

GATI - विधि

-LAW IN ACTION



Legal Updates

SC observes that Electricity Act confers deemed licensee status upon SEZ developers without imposing any condition

The Supreme Court (SC) has passed an order dated 17.05.2024 in Civil Appeal No. 8978 of 2019 wherein it has clarified that the purpose of the deeming fiction in the proviso to section 14(b) of the Electricity Act is to grant SEZ developers a status as deemed distribution licensees. The 2010 Notification of the Ministry of Commerce & Industry (Department of Commerce), which introduced this proviso, entitles SEZ developers to the privileges of a distribution licensee within their areas. However, this status does not eliminate the need for obtaining a license and the Telangana State Electricity Regulatory Commission (TSERC) is still empowered to scrutinize such applications to ensure compliance with applicable provisions for deemed licensees. This ruling clarifies the regulatory framework for SEZ developers, emphasizing both their privileges and the necessity of regulatory scrutiny.

SC holds that delay in filing suit for specific performance can lead to refusal

In a landmark decision, the SC vide order dated 16.05.2024 passed in Civil Appeal No. 7840 of 2023 in the case of Rajesh Kumar vs Anand Kumar & Ors. has clarified that merely filing a suit for specific performance of a contract within the three-year limitation period does not guarantee a decree. Highlighting the importance of timely action, the Bench comprising of Justices Pankaj Mithal and PK Mishra ruled that plaintiffs cannot delay filing suits and expect favorable outcomes simply because they are within the statutory period. The Apex Court observed that specific performance suits should be filed promptly after the breach. Waiting until the end of the limitation period, especially after knowing about the breach, undermines the purpose of the time limits stipulated in agreements.

SC clarifies that Arbitration proceedings cannot be terminated on grounds of failure to request hearing date

Vide order dated 16.05.2024 in the case of *Dani Wooltex Corporation and Ors. v. Sheil Properties Pvt. Ltd. and Ors.* in Civil Appeal No. 6462 of 2024, the SC has clarified that Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 (“Act”) can only be invoked if the Tribunal determines that the continuation of proceedings has become unnecessary or impossible, based on recorded evidence. This measure prevents the casual use of this power, ensuring the Act's purpose is upheld. Secondly, it reiterated the Tribunal's duty to schedule hearings, even without party requests, and to adjudicate on referred disputes. However, the failure of the claimant to request a hearing date does not automatically render proceedings unnecessary. Lastly, the Court emphasized that abandonment of a claim can justify invoking Clause (c), but abandonment must be either explicitly stated or inferred from compelling circumstances, a mere failure to request a hearing date does not imply abandonment.

MPERC issues MPERC (Terms and Conditions for determination of Transmission Tariff) (Revision – V), Regulations, 2024

Madhya Pradesh Electricity Regulatory Commission (“MPERC”) vide notice dated 28.05.2024 has issued MPERC (Terms and Conditions for determination of Transmission Tariff) (Revision – V), Regulations, 2024 {RG-28 (V) of 2024} (“Draft Regulations”)

The suggestions/comments/objections may be sent to the Secretary, Madhya Pradesh Electricity Regulatory Commission, MPERC office within 21 days from publication of this notice. The Commission shall conduct a virtual public hearing on 18.06.2024 at 11:00 AM.

The Control Period of the Draft Regulations is five years from FY 2024-25 to FY 2028-29. The Draft Regulations shall come into force with effect from 1st April 2024 and unless reviewed earlier or extended by the MPERC, shall remain in force for a period of five years i.e. up to 31.03.2029.

The Draft Regulations shall apply in all cases of determination of intra-transmission Tariff under Section 62 of the Electricity Act, 2003 (“the Act”) to be charged by the Transmission Licensee to Distribution Licensees/ Open Access Customers, to whom the capacity of the Transmission System has been allotted under MPERC (Terms & Conditions of Intra- State Open Access in MP) Regulations, 2005. The tariff of all new intra-state transmission projects costing above a threshold limit of Rs. 325 Crore shall be determined through the transparent bidding process and shall be adopted by the MPERC under section 63 of the Act after prudence check in accordance with the relevant Guidelines issued by the Ministry of Power (“MoP”).

MERC issues draft Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) (First Amendment) Regulations, 2024

MERC has issued the Draft Maharashtra Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) (First Amendment) Regulations, 2024 (**Draft First Amendment Regulations**) to amend the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality), Regulations, 2021 (**the Principal Regulations**). Vide the Draft First Amendment Regulations, the MERC has proposed the following amendments to the Principal Regulations:

1. The term “*Customer Average Interruption Frequency Index (CAIFI)*” has been defined under the newly introduced Regulation 2.2(j)(a) which reads – “2.2(j)(a) “*Customer Average Interruption Frequency Index (CAIFI) means the average interruption frequency of the sustained interruptions for those who experienced interruptions during the reporting period, as specified by the Commission*”
2. The term “*Momentary Average Interruption Frequency Index (MAIFI)*” has been defined under the newly introduced Regulation 2.2(ii)(a) which reads – “*Momentary Average Interruption Frequency Index (MAIFI) means the average number of momentary interruptions per Consumer occurring during the reporting period, as specified by the Commission.*”

3. The second proviso to Regulation 5.8 of the Principal Regulations which provides for the timelines for releasing new connections is proposed to be substituted as –

“Provided further that subject to the statutory provisions and permissions, the Distribution Licensee shall release new connections or modify an existing connection, after submission of application complete in all respects within the following timelines:

a. Connection from existing network without any augmentation:

- 1. Metropolitan Area – Three (3) Days*
- 2. Other Municipal Areas – Seven (7) Days*
- 3. Rural Area – Fifteen (15) Days*

b. Connection requiring augmentation or extension of Distribution Mains or commissioning of new sub-stations forming a part of the distribution system –

c. Ninety (90) Days.”

4. After Regulation 5.8 of the Principal Regulations, Regulation 5.9 is proposed to be introduced which reads – *“5.9 On the request from a consumer, the Distribution Licensee shall provide a separate connection for supply of electricity for Electric Vehicle charging system:*

Provided that the timeline for providing the connection shall be in accordance with the 2nd Proviso of Regulation 5.8 of this Regulation.”

5. Regulation 15.3.3. of the Principal Regulations which provides for replacement of the meter, recovery of the price of the new meter and billing of the estimated electricity charges for the period for which meter was not available due to the meters getting burnt has been made applicable to defective meters as well.

6. Regulation 15.3.4 of the Principal Regulations which provides that the Distribution Licensee shall not be authorized to recover the price of the meter except in case of burnt and lost meters has been made applicable to defective meters as well.

7. After Regulation 15.4.3 of the Principal Regulations, the Regulation 15.4.4 is proposed to be introduced which reads –

“15.4.4 The pre-payment meters shall be read by an authorized representative of the Distribution Licensee at least once in every three months and the data regarding energy consumption shall be made available to the Consumer, through website or mobile application or short message service and the like:

Provided that the Consumers having smart pre-payment meters shall also be given the data access for checking their consumption and balance at least on daily basis.”

8. After Regulation 15.6.1 of the Principal Regulations, Regulation 15.6.1 (A) is proposed to be introduced which provides that the testing of the meters shall be done within thirty days of receipt of the complaint from the consumer about meter readings not being commensurate with consumption of electricity, stoppage of meter, damage to the seal, burning or damage of the meter etc. and further provides that in case of complaint of the meter reading not being commensurate with the consumption of electricity, the Distribution Licensee shall install an additional meter within five days from the date of receipt of the complaint to verify the consumption for a minimum period of three months.

9. The additional proviso in Regulation 15.6.2 of the Principal Regulations is proposed to be substituted as – *“Provided also that the list of NABL accredited laboratories for testing of meters shall be made available in their various offices as well as on the website of the Distribution Licensee.”*
10. After Regulation 22.1 of the Principal Regulations, Regulation 22.1 (A) is proposed to be introduced which provides that the Distribution Licensee shall supply 24*7 power to all Consumers. However, MERC may specify lower hours of supply for some categories of consumers like agriculture.
11. Under Regulation 22.12.1 of the Principal Regulations, additional two indices i.e. Customer Average Interruption Frequency Index (CAIFI) and Momentary Average Interruption Frequency Index (MAIFI) are added to calculate the reliability of its distribution system by the Distribution Licensee.
12. After Regulation 28.8 of the Principal Regulations, Regulation 28.9 is proposed to be introduced which mandates the Distribution Licensee to establish a mechanism, preferably with automated tools for monitoring and restoring the outages.
13. Sr. No. 1 (ii) in Annexure II of the Principal Regulations is proposed to be substituted in accordance with the proposed amendment to Regulation 5.8 of the Principal Regulations.

MERC has issued a Public Notice inviting comments, suggestions or objections to the Draft First Amendment Regulations which may be uploaded through “E-Public Consultation” tab on MERC website on or before 14 June 2024. The Draft First Amendment Regulations is uploaded on the website of MERC and can be viewed from the website.

The MERC has come out with Draft Maharashtra Electricity Regulatory Commission (Grid Interactive Rooftop Renewable Energy Generating Systems) (Second Amendment) Regulations, 2024 (“**Draft Regulations**”) to amend the Maharashtra Electricity Regulatory Commission (Grid Interactive Rooftop Renewable Energy Generating Systems) Regulations, 2019 read with Maharashtra Electricity Regulatory Commission (Grid Interactive Rooftop Renewable Energy Generating Systems) (First Amendment) Regulations, 2023 (“**Principal Regulations**”). Vide the Draft Regulations, MERC has proposed the following amendments to the Principal Regulations:

1. Addition of Fourth and Fifth proviso to the definition of the term “Eligible Consumer” under Regulation 2.1 (j) of the Principal Regulations. The fourth proviso provides that Residential Consumer can set up Renewable Energy (“**RE**”) Generating System at any place within same Distribution Licensee’s area of supply and source RE generated from such plant under Virtual Net-Metering Arrangement. The fifth proviso provides that multiple Residential Consumers including common connection of housing society can come together and set up RE Generating system at a common place under Virtual Net Metering arrangement subject to condition that total capacity of such RE Generating system shall not exceed summation of capacity eligible to each participating consumer.
2. Introduction of Regulation 2.1(z)(a) to define the term “Virtual Net Metering” which states that Virtual Net Metering means a modality whereby entire energy generated from a RE Generating System is exported to the grid from RE meter or gross meter and the energy exported is adjusted in either one or more than one participating Residential Consumer(s) including common connection of housing society located within the same Distribution Licensee’s area of supply.

**MERC issues Draft
Maharashtra Electricity
Regulatory Commission
(Grid Interactive Rooftop
Renewable Energy
Generating Systems)
(Second Amendment)
Regulations, 2024**

3. Introduction of Regulation 4.4 which states that Grid connectivity and scheduling of RE Generating System installed under virtual net-metering arrangement shall be governed by relevant regulations of MERC.
4. Expansion of the scope of applicability of Regulation 8.11 of the Principal Regulations to include RE Generating System set up under Virtual Net Metering Arrangement.
5. Proposed substitution of first proviso to Regulation 9.7 of the Principal Regulations to state that application may be considered in chronological order of seniority.
6. Introduction of Regulation 9.7(a) which provides that the Distribution Licensee shall be responsible for carrying out upgradation of distribution infrastructure like augmentation of service line, distribution transformer capacity etc., in adherence to timeline specified in the MERC (Electricity Supply Code and Standards of Performance for Distribution Licensees, including Power Quality) Regulations, 2021 and that the cost for the same shall be included in the annual revenue requirement of the Distribution Licensee.
7. Introduction of Regulation 11.10 which deals with the provisions for Energy Accounting and Settlement of Virtual Net Metering arrangement. It deals with the provision for crediting the energy generated under the RE Generating System, methodology for compensating the electricity generated against the electricity consumed, accounting of units credited in excess of the units imported by the consumer, settlement of the unadjusted net credited units at the end of each financial year etc.
8. Amendment of Clause c of Annexure 1 of the Principal Regulations to provide that the technical feasibility study shall be completed within a period of 15 days and the outcome of the study shall be intimated to the Applicant failing which it shall be presumed that the proposal is technically feasible. Further, a proviso is also proposed which states that applications for RE Generating Systems up to 10 kW capacity, complete in all respects shall be deemed to have been accepted without requiring technical feasibility study and any commensurate enhancement of the sanctioned load of the consumer, as may be required shall be carried out by the Distribution Licensee.
9. Proposed addition of Clause i which states that formats of Model Net Metering/ Net Billing/ Gross Metering connection agreement shall be uploaded on the web portal of the Distribution Licensee.
10. Proposed addition of Clause 8.7 in Annexure 3 which deals with the provisions for Energy Accounting and Settlement of Virtual Net Metering arrangement.

MERC has issued a Public Notice inviting comments, suggestions or objections to the Draft Regulations which may be uploaded through “E-Public Consultation” tab on MERC website on or before 14th June 2024. The Draft Regulations are uploaded on the website of MERC and can be viewed [here](#).

The Central Electricity Regulatory Commission (“CERC”) has issued a suo-moto order on 23.05.2024 in Petition No. 3/SM/2024, directing modifications to the Power Exchanges in accordance with the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (“PMR 2021”). CERC has mandated an increase in the maximum block bid size for thermal generators to 400 MW in the Day-Ahead Market (DAM). This decision addresses the growing demand for ensuring continuous operation of large power plants, and it will be implemented for a period of six-month trial basis. For sellers other than thermal generators and

CERC Increases Block Bid Size for Thermal Generators vide Suo-Moto Order Dated 23.05.2024

all buyers, the maximum block bid size remains at 100 MW, with a restriction of 50 block bids per market participant.

As per the said order, Power Exchanges are required to update their systems and submit a compliance report with affidavit within two weeks of the order. The new directions are designed to enhance market flexibility while maintaining system reliability. A review will be conducted based on feedback from Grid-India and stakeholders within three months to assess the operational impact and effectiveness of the block bid size modification.

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4659 4466 F: +91 11 4359 4466
E: mail@neetiniyaman.co
W: www.neetiniyaman.co

Office No. 501, 5th Floor,
Rehman House Premises CHS,
Nadirsha Sukhia Street, Fort,
Mumbai-400001, India

Disclaimer: 'GATI-विधि: LAW IN ACTION' is for information purposes only and should not be construed as legal advice or legal opinion. Its contents should not be acted upon without specific professional advice from the legal counsel. All rights reserved.