SAGUS SPEAKS

Sagus Legal
Advisors & Advocates

This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

REGULATORY & POLICY UPDATES

SEBI notified the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023[1]

The Securities and Exchange Board of India ("SEBI"), through its notification dated 03.07.2023, issued the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023 ("Amendment Regulation") to come into effect from 06.07.2023 to further enhance the framework for SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("NCS Regulations").

By way of the Amendment Regulation, new definition have been inserted in the NCS Regulation for the terms (a) 'key managerial personnel' which shall have same meaning same as ascribed under the Companies Act, 2013 ("Companies Act"); and (b) 'senior management' which has been given an expansive meaning to include members of the core management team and all members of management one level below the CEO/ MD/ whole time director/ manager (including CEO/ manger, in case they are not part of the board of directors), the functional heads, CFO and the Company Secretary, but shall exclude the board of directors. Additionally, Schedule I (formerly known as Disclosures for Public Issue and Non-Convertible Redeemable Preference Shares) of the NCS Regulations has been substituted by the new Schedule I (*Disclosures for Issue of Securities*) of the Amendment Regulations which provides for disclosure

[1] NCS Amendment Regulations

© Sagus Legal | All rights reserved

applicable for both private and public issuances including specific disclosures regarding any financial or material interests held by senior management and key managerial personnel.

The Amendment Regulations also introduce a new Chapter VA to the NCS Regulations, dealing with the Issuance and Listing of non-convertible securities on private placement basis, in line with the decision at the SEBI Board meeting held on 29.03.2023. Now, issuers intending to make a private placement of non-convertible securities under the NCS Regulations are required to file a general information document ("GID") with the stock exchanges, containing all disclosures (in addition to what has been provided under the Companies Act) as per the newly substituted Schedule I and such other disclosures as maybe specified by SEBI, at the time of the initial issuance and will remain valid for 1 year from the date of filing such GID, governing the issuance during that period. Thereafter, for any issues on a private placement basis, the issuer is only required to file a specific key information document ("KID") containing (i) details of the new offer of securities; (ii) financial information, if the information provided in GID is more than six months old; (iii) any material developments since the disclosure made under the GID; and (iv) disclosures in case of private placement as specified in Schedule I, in case the offer is made during the validity of the shelf prospectus for which no GID has been filed. Issuers intending to issue and list their Commercial Papers after having already filed the GID or having filed the shelf prospectus in case of public issue shall now only be required to file the KID for their issuance. The compliance for filing of the GID and KID is on a "comply or explain basis" until 31.03.2024 and will be mandatory thereafter.

SEBI repealed SEBI (Ombudsman) Regulations, 2003[2]

SEBI issued the SEBI (Ombudsman) Repeal Regulations, 2023 dated 03.07.2023 ("Repeal Regulations") to repeal the SEBI (Ombudsman) Regulations, 2003 (Ombudsman Regulation") with immediate effect. The Repeal Regulations will not affect the previous operation of the Ombudsman Regulations and any penalties, punishments, investigations, legal proceedings, imposed or initiated under the Ombudsman Regulation will continue as if the same has not been repealed.

The Repeal Regulations have been introduced after a lengthy decision-making process, in order to do away with a system of Ombudsman which was fraught with legal infirmities and not designed to provide effective relief to investors and market participants.

SEBI issued the SEBI (Alternate Dispute Resolution Mechanism) (Amendment) Regulations, 2023[3].

SEBI has issued SEBI (Alternate Dispute Resolution Mechanism) (Amendment) Regulations, 2023 dated 03.07.2023 ("ADR Amendment") to amend the regulations applicable to all market participants and provide for alternate dispute resolution mechanism therein.

As per the ADR Amendment, all claims, differences, or disputes under the relevant regulations applicable to different market participants such as merchant bankers, registrars, debenture trustees, mutual funds, custodians, credit rating agencies, collective investment schemes, KYC registration agencies, alternative investment funds, investment advisers, research analysts, infrastructure investment trusts, real estate investment trusts, listing obligations, foreign portfolio investors, portfolio managers, and vault managers, have to be mandatorily submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI.

The ADR Amendment is another step by SEBI to institutionalize the alternative dispute resolution mechanisms as a means for a fair and faster means to resolve disputes between market participants, clients, and investors that will promote fairness and efficiency.

GOVERNMENT NOTIFICATIONS

Ministry of Power issued the Carbon Credit Trading Scheme, 2023[4]

The Ministry of Power ("MoP") through its notification dated 28.06.2023 has issued the Carbon Credit Trading Scheme, 2023 ("CCTS").

The CCTS provides for formation of a National Steering Committee ("NSC"), a technical committee under Bureau of Energy Efficiency ("BEE"), and an accredited Carbon Verification Agency. NSC has been tasked with monitoring the functioning of the ICM and making recommendations to the BEE for formulation and finalization *inter alia* of (a) procedures for institutionalizing ICM, (b) rules and regulations for the functions of ICM, (c) specific greenhouse gases emission targets for the obligated entities, (d) guidelines regarding trading of carbon credit certificates outside India.

BEE shall be the administrator of ICM and will be responsible for (a) identifying sectors and potential for reduction of greenhouse gas emissions and making recommendations to the Ministry of Power in this regard, (b) developing targets for the entities under compliance mechanism, (c) developing market stability mechanisms for carbon credits and issuing carbon

[2] SEBI Ombudsman Repeal Regulations
[3] 2023 SEBI ADR Amendment
[4] Carbon Credit Trading Scheme, 2023

© Sagus Legal | All rights reserved

credits certificate based on the recommendation; (d) developing procedures for accreditation and functioning of accredited carbon verification agency, etc.

Grid Controller of India Limited will be the registry for ICM and will *inter alia* undertake registration of obligated/ non-obligated entities and maintain records of all transactions. It will also function as the meta-registry, i.e., the national greenhouse gas registry.

CERC, as the regulator, is entrusted with functions of protecting the interest of both sellers and buyers, regulation of frequency of carbon credit certificates trading, provide market oversight and take necessary preventive and corrective actions to prevent fraud or mistrust. The sectors and the obligated entities which shall be covered under the compliance mechanism shall be decided by the MoP based on recommendations of the BEE.

The sectors and the obligated entities (i.e., the registered entities) which shall be covered under the compliance mechanism of CCTS (mechanism for obligated entities to comply with the greenhouse gas emission norms) shall be notified by the MoP based on recommendations of BEE.

MoP notified Electricity (Amendment) Rules, 2023[5]

MoP through its notification dated 30.06.2023 issued the Electricity (Amendment) Rules, 2023 ("2023 Amendment Rules").

Rule 3(a)(i) of the Electricity Rules has been amended to provide that where a captive generating plant is set up by an affiliate company at least 51% of the ownership of such affiliate company should be held by the captive user. Further, in the definition of 'captive user' in the explanation to Rule 3 (2), it has been added that (i) consumption of electricity by the captive user may be either directly or through Energy Storage System, and (ii) consumption by a subsidiary company of a company which is an existing captive user shall also be treated as captive consumption by the captive user.

Further, new Rules 4A, 4B and 4C have been added to the Electricity Rules which *inter alia* provide that the Appropriate Commission shall determine the period of the license under Section 14 of the Electricity Act in accordance with terms and conditions of the license. The license period for a deemed licensee under first, second and fifth proviso to Section 14 of the Electricity Act shall be 25 years from the date of the coming into force of the Electricity Act. The said licenses shall be deemed to be renewed for a period of 25 years or less (if requested by the licensee) unless the same are revoked.

Schedule I of the Electricity Rules, which provides the methodology for calculation of tariff for the month has also been substituted to provide that Tariff for a particular month shall be calculated based on Energy Scheduled to end procurer from the Central Pool (i.e., Solar Power Central Pool, Wind Power Central Pool etc.) by the Intermediary Procurer and the actual amount to be payable for such scheduled energy. The 2023 Amendment Rules have also amended Schedule II of the Electricity Rules to modify the purchase adjustment methodology by providing a new formula which includes change in fuel cost.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that unreasonable delay in deciding the application for reduction in contracted supply of power is arbitrary and opposed to Article 14 of the Constitution of India, 1950.

The Supreme Court in the matter of ***Madras Aluminum Company Limited v. Tamil Nadu Electricity Board***[6] in its judgment dated 06.07.2023 has held that unreasonable delay by Tamil Nadu Electricity Board ("TNEB") in deciding the application of Madras Aluminum Company Limited ("MACL") for reduction in contracted supply of power is arbitrary and opposed to Article 14 of the Constitution of India, 1950 ("Constitution").

The TNEB in its communication dated 11.08.1994 had allowed reduction in contracted load capacity upon request from MACL from 67,000 KVA to 23,000 KVA. Thereafter, MACL on 24.12.2001 requested TNEB to further reduce the contracted maximum demand to 10,000 KVA with effect from 27.01.2002. Despite such requests being made, no steps effectuating such request were taken by TNEB.

MACL filed a writ petition before the High Court of Madras which was dismissed by a Single Judge of High Court observing that MACL was bound to pay charges in terms of the contract irrespective of the actual consumption. The said observations of the Ld. Single Judge were upheld by the Division Bench of High Court of Madras in appeal wherein the Division Bench held that such disputes which are contractual in nature could be adjudicated under Article 226 of the Constitution.

In appeal, the Supreme Court examined whether an action on the application remaining pending for an unreasonable period could be classified as an arbitrary and unreasonable act. The Court relied on the principle of reasonable time recently followed in ***SEBI* v. *Sunil Krishna Khaitan and Ors.***[7] and keeping in view

[5] Electricity (Amendment) Rules, 2023
[6] Civil Appeal Nos. 7224-7226 of 2009
[7] (2023) 2 SCC 643

© Sagus Legal | All rights reserved

the well-established principle that State action irrespective of being in the contractual realm must abide by Article 14 of Constitution, the Court held that actions of TNEB of keeping the application pending for a period much longer than reasonable would make such action unreasonable and arbitrary.

High Court of Kerala held that a challenge to an order issued by the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 would lie with the High Court which has jurisdiction over such Facilitation Council.

The High Court of Kerala in the matter of ***M/s Shreyas Marketing v. Micro and Small Enterprises Facilitation Council***[8] in its judgement dated 12.06.2023 has held that where in case of a dispute between a buyer and a supplier, the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") has issued an order, any challenge to such order would lie with the High Court having jurisdiction over the said Facilitation Council.

The issue before the court was a plea challenging an intimation by the Karnataka State Micro and Small Enterprises Facilitation Council to M/s Shreyas Marketing ("MSM"), a partnership firm, involved in distribution and marketing of certain products. On the issue of maintainability, MSM contended that as the goods and services had been supplied to MSM in the State of Kerala, the High Court of Kerala had the jurisdiction to entertain the instant writ petition. The Facilitation Council contended that the jurisdiction is vested in the High Court of Karnataka as the seat of the Facilitation Council was not within the territorial jurisdiction of High Court of Kerala.

The High Court of Kerala rejecting the contentions of MSM held that in accordance with Section 18 of the MSMED Act, 2006, the power to entertain such matters vests with High Court of Karnataka even if part of the cause of action arose in Kerala. The Court held that the doctrine of *forum conveniens* would apply as the predominant part of the cause of action arose in the jurisdiction of High Court of Karnataka.

High Court of Delhi held that amendment to Section 29A of the A&C Act through The Arbitration and Conciliation (Amendment) Act, 2019 is procedural in nature and would apply to all arbitrations that were pending on the date of its coming into force.

The High Court of Delhi in the matter of ***Harkirat Singh Sodhi v. Oram Foods Private Limited***[9] in its judgment dated 28.06.2023 examined the issue of applicability of the amendment to Section 29A of A&C Act brought about by the Arbitration and Conciliation (Amendment) Act, 2019 which came into effect from 09.08.2019 and held that the amendments being procedural in nature would apply retrospectively to all arbitrations pending at such time.

The Court held that the pleadings before the sole arbitrator having been completed on 29.08.2019 would entail passing of the award within 12 months in terms of amended provisions. However, on account of the extension of limitation granted by Hon'ble Supreme Court due to Covid-19 pandemic from 15.03.2020 till 28.02.2022, the period of 12 months would have expired on 16.08.2022.

The Court observed that the arbitrator delivered the award on 30.08.2022 and a marginal delay of 14 days in the rendering of the award can be condoned on account of existence of exceptional circumstances i.e., the unfortunate demise of two arbitrators and recusal of the third arbitrator. Therefore, the Court allowed the petition and extended the mandate of the sole arbitrator until the date of the award.

High Court of Delhi held that an order of the arbitral tribunal refusing to entertain additional counterclaims filed without making any application under Section 23 of A&C Act is not an arbitral award, therefore, it cannot be challenged under Section 34 of the A&C Act.

The Delhi High Court in the matter of ***M/s Abhijeet Angul Sambalpur Toll Road Limited v. National Highways Authority of India***[10] in its judgment dated 28.06.2023 has held that an order of the arbitral tribunal refusing to entertain additional counterclaims filed without making any application under Section 23 of the A&C Act is not an 'interim award', therefore, it cannot be challenged under Section 34 of the A&C Act.

The appeal arose out of the order of the single judge dated 28.02.2022 passed in a Section 34 application preferred by National Highways Authority of India ("NHAI") against an order of the arbitral tribunal dated 26.08.2020 by which the arbitral tribunal refused to entertain the counterclaims of NHAI. The single bench held that the order of the arbitral tribunal refusing to entertain the counterclaims was an interim order within the meaning of Section 31 of the A&C Act which could be challenged under Section 34 of the A&C Act, and therefore, it set aside the order of the arbitral tribunal and directed it to decide the counterclaims of NHAI on their merits.

The Court further held that order of the arbitral tribunal refusing to entertain additional counterclaims filed without requisite permission/ authority of the arbitral tribunal is not an interim

[8] WP(C) No. 3327 OF 2021
[9] OMP (COMM.) 186 of 2021
[10] F.A.O. (OS) (COMM.) No. 88 of 2022

© Sagus Legal | All rights reserved

award as it neither conclusively settles any issue between the parties so to have the *res judicate* effect nor forecloses the right of the aggrieved party to refile the counterclaims by seeking "authority" or permission on an application under Section 23 of the A&C Act.

High Court of Delhi held that the CA firm appointed as 'Special Auditor' under Section 142(2A) of the Income Tax Act, 1961 by the assessing officer will not be covered under the provisions of MSMED Act

The High Court of Delhi in the matter of ***Pr. Commissioner of Income Tax v. Micro and Small Enterprise Facilitation Council and Anr.***[11] in its judgment dated 06.07.2023 has held that determination of remuneration of accountant(s) nominated under Section 142(2A) of the Income Tax Act, 1961 ("**IT Act**") by the commissioner or by other high-ranking officials of the IT department, is of a specialized nature and can only be undertaken by the IT Department..

In the present case, a dispute arose between the IT Department and a chartered accountant firm ("CA firm") regarding the remuneration determined by IT department payable to the CA Firm for rendering its auditing services as a 'Special Auditor' under Section 142(2A) of the IT Act. The CA Firm invoked the provisions of MSMED Act and referred the dispute to MSEFC. MSEFC upon failure of conciliation proceedings, referred the matter to arbitration which was challenged by the IT department in the present writ petition.

The Court held that in terms of the MSMED Act, the IT department cannot be termed as a 'buyer' when it is nominating an accountant for conducting a Special Audit and neither can the CA Firm be termed as a 'supplier'. The remuneration payable to the CA Firm cannot also be termed as 'consideration' as the Special Audit is a statutory duty being performed by the CA Firm for and on behalf of the IT department.. The MSMED Act would accordingly have no application to the issue of remuneration payable to the CA Firm for the Special Audits.

National Company Law Appellate Tribunal held that the compulsorily convertible debentures are in the nature of equity instruments and do not fall within the definition of financial debt as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench in the matter of ***M/s IFCI Limited v. Sutanu Sinha, Resolution Professional of IVRCL Chengapalli Tollways Limited & Ors.***[12] in its judgment dated 05.06.2023 has held that any instrument which is compulsorily convertible into shares is to be treated as equity and not a loan or debt. In this regard, NCLAT observed that there is no express definition or interpretation regarding whether CCDs are to be treated as 'Debt' or 'Equity' and further discussed the judgement of Hon'ble Supreme Court in ***Narendra Kumar Maheshwari v. Union of India***[13] where it was held that any instrument which is compulsorily convertible into shares is regarded as an 'equity' and not a loan or debt.

In the present case, the claims of IFCI Limited ("IFCI") as a financial creditor holding Compulsory Convertible Debentures ("CCDs") of IVRCL Chengapalli Tollways Limited ("ICTL") was rejected by resolution professional ("RP"). In the application before National Company Law Tribunal ("NCLT"), the decision of the RP rejecting such claims was reaffirmed and the NCLT held that CCDs subscribed by ICFI are to be treated as equity and not as debt in view of the RBI Master Directions on Foreign Investment in India and the judgment in *Narendra Kumar Maheshwari v. Union of India*.

NCLAT observed that the definition of 'equity', in the agreements entered between the parties, included CCDs issued to ICTL and observed that the intention of the parties as set forth in the agreement does not reflect that the CCDs would take the character of financial debt upon occurrence of any event.

NCLAT held that the transaction of transfer of assets within the group companies, *ex-facie*, will not come within the meaning of 'fraudulent trading' under Section 66(1) of the Insolvency and Bankruptcy Code, 2016.

The NCLAT, Chennai in the matter of ***Renuka Devi Rangaswamy, IRP of M/s. Regen Infrastructure and Services Private Limited v. Mr. Madhusudan Khemka & Ors.***[14] in its judgment dated 05.06.2023 has held that for claiming fraudulent trading, the Interim Resolution Professional ("IRP") has a duty to establish that the business with the corporate debtor has been knowingly carried out by a person with a dishonest intention to defraud the creditors.

In the present case the IRP of Regen Infrastructure and Services Private Limited ("RISPL") filed an appeal against an order dated 01.07.2022 passed by the NCLT, Chennai. The order recorded that transfer of assets within the group companies *per se* would not constitute `fraudulent trading' as stipulated under Section 66(1) of the IBC as the IRP had not made a case of fraud or dishonest intention on the part of the respondents except making sweeping allegations and hence Section 66 of the IBC could not be invoked.

[11] W.P.(C) 13754 of 2019
[12] Company Appeal (AT)(CH)(INS.) No. 108/2023
[13] 1989 AIR 2138
[14] Company Appeal (AT) (CH) (INS.) No. 356 of 2022

© Sagus Legal | All rights reserved

Aggrieved by this order, the IRP preferred an appeal before NCLAT. The IRP contended that although as per the Audited Financial Statements `RISPL' had acquired certain lands, none of the documents relating to the same were available. Further, the said lands were purchased in the name of another party (the 3rd respondent), utilising the funds provided by RISPL which was not in the ordinary course of business of RISPL.
NCLAT in its judgement pointed out the ingredients of Section 66 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and observed that dishonesty is an essential ingredient of fraudulent trading. The appellant has a `duty' to establish that a person has knowingly carried on the business with the corporate debtor with a dishonest intention to defraud the creditors. It was further observed that to prove fraudulent trading, necessary materials furnishing requisite facts which indicate fraudulent intent should be provided, and the degree of probability must be such that the tribunal is satisfied regarding the actions and intentions of such party.

Securities Appellate Tribunal held that the Adjudicating Officer has no power to issue show cause notice or adjudicate the contravention under Securities & Exchange Board of India Act, 1992 after the moratorium under the Insolvency and Bankruptcy Code, 2016 has been declared.

The Securities Appellate Tribunal ("SAT") in the matter of ***Bhushan Power & Steel Limited v. Securities & Exchange Board of India & Ors.***[15] in its judgement dated 28.06.2022 has held that once moratorium has been initiated and a resolution plan has been approved by the NCLT, no order can be passed against the corporate debtor for acts and omissions committed prior to the commencement of corporate insolvency.

The present appeal was made against an order dated 13.04.2023 passed by an Adjudicating Officer ("AO") imposing a penalty to be jointly and severally paid by Bhushan Power and Steel Limited ("BPSL") along with 22 other entities for violating the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The AO observed that Unisys Softwares and Holding Industries Limited had made a preferential allotment of shares for which, it had given financial assistance to other entities to subscribe to such shares. It was further observed that BPSL was one of the means through which such funds were transferred.

BSPL contended that the show cause notice was issued by the AO after the initiation of insolvency proceeding against it, during which period moratorium was subsisting. Subsequently, a resolution plan was approved by the NCLT which resulted in the change in management and control of BSPL even before the order was passed by the AO.

SAT, in accordance with the 'clean slate principle' laid down by the Supreme Court in the matter of Committee of Creditors of *Essar Steel India Limited vs. Satish Kumar Gupta*[16] observed that a successful resolution applicant could not be burdened with any liability on account of violations committed before the initiation of insolvency proceedings and accordingly, set aside the order passed by the AO in so far as it related to BSPL.

NCLAT held that a notice period of 30 days should be given in e-auction to obtain best value, even though Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") do not provide for any timeline.

NCLAT in the matter of ***Naren Seth v Sunrise Industries & Ors***[17] in its judgement dated 04.07.2023 has held that even though the Liquidation Regulations do not provide for any timeline, however, a notice period of 30 days is to be given to obtain best value in e-auction. In the present case the entire e-auction process was concluded within 5 days including weekends.

The e-auction dated 08.04.2022 was challenged before the NCLT by the bidders, wherein the NCLT while setting aside the e-auction held that sufficient gap was not given after issuance of sale notice to complete the e-auction exercise and that the liquidator had acted in a prejudicial manner.

In the present appeal, NCLAT upheld the decision of NCLT and while referring to Rule 8(6) of the SARFAESI Security Interest (Enforcement) Rules, 2002 which states that "the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5)", and opined that the Liquidator should have allowed a reasonable period of 30 days following the Sale Notice before proceeding with the e-auction to giving adequate opportunity to bidders to participate.

Appellate Tribunal for Electricity held that CERC is the appropriate commission for determining trading margin and the State Commission does not have jurisdiction in reviewing or modifying the tariff adopted by CERC.

The Appellate Tribunal for Electricity ("APTEL") in the matter of ***Solar Energy Corporation of India Limited v Uttar Pradesh Electricity Regulatory Commission & Ors.***[18] in its judgment dated 06.07.2023 has held that state commission has no jurisdiction over the trading margin which is to be mutually

[15] Appeal No. 534 of 2022
[16] (2020) 8 SCC 531
[17] CA (AT) (Ins.) No. 401 of 2023
[18] Appeal No. 199 of 2023

© Sagus Legal | All rights reserved

decided between the parties. CERC mandated Solar Energy Corporation of India Limited ("SECI") to procure electricity from the Renewable Power Developers under the Power Purchase Agreements ("PPAs") for the purpose of further sale to the buying utilities/distribution licensees under Power Sale Agreement ("PSA") through back-to-back arrangements.

SECI filed a petition before CERC for adoption of tariff for 480 MW wind power developers discovered under competitive bidding process. Meanwhile, CERC notified the CERC (Procedure, Terms and Conditions for Grant of Trading Licence and Other regulated matters), Regulations, 2020 which provides that trading margin shall be mutually agreed between the parties for long term contracts. CERC accordingly disposed the petition. Thereafter, Uttar Pradesh Power Corporation Limited ("UPPCL") filed a petition before the State Commission for approval of PSA between SECI and UPPCL. However, the State Commission while approving the PSA held that SECI should make suitable adjustments to the trading margin.

APTEL held that the CERC is the appropriate commission for determining the trading margins and the State Commissions do not have jurisdiction in reviewing or modifying the tariff adopted by CERC and also have no jurisdiction over the trading margin which is to be mutually decided between the parties.

CERC held that introduction of Goods and Service Tax and imposition and introduction of Safeguard Duty will be considered as 'Change in Law' event.

CERC in the matter of ***SB Energy Three Private Limited v. M/s Solar Energy Corporation of India Limited & Ors.***[19] in its order dated 30.06.2023 recognized the introduction of Good and Service Tax ("GST") law and Safeguard Duty ("SGD") *vide* Notification No.01/2018- Customs SG dated 30.07.2018 ("SGD Notification 2018") as 'Change in Law' events under the Power Purchase Agreements ("PPAs"), entitling SB Energy Three Private Limited ("SB Energy") to relief.

CERC observed that in the instant case, a bid was submitted by SB Energy on 19.04.2017, the PPAs were executed on 06.10.2017, scheduled date of commissioning ("SCOD") as per the PPAs was 16.09.2018 and the projects were commissioned on 04.10.2018. However, the GST laws were introduced from 01.07.2017 and the SGD Notification 2018 was issued on 30.07.2018, i.e., after the bid submission date on 19.04.2017, and before SCOD. Therefore, SB Energy was entitled to relief for 'Change in Law' for the introduction of GST laws and SGD.

ABOUT SAGUS LEGAL

Sagus Legal is a full-service law firm that provides comprehensive legal advisory and advocacy services across multiple practice areas. We are skilled in assisting businesses spanning from start-ups to large business conglomerates including Navratna PSUs, in successfully navigating the complex legal and regulatory landscape of India. Our corporate and M&A, dispute resolution, energy, infrastructure, banking & finance, and insolvency & restructuring practices are ranked by several domestic and international publications. We also have an emerging privacy and technology law practice.

Delhi Office:
First Floor, S-35B,
Panchsheel Park,
New Delhi – 11001

Gurugram Office:
I-46, Emaar Emerald Hills,
Sector 65, Gurugram – 122001

Satellite Office:
Bhubaneswar, Odisha
Email: info@saguslegal.com
Phone No.: +91 1146552925
Website: https://www.saguslegal.com/

The contents of this Newsletter are for general information only. It shall not be construed as legal advice. For any specific legal or

factual query/ opinion, kindly obtain appropriate professional advice.

[19] Petition No. 72/MP/2020

© Sagus Legal | All rights reserved