



PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



In this Section

Electricity (Second Amendment) Rules, 2023

Guidelines for Tariff-Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects

Electricity (Second Amendment) Rules, 2023

- The Ministry of Power (**MoP**), on July 26, 2017 issued the Electricity (Second Amendment) Rules, 2023 (**Electricity Amendment Rules**), which amend the Electricity Rules of 2005 (**Electricity Rules**).
- **Key aspects:**
 - Under the Electricity Amendment Rules, Rule 15 has undergone modification to encompass several changes:
 - Each Distribution Company (**DISCOM**) is required to submit a quarterly report to the respective State Commission, detailing the subsidy received and the actual energy consumption by subsidized categories.
 - DISCOMs are obligated to furnish quarterly reports to the relevant State Commission.
 - State Commissions are now empowered to issue orders for tariff implementation without subsidy if the State Government fails to provide advance subsidy payment.
 - State Commissions are authorized to take suitable actions against DISCOM officials for non-compliance.
 - The former Rule 20 (concerning the issuance of orders and practice directions) within the Electricity Rules has been renumbered as Rule 21, while a fresh Rule 20 has been introduced. This new Rule 20 establishes a structure to ensure the financial sustainability of DISCOMs and outlines the following provisions:
 - DISCOMs' trajectory for reducing Aggregate Technical and Commercial losses (**AT&C Loss**) for tariff determination must align with the trajectory agreed upon by the State Governments and approved by the Central Government under national schemes or programs.
 - State Commissions are responsible for determining the trajectory for collection and billing efficiency of DISCOMs, based on the approved trajectory.
 - Prudent costs incurred by DISCOMs for power procurement are to be taken into account.
 - DISCOMs' reasonable expenses for establishing and maintaining distribution system assets are eligible for pass-through.
 - Deviations from the approved AT&C Loss reduction trajectory will lead to the quantification of gains or losses based on average power purchase cost, with distribution between DISCOMs and consumers in a determined ratio.
 - State Commissions are permitted to provide a reasonable return on equity.

Guidelines for Tariff-Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects

- On July 26, 2023, the Ministry of Power (**MoP**) issued the Guidelines for the Tariff Based Competitive Bidding Process in the context of Procurement of Power from Grid Connected Wind Power Projects (**Guidelines**).
- This initiative has been introduced with the dual objective of promoting the augmentation of renewable energy capacity and establishing an unequivocally transparent, equitable, and standardized framework for the procurement of power produced from wind energy sources.
- The wind power potential within the country has been evaluated by the National Institute of Wind Energy (**NIWE**) and is approximated to be 1,164 GW when measured at a height of 150 meters above the ground. The majority of this potential is concentrated in eight specific states: Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and Telangana.
- The primary focus of these Guidelines lies in facilitating both inter-state and intra-state transactions involving the sale and purchase of electricity generated through wind energy.
- The Guidelines have been devised to oversee the efficient procurement of electricity specifically from two categories of grid-connected Wind Power Projects (WPPs): those with a capacity of 10 MW and above, closely integrated with intra-state transmission systems, and those with a larger capacity of 50 MW and above, linked to the expansive inter-state transmission system.
- Under these Guidelines, the bidder will prepare the bid documents in accordance with these Guidelines. In case there is any deviation the bidder has to take prior approval from the Government for such deviations in the draft RfS, draft PPA, or draft PSA.
- The Guidelines are exhaustive and incorporate and provide uniformity in all bidding for the wind projects.
- The Guidelines stipulate that the tariff adopted through bidding should apply specifically at the point of delivery. This implies that all associated expenses and outcomes leading up to the delivery point will be the responsibility of the Wind Power Generator (**WPG**), encompassing potential costs like transmission charges or losses, as well as Demand Side Management (**DSM**) charges. As a result, any expenses beyond this delivery point will be the obligation of the entity procuring the power.
- Furthermore, MoP has also covered various aspects of transmission connectivity, the role to be played by the State Nodal Agency, mechanisms for resolving disputes, charges and losses related to Inter-State Transmission System (ISTS), and other pertinent considerations. These measures aim to facilitate the seamless generation and distribution of power by the generator and its subsequent acquisition by the procurer.

RECENT JUDGMENTS



In this Section

Tamil Nadu Generation and Distribution Corporation Ltd v. Central Electricity Regulatory Commission & Ors

Raygen Power Private Ltd v. Chamundeshwari Electricity Supply Corporation Ltd & Ors

Solar Energy Corporation of India Ltd v. Uttar Pradesh Electricity Regulatory Commission & Anr

Paschimanchal Vidyut Vitran Nigam Ltd v. Raman Ispat Pvt Ltd & Ors

Tamil Nadu Generation and Distribution Corporation Ltd v. Central Electricity Regulatory Commission & Ors

Appellate Tribunal For Electricity (APTEL) | Order dated July 18, 2023 | IA No. 1985 of 2022 in Appeal No. 433 of 2022

Background facts

- The Interlocutory Application bearing I.A. No. 1985 of 2022 was filed on behalf of Tamil Nadu Generation and Distribution Corporation Ltd (**Appellant/TANGEDCO**) seeking interim relief against Order dated September 29, 2022 passed by the Central Electricity Regulatory Commission (**CERC**) in Petition No. 685/TT/2020 filed by Power Grid Corporation of India Ltd (**PGCIL/Respondent No. 2**), a deemed transmission licensee, for determination of tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (**2019 Tariff Regulations**).
- In the Impugned Order, CERC while dismissing the petition, held that it is not the appropriate forum for declaring any transmission asset to be of national and strategic importance.
- The Appellant submitted that transmission system in dispute is the Raigarh-Pugalur-Trissur HVDC transmission system which is implemented by PGCIL at an investment cost of INR 20,000 crore (approximately) for the purpose of system strengthening to transfer surplus power from Chhattisgarh State 'Raigarh' to Southern Region and also as part of green energy corridor for transfer of Renewable Energy (**RE**) power from RE rich Southern States to the rest of the country.
- The Appellant stated that this HVDC system qualifies all the characteristics to be declared as an asset of strategic importance and contended that the CERC has erred in considering the transmission scheme in spite of the fact that no regulatory approval was obtained by PGCIL prior to planning and commissioning of the said asset as mandated by the CERC Regulatory Approval Regulations 2010, even to the fact that compliance to its own regulations is mandatory as per the settled principle of law.
- The Appellant also submitted that the CERC has also failed to include the tariff under regional component of western regional beneficiaries as per Regulation 6(2) of the Sharing Regulations 2020.
- The CTU contended that the 6000 MW Raigarh-Pugalur-Trissur HVDC system was planned to import power from Western Region to the Southern Region through direct interconnection between pit head generating stations in Chhattisgarh and load centers in Southern Region. However, considering the surplus scenario and optimistic RE capacity addition projections later on, it was proposed to use the said HVDC system for export of power from Southern Region as well 'bi-directional', accordingly, the HVDC system was planned for 6000 MW import to the Southern Region and provisions for 3000 MW reverse power flow for export from Southern Region.

- CTU further added that the Southern Region would become surplus in power during peak RE hours in future in view of the surplus scenario and optimistic RE capacity addition projections as part of Government of India's target of achieving 175 GW renewable power by 2022 and 500 GW renewable power by 2030.
- Consequently, Raigarh-Pugalur HVDC transmission link will continued to be utilized for export of power outside Southern Region (bi-directional), facilitating optimal utilization of existing inter-regional links and reducing the need for identification/implementation of additional interregional links for export of surplus power from Southern Region and, therefore, may be considered as national component under the Sharing Regulations, 2020.
- It was also informed that the Government of India, Ministry of Power vide its letter dated May 30, 2022 addressed to the Central Commission has stated that the Raigarh-Pugalur-Thrissur HVDC system is benefitting both Western Region and Southern Region and, therefore, it appeared that there was a case for inclusion of the subject transmission system as national component under the Sharing Regulations, 2020.
- CTU further submitted that during the consultation process concerning the draft Sharing Regulations, 2020, the CERC clarified that HVDC systems planned to cater to the requirement of drawl by a particular region were covered under regional component and, in case of change in load generation mix, if need arose to consider the sharing based on bi-directional flow of power, the same could be dealt with by the Commission at an appropriate time.
- Therefore, the issue of considering the HVDC link i.e. Raigarh-Pugalur-Trissur HVDC system in the national component was discussed at the time of framing of the Sharing Regulations, 2020 and the CERC decided to consider the same at an appropriate stage to include it in the National Component based on bi-directional flow of power
- PowerGrid, on the other hand, argued that there is no infirmity in the Impugned Order and additionally submitted that it has commissioned the said HVDC link and, therefore, required to be paid for the assets it has set up, adding that tariff recovery is not akin to a claim for damages but goes towards servicing of the capital cost invested by PowerGrid in the construction of transmission assets claiming that all the prudent costs and expenses incurred by PowerGrid along with a reasonable Return on Equity (RoE) should be paid to it.

Issue at hand

- Whether CERC has the powers and jurisdiction to declare any transmission asset as of national importance and 100% yearly transmission charges may be considered under National Component?

Decision of the Tribunal

- APTEL while setting aside the Impugned Order and held that the Raigarh-Pugalur HVDC transmission system is an asset of strategic and national importance in line with the other HVDC systems so that the charges are shared on all India basis.
- APTEL held that CERC has adopted an inconsistent approach in the present case with its decision to defer the consideration of the instant HVDC link under the components of national importance to a later stage based on change in load generation and bi-directional flow of power is unreasonable as the Dehgam-Mundra-Mohindergarh-Bhiwani link, till date, has operated with only unidirectional flow, as submitted by the Appellant and also that the \pm 800 kV Biswanath Chariali-Agra HVDC link is under-utilized and the Southern Region is not benefitted by either of the two.



HSA Viewpoint

The Commission's decision is a victory for the Appellant and could set a precedent for future cases as the state of Tamil Nadu and other Southern Regional States are RE rich States and the resources will be shared for the benefit of the entire country. Therefore, the declaration of a transmission asset as an asset of national and strategic importance will pave the way for similar consideration of comparable future scenarios that may arise.

Raygen Power Private Ltd v. Chamundeshwari Electricity Supply Corporation Ltd & Ors

Karnataka Electricity Regulatory Commission (KERC) | Judgement dated July 26, 2023 | OP Nos. 62 of 2017 & 132 of 2017

Background facts

- The Petition has been filed by the solar power project developers (**Petitioners**), inter alia seeking extension of schedule commissioning dates, on account of force majeure events including the time taken to secure necessary project permissions or approvals.
- The Petitioners are covered under the farmers' scheme for developing infrastructure for solar energy.
- The power generated from the projects is to be supplied to the Distribution Licensee (**DISCOM**).

Issue at hand

- Whether delay in commissioning of solar power project can be condoned for delay caused due to force majeure events?

Decision of the Commission

- KERC in its Order has held that the delay in grant of permission, approval of PPA and SPPD, demonetization, delay in power evacuation approvals, safety approvals, etc. constitute force majeure and therefore, the result delay in project commissioning ought to be condoned.
- KERC in its Order has condoned the delay in commissioning of the solar power projects by the Petitioners and has further extended the scheduled commissioning dates.
- KERC has also held that the Petitioners are entitled to receive the tariff as enshrined in their respective agreed PPA and has directed the DISCOM to not levy any liquidated damages.
- KERC has also granted the Petitioners interest at the rate of 10% p.a. for the differential tariff for the period from the date of COD till the date of payment.
- A 90-day time period has been granted to the DISCOM to make the payment with interest, failing which the Petitioners are entitled for late payment surcharge from date of default till realization.



HSA Viewpoint

KERC exhibited a conciliatory stance when addressing a notable delay in the initiation of the solar power projects and endorsed the original tariff rates as specified in the Power Purchase Agreement (PPA), aligning with the established contractual terms. This decision is based on legal principles and underscores the necessity of pardoning the projects' delay attributed to force majeure events mentioned in the PPA. The extension of the project timelines releases the petitioner from the initial obligation to adhere strictly to the designated timeframe, while maintaining the predetermined tariff rates. This approach prioritizes the well-being of consumers by upholding a just distribution of costs and benefits, preserving overall stability. To recap, the KERC's verdict effectively balances the commitment to contractual obligations with the management of unexpected hurdles, ultimately fostering a harmonious relationship between regulatory adherence and consumer welfare.

Solar Energy Corporation of India Ltd v. Uttar Pradesh Electricity Regulatory Commission & Anr

Appellate Tribunal for Electricity (APTEL) | Judgement dated July 19, 2023 | Appeal No. 453 of 2020

Background facts

- The Appeal was filed by Megha Engineering and Infrastructures Ltd (**MEIL**) under Section 111 of the Electricity Act, 2003 read with Section 33 of the Petroleum and Natural Gas Regulatory Board Act, 2006 challenging the Order passed by the Petroleum and Natural Gas Board (**PNGRB**) dated February 18, 2020 whereby the MEIL was directed to handover the CNG Station situated in Kanuru to the PNGRB, and were restrained from marketing CNG thereat.
- MEIL was authorized by the letter of PNGRB dated September 14, 2015 for development of the City Gas Distribution Network in Geographical Area (**GA**) of Krishna District 'excluding area authorized in favor of Respondent No. 1'. Respondent No.1 was authorized by letter of PNGRB dated July 28, 2009 for development of Vijayawada CGD network.
- Respondent No. 1, vide its letter dated March 26, 2018, sought clarification on the boundary of Vijayawada GA, and thereafter filed a complaint on June 27, 2018 'which the Appellant claimed to

be after expiry of 34 days beyond the 60 days stipulated in Section 25(2) of the PNGRB Act', contending that the CNG station established by the Appellant fell outside the geographical area authorized in their favor; the Appellant had built a CNG station within the GA allotted to Respondent No. 1 i.e., in Kanuru village in Vijayawada; the Appellant was carrying on construction in a covered enclosure because of which Respondent No. 1 was unable to make out the nature of construction, and could not agitate the issue earlier; Respondent No. 1 vide its letter dated March 26, 2018 regarding the unauthorized construction of the subject CNG station by them; and the Appellant had encroached into the area allocated to Respondent No. 1 for development of CGD network.

- The Appellant, in its reply, stated that the authorization was granted to it by PNGRB vide its letter dated September 14, 2015; the Appellant had constructed a CNG station on its own land which fell under Kanuru Gram Panchayat, and the Gram Panchayat had granted its approval for construction of the CNG station by its Resolution dated March 16, 2018; the District Panchayat Officer vide its letter dated April, 2018 granted its NoC to install and set up the subject CNG station.
- PNGRB constituted a committee to ascertain 'whether the CNG station constructed by the Appellant fell within the village of limit of KANURU (Census Town) or not as per PNGRB allotment of CA-06 to the Appellant', thereafter, the Committee visited Vijayawada on January 21, 2019 to carry out ground verification of CNG station built by the Appellant and recorded that the latitude and longitude fell under the area authorized to Respondent No. 1; this latitude and longitude fell under the area authorized to Respondent No. 1 even on the map given to the Appellant for the authorization issued on September 14, 2015 for Krishna District excluding areas already authorized; erroneously, the map given to the Appellant, the Kanuru village falls under the area already authorized to Respondent No. 1; accordingly, bidders should have verified the areas offered in line with the tender condition before submitting their bids.

Issues at hand

- Whether the Appeal is barred by limitation as prescribed under Section 25 of the PNGRB Act?
- Whether the location of the CNG substation be determined on basis of the table shown in Krishna District GA Map under CA-6 or based on co-ordinates?
- Was PNGRB justified in applying the co-ordinates test to hold that the CNG station at Kanuru fell within Vijayawada GA?

Decision of the Tribunal

- In furtherance of Section 22 and 23 of the Limitation Act, in a continuing cause of action such as in the present case, once a cause of action arises and the acts complained of are continuously repeated, the cause of action continues and goes on *de die in diem*. As the relief sought for is for the alleged act of contravention even as of date, the relief sought in the Complaint dated June 27, 2018 is available and the Complaint is not barred by limitation as stipulated under Section 25(2) of the PNGRB Act. The satisfaction of PNGRB for filing a complaint after the expiry of 60 days as stipulated in Section 25 does not obligate PNGRB to await an application seeking condonation of delay.
- The Committee constituted by PNGRB, had in its report recorded its findings to the extent that the latitude and longitude of the subject CNG station fell within the area authorized on July 28, 2009 to Respondent No. 1. This latitude and longitude fell under the area authorized to Respondent No. 1 even in the map given to the Appellant for authorization issued on September 14, 2015 for Krishna District. As per Clause 2.1.1 & Clause 2.1.2 of the bid document for Krishna District, the areas offered excluded the areas already authorized, and the map of the already authorized areas were available on PNGRB website, and the bidders should have verified the areas offered, in line with the tender conditions, before submitting their bids.
- The contention that the report of the Committee was biased in favor of Respondent No. 1 was also rejected as the committee constituted by PNGRB was its own committee and the Committee's recommendations are unilateral.
- In light of the authorization given by the Central Government and the exclusivity given by it, PNGRB could not have granted the Appellant the authorization to operate within any part of the geographical area of Respondent No. 1. Any error on part of PNGRB in having prepared the table given in the map of Krishna District geographical area cannot result in Respondent No. 1's right to operate exclusively within its geographical area being defeated.
- While the Appellant had installed and constructed the CNG station in its own land in Kanuru village, the proprietary rights of Appellant over the land have no bearing on the question whether or not CNG station is located within the Respondent No. 1's geographical area. Even if the location of the subject CNG station is held to fall within Vijayawada boundary limits and not within Krishna District, the Appellant would nonetheless continue to remain the owner of the land, as also of the assets thereat. However, the Appellant would no longer be entitled to continue operating the subject CNG station or market the CNG products therefrom.

- While the Appellant may be entitled to hold the PNGRB to account for the consequences of any error committed by it in preparation of the map, they can neither operate the CNG station by encroaching into, nor deprive Respondent No. 1 of its right to operate exclusively within each and every part of Vijaywada GA.
- It matters little whether or not the PNGRB had inadvertently included Kanuru village in Krishna District GA map, since the PNGRB could not have granted authorization to the Appellant for any part of Vijayawada GA as authorization for the said GA was granted in favor of Respondent No. 1 by the Central Government in 2008 and exclusivity was granted to them by PNGRB in 2009, several years before bids were invited by PNGRB for the Krishna District GA in the year 2015.
- In the light of the law settled by the Supreme Court in ***Maharshi Dayanand University v. Surjeet Kaur***¹, the statutory right conferred on Respondent No. 1 under Section 17 of the PNGRB Act, Regulation 17 of the 2008 Regulations and Regulation 5 of the Exclusivity Regulations cannot be defeated by any error on the part of the PNGRB, more so as it is well settled that neither the court nor any tribunal has the competence to issue a direction contrary to law or to direct an authority to act in contravention of a statutory provision.
- The stand taken on behalf of the Appellant that no reliance ought to be placed on co-ordinates is contrary to what the Appellant had raised in its complaint to the PNGRB regarding installation of a CNG station in Ibrahimpatnam by Respondent No. 1, within the boundaries of Krishna District GA of the Appellant.
- The subject CNG station at Kunuru falls within Vijayawada GA for which authorization and exclusivity was granted in favor of Respondent No. 1 several years prior to bids being invited, and authorization being granted to the Appellant in the year 2015 for Krishna District GA.
- Regulation 12(i) of the 2008 Regulations provides that the exclusivity period shall be in terms of the Exclusivity Regulations, and Regulation 12(2) stipulates that the period for which a distribution network shall be excluded from the purview of a common carrier and contract carriers shall be 8 years. Similarly, Regulation 5(1) of the Exclusivity Regulations enables the PNGRB to grant exclusivity to an entity for laying, building, operating, or expanding the CGD network over the economic life of the project which, in terms of Regulation 5(1)(a), is normally expected to be 25 years for the CGD network project.
- Section 20(i) of the PNGRB Act confers power on the PNGRB to declare the existing pipeline of the existing city or local natural gas distribution network to be a common carrier or a contract carrier or to allow access to such pipeline or network. The said provision prescribes the procedure for issuing such a declaration. It is only after the aforesaid procedure is followed that the PNGRB can thereafter issue a declaration that the network shall henceforth be a common carrier or a contract carrier.
- It is not in dispute that the PNGRB has not initiated any action in terms of Section 20 of the PNGRB Act. Consequently, Respondent No. 1 continues to have exclusivity for the entire Vijayawada GA and the Appellant cannot claim that it is entitled to establish its CNG station within any part of Vijayawada GA on the specious plea that the entire network of Respondent No. 1 is no longer exclusive.
- In its judgment, APTEL set aside the first part of the Impugned Order directing the Appellant to hand over the subject CNG station. The second part of the Impugned Order directing the Appellant to cease and desist from marketing CNG from the subject CNG station, as it falls within Vijayawada GA, was upheld with the clarification that the land on which the subject CNG station was constructed, and the assets installed thereat, shall continue to remain with the Appellant, but the Appellant shall henceforth cease and desist from operating, or marketing CNG from the said CNG station at Kanuru.
- In view thereof, APTEL set aside the Order dated March 19, 2021 passed by the Respondent Commission to the limited extent that the trading margin of INR 0.07/kWh as mutually agreed by SECI and UPPCL through the PSA, shall be final and the decision of the Respondent Commission in directing UPPCL to suitably adjust the trading margin cannot be agreed to.



HSA
Viewpoint

The Tribunal has issued a well-reasoned decision that while the Appellant continues to remain in possession of the land and the assets installed thereat, the Appellant shall cease and desist from operating or marketing CNG from the subject CNG station as the same was built on the GA allotted to Respondent No. 1.

¹ (2010) 11 SCC 159

Paschimanchal Vidyut Vitran Nigam Ltd v. Raman Ispat Pvt Ltd & Ors

Supreme Court of India | Judgement dated July 17, 2023 | Civil Appeal No. 7976 of 2019

Background facts

- The Appellant i.e., Paschimanchal Vidyut Vitran Nigam Ltd (**PVVNL**), has been aggrieved by an order of the National Company Law Appellate Tribunal (**NCLAT**) wherein the NCLAT rejected PVVNL's appeal against an order from the National Company Law Tribunal, Allahabad (**NCLT**), which directed the District Magistrate and Tehsildar, Muzaffarnagar to release the attached property in favor of the Liquidator of Respondent Raman Ispat Pvt Ltd (**Corporate Debtor**). The release enabled the property's sale, and the value's distribution, according to the Insolvency and Bankruptcy Code, 2016 (**IBC**).
- On February 11, 2010, the parties entered into an agreement for electricity supply. The requisite clause stipulated that any outstanding dues would be charged against the company's assets and must be cleared or specifically mentioned before sale. When the Corporate Debtor's dues remained unpaid, PVVNL attached its properties on January 12, 2016 and the Tehsildar of Muzaffarnagar further restricted the transfer of property on January 23, 2016 by sale, donation or any other mode and further created a charge on the property. The Corporate Debtor initially entered the resolution process under the IBC but ended up in liquidation when the process failed.
- The final bill on January 27, 2017 revealed total arrears of INR 4,32,33,883. The District Collector sought to recover INR 2,50,14,080 by auctioning properties on March 05, 2018. The Liquidator argued that the attachment orders must be set aside by the NCLT as no buyer would purchase the Corporate Debtor's property due to uncertainty. The Liquidator also stated that PVVNL's claim would fall under the priority order in Section 53 of the IBC, entitling PVVNL to a pro rata distribution of proceeds with other secured Creditors.
- The NCLAT directed the immediate release of the attached property to the Liquidator for sale, with proceeds to be distributed according to the IBC. It also affirmed the NCLT's reasoning that PVVNL was an 'Operational Creditor,' thus allowing it to realize its dues in the liquidation process as per the law.
- PVVNL's argument rests on the Electricity Act having primacy over the IBC, and the specific provisions under these acts that would allow it to independently recover its dues without being subject to the priority of claims mechanism under the IBC.
- The Liquidator's arguments revolved around the specific priorities and procedures outlined in the IBC and other related laws, emphasizing that the provisions of the IBC would prevail over conflicting ones in the Electricity Act, and that electricity dues do not enjoy priority in liquidation proceedings.

Issues at hand

- The crux of the dispute centers around the priority of claims in insolvency proceedings. Specifically, the judgment examines whether the dues payable to Secured Creditors should have a higher priority over Government dues, including those under the Electricity Act, 2003.
- The judgment also delves into the overriding effect of Section 238 of the IBC over conflicting provisions in other statutes, including the Electricity Act. This addresses the question of whether specific charges and recovery mechanisms under the Electricity Act can be enforced during the liquidation process when they conflict with the provisions of the IBC.
- The judgment addresses a multifaceted issue concerning the hierarchy of claims in insolvency proceedings, the interpretation of different statutes, and the harmonization of potentially conflicting laws. It seeks to delineate the boundaries of the IBC, the Electricity Act, and other related laws in the context of insolvency and liquidation.

Decision of the Court

- The IBC provides a unified legal framework for commercial insolvency. It outlines the process for initiating insolvency resolution, which can be triggered by the Corporate Debtor itself or by Financial or Operational Creditors.
- The Court has further delineated a compulsory and systematic procedure for liquidation under the IBC, detailing the specific roles, responsibilities, and timelines that must be adhered to in the process.
- **Mandatory initiation of liquidation:** As per the judgments in *K Shashidhar v. Indian Overseas Bank*² and *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors*³, the Adjudicating Authority is obligated to initiate the liquidation process under Section 33(1) of the

² 2019 (3) SCR 845

³ 2019 (16) SCR 275

IBC. There's no discretion in the matter; liquidation must begin if any condition specified under Section 33 is met.

- **Role of Liquidator:** Upon initiation of liquidation, a Liquidator (ordinarily the RP) must be appointed. The powers and duties of the Liquidator are prescribed under Section 35, including verification of creditors' claims, managing the assets of the Corporate Debtor, selling assets, and protecting and preserving the properties.
- **Claims process:** The Liquidator must issue a public announcement calling upon creditors to submit their claims. Creditors have 30 days from the initiation of the liquidation process to send their claims. The Liquidator then verifies, admits, or rejects these claims and must communicate the decision within 7 days (Sections 39 and 40).
- **Liquidation estate:** The Liquidator concurrently identifies the liquidation estate, comprising the various assets and claims {Section 36(3)}, and then determines the value of the claims for asset distribution.
- **Timeline for liquidation:** Regulation 47 of the Liquidation Regulations requires that liquidation proceedings be completed within 1 year from initiation. This is in contrast to the extendable 330 day limit for the resolution process under IBC.
- **Moratorium on Secured Creditors {Section 14 (1) (c)}:** During the Insolvency Resolution Process, a Secured Creditor is barred from realizing its dues by initiating any proceedings. A moratorium period is imposed, precluding Secured Creditors from taking any action to foreclose, recover, or enforce any security interest. The rights of Secured Creditors are restored only in the event of the failure of the Insolvency Resolution Process, at the stage of liquidation. Additionally, any contractual arrangements between recipients with equal ranking that disrupt the order of priority will be disregarded by the Liquidator. The fees payable to the Liquidator are deducted proportionately from the proceeds payable to each class of recipients.
- **Priority of Government debts:** The IBC sets a clear distinction between Unsecured and Secured Creditors in liquidation proceedings, with options for Secured Creditors to either relinquish their security interest or realize it. Section 53 lays down a detailed mechanism for the distribution of proceeds from the sale of liquidation assets, with Secured Creditors' rights affected but workmen's dues protected, and establishes a clear priority for distributing the proceeds from the sale of the liquidation assets. It highlights a higher priority for debts owed to a Secured Creditor when such a creditor has relinquished security and a lower priority for Government debts and operational debts compared to unsecured Financial Creditors. Amounts due to the Government 'Consolidated Fund of India or a State' are ranked like Secured Creditors who don't relinquish their security interest (Section 53(1)(e)(ii)). This was aimed at promoting credit availability, reducing capital costs, fostering entrepreneurship, and accelerating economic growth. It aligned with the objective to bring practices in India in line with global standards.
- The IBC provisions maintain high priority for workmen's dues. A recent court judgment in the case of *Moser Baer Karamchhari Union*⁴ reinforced the above understanding of the law. Secured Creditors must decide at the onset of the liquidation process whether to relinquish or enforce their security interest, which affects their priority in the payout structure.
- The Court analyzed the interplay between IBC and various statutes, including the Gujarat Value Added Tax Act, Customs Act, Tea Act, Electricity Act, and Section 77 of the Companies Act, 2013, and found that the IBC takes primacy over other statutes, even if they contain non-obstante clauses. The Court also highlighted the separate treatment of Secured Creditors and Government dues under the IBC, finding Parliament's intention to treat Government dues at a lower priority than Secured Creditors, consistent with the IBC's preamble. The Liquidator's argument about non-registration of charges under Section 77 of the Companies Act was dismissed, as the Court found PVVNL a secured creditor and subsequent factual developments made it inappropriate for the Court to rule on the non-registration issue. The appeal was dismissed, upholding the Court's decision.



HSA
Viewpoint

The judgment affirmed the IBC's overriding effect over the Electricity Act, 2003, based on Section 238 of the IBC. This section asserts the primacy of the IBC over conflicting provisions in other laws. Even though the Electricity Act contains specific provisions with non-obstante clauses (i.e., provisions that exclude the application of other conflicting laws), the Court upheld the IBC's supremacy, in line with previous rulings that have established the position of the IBC as the prevailing law in insolvency matters. The judgment thus underscores the central role of the IBC in insolvency proceedings and its overarching application, even when faced with potentially conflicting statutory provisions.

⁴ 223 SCC 547

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HSA AT A GLANCE

FULL-SERVICE CAPABILITIES



BANKING & FINANCE



DEFENCE & AEROSPACE



INVESTIGATIONS



PROJECT FINANCE



RESTRUCTURING & INSOLVENCY



COMPETITION & ANTITRUST



DISPUTE RESOLUTION



LABOR & EMPLOYMENT



REAL ESTATE



TAXATION



CORPORATE & COMMERCIAL



ENVIRONMENT, HEALTH & SAFETY



PROJECTS, ENERGY & INFRASTRUCTURE



REGULATORY & POLICY



TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

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