

# GATI - विधि

-LAW IN ACTION



## Legal Updates

### MNRE issues Notification classifying Ocean Energy as Renewable Energy

Ministry of New and Renewable Energy (“MNRE”) (Ocean Energy Division) vide Notification dated 22.08.2019 has issued a clarification classifying energy produced using various forms of ocean energy, such as tidal, wave, ocean thermal energy conversion etc. to be considered as ‘Renewable Energy’. Such energy shall be eligible for meeting the non-solar Renewable Purchase Obligations.

### MNRE issues Guidelines for Implementation of Phase II of Grid Connected Rooftop Solar (RTS) Programme

MNRE vide O.M. dated 20.08.2019 has issued Operational Guidelines for Implementation of Phase II of Grid Connected RTS Programme (“Guidelines”). The major components of the Guidelines are:

- Component A: Setting up of 4000 MW of grid connected RTS projects in residential sector with Central Financial Assistance.
- Component B: Incentives to DISCOMs based on achievement towards initial 18000 MW of grid connected RTS plants.

The Guidelines include various business models covered as per the prevailing legal framework and also includes hybrid systems such as solar rooftop PV- wind hybrid, solar rooftop PV- solar thermal hybrid, solar rooftop PV- biomass hybrid etc. The Guidelines further list out the roles and responsibilities of various stakeholders i.e. MNRE, DISCOMs and the empaneled vendors for supply and installation of RTS projects.

### APTEL directs APERC to not hold public hearing for adoption of tariff in a competitive bidding process

Appellate Tribunal for Electricity (“APTEL”) in *Ayana Ananthapuramu Solar Private Limited. v. Andhra Pradesh Electricity Regulatory Commission & Ors.* and other batch matters, has directed the Andhra Pradesh Electricity Regulatory Commission (“APERC”) to not allow the DISCOMs to withdraw the petitions for adoption of tariff and directed the APERC to not hold the public hearing since the proceedings pertain to adoption of tariff through a competitive bidding process. APTEL has held the same in view of the fact that the process of bidding had already commenced, wherein the bidders had made substantial investment and progress in establishment of the concerned solar plants.

**MoP approved the HLEC recommendations addressing issues of Stressed Thermal Power Projects**

Ministry of Power (“**MoP**”) has issued an O.M. dated 30.08.2019 approving certain “Adequate Safeguards” to be taken pursuant to Para No. 2.1(b) of earlier O.M. dated 08.03.2019. The said O.M. allowed generating companies to use existing coal linkage for sale of power through short-term PPAs, using DEEP portal or power exchange for a maximum period of 2 years or until they find a buyer under long/medium term PPA. These safeguards include:

- Reason for cancellation shall only be on account of “default in payment”;
- In case of termination by Generator on such account, sale of power allowed only through DEEP portal or power exchange at market determined price for a period of maximum 2 years and not through bilateral sale;
- Existing LoA / FSA shall continue for a further period of maximum 2 years with necessary modifications, if required; and
- Linkage shall be cancelled after prescribed 2 years, if Generator is not able to secure long / medium term PPA during that period.

**MNRE issues a letter regarding release of PBG for commissioned solar / wind power projects**

MNRE has issued a letter to NTPC and SECI on 02.09.2019 conveying that where solar / wind power plant has been commissioned, Performance Bank Guarantees (“**PBG**”) may be released within 45 days from Commercial Operation Date subject to submission of all requisite documents. In case of delay, developer must bring the same to the notice of MNRE and the CMD / MD of the concerned Intermediary Procurer.

**APTEL holds that IBC will override anything inconsistent in any other enactment**

APTEL in *Monnet Ispat & Energy Limited v. Chhattisgarh State Electricity Regulatory Commission and Anr.*, rejected the claim raised by a Distribution Company for Parallel Operation Charges (“**POC**”) as the new formula for computation of the claim of POC was evolved after the Appellant underwent Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). APTEL observed that Sec. 238 of the IBC will override anything inconsistent in any other enactment and thus, all other outstanding claims of other creditors stood extinguished in terms of the Resolution Plan approved by the NCLT.

**NCLAT does not have the jurisdiction to condone delay beyond 15 days from the prescribed period**

National Company Law Appellate Tribunal (“**NCLAT**”) in *Dhiren Dave v. Pantomath Capital Advisors Pvt. Ltd.*, by relying upon its earlier judgment in *Prowess International Private Ltd. v. Action Ispat & Power Private Ltd.* dismissed an Appeal against the order of dismissal of application under Section 9 of the IBC filed by the Operational Creditor. The NCLAT observed that the Tribunal has no jurisdiction to condone delay beyond 15 days in addition to the prescribed period of 30 days for filing of an Appeal.

**NCLAT holds that Sec. 29A IBC is not applicable for considering an application under Sec. 12A**

NCLAT in *Shweta Vishwanath Shirke & Ors. v. The Committee of Creditors & Anr.* decided whether a ‘Promoter’ not eligible to file ‘resolution plan’ under Sec. 29A of the IBC, could file an application under Sec. 12A. NCLAT, relying upon the order of the Supreme Court passed in *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.*, held that Sec. 29A of the IBC is not applicable for considering an application under Sec. 12A. If the assets of the Corporate Debtor are based on proceeds of crime, then it is open for Enforcement Directorate or other agencies to proceed as per law, but this cannot be a ground to refuse the application under Sec. 12A of the IBC.

**Auditors empanelled by TRAI to carry out audit of Digital Addressable Systems**

Telecom Regulatory Authority of India (“**TRAI**”) has uploaded the first list of Panel of Auditors for carrying out audit of Digital Addressable Systems. The list contains the address of nine firms along with the name and details of the authorized person of the respective firm.

**TRAI issues Draft Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Amendment) Regulations, 2019**

TRAI has issued the Draft Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Amendment) Regulations, 2019 (“**Draft Regulations**”). The Draft Regulations relates to the amendment to Schedule-III of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, and have been issued to address the following concerns observed during the consultation process undertaken to prepare the Audit Manual:

- Digital Rights Management Systems;
- Transactional capacity of CAS and SMS system;
- Fingerprinting - Support for Overt and Covert fingerprinting in STBs; and
- Watermarking network logo for all pay channels.

Written comments on the Draft Regulations are invited from the stakeholders by 09.09.2019.

TRAI has issued a Consultation Paper and has invited comments/views of all the stakeholders on the issues related to Platform Services (“**PS**”) to put in place a proper regulatory framework for PS to be incorporated in Direct to Home (“**DTH**”) guidelines. The Consultation Paper has sought comments on the following issues:

- Exclusivity of the programme offered as PS by DTH operators;
- Enhancement of Registration Fee;
- Maximum number of PS channels that can be offered by DTH operators;
- Electronic Programme Guide to contain PS channels on a separate sequence number from the regular channels;
- PS to be displayed in a particular caption size;
- Activation/Deactivation of PS channels; and
- Specific genre of PS channels.

Written comments on the Consultation Paper are invited from the stakeholders by 27.09.2019. Counter-comments, if any, may be submitted by 11.10.2019.

**TRAI issues Consultation Paper on Platform Services offered by DTH Operators**

**TRAI notifies Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and all such other matters Regulations, 2019**

TRAI has issued the ‘Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and all such other matters Regulations, 2019’ (“**Register of Interconnection Regulations**”), which provide for service providers to report details of interconnection agreements including commercial details to TRAI. The Register of Interconnection Regulations requires all the Reference Interconnect Offers to be filed by every broadcaster and distributors of television channels. At present, the distributors having average active subscriber base below one lakh have been exempted from the obligation of reporting details of interconnection agreements to promote ease of doing business and reducing regulatory burden on distributors with limited resources. For ease of compliance, the Register of Interconnection Regulations will come into force in 120 days, except for Regulation 7 which provides for designation of a Compliance Officer by broadcasters and distributors.

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