Legal Updates

Supreme Court affirms State's Authority to Tax Mineral Rights: Its Implications on the MMDR Act and Constitutional Entries

The Hon'ble Supreme Court in the matter of *Mineral Area Development Authority* v. *SAIL*, with an 8:1 majority, ruled that states have the authority to levy taxes on mineral rights, independent of the Mines and Minerals (Development and Regulation) Act 1957 ("**MMDR Act**"). The court addressed two key issues: whether royalties on mining leases qualify as taxes, and whether states can impose royalties/taxes on mineral rights despite the MMDR Act. The majority conclusions are covered hereunder:

1. Royalty is not a Tax: Royalty is a contractual payment from the lessee to the lessor in a mining lease and does not have the characteristics of a tax. The previous judgment passed in *India Cement Ltd.* v. *State of Tamil Nadu* (1990) is overruled.

2. Regulatory vs. Taxing Power: Entry 54 of List I (Union List) pertains to regulation and development of mines and minerals, not taxation. Regulatory entries are distinct from taxing entries, and Entry 54 does not include Union taxation power.

3. State Taxation Power: The authority to tax mineral rights rests with state legislatures, not Parliament, which lacks the legislative competence to tax mineral rights under Entry 54 of List I, being a general entry. Since the power to tax mineral rights is specifically detailed in Entry 50 of List II, Parliament cannot exercise its residuary powers in this regard. Entry 50 of List II allows Parliament to impose "any limitations" on the legislative scope defined by this entry through laws related to mineral development. However, the MMDR Act, as it currently stands, does not impose such limitations. The term "any limitations" in Entry 50 of List II is broad enough to encompass restrictions, conditions, principles, and prohibitions.

4. Royalty not Limitation: Section 9 of the MMDR Act, which mandates royalty payments for mineral extraction, does not limit the state taxing powers. The constraints on royalties do not equate to limitations on state powers.

5. Definition of Land: The term "land" in Entry 49 of List II includes all land types, including mineral-bearing lands, allowing states to tax them.

6. State Legislative Competence: States have the authority under Article 246 read with Entry 49 of List II to tax land comprising mines and quarries.

7. Tax Measures: States can use the yield of mineral-bearing land, the quantity of minerals produced, or royalty as measures to tax mineral-bearing lands.

8. Separate Fields: Entries 49 and 50 of List I address different subjects and operate in distinct fields. Mineral value or mineral produce can be used to impose taxes under Entry 49 of List II.

9. Non-interference: Limitations imposed by Parliament on mineral development under Entry 50 of List 2 cannot affect Entry 49 of List II without specific constitutional stipulation.

The Court examined the nature and scope of royalty under Section 9 of the MMDR Act to determine whether it constitutes a tax. Section 9 requires mining leaseholders to pay royalties on minerals extracted or consumed, with rates set in the Second Schedule and subject to amendment by the Central Government no more than once every three years. The Petitioners' five main questions addressed the relationship between Sections 9 and 15 of the MMDR Act and Entries 49 and 50 of List II and Entry 54 of List I of the Constitution's Seventh Schedule.

This decision overrules previous rulings in cases like *India Cements, Orissa Cements, Mahanadi Coal Fields, Saurashtra Cement, Mahalaxmi Fabric Mills,* and *P Kannadasan.*

Arbitral Tribunal cannot award damages on account of loss of profit if it is contrary to express terms of the agreement entered into between the parties

A Division Bench of the Delhi High Court (**Division Bench**) in the matter of ***M/s. Plus91 Security Solutions vs. NEC Corporation India Private Limited FAO (OS)(COMM) 36/2024*** has held that construction of a contract falls within the jurisdiction of the arbitrator and a possible interpretation of a contract would not be vulnerable to challenge under Sec. 34 of the Arbitration and Conciliation Act, 1996 ("**the Arbitration Act"**) either on the ground of patent illegality or on the ground of public policy exception. However, the Arbitral Tribunal's decision to award damages on account of loss of profit would be vitiated by patent illegality if it runs contrary to the express terms of the agreement entered into between the parties.

The principal question for consideration before the Division Bench was whether the impugned Award was vitiated by patent illegality. The Arbitral Tribunal held that the Respondent herein breached the MOU by not awarding works for a value of Rs. 84,30,79,040/- to the Appellant herein and further awarded a sum of Rs. 8,43,07,904/- calculated at 10% of the value of the work, being the loss of profits to the Appellant herein. The said award was challenged before a Single Judge of the Delhi High Court who held that the conclusion drawn by the Arbitral Tribunal was patently illegal in view of Clause 10 of the MOU which categorically provided that neither of the parties would be liable for any loss of revenue or profit arising from or in connection with the MOU.

Being aggrieved by the judgement of the Single Judge, the Appellant herein filed the instant appeal. The Division Bench upholding the sanctity of the MOU, held that the profit awarded by the Arbitral Tribunal is plainly contrary to the express terms of the MOU. The Arbitral Tribunal has proceeded on the basis that the said clause is contrary to the public policy and is, thus, void. This conclusion is patently illegal. The Division Bench further observed –

"64. It is essential to maintain the bargain entered into between the parties. The parties agreed that they would not be liable for (i) any indirect, special, or consequential loss or damage; (ii) any loss or damages due to any loss of goodwill; and, (iii) loss of revenue or profit arising from or in connection with the MOU. If the MOU is accepted as a binding agreement, this is clearly a part of the bargain struck by the parties. Disregarding the said stipulation would in effect amount to rewriting the bargain between the parties."

With the above observation, the Division Bench concurred with the conclusion of the Single Judge in setting aside the impugned award as vitiated by patent illegality and dismissed the appeal accordingly.

APTEL passes directions regarding RPO compliance

The Hon'ble Appellate Tribunal for Electricity ("**APTEL**") has issued comprehensive directions in Order dated 31.07.2024 passed in OP No. 5 of 2023. The APTEL in its order has noted that the Renewable Purchase Obligations Regulations ("**RPO Regulations**"), framed by almost all the State Electricity Regulatory Commissions ("**State Commissions**"), require obligated entities in respective states to carry out certain mandatory obligations.

The APTEL while referring to the Ministry of Power's letter dated 22.07.2022 whereby RPO trajectory was specified for 2022-30 has directed the State Commissions to respond to "whether the Commissions have considered the contents of the said letter?". In case the State Commissions have considered the said letter they have been asked to express their views on the same. In case of non-consideration of the letter, the State Commissions have been asked to explain why they chose not to consider the said letter.

Additionally, the ATPEL has also asked the State Commission to furnish the following information in a tabular statement before the next hearing date:

1. Particulars of each of the obligated entities located within their State,
2. The RPO obligations which each of these obligated entities are required to discharge in terms of the RPO Regulations,
3. The extent of compliance by each of these obligated entities which they are required to discharge in terms of the RPO Regulations,
4. In case of non-compliance, what action, if any, has been taken by the State Commissions against the erring obligated entities in terms of the RPO Regulations, and
5. Whether the State Commissions have complied with the directions issued by the APTEL in Order dated 20.04.2015 passed in OP No. 01 of 2013 and Batch, if so, details of the extent of compliance.

The aforementioned information has to be furnished on annual basis from the date on which the RPO Regulations came into force in the respective State. The State Commissions have been directed to file this report/ reply within six weeks from the date of the Order.

Draft Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (Third Amendment) Regulations, 2024

The Ld. Central Electricity Regulatory Commission ("**CERC**") vide its Notification dated 31.07.2024 has issued Draft CERC (Connectivity and General Network Access to the inter-State Transmission System) (Third Amendment) Regulations, 2024 ("**Draft Regulations**"), wherein the Ld. CERC has proposed the following important amendments.

Addition of Clause (j-i) in Regulation 2.1 of the Principal Regulations providing definition of the term "Complex of ISTS substations" or "Cluster of ISTS substations". This definition is intended to help in the better organization and planning of ISTS substations, enhancing operational efficiency.

Substitution of the existing Regulation 3.7 with new provisions detailing the process for the withdrawal of applications for Connectivity or General Network Access (GNA).

Introduction of Regulation 4.4 to facilitate grant of connectivity to Renewable Energy Generating Stations ("**REGS**") seeking to connect to the transmission network of the Bhakra Beas Management Board ("**BBMB**").

Regulation 5.5 is amended to allow Renewable Power Park Developers authorized for more than 500 MW to apply for Connectivity in phases. This amendment aims to facilitate the development of large renewable energy projects by allowing phased development and connectivity.

New Regulations 5.9 and 5.10 are proposed to be introduced to specify the land requirements per MW for REGS allowing projects to be implemented at different land parcels without changing the point of Connectivity or the start date of Connectivity. This flexibility is expected to accommodate the varying land acquisition processes and timelines associated with renewable energy projects.

Introduction of Regulations 8.3 to 8.7 to substitute the existing Regulations 8.3 and 8.4, detailing the requirements for Bank Guarantees related to Connectivity applications and augmentation timelines.

Addition of Regulation 11C allowing reallocation of Connectivity to another ISTS substation within a cluster if a terminal bay falls vacant due to surrender or revocation. This reallocation aims to optimize the utilization of the transmission system by reallocating resources efficiently, thus ensuring better management of transmission capacities.

Amendment of Regulation 22.2 clarifying the provisions for GNA applications. Notably, a web portal by NLDC will be introduced to display the GNA quantum available for use by other GNA grantees, facilitating better communication and utilization of GNA resources.

Amendment of Regulation 36.1 to allocate available transmission corridors to GNA grantees proportionally based on their GNA quantum during transmission system constraints. This amendment ensures equitable access to transmission resources during periods of limited capacity.

Amendments to Regulations 39.1 and 39.2 setting a timeline for the Nodal Agency and NLDC to submit revised Detailed Procedures to ensure that the regulatory framework remains up-to-date and aligned with the latest amendments.

The Ld. CERC vide its notification has invited comments/ objections from stakeholders and interest parties on or before 02.09.2024. The Draft Regulations can be access at here

PNGRB notifies Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2024

The Petroleum and Natural Gas Regulatory Board (**PNGRB**), vide notification F. No. PNGRB/COM/11-PPPL(1)/2024 (E- 5022) dated 19.07.2024, has notified the PNGRB (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2024 ("**Pipeline Transportation Tariff Regulations**"). The Pipeline Transportation Tariff Regulations aim to provide a clear and structured approach to determining tariffs for Petroleum and Petroleum Products Pipelines ("**Pipelines**").

The Pipeline Transportation Tariff Regulations define term "Pipeline Transportation Tariff" as the unit rate of tariff for transporting petroleum and petroleum products, measured in rupees per metric ton (₹/MT) or per metric ton per kilometer (₹/MT/KM).

The Pipeline Transportation Tariff Regulations applies to entities authorized by the Central Government before the appointed day and accepted by the PNGRB, as well as those involved in pipeline activities both before and after the appointed day. It also includes entities authorized under previous PNGRB regulations, entities converting dedicated pipelines into Pipelines, and those with pipelines declared as common or contract carriers by the PNGRB.

Regulation 4 read with Regulation 5 specify a detailed procedure for determining tariffs for Pipelines. Pipelines commissioned before the notification of Pipeline Transportation Tariff Regulations will follow the procedure outlined in Schedule A, while those commissioned after will adhere to Schedule B. As per Regulation 5(3), Pipelines that have completed ten (10) years of operation will transition to the Schedule B procedure from the eleventh year onwards.

Regulation 6 provides that the entities, to which Pipeline Transportation Tariff Regulations apply, are required to submit detailed tariff data to PNGRB within specified timelines. For Pipelines commissioned before the before the notification of the PNGRB (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010 ("**Pipeline Transportation Tariff Regulations, 2010**"), the relevant details must be submitted within sixty (60) days of the Pipeline Transportation Tariff Regulations coming into force. For Pipelines commissioned after the Pipeline Transportation Tariff Regulations, 2010, or those transitioning after ten (10) years of operation, submissions must be made at least six (6) months before the expected commissioning date or within ninety (90) days of the Pipeline Transportation Tariff Regulations coming into force, whichever is later. The PNGRB will then determine the applicable tariffs, and entities must adjust their charges accordingly.

Moreover, entities must submit transportation rates along with an interactive spreadsheet calculation model, duly filled formats, and a statutory auditor's certificate as specified in the schedules of the Pipeline Transportation Tariff Regulations. For entities whose Pipelines are not yet in operation, the data submission must be completed at least six (6) months before commissioning or within ninety (90) days from the Pipeline Transportation Tariff Regulations enforcement. For already operational Pipelines, the submission must occur within ninety (90) days from the enforcement or six (6) months before the end of the tenth year of operation.

The PNGRB (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2024 can be accessed form the following link.

MOC issues guidelines amending the land use policy of Central Public Sector Undertakings in Coal Sector

In addendum to the policy guidelines dated 22.04.2022, the Ministry of Coal ("**MOC**") has formulated the following guidelines to overcome the impediments arising due to overlapping of land acquisition under the Coal Bearing Areas (Acquisition & Development) Act, 1957 ("**CBA Act"**) or Coking Coal Mines (Nationalisation) Act, 1972 ("**CCMN Act"**) and Coal Mines (Nationalisation) Act, 1973 ("**CMN Act"**) and difficulty in transferring land acquired under the CBA or CMN Act which is vested in government companies to private allocatees to undertake mining operations:

1. These guidelines shall only apply to such land parcels already acquired by Central Government and vested in government companies under the CBA Act or CCMN Act or CMN Act or to land already acquired by coal PSUs under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("**RFCTLARR Act"**) or the land otherwise already purchased/acquired/possessed by the coal PSUs which overlaps with the coal mines/blocks already allocated/under allocation under the Coal Mines Special Provisions Act, 2015 ("**CMSP Act"**) or Mines and Minerals (Development and Regulation) Act, 1957 ("**MMDR Act"**)to the extent of such overlap.
2. Mining and surface rights in such parcels of land to be leased only to successful bidders who had been allocated the concerned coal mine/block under CMSP Act or MMDR Act.
3. Government company may grant lease/sub-lease of surface rights of the overlapping land parcels acquired under CCMN Act or CMN Act to the successful bidder under the terms and conditions which it deems fit and in respect of mining lease, the said government company may grant sub-lease to the successful bidder or surrender mining lease to the State Government for granting fresh mining lease to the successful bidder.
4. Government company may grant lease/sub-lease of surface rights of the overlapping land parcels acquired under CBA Act to the successful bidder under the terms and conditions which it deems fit and in respect of mining lease, the mining lease may be executed between the successful bidder and the Government Company.
5. In case of overlapping land parcels having been acquired by the coal PSUs under the RFCTLARR Act or otherwise already purchased/acquired/possessed by the coal PSUs, the said coal PSUs may lease surface rights to the successful bidder on such terms and

conditions as the said PSU deems fit. In respect of mining lease, the same shall be granted by the State Government.

6. Surface leases granted by the government companies shall be for a period of up to 50 years. Mining lease/ sub-lease shall be granted under MMDR Act.
7. The lessee/sub-lessee shall pay all kinds of amounts such as royalty, deed rent, surface rent etc. to the State Government and pay the District Mineral Foundation and the National Mineral Exploration Trust as payable by a lessee under the MMDR Act.
8. The lessee/sub-lessee shall bear the cost of land acquisition, cost of rehabilitation and resettlement, cost of employment against land, other incidental or ancillary costs/expenses borne by the government company at present market rate and also pay rent for the surface lease to the lessor Government Company at the rate of Rs. 1000 per hectare of land per year.

The amendment can be accessed via the following this link.

RERC issues Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) (Second Amendment) Regulations, 2024

The Rajasthan Electricity Regulatory Commission ("**RERC"**) had issued an order dated 25.07.2024 in Petition No. RERC/2240/2024 (SUO-MOTU), whereby it had proposed amendments to Regulations 12 and 8 of the Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2021 ("**Principal Regulations**"). The draft second amendment regulations were published for public comments, and a public hearing was conducted on 23.07.2024, following which, the RERC has issued the following amendments to the Principal Regulations by way of (Grid Interactive Distributed Renewable Energy Generating Systems) (Second Amendment) Regulations, 2024:

1. Regulation 12 -Energy Accounting and Settlement:
   A new proviso has been added to sub-regulation 12.6.1(a), allowing recognized educational institutions under net-metering arrangements to opt for net billing for any two months during a financial year, subject to prior intimation to the distribution licensee.

2. Regulation 8 -Procedure for Application:
   a) Sub-regulation 8.8 has been substituted to mandate completion of technical feasibility studies within 15 days for renewable energy generating systems. Applications for systems up to 10 kW capacity are deemed accepted without requiring technical feasibility studies.

   b) Sub-regulation 8.12 has been amended to stipulate that distribution licensees must complete the signing of connection agreements, meter installation, and system commissioning within 15 days of receiving the installation certificate from the consumer.

The RERC also addressed additional concerns raised by stakeholders, particularly regarding the PM-Surya Urja Yojana. It directed the Discoms to organize camps for expediting name changes and load increases on electricity connections. The Managing Director of Jodhpur Vidyut Vitran Nigam Limited ("**JVVNL**") was specifically instructed to implement these measures in the Bikaner Circle within 7 days.

RERC has ordered the publication of these finalized regulations in the Official Gazette and their dissemination to relevant authorities including the State Government, Central Electricity Authority (CEA), concerned utilities, and other stakeholders. The RERC (Grid Interactive Distributed Renewable Energy Generating Systems) (Second Amendment) Regulations, 2024 can be accessed form the following link.

TGERC issues Public Notice in the matter of Suo Moto Determination of RPO Compliance for FY 2022-23

The Ld. Telangana Electricity Regulatory Commission ("**TGERC**") has issued a public notice in the matter of Suo-Moto determination of RPO compliance for the obligated entities for FY 2022-23. The said notice has been issued pursuant to TSTRANSCO's report dated 06.06.2024 whereby it has submitted a consolidated compliance report on the RPO of obligated entities for the FY 2022-23, following the issuance of final notices and receipt of comments from these entities. TSTRANCO in its report has mentioned that despite final notices and letters, only a few of the obligated entities have responded.

The last date for sending comments and suggestions to the Ld. TGERC is on or before 27.08.2024 by 5:00 PM. A public hearing is scheduled for 30.08.2024, starting at 11:00 AM, in the Court Hall of TGERC. The notice for the public hearing can be accessed here.

NCLT, New Delhi observes that maintenance charges and interest free maintenance security are not financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 "IBC Code"

The National Company Law Tribunal, New Delhi (**"NCLT")** vide its order dated 30.07.2024 in the case of *ILD Owners Welfare Association Vs. M/s ALM Infotech City Private Limited* has observed that maintenance charges and IFMS are not financial debt under Section 5(8) of the IBC Code. The ILD Owners Welfare Association **("Applicant/Financial Creditor")** approached the NCLT under Section 7 of the Insolvency and Bankruptcy Code("**IBC"**) r/w Rule 4 of the IBC (Application to Adjudicating Authority) Rules, 2016 **("IBC Rules")** seeking an Order to initiate Corporate Insolvency Resolution Process **("CIRP"),** against M/s. ALM Infotech City Private Limited, **("Respondent/ Corporate Debtor")** for having collected ₹2.95 crores as an interest-free maintenance deposit from the residents.

The NCLT examined whether the amount in question qualified as a Financial Debt under Section 5(8) of IBC. The Conveyance Deed dated 09.12.2015 executed between the Allottees and the Corporate Debtor provided under Clause 26 that this amount after being collected was to be handed over to the Financial Creditor/Society as and when it was formed. Applicant, therefore, argued that the amount in question constituted Financial Debt within the meaning of Section 5(8) of the IBC 2016.

NCLT, while dismissing the application relied upon the decision of NCLT, Hyderabad in the case of *Vasathi Anandi Owners Welfare Association v. Vasathi Housing Limited* wherein it was observed that the 'corpus fund' was not collected under any real estate project, and the owners of the apartments, who are contesting in the form of a registered society, cannot be treated as 'allottee' under section 5(8)(f) of IBC, in respect of the 'corpus fund' as the same was not in relation to the real estate project. The corpus fund being an interest free deposit towards maintenance had no stipulation for any consideration for the time value of the money so deposited, which is an essential feature of any financial debt.

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