

# GATI - विधि

-LAW IN ACTION



## Legal Updates

Ministry of Power vide its notification dated 22.10.2021 has introduced the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (“Rules”).

Some of the salient features of the said Rules are as under: -

1. Change in Law has been defined under the Rules to mean change in law in relation to tariff (unless otherwise defined in the contract) made after the determination of tariff under section 62 or section 63 of the Electricity Act and includes change in interpretation of any law by a competent Court, change in any domestic tax, including duty, levy, cess, charge, or surcharge levied by the Government and any change in the condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity (unless specifically excluded from the contract) and explicitly excludes any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee, deviation settlement charge changes or frequency intervals by an Appropriate Commission.
2. The affected party i.e., the generating company or transmission licensee, must give a 3-week prior notice to the other party about the proposed impact in the tariff or charges to be recovered and the monthly tariff or charges can be adjusted to compensate the affected party to restore such affected party to the economic position prior to the change in law.
3. The affected party would be required to furnish computation of impact in tariff or charges to be adjusted and recovered, within 30 days of the occurrence of the change in law or on the expiry of 3 weeks from the date of the notice, whichever is later.

**Ministry of Power  
notifies the  
Electricity (Timely  
Recovery of Costs  
due to Change in  
Law) Rules, 2021.**

4. The recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff and will be computed as one time or monthly charges or per unit basis or in a combination of the two and shall be recovered in the monthly bill as the part of tariff and such amount shall be calculated in accordance with the formula under the agreement or as per the formula provided in the Schedule of the Rules. The recovery of the impacted amount shall be within a period of 180 months in case of fixed amount and until the impact exists in case of recurring amounts.
5. The Appropriate Commission shall verify the calculation for adjustment within 60 days from the date of receipt of the relevant documents and calculations from the generating company or transmission licensee and the same shall be adjusted in the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.

Ministry of Power vide its notification dated 22.10.2021 has notified the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021 (“**Rules**”) which defines and lays down the functioning of:

1. An intermediary procurer (“**Procurer**”): A deemed trader under the Electricity Act and can be an intermediary company, nominated by the Government (Central/State), between the distribution licensees and the generating company, who is required either to aggregate the purchase of electricity from different generators and sell it to the distribution licensee. They are allowed to retain only the trading margin as specified in the agreements or the regulations or as may be determined by the Appropriate Commission from the sale of electricity, which must be through a transparent bidding process.
2. A must-run power plant (“**Plant**”): Any wind, solar, wind-solar hybrid or hydro power plant (in case of excess water leading to spillage) or a power plant from any other sources, as may be notified by the Appropriate Government, which has entered into an agreement to sell the electricity to any person. Curtailment of electricity of these plants are only allowed due to technical constraint or for reasons of security of the electricity grid in accordance with the Indian Electricity Grid Code. Also, compensation shall be payable by the Procurer at the rates specified in the agreement for purchase or supply of electricity. In case prior notice (prior to the start of the day ahead market or real time market or any other product introduced from time to time in the power exchange) is given, the unscheduled electricity of the Procurer shall be sold in the Power Exchange and the amount realised shall be adjusted against the compensation payable by the Procurer after deducting actual expenses paid for the sale. Any deficit shall be paid by the Procurer on monthly basis; any excess realisation of amount during a month from such sale shall be carried forward and adjusted in the next month or months. The final adjustments if any, shall be paid by the Plant to the Procurer within one month of the close of the financial year.
3. The Appropriate Commission shall adjust the rate of tariff on annual basis based on the actuals or adopt the weighted average tariff pursuant to an application made by the Procurer or distribution licensee.
4. The Procurer or trading licensee would be offered a resultant bid rate computed by considering the weighted average of different rates of multiple successful bidders selected to meet the full quantum of electricity specified in the bid for sale to third parties and would be applicable to agreements entered into prior to the commencement of these Rules between the Procurer and distribution licensees.

The Ministry of Corporate Affairs (“**MCA**”) vide general circular no. 16/2021 dated 26.10.2021 notified relaxation in paying additional fees in case of delay in filing Statement of Account and Solvency by Limited Liability Partnerships (“**LLP**”) up to 30.12.2021.

**Ministry of Power notifies Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021**

**Relaxation in paying additional fees in case of delay**

**in filing Form 8 by  
LLP**

MCA had earlier received a representation seeking extension of timeline for filing the Statement of Account and Solvency without paying additional fees by LLPs on account of challenges faced by the LLPs due to COVID-19 pandemic. As part of the government's constant efforts to promote ease of doing business and compliances for Micro, Medium and Small Enterprises doing business through the vehicle of LLP, it has been decided to allow LLPs to file Form 8 (Statement of Account and Solvency) for the Financial Year 2020-2021 without paying additional fees up to 30.12.2021.

**TRAI issues  
Consultation Paper  
on "Market  
Structure /  
Competition in  
Cable TV services"**

The Telecom Regulatory Authority of India ("TRAI") has issued a consultation paper on "Market Structure / Competition in Cable TV services" on 25.10.2021 ("**Consultation Paper**").

The Ministry of Information and Broadcasting ("**MIB**"), vide its letter dated 12.12.2012 had sought recommendations from TRAI on issues related to monopoly / market dominance in cable TV services. TRAI issued its recommendations on the same on 26.11.2013 after following a due consultation process. TRAI has received a back reference dated 19.02.2021 from MIB mentioning therein that considerable time has passed since the recommendations were made and that the media and entertainment landscape has changed drastically, particularly with the advent of new digital technologies in this sector. Therefore, MIB felt that some of the issues need further consideration by TRAI and it may provide a fresh set of recommendations in the matter.

TRAI has invited responses from all stakeholders on the Consultation Paper by 22.11.2021, and provide their counter-comments, if any, by 06.12.2021.

**Supreme Court  
holds that an  
arbitrator has  
substantial  
discretion in  
awarding interest**

The Supreme Court vide order dated 20.10.2021 in *Punjab State Civil Supplies Corporation Limited and Anr. v. Ganpati Rice Mills and Anr.* (Special Leave to Appeal No. 36655/2016) has held that Section 31 (7) of the Arbitration and Conciliation Act, 1996 grants substantial discretion to the arbitrator in awarding interest.

The Court upheld imposition of interest at the rate of 18% per annum by the arbitrator and distinguished an earlier judgment of the Supreme Court in *A.P. State Trading Corporation Limited v. G.V. Malla Reddy and Company* (2010 SCC Online SC 1081) by concluding that the said judgment pertained to arbitration proceedings under the Arbitration Act of 1940. The Court also observed that the even the agreement between the parties envisaged interest as high as 21%.

**Bombay High  
Court holds that an  
arbitral tribunal  
does not have the  
jurisdiction to pass  
ex parte ad interim  
order**

The Bombay High Court vide order dated 13.10.2021 in *Godrej Properties Ltd. v. Goldbricks Infrastructure Pvt. Ltd.* (Commercial Arbitration Petition No. 23500 of 2021) held that the Arbitration and Conciliation Act, 1996 ("**1996 Act**") does not confer power on an arbitral tribunal to pass ex parte ad interim orders on application filed under Section 17 of the 1996 Act.

While coming to the above conclusion, the Court observed that even if the arbitral tribunal is recognized to have the same power for making orders as that of the Court, for the purposes of and in relation to any proceedings before it, due meaning to the provisions of Sub-section (2) of Section 24 read with Section 18 of the 1996 Act would be required to be given. The said provisions prescribe that a party shall be given sufficient advance notice of any hearing and that the arbitral tribunal will be under an obligation to treat all the parties equally and that each party shall be given a full opportunity to present its case, which is required to be recognized to be applicable at all stages of the proceedings before the arbitral tribunal.

**Supreme Court  
holds that  
limitation period  
for appeal under  
Section 61 of IBC  
starts from the date  
of pronouncement  
of order**

Supreme Court vide judgment dated 22.10.2021 in *V Nagarajan v. SKS Ispat and Power Ltd.* held that the period of limitation for filing of appeal against an order as per Section 61 of the Insolvency and Bankruptcy Code ("**IBC**") will start running as soon as the same is pronounced, and that it is not dependent on the date when the order is uploaded. A party who fails to file an application for the certified copy of the order immediately cannot raise a plea to extend the period of limitation on the ground of delay in uploading the order.

The Court observed that Sub-sections (1) and (2) of Section 61 of the IBC consciously omit the requirement of limitation being computed from when the "order is made available to the aggrieved party", in contradistinction to Section 421(3) of the Companies Act, 2013. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified

copy upon pronouncement of the order it seeks to assail, in consonance with the requirements under Rule 22(2) of the NCLAT Rules, 2013. It was further observed that it is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLAT Rules, 2016 and prevent limitation from running.

The Court further observed that Rule 22(2) of the NCLAT Rules, 2016 mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While it is true that the tribunals may choose to exempt parties from compliance with this procedural requirement in the interest of justice, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance.

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