 July 2023, a division bench of the Delhi High Court, while deciding on the interplay between the Competition Act and the Patent Act, held that the jurisdiction of the controller of patents would prevail, to the exclusion of the CCI, when deciding on matters relating to anti-competitive practices by patent holders. The court's findings were primarily based on the fact that (i) the Patents Act, as compared to the Competition Act, is a self-contained specialized law that explicitly addresses issues related to anti-competitive agreements and abuse of dominance through licensing of IPR; and (ii) that legislative intent can be inferred from the fact that the Patent Act's provisions *qua* evaluating the reasonableness of licensing agreements, though materially identical to the powers of CCI, were enacted after the Competition Act came into force. Based on this reasoning, the Delhi High Court quashed the CCI's proceedings against Telefonaktiebolaget LM Ericsson (PUBL) and Monsanto Holdings Private Limited, while also observing that once a settlement has been reached between an informant and a person against whom information is filed, the CCI's foundation to initiate proceedings is lost.

### CCI holds litigations instituted by Boehringer to protect its IPR, not an abuse of dominance

On 22 August 2023, the CCI rejected an abuse of dominance complaint filed by Macleods Pharmaceutical Limited, which *inter-alia* alleged that Boehringer Ingelheim Pharma GmbH & Co. KG D and its Indian subsidiary ("**Boehringer**"), through frivolous and vexatious litigations, prevented its competitors from using 'Linagliptin' (a

patented compound whose validity was disputed). While refusing to delve into matters pertaining to patent validity, the CCI observed that the litigations initiated by Boehringer could not be deemed to be *mala fide* under the existing facts and circumstances. In this regard, the CCI observed that the two criteria to consider while assessing if a litigation is abusive are (a) whether the case objectively appears baseless, i.e., no reasonable litigant could realistically expect success on merits; and (b) whether the case was filed with an intent to prevent competition, i.e., to prevent a competitor from effectively competing or thwarting a potential entrant into the market.

### CCI refuses to interfere in IRDAI's regulatory functions

On 26 July 2023, the CCI dismissed an abuse of dominance claim against IRDAI and the Indian Institute of Insurance Surveyors and Loss Assessors ("**IISLA**"), which is a body promoted by IRDAI. It was *inter-alia* alleged that making an IISLA membership, a prerequisite to obtaining IRDAI surveyors and assessors licence, was anti-competitive. In its order, the CCI observed that alleged anti-competitive conduct was undertaken in exercise of the IRDAI's regulatory functions, which is not per se amenable to the jurisdiction of the CCI as per a recent decision of the Delhi High Court (discussed in our previous edition of Versed).

### CCI rejects abuse of dominance allegations against Tata Motors

On 23 August 2023, the CCI rejected allegations of abuse of dominance and anti-competitive practices raised against Tata Motors Limited ("**TML**") by two of its authorized dealers for commercial vehicles. The allegations broadly pertained to the process for placing vehicle orders with TML; and the terms of the dealership agreement(s), which had the effect of restricting dealers from (i) diversifying

into other businesses; and (ii) making sales outside allocated territories. The CCI observed that TML was a dominant entity in the market for the manufacture and sale of commercial vehicles in India. However, CCI found that in so far as the process for placing orders with TML was concerned, there was an objective justification for the process being followed and also noted that there was no proof of coercion on the part of TML. As regards to the alleged restrictions in the dealership agreements, the CCI held that the restrictions were not absolute since (i) diversification into other businesses by dealers could freely take place after obtaining TML's permission, which did not seem to be unreasonably withheld; and (ii) the territorial restrictions placed on the dealers were limited to active sales, whereas passive sales could take place outside the allocated territories.

### Other developments

**CCI finds Chandigarh Housing Board guilty of abuse of dominance:** The CCI, while finding the Chandigarh Housing Board ("**CHB**") dominant in the market for provision of services for the development and sale of residential flats in Chandigarh, held that the imposition of and actions taken pursuant to certain conditions in its allotment letter were abusive. Noting that CHB had already undertaken corrective measures, the CCI did not impose any monetary penalty and ordered CHB to cease and desist from undertaking such activities.

**CCI holds chemists and druggists associations of Sriganganagar, Rajasthan guilty of anticompetitive conduct:** The CCI found that arrangements which had the effect of pre-deciding trade margins and incentive schemes for pharmaceutical manufacturers under the threat of boycott amounted to anti-competitive agreements and consequently ordered these trade associations to cease and desist from undertaking such activities.

**CCI rejects case against University Tenders:** While rejecting a complaint filed by book suppliers against certain universities, CCI observed that a party initiating a tender can be deemed to be a procurer acting as a consumer. Further, it observed that such entities have the right to make decisions to suit their best interests and preferences in order to get the full benefits of consuming a product or service. Accordingly, CCI concluded that the universities had not engaged in any anti-competitive behaviour.

## Merger Control

### NCLAT upholds AGI Greenpac's acquisition of Hindustan National Glass

On 28 July 2023, the National Company Law Appellate Tribunal ("**NCLAT**") dismissed challenges against the CCI's conditional approval of AGI Greenpac's takeover of Hindustan National Glass & Industries. The NCLAT, while looking into the procedure under the second phase (Phase II) of the merger approval process, held that (i) the CCI's show cause notice ("**SCN**"), when it's of the *prima facie* opinion that a combination may cause an AAEC, should be issued to both the acquiring and the target entities. However, failure to do so would not automatically vitiate proceedings; and (ii) once the CCI receives the party(s) response to the SCN (which may include modifications), it can either (a) proceed to approve the combination if it is satisfied with the response; or (b) if the CCI is not satisfied with the response to the SCN, it can direct the parties to publish details of the combination and invite public comments on the same. In this regard, it was noted that the right of public participation in the merger approval process only arises after the CCI has considered the response to the SCN and continues to be of the *prima facie*

view that the proposed combination may cause an AAEC.

### **NCLAT upholds the PVR-Inox merger**

On 10 August 2023, the NCLAT dismissed an appeal filed by the Consumer Unity & Trust Society ("**CUTS**") that challenged the PVR-Inox merger. It was *inter-alia* alleged that the merger was an anti-competitive agreement with the potential to cause an appreciable adverse effect on competition ("**AAEC**") and would lead to abuse of dominance. The NCLAT, while coming to its decision, reasoned that it would be incorrect to equate actions taken pursuant to a merger with an anticompetitive agreement under the Competition Act. Further observing that once the merger was completed, PVR and Inox no longer existed as two separate entities and as such any arrangements between them could not be considered an agreement within the purview of the Competition Act. With respect to the abuse of dominance allegations, the NCLAT agreed that the merged PVR-Inox could be deemed dominant, but also noted that the merged entity had not undertaken any abusive conduct. Consequently, upholding CCI's position that dominance is not anti-competitive per se, and that it is only when the actions of the dominant entity are in the nature of the abusive conduct set out in the Competition Act that it becomes anti-competitive.

### **CCI imposes penalties on Platinum Trust and TPG Upswing for wrongly filing under the Green Channel Route**

On 18 August 2023, the CCI held that the acquisition of a minority stake in UPL Sustainable Agri Solutions Limited ("**UPL SAS**") by Platinum Jasmine A 2018 Trust and TPG Upswing Limited was wrongly filed under the green channel route ("**GCR**") on account of certain overlaps between a portfolio entity of the acquirers and UPL SAS.

Notably, GCR filings can only be made if there are no overlaps between the acquirer and target entities and are deemed approved on the date of filing.

On account of the identified overlaps between the parties, the CCI found all other factors and averments relating to the nature of the overlap to be irrelevant and imposed a penalty of INR 500,000 (USD 6,007) for failing to notify the transaction and a penalty of INR 5 million (USD 60,072) for submitting false statements in the GCR declaration. To this end, the CCI stated that the GCR was modelled on a trust-based self-assessment and further emphasised that notifying parties choosing to avail the benefit of the GCR must assess overlaps in the utmost good faith.

### **CCI penalises Airtel for gun-jumping**

On 23 August 2023, the CCI penalised Bharti Airtel Limited ("**BAL**") for failing to notify the CCI of its acquisition of an additional 20% stake in Bharti Telemedia Limited ("**BTL**") from Lion Meadow Investment Limited ("**LIML**"), pursuant to which BAL would become the sole shareholder of BTL; and LIML's interconnected acquisition of 0.664% in BAL ("**Proposed Combination**"). While coming to its findings the CCI assessed whether an exemption relating to incremental acquisitions, by existing shareholders who hold 50% (or more) in a target enterprise, not leading to a change from joint to sole control, ("**Exemption**") could be applied to the Proposed Combination. In this regard, the CCI analysed LIML's rights in BTL, such as veto rights and the right to appoint a director, and eventually held that LIML exercised joint control over BTL. Based on this, and coupled with the fact that LIML's rights in BTL would be extinguished after the share transfer to BAL, the CCI concluded that the Proposed Combination would not be able to avail the benefit of the Exemption since there was a change from joint to sole control. Importantly, in its analysis the CCI observed that



control can be determined from the mere existence of rights that would lead to material influence rather than the actual conduct in relation to these rights. Further, noting that the concept of 'joint control' does not require the exercise of an equal degree of control by all shareholders. Consequently, the CCI imposed a penalty of INR 10 million (USD 120,144) after considering past non-compliances by BAL as an aggravating factor while determining the quantum of penalty.

### **CCI imposes penalty on MassMutual for gun-jumping**

On 7 August 2023, the CCI imposed a penalty of INR 500,000 (USD 6,007) on Massachusetts Mutual Life Insurance Company ("**MassMutual**") for failing to notify the acquisition of a ~16% stake in Invesco Limited ("**Invesco**"), an offshore company with 4 Indian subsidiaries ("**Proposed Combination**"). Invesco's main presence in India was through its subsidiary that acted as an asset management company ("**AMC**") for a mutual fund. In its order, the CCI held that MassMutual had incorrectly assessed the applicability of the *de-minimis* exemption by failing to consider Invesco's mutual fund business in India. Further observing that with respect to mutual fund businesses, (a) the value of assets will be the aggregate of (i) assets of the AMC of the mutual fund, (ii) assets of the trustee of the mutual fund (if it is also subject to the acquisition) and, (iii) assets under management of the mutual funds; and (b) turnover will be the aggregate of (i) turnover/revenue from operations of the mutual fund's AMC, (ii) turnover/revenue from operations of the trustee of the mutual fund, (if it's subject to the acquisition), and (iii) turnover of the mutual funds. Further explaining that the turnover of mutual funds can be understood to be any income from securities held irrespective of whether the fund exercises 'control' on account of its holdings and as such, it is the

aggregate of: (i) gross value of sale and redemption of securities and (ii) other income such as dividends, interests, etc.

### **CCI approves General Atlantic's acquisition of a minority stake in Acko subject to modifications.**

On 6 July 2023, the CCI approved General Atlantic Singapore ACK Pte. Ltd.'s ("**General Atlantic**") acquisition of an additional minority stake in Acko Technology & Services Private Limited ("**Acko**") subject to certain behavioural modifications. In light of a horizontal overlap between NoBroker Technologies Solutions Private Limited ("**NoBroker**") which is a General Atlantic group portfolio entity; and Vivish Technologies Private Limited ("**Vivish**") where Acko has a minority stake, the CCI expressed concerns relating to the influence the acquirer group would have, post transaction, over two prominent players that provided society/gated community management services. To address these concerns, General Atlantic voluntarily proposed certain modifications which were accepted by the CCI. As such, General Atlantic undertook not to directly or indirectly, (a) interfere in any matter related to Vivish or Acko's investment in Vivish, (b) access any non-public information about Vivish that may be in Acko possession, and (c) influence or engage with Acko's representatives who were appointed to Vivish's board.

### **CCI approves Air India Vistara merger subject to modifications**

On 1 September 2023, the CCI conditionally approved the composite transaction pursuant to which Tata SIA Airlines Ltd. ("**Vistara**") which is a joint venture between Air India Limited ("**Air India**") and Singapore Airlines Limited ("**SIA**") would be merged into Air India and SIA would subsequently acquire a 25.1% stake in Air India ("**Proposed Combination**").

The CCI in its analysis, noted that pursuant to the Proposed Combination, the parties could enjoy substantial market power on certain identified domestic and international routes which could in turn have anti-competitive consequences ("**Identified Routes**"). In order to assuage the CCI's concerns, the parties proposed certain voluntary modifications whereby they committed to maintaining certain minimum annual scheduled air passenger transport capacities for a period of 4 years (subject to certain contingencies) in the Identified Routes. Based on the above, the CCI approved the Proposed Combination subject to the modifications being carried out, while also observing that approval of the Proposed Combination under the merger regime would not provide the parties with immunity from future scrutiny under the behavioural provisions of the Competition Act.

### **Other developments**

#### **CCI Imposes Gun jumping Penalties on Axis Bank, Cummins and NTPC:**

The CCI imposed gun-jumping penalties of (i) INR 4 million (USD 48,058) on Axis Bank Limited ("**Axis Bank**"), (ii) INR 4 million (USD 48,058) on NTPC Limited ("**NTPC**"); and (iii) INR 1 million (USD 12,041) on Cummins Inc ("**Cummins**"). In each of these cases, the parties had made *bona fide* errors in assessing the applicability of certain exemptions. While coming to its findings of contravention in each case, the CCI reiterated that the Indian merger regime is mandatory and suspensory in nature and as such the *bona fides* of an erring party would not affect a finding of a contravention.

**CCI approves IPCA's majority acquisition in Unichem subject to modifications:** The CCI approved Ipca Laboratories Limited's majority stake in Unichem Laboratories Limited ("**Unichem**"), both of whom are active in the pharmaceutical sector. To allay the CCI's concerns relating to the post

-closing effect on the formulations market, the parties volunteered certain modifications, which were accepted by the CCI pursuant to which Unichem agreed not to re-enter the formulations market for 36 months post-closing.

## **Developments in the Legal Framework**

### **Draft Combination Regulations published for stakeholder comment**

On 5 September 2023, the CCI published the draft 'Competition Commission of India (Combination) Regulations ("**Draft Combination Regulations**")', which are intended to replace the existing regulations and provide a mechanism to implement the changes to the Indian merger regime as contemplated in the Competition (Amendment) Act, 2023 ("**Amendment Act**"). A brief overview of some of the key highlights of the Draft Combination Regulations is set out below:

**Calculation of Deal Value:** The determination of 'deal value' for the purposes of the newly introduced INR 2000 crore 'Deal Value Threshold' ("**DVT**") will include considerations paid in lieu of any (i) covenant, undertaking, obligations or restrictions imposed (e.g., non-compete fees); (ii) interconnected and incidental transactions;(iii) options and securities; and (iv) occurrence or non-occurrence of a contingent event. The Draft Combination Regulations further state that if the precise value of a transaction cannot be determined then the notifying party should assume that the threshold has been met and act accordingly.

**Substantial Business Operations:** As per the Amendment Act, the DVT will only get triggered if the target enterprise has substantial business operations in India. In this regard, the Draft Combination Regulations contemplate that this criterion will be



met if 10% of the target's (i) global users, subscribers, customers, or visitors in the preceding twelve months; (ii) global gross merchandise value in the preceding twelve months or (iii) turnover from all products or services in the financial year preceding the date of the transaction is from India.

Further, the Draft Combination Regulations also provide for (i) the nature of rights that can be exercised on shares acquired through open market purchases pending CCI approval; (ii) the formalization of the pre-filing consultation process; (iii) the format in which voluntary modifications are to be provided; and (iv) an increase in the filing fees.

### **CCI publishes draft Commitment and Settlement Regulations for public comments**

On 23 August 2023, the CCI published the draft Competition Commission of India Commitment Regulations ("**Commitment Regulations**") and the draft Competition Commission of India Settlement Regulations ("**Settlement Regulations**") for public comments. Notably, this was done to provide a framework for the newly introduced concepts of Commitments and Settlements in the Amendment Act, which are applicable to cases relating to abuse of dominance and vertical restraints. Through these draft regulations, the CCI *inter-alia* set out details of the (i) procedure and timelines to be followed while making an application; (ii) the quantum of fees payable; and (iii) the nature and effect of the Commitment or Settlement proceedings on the parties involved.

### **Other legal developments**

**Rural Banks:** The CCI has exempted regional rural banks from the merger control provisions of the Competition Act for a period of five years starting from 19 July 2023.

**Appointment of DG Investigation:** By

a notification dated 18 July 2023, the CCI has now been empowered to appoint the DG on the basis of the recommendations of a three-member search cum selection committee which is to comprise of representatives from the CCI, Ministry of Corporate Affairs and an expert nominated by the Central Government.

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# FINANCE

## Regulatory Updates

### Appointment of debenture trustee's nominee on boards/governing bodies of non-company issuers

Regulation 23(6) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”), obligates an issuer which is a company under the Companies Act, 2013 to ensure that its articles of association require its board of directors to appoint the person nominated by the debenture trustee as a director in terms of Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993 (“**DT Regulations**”).

Given that similar provisions did not exist for issuers which are not companies, SEBI issued a circular on 4 July 2023 obligating issuers which are not companies, to submit an undertaking to their debenture trustee that in case of occurrence of events listed in Regulation 15(1)(e) of DT Regulations, a non-executive or independent director or trustee or member of its governing body shall be designated as nominee director for the purposes of Regulation 23(6) of NCS Regulations, in consultation with the debenture trustee(s).

These changes are also reflected in the Master Circular for Debenture Trustees dated 31 March 2023 (updated as of 6 July 2023) and the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper, dated 19 August 2021 (updated as of 7 July 2023).

Further, it has been clarified that in relation to InvITs and REITs, the requirement shall be provided in the articles of association of their investment managers/managers.

### New disclosure requirements for issuance of listed non-convertible securities

On 6 July 2023, SEBI notified the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023 (“**NCS Amendment Regulations**”) to amend the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. The key aspects of the amendments are as follows:

- The concepts of General Information Document (“**GID**”) and Key Information Document (“**KID**”) have been introduced vide Regulation 50A of Chapter VA, which are to be filed by a listed entity seeking to list their non-convertible securities on any recognized stock exchange to reduce the paperwork earlier required to be filed by listed entities.
- The GID shall serve as the comprehensive document through which listed entities shall be required to make prescribed disclosures. During the validity period of a GID (one year of first offer thereunder), if the listed entity wishes to issue subsequent or second offers of non-convertible securities, it shall only be required to issue a KID.
- The disclosure requirements introduced under Regulation 50A shall be applicable on a ‘comply or explain’ basis until 31 March 2024 and on a mandatory basis thereafter.
- The NCS Amendment Regulations have replaced Schedule I (Disclosures for Public Issue of Debt Securities and Non-Convertible Redeemable Preference Shares) and Schedule II (Disclosures for Private Placement of Non-Convertible Securities) of the NCS Regulations with a single Schedule I (Disclosures for Issue of

Securities) which seeks to create a common disclosure form for both public and private issuances.

### **LEI disclosure to Designated Depository Participant mandatory for non-individual FPIs**

Presently, Foreign Portfolio Investors (“**FPIs**”) are required to provide details in relation to Legal Entity Identifier (“**LEI**”) in the common application form, used for registration, Know Your Customer (“**KYC**”), and account opening of FPIs to their Designated Depository Participant (“**DDP**”) on a voluntary basis.

SEBI vide its circular dated 27 July 2023, has mandated for all non-individual FPIs to disclose LEI details to their DDP. All existing FPIs are mandated to do so within 180 days from the date of this circular, failing which their account shall be blocked for further purchase until the LEI is provided to the DDP.

Additionally, FPIs are required to ensure that their LEI is active at all times. Any FPI whose LEI has lapsed/expired will also be blocked from purchasing in the securities market until the LEI code is renewed.

### **Requirement of Incremental CRR and its discontinuance**

As per section 42(1) of the Reserve Bank of India Act, 1934 (“**RBI Act**”), all Scheduled Banks are required to maintain with the Reserve Bank of India a cash reserve ratio (“**CRR**”) of 4.5% of Net Demand and Time Liabilities (“**NDTL**”).

RBI *vide* the notification dated 10 August 2023, directed all Scheduled Banks, to maintain with the RBI, effective from 12 August 2023, an incremental CRR of 10% on the increase in NDTL between 19 May 2023 and 28 July 2023.

By a notification dated 8 September

2023, the RBI decided to discontinue the incremental CRR in a phased manner and by 7 October 2023, the incremental CRR will be nil.

### **Revised Regulatory Framework for Infrastructure Debt Fund-NBFCs**

RBI issued a circular dated 18 August 2023, introducing an updated regulatory framework for Infrastructure Debt Fund-Non-Banking Financial Companies (“**IDF-NBFCs**”). Some key provisions of the revised regulatory framework are highlighted below:

- An IDF-NBFC is now, in addition to being able to refinance operational projects that have completed at least one year of satisfactory commercial operations, also permitted to finance Toll Operate Transfer (“**TOT**”) projects as the direct lender.
- IDF-NBFCs are obligated to maintain a minimum net owned fund of INR 300 million and a capital-to-risk weighted assets ratio of at least 15%, with a minimum tier 1 capital of 10%.
- In addition to bonds, IDF-NBFCs can raise funds through external commercial borrowings (except from foreign branches of Indian banks) with a minimum tenor of five years.
- Exposure limits for IDF-NBFCs are set at 30% of their tier 1 capital for a single borrower/party and 50% of their tier 1 capital for a single group of borrowers/parties.
- The earlier requirement of sponsorship of an IDF-NBFC by a bank or an NBFC-Infrastructure Finance Company (“**NBFC-IFC**”) has now been withdrawn. Shareholders of IDF-NBFCs shall be subjected to scrutiny as applicable to other NBFCs, including NBFC-IFCs.

- The earlier requirement of entering into a tripartite agreement with the concessionaire and project authority for investments in the public private partnership infrastructure projects, has been made optional.
- All other regulatory norms including income recognition, asset classification and provisioning norms as applicable to NBFC-IFCs shall be applicable to IDF-NBFCs.
- NBFCs will now be eligible to sponsor Infrastructure Debt Fund-Mutual Funds (IDF-MFs) with prior approval of the RBI subject to the conditions stipulated under the revised regulatory framework.

### **Fair Lending Practice – Penal charges in Loan accounts**

By a circular dated 18 August 2023, RBI has issued instructions to all Commercial Banks, Primary (Urban) Co-operative Banks, Non-banking Financial Companies and All India Financial Institutions (collectively, “REs”) to adopt the following for charging penal interests, or charges on loans:

- Penalty charged for non-compliance with the loan contract shall be treated as 'penal charges' and not 'penal interest'. Penal charges will not be capitalised. RE shall not introduce any additional component to the rate of interest.
- REs shall formulate a board approved policy on penal charges or similar charges on loans. Penal charges in loans sanctioned to individual borrowers, for purposes other than business shall not be higher than the penal charges applicable to non-individual borrowers.
- REs to clearly disclose the quantum

and reason for penal charges and display the same on REs' website under 'Interest rates and Service Charges'.

- These instructions shall come into effect from 1 January 2024. REs may carry out appropriate revisions in their policy framework and ensure implementation of the instructions in respect of all the fresh loans availed/ renewed from the effective date. In the case of existing loans, the switchover to the new penal charges regime shall be ensured on the next review or renewal date or six months from the effective date of these instructions, whichever is earlier.

### **Mandatory listing of subsequent issuances of NCDs and new voluntary delisting provisions**

SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023 on 23 August 2023 and SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2023 on 19 September 2023. The key aspects of these amendments are:

- **Listing of subsequent issuances of NCDs:** A listed entity, whose non-convertible debt securities (“NCDs”) are listed, shall list all NCDs proposed to be issued on or after 1 January 2024 on the stock exchanges. A listed entity whose subsequent issues of unlisted NCDs made on or before 31 December 2023 are outstanding on the said date, may list such securities. A listed entity proposing to list the NCDs on the stock exchanges on or after 1 January 2024 shall list all outstanding unlisted NCDs previously issued on or after such date within 3 months of listing of the proposed NCDs. However, these requirements do not apply to (a) bonds issued under



Section 54EC of the Income Tax Act, 1961; (b) NCDs issued pursuant to an agreement between the listed entity and multilateral institutions; (c) NCDs issued pursuant to an order of any court, tribunal, or regulatory requirement stipulated by SEBI, RBI, Insurance Regulatory and Development Authority of India or Pension Fund and Regulatory Development Authority.

- **Voluntary delisting of non-convertible securities:** Provisions for voluntary delisting of all listed NCDs or non-convertible redeemable preference shares (collectively “NCS”) have been introduced. Exceptions include (a) listed entity with outstanding listed NCS issued by way of public issue; (b) listed entity with more than 200 security holders excluding qualified institutional buyers; (c) NCS delisted by stock exchange due to penalties or other regulatory actions; (d) NCS delisted pursuant to the redemption of such securities; and (e) NCS delisted pursuant to resolution plan of the Insolvency and Bankruptcy Code, 2016. The amendment also introduces the process and considerations for such de-listing.

### **Amendments in the regulatory framework for NBFCs regarding penal charges and interest rates**

In addition to the changes brought to the regulatory framework for Infrastructure Debt Fund - Non-Banking Financial Companies as set out above, the RBI has also amended the Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, the Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and the Master Direction – Non-

Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021, on 29 August 2023, in respect of penal charges and interest rates.

- **Penal charges in Loan account:** Same as the instructions issued under circular dated 18 August 2023, regarding fair lending practice - penal charges in loan accounts.
- **Reset of Floating interest rate on EMI based personal loans:** A policy framework is to be put in place by an NBFC for: (a) Clear communication to the borrowers about the impact of change in benchmark interest rate on loan leading to change in EMI and/or tenor or both. (b) Borrower's option to switch over to fixed rate at the time of interest reset. (c) Borrower's option for enhancement in EMI or elongation of tenor, or a combination of both; and to prepay, in part or fully, at any point during the tenor of the loan. (d) Transparent disclosure by NBFC of all cost incidental to above options in the sanction letter and at the time of revision of charges. (e) Extension by NBFC of instructions related to EMI and equated instalment-based loans of different periodicity, to existing loans by 31 December 2023.

### **Additional anti-money laundering measures specified by IFSCA**

International Financial Services Centres Authority (“IFSCA”) via a circular dated 31 August 2023 has specified additional anti-money laundering measures under the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022 to be complied with by regulated entities:

- The requirement of including information relating to cross-border

wire transfers by a bank (as an ordering institution) which was earlier applicable to cross-border wire transfers exceeding USD 1,000, now applies to cross-border wire transfers equal to USD 1,000. Further, the threshold for banks to include information of cross-border transfers bundled in a batch file which was USD 1,000 has now been removed.

- A bank acting as an intermediary institution is required to take reasonable measures consistent with straight through processing, to identify cross-border wire transfers that lack the required information as per the guidelines.

#### **New format of Abridged Prospectus for public issues of non-convertible securities**

SEBI *vide* its circular dated 4 September 2023 revised the format of abridged prospectus required to be filed by an issuer at the time of listing non-convertible securities, to simplify and provide greater clarity and consistency in the disclosures across various documents.

As per the revised format, the issuer/merchant banker shall:

- disclose requisite details including type of instrument, base size, face value etc. on the front page of the abridged prospectus.
- insert a Quick Response (QR) code on the last page of the abridged prospectus.
- ensure that qualitative statements in the abridged prospectus shall be substantiated with quantitative factors.
- on their website: (a) publish instructions to investors for completing the application form as specified and (b) make available a

copy of the abridged prospectus.

#### **Revised Master Directions on Classification, Valuation, and Operation of Investment Portfolio of Commercial Banks**

On 12 September 2023, the RBI issued a revised Master Directions on Classification, Valuation and Operation of Investment Portfolio of Commercial Banks, 2023 ("**Directions**"). The revised Directions will be applicable from 1 April 2024 to all Commercial Banks excluding Regional Rural Banks. The Directions include principle-based classification of investment portfolio, inclusion of non-statutory liquidity ratio securities in held to maturity securities subject to fulfilment of certain conditions, and symmetric recognition of gains and losses.

The Directions have also provided specific accounting treatment for transition from the erstwhile framework to the revised framework for smooth implementation.

#### **New Prudential Regulations for All India Financial Institutions**

RBI has notified the Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023 ("**Directions**"), which shall come into effect from 1 April 2024. These are applicable to All-India Financial Institutions (AIFIs) governed by RBI such as the Export-Import Bank of India (EXIM Bank), the National Bank for Agriculture and Rural Development (NABARD), the National Bank for Financing Infrastructure and Development (NaBFID), the National Housing Bank (NHB) and the Small Industries Development Bank of India (SIDBI).

The Directions seek to consolidate

older guidelines which governed exposure norms, classification, valuation, and operation of investment portfolios. Amongst others, these include the responsibility of the AIFIs for implementation of the three pillars of the Basel III Regulation System, provisions on 'Central Counterparty', and 'Counter-party Credit Risk'.

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## Case Summaries

### **NCLT rejects inter-se ranking of charges amongst secured financial creditors**

Pursuant to separate applications filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") by *PTC India Financial Services Ltd* and *Indo Unique Flame Limited*, in *State Bank of India v. Varam Bioenergy Private Limited (corporate debtor)*, the NCLT observed that Section 53(1) of IBC does not recognize any pre-CIRP (corporate insolvency resolution process) inter-se ranking of charges among the financial creditors of a corporate debtor, for the distribution of sale proceeds during liquidation.

It was further observed that Section 53(2) of IBC clarifies that any contractual arrangement between the recipients under Section 53(1) with equal ranking, which disrupts the order of priority thereunder, must be disregarded.

Further, Section 53(1) of IBC very clearly defines the classes and the order of the waterfall mechanism without any scope for adding any other sub-classes. Consequently, the NCLT directed the liquidator to re-calculate and redistribute the sale proceeds to all the secured financial creditors of the corporate debtor by putting them on the same pedestal irrespective of the priority of their charge on the assets of the corporate debtor.

# INSURANCE

## Regulatory Updates

### Revision of Customer Information Sheet/Know Your Policy for the Consolidated Guidelines on Product filing in Health Insurance Business dated 22 July 2020

As per Regulation 26 of the Insurance Regulatory and Development Authority of India (“IRDAI”) (Health Insurance) Regulations, 2016 (“**Health Insurance Regulations**”), every policyholder shall be provided with a Customer Information Sheet (“**CIS**”) as specified by IRDAI in the Health Insurance Regulations. IRDAI has proposed to revisit CIS to ensure that the health insurance policy information is provided in simple and easily understandable language.

An exposure draft of the revised CIS has been issued seeking comments from the stakeholders on or before 13 September 2023. The exposure draft of the revised CIS inter alia includes the requirements for the description of the product/policy, type of insurance product/policy, sum insured, policy coverage and exclusions, waiting period, financial limits of coverage, claims procedure, policy servicing, grievances and obligations.

### IRDAI (Re-insurance) (Amendment) Regulations, 2023

The IRDAI (Re-insurance) (Amendment) Regulations, 2023 (“**Re-insurance Regulations**”) were notified on 22 August 2023 to amend IRDAI (Re-insurance) Regulations, 2018, IRDAI (Registration and Operations of Branch Offices of Foreign Re-insurers other than Lloyd’s) Regulations, 2015, and IRDAI (Lloyd’s India) Regulations, 2016.

The overarching objective of the Re-insurance Regulations is to harmonise and streamline the existing regulations that apply to Indian insurers, Indian

reinsurers, Foreign Reinsurance Branches (“**FRBs**”), and International Financial Centre Insurance Offices (“**IIOs**”) and to align the regulatory framework for IIOs with the International Financial Services Centres Authority (“**IFSCA**”).

The minimum capital requirement for FRBs has been lowered to INR 50 crores from the previous threshold of INR 100 crores, with a provision to repatriate any excess assigned capital as per the amended Regulation 5(g) of the IRDAI (Registration and Operations of Branch Offices of Foreign Re-insurers other than Lloyd’s) Regulations, 2015. The format for reinsurance programmes has been simplified and regulatory reporting requirements have been rationalised for increased clarity and effectiveness. Further, the order of preference for insurers has been streamlined from the previous six levels to four.

### Technical Guidance in respect of Indian Risk Based Capital Framework – Quantitative Impact Study-1

The IRDAI has vide a circular and a press release dated 10 August 2023, taken the first step towards a ‘Risk Based Capital Framework’ (“**RBC Framework**”) for the Indian insurance industry. To support this endeavor, an initial ‘Technical Guidance’ document has been made available, detailing the Indian Risk Based Capital framework (“**Ind-RBC Framework**”) for carrying out the first Quality Impact Study (“**QIS1**”). The QIS1 will help in assessing the likely impact on the Indian insurance industry of the proposed Ind-RBC Framework for quantification of capital and solvency requirements, and the insurers are responsible for presenting the results of the QIS1 on or before 30 November 2023.

The Technical Guidance document is not publicly available, and is being separately shared with the insurers.



Insurers are asked to note that the Technical Guidance is only for the purpose of QIS1 and is not indicative of the final decision of the IRDAI on the Ind-RBC Framework. Further, insurers will also have to continue to submit regulatory returns as mandated by the current regulatory regime, as and when due.

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# PROJECTS & INFRASTRUCTURE

## Regulatory Updates

### Amendments to the validity period and transferability of CRZ clearances

On 3 July 2023, the Central Government amended the Coastal Regulation Zone ("CRZ") Notification, 2011. The key amendments include:

- Increase in the validity period of CRZ clearances from 5 to 10 years, further extendable by a year on the application as per procedure;
- The period from 1 April 2020 to 31 March 2021 will be excluded from the validity period of CRZ clearances, owing to COVID-19;
- A CRZ clearance can be transferred during its validity, on original terms and conditions, upon approval from the relevant authorities;
- A CRZ clearance can be divided among multiple legal entities entitled to undertake a project, and can be transferred during its validity after obtaining recommendations from the Coastal Zone Management Authority ("CZMA") and the Expert Appraisal Committee ("EAC"); and
- For projects requiring both environmental clearance and CRZ clearance, the validity period and transfer will be as per the Environment Impact Assessment Notification, 2006. Extension of validity period and transfer will require recommendations from the CZMA, and transfers shall additionally require recommendations of the EAC.

### New Guidelines for Tariff Based Bidding for Grid Connected Wind Power Projects

The Ministry of Power on 26 July 2023 issued new Guidelines for Tariff Based

Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects ("Guidelines"). Some key features are below:

- **Applicability:** To procurement of electricity by distribution licensee(s), their authorized representative, or an intermediary procurer, from grid-connected Wind Power Projects having (a) bid capacity of 10 MW and above for projects connected to intra-state transmission system; and (b) bid capacity of 50 MW and above for projects connected to inter-state transmission system.
- **Bid Structure:** Bids are invited based on a minimum power capacity (MW). The tariff quoted shall be the bidding parameter, which shall not exceed the procurer specified benchmark tariff.
- **Term of PPA:** The power purchase agreement must generally be 20 years from the scheduled commercial operation date but may also be set for a 25-year period.
- **Performance Bank Guarantee:** Performance Bank Guarantee shall be the lower of 5% of the estimated capital cost for the project for the financial year in which bids are invited or the upper limit stipulated by the Ministry of Finance.
- **Deviation:** Deviation of bid documents from the Guidelines requires Government approval.

### Captive generation criteria and other provisions of Electricity Rules amended

The Ministry of Power has notified the Electricity (Second Amendment) Rules, 2023 on 26 July 2023 and Electricity (Third Amendment) Rules, 2023 on 1 September 2023 to further amend the Electricity Rules, 2005. The following are some of the important changes:

- **Subsidy Accounting and Payment:** Rule 15 has been substituted with a new rule governing subsidy accounting and payment, which requires accounting of the subsidy payable under Section 65 of the Electricity Act, 2003 by the distribution licensee, in accordance with the standard operating procedures issued by the Central Government. The amendments also require submission of quarterly reports by distribution licensees for examination and issuance by State Commissions.
- **Framework for Financial Stability:** New Rule 20 provides for a framework for financial stability which, amongst others, mandates that the Aggregate Technical and Commercial loss reduction trajectory to be approved by the State Commissions for tariff determination should align with the trajectory agreed by the respective State Governments and approved by the Central Government under any national scheme/programme.
- **Criteria of captive generating plant:** The rules earlier stipulated that a power plant could only qualify as “captive generating plant” if not less than 26% of its ownership was held by a captive user. The term ‘captive user’ has been replaced with ‘captive user(s)’, and the proviso which required the affiliate company to hold not less than 51% of the ownership, for captive generating plant set up by affiliate company, has been removed. Further, consumption by a subsidiary/holding company of a company which is a captive user is now admissible for calculation of captive consumption by captive user.
- **Centralized verification of captive status:** The captive status

of generating plants, where the captive generating plant and its captive users are located in more than one state, shall be verified by the Central Electricity Authority as per the procedure issued by the authority with the approval of the Central Government.

### **No environmental clearance required for manufacturing of Green Ammonia/Green Hydrogen**

On 28 July 2023, the Ministry of Environment, Forestry and Climate Change issued a clarification that standalone plants manufacturing green ammonia/green hydrogen shall not be required to obtain an environmental clearance (“EC”) under the Environment Impact Assessment Notification, 2006. However, any such plant being set up in the same premise as an existing unit (which otherwise requires an EC), will require an amendment to the EC to include the component of green ammonia/green hydrogen plant.

### **Guidelines for Medium and Long Term Power Demand Forecast**

The Ministry of Power in July 2023 released the Guidelines for Medium and Long Term Power Demand Forecast (“Guidelines”). The Guidelines aim at providing a basic framework of medium term and long term power demand forecast for a Distribution Company/State/Union Territory. The forecast covers medium term (more than 1 year and up to 5 years) as well as long term forecast (next 10 years at least). The Guidelines require the detailed demand forecasting exercise to be undertaken in every 5 years. The forecast should be for at least 3 scenarios – optimistic; business as usual; and pessimistic.

### **Amendments to CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020**

The Central Electricity Regulatory

Commission (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023 have been introduced on 3 August 2023 which shall come into operation with effect from 1 October 2023.

These amendment regulations prescribe that the billing, collection, and disbursement for the billing period of October 2023 shall be undertaken in the billing month of December 2023, and for August 2023 and September 2023 shall be undertaken in the billing months of October 2023 and November 2023 respectively.

### **Remaining provisions of CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, now effective**

The Central Electricity Regulatory Commission ("CERC") has, on 3 August 2023, notified that the remaining regulations of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 ("**GNA Regulations**") (published on 19 July 2022) and the remaining regulations of the first amendment to the GNA Regulations (published on 6 April 2023) will come into effect from 1 October 2023.

### **New Electricity Grid Code notified**

On 3 August 2023, Central Electricity Regulatory Commission ("**CERC**") notified the CERC (Indian Electricity Grid Code) Regulations, 2023 (the "**Grid Code**") which shall come into effect from 1 October 2023. The Grid Code applies to all users, State Load Despatch Centres, Renewable Energy Management Centres, Regional Load Despatch Centres, National Load Despatch Centre, Central Transmission Utilities, State Transmission Utilities, licensees, Regional Power Committees, Settlement Nodal Agencies, Qualified Coordinating

Agencies and Power Exchanges to the extent applicable.

Further, it is expressly specified that the Grid Code or any amendments thereto shall not be treated as a "Change in law" in any of the agreements entered into by any of the users covered thereunder.

### **Rationalisation of Offences under various statutes**

On 11 August 2023, the Ministry of Law and Justice introduced the Jan Vishwas (Amendment of Provisions) Act, 2023 ("**JV Act**") to decriminalise and rationalise offences under various laws. Some of these statutes are the Indian Forest Act, 1927, the Industries (Development and Regulation) Act, 1951, the Merchant Shipping Act, 1958, the Marine Products Export Development Authority Act, 1972, and the Metro Railways (Operation and Maintenance) Act, 2002.

Further, in Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986, contravention of provisions of the respective acts or rules, orders or directions thereunder (as applicable) for which no penalty was specified were earlier punishable with imprisonment or fine. Such contravention is now decriminalised and person in contravention is liable to pay increased penalty of minimum INR 10,000, extendable to INR 1.5 million and in case of continued contravention, an additional penalty extendable to INR 10,000 for each day during which the contravention continues.

### **MNRE strategy for establishment of Offshore Wind Energy Projects**

Pursuant to the National Offshore Wind Energy Policy 2015, the Ministry of New and Renewable Energy ("**MNRE**") has, on 17 August 2023 and 26 September 2023, proposed revisions to the models for development of offshore wind farms.

- **Model-A (VGF Model)** – This is to



be followed for demarcated offshore wind zones for which MNRE/National Institute of Wind Energy (“NIWE”) has carried out or proposed to carry out detailed studies/surveys. MNRE or its designated agency will enter into a lease agreement for 35 years, and necessary central financial assistance in the form of Viability Gap Funding (“VGF”) would be available to achieve a pre-determined power tariff.

- **Model-B (Non-VGF, with exclusivity over seabed during study/survey period)** - To be followed for sites identified by NIWE, and proposed offshore wind sites will be demarcated and allocated on an exclusive basis for 5 years' period on a lease. The power generated will be sold under open access/captive/third party sale mechanism without any central financial assistance. Benefits like provision of power evacuation infrastructure from off-shore pooling delivery point, waiver of transmission charges and additional surcharge, carbon credit benefits etc. will be applicable.
- **Model-C (Non-VGF, without exclusivity over seabed during study/survey period)** - In this model, developer may identify any offshore wind site within the Exclusive Economic Zone (EEZ) excluding the sites considered under Model-A & Model-B and carry out studies and surveys. Government will come up with bid for project development/seabed allocation including any of the following methods: (a) Bidding on lease/allocation fee or revenue sharing for open access/captive/third party sale; (b) Tariff based competitive bidding for power procurement by DISCOMs or central/state government; and (c) Any other transparent bidding mechanism. No central financial

assistance will be available. MNRE or its designated agency will enter into the concession agreement and lease agreement for 35 years.

### **Release of Green Hydrogen Standard**

For the purposes of the National Green Hydrogen Mission, the Ministry of New and Renewable Energy (“MNRE”) has, on 18 August 2023, introduced a standard to define "Green Hydrogen", along with an emission cap of 2 kg CO<sub>2</sub> equivalent/kg for Green Hydrogen produced through electrolysis or conversion of biomass. MNRE has specified that a detailed methodology for measuring, reporting, monitoring, onsite verification, and certification shall be released and that the Bureau of Energy Efficiency will be the nodal authority for accreditation of agencies for such monitoring, verification, and certification.

### **National Framework for Promoting Energy Storage**

The Ministry of Power has issued the national framework for promoting energy storage in August 2023. Some matters for consideration as specified in the framework are as follows:

- Viability gap funding is proposed for few initial battery energy storage systems of up to 40% of project's capital cost, subject to commissioning within 18-24 months;
- Sovereign green bonds may be used for funding green infrastructure and financial institutions may also extend long term loans to energy storage projects;
- Connectivity of energy storage systems to the nearest inter-state transmission systems may be granted on a priority basis; and

- New renewable energy projects (excluding hydro projects) with an installed capacity of over 5 MW or as specified by the Central Government may be mandated to install energy storage systems for minimum 5% of the renewable energy capacity.

### **Guidelines for Tariff Based Competitive Bidding Process for Grid Connected Wind Solar Hybrid Projects**

On 21 August 2023, the Ministry of Power issued guidelines for competitive bidding for procurement of power from wind-solar hybrid projects ("HPPs") by distribution licensees, their authorized representatives, or an intermediary procurer ("Procurer") to promote consumer interests ("Guidelines").

- The Guidelines will apply for long term procurement of electricity through competitive bidding process by Procurers from HPPs of 10 MW capacity and above for intra-state transmission system or 50 MW and above for projects connected to inter-state transmission system, provided that at least 33% of the total contracted capacity of the project must come from either wind or solar sources.
- The PPA period shall be for 20 years from Scheduled Commencement Supply Date ("SCSD") quoted by the bidder, which can be extended up to 25 years. The generator will be compensated by the Procurer in case of inability to off-take scheduled power due to constraints as specified under the Guidelines.
- The commencement of supply shall be: (a) for projects below 1000 MW capacity, within 24 months from the date of signing of PPA; and (b) for projects above 1000 MW capacity, within 30 months from the date of signing of PPA.

- The Guidelines provide for encashment of performance bank guarantee on a per day basis for delay in commencement of power supply beyond the SCSD. Further, delay beyond 6 months, would result in a reduction of contracted capacity to the project capacity which has commenced power supply along with blacklisting.
- Any deviation from the Guidelines requires government approval before initiation of bidding.

### **New conditions for exemption of certain activities from environmental clearance**

The Ministry of Environment, Forest and Climate Change has, on 30 August 2023, amended the list of activities in the Environmental Impact Assessment Notification, 2006, that are exempt from environmental clearance, pursuant to the order of the National Green Tribunal in the case of *Noble M Paikada vs. Union of India & Ors.*

The amendments have made the exemption of (a) extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc, subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time; and (b) dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management, subject to the compliance of environmental safeguards issued in this regard from time to time.

### **Direction to GENCOs for timely import of coal for blending and maximizing production**

The Ministry of Power ("MoP") issued a direction dated 1 September 2023, whereby, the mandatory blending rate of imported coal has been modified

from 6% to 4% (by weight) for the remaining financial year 2023-2024. MoP has requested the central and state generation companies ("GENCOs") to undertake necessary actions to import coal for blending at the new specified rate through a transparent competitive bidding process, to have comfortable coal stocks for smooth operations. Further, any shortfall in domestic coal supply will be shared by the GENCOs on a *pro-rata* basis and their share of domestic coal will be determined in a manner which ensures that their respective pit-head stations are provided 100% of their domestic coal requirement.

### **EPR Obligations on producers regarding metals recycled from e-waste**

On 21 September 2023, a framework for generation of Extended Producer Responsibility ("EPR") certificates was introduced wherein EPR certificates will be issued against key metals recycled from e-waste. The key metals are classified into 3 groups namely precious metals, non-ferrous metals, and ferrous metals. The framework specifies EPR obligations of producers basis this classification. EPR authorisation under E-Waste (Management) Rules, 2022 aims to channelise and manage a system of e-waste collection.

### **CERC removes difficulties in implementation of GNA Regulations**

In its order dated 22 September 2023, Central Electricity Regulatory Authority ("CERC") has issued clarifications on a few issues for removal of difficulties in implementation of CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 ("GNA Regulations"). The clarifications, *inter alia*, pertain to transition from CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 to GNA

Regulations, bank guarantees, transfer of connectivity, and treatment of cases requiring system augmentation for grant of additional general network access.

## **Case Summaries**

### **MERC-determined tariff stayed for being higher than licensee-proposed tariff**

In *Tata Power Company Ltd. vs. Maharashtra Electricity Regulatory Commission*, the Appellate Tribunal for Electricity ("APTEL"), *vide* its interim order dated 13 July 2023 granted an interim stay (pending disposal of main appeal) on the tariff schedule of Tata Power for FY 2023 -24 as approved by the Maharashtra Electricity Regulatory Commission ("MERC"), on account of such tariff being higher than that proposed by Tata Power.

APTEL observed that the regulatory commission fixing a tariff, higher than that sought by the licensee, should be an exception, and not a norm or a matter of course, and such fixation can only be done after all factors under Section 61 of the Electricity Act, 2003 (such as factors which would encourage competition, efficiency and economic use of resources, safeguarding of consumers interests, etc.) have been taken into consideration. APTEL concluded that the increase in tariff, as approved by MERC, was *prima facie* unjustified and violative of Section 61(d) of the Electricity Act, 2003.

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