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COMPETITION

Enforcement Matters

Supreme Court provides clarity on when to approach the CCI during Insolvency and Bankruptcy proceedings

On 29 January 2025, while dealing with an appeal filed by Independent Sugar Corporation Limited ("**INSCO**") which challenged veracity of the procedure followed by AGI Greenpac Limited ("**AGI**") in its proposed acquisition of Hindustan National Glass and Industries Limited ("**HNG**") ("**AGI Transaction**") pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), the Supreme Court held that CCI approval must be obtained before the approval of a resolution plan by the committee of creditors ("**CoC**").

While setting aside (a) the CCI approval obtained by AGI which was subject to the fulfilment of certain conditions, and (b) the CoC approval that was earlier upheld by the National Company Law Appellate Tribunal ("**NCLAT**"), the Supreme Court *inter alia* observed that owing to the fact that the CCI approval could result in material changes to a resolution plan - if the CoC approval is granted before the CCI approval, then the CoC would not have the opportunity to consider the changes being imposed by the CCI.

Additionally, with respect to certain averments relating to the interpretation of provisions of the IBC which dealt with the timing of approaching the CCI, it was noted that the abovementioned interpretation was in alignment with legislative intent *i.e.* to ensure combinations are scrutinized for anti-competitive effects before consideration by the CoC. Further, with regard to the process adopted by the CCI at the time of conducting its inquiry into the anticompetitive impact of the AGI Transaction, the Supreme Court noted that show cause notices issued by the CCI (if any), should not only be sent to the acquiring entity but also to the target entity in the transaction being notified to the CCI. Consequently, based on this reasoning the Supreme Court nullified AGI's resolution plan and directed the CoC to reconsider plan submitted by INSCO and/or any other resolution plans that may have also obtained the requisite CCI approvals.

NCLAT reduces Google's penalty from INR 9.3 billion to INR 2.1 billion while partially upholding CCI's findings

The NCLAT, in its order dated 28 March 2025, has reduced the penalty imposed on Alphabet Inc. ("**Google**") from INR 9.3 billion (USD ~109.50 million) to INR 2.1 billion (USD ~25.34 million), while partially upholding the CCI's findings that Google had abused its dominance with respect to the implementation of its billing systems through the Google Play Billing System ("**GPBS**").

Taking note of the distinct features of UPI payment apps which are not substitutable with other digital payment methods the NCLAT upheld the CCI's narrow market definition of 'the market for apps facilitating payment through UPI in India' and assessed whether Google's conduct amounted to an abuse of dominance. Notably, in this regard the NCLAT reiterated that in order to establish an abuse of dominance claim, an effects analysis must be undertaken. Further it was observed such an analysis should be (a) undertaken on the basis of conduct that has actually taken place and not hypothetical future conduct; and (b) the scope of the effects analysis should include, both, conduct that causes actual harm and that has the potential of causing harm to competition.

With respect to the merits of the case, the NCLAT upheld the CCI's findings that (a) Google imposed unfair conditions on app developers by requiring them to mandatorily use GPBS for paid apps and in-app purchases since it *inter alia* restricted users and developers' ability to choose alternate payment processors and methods; and (b) Google leveraged its dominance in the licensable mobile OS and app store markets to protect its position in the downstream UPI payments market, since Google's various policies relating to payment integration gave Google Pay a competitive advantage. However, with respect to the CCI's findings that Google's conduct had resulted in limiting technical development and a denial of market access, the NCLAT while dismissing these findings, took note of Google's small market share in the UPI payments market and *inter alia* observed that the mandatory imposition of GPBS could not have hindered technical development, and there was no evidence of market foreclosure or exclusion.

Further, while deciding on the CCI's findings that Google was imposing discriminatory pricing because GPBS was not applicable to YouTube, the NCLAT accepted Google's averments that a comparison of fees applicable to YouTube and third party apps under the GPBS would not be tenable because the revenue earned by YouTube would be the revenue earned by Google itself, since YouTube is owned by Google. Lastly, while reducing the quantum of penalty imposed the NCLAT *inter alia* reasoned that the penalties imposed must be linked to the infringing conduct and as such should be based on Google's relevant turnover from (a) app purchases, in-app purchases, and subscription purchases made by Indian users; (b) developer registration fee and sale of digital content; and (c) advertisements on Google Play and In-App advertisement rather than its entire turnover from India.

NCLAT dismisses abuse of dominance allegations against Asian Paints

On 19 February 2025, the NCLAT upheld the CCI order which dismissed allegations against Asian Paints that claimed it had abused its dominance and was in breach of the provisions of the Competition Act that dealt with anti-competitive agreements.

These allegations were *inter alia* based on the fact that the appellant faced financial and reputational losses because it had entered into a commercial arrangement with JSW Paints, and as a consequence of this, Asian Paints downgraded the appellant's retailer status from 'critical retailer' to 'colour world'. However in this regard, the NCLAT noted that the allegations against Asian Paints were misplaced as the revocation of appellant's critical retailer status was due to consistent reduction in the offtake of the products and not because of its separate dealings with JSW Paints.

The tribunal also emphasized the importance of approaching any forum with clean hands as the appellant had not disclosed the fact that its critical retailer status was restored prior to filing of the information with the CCI and moreover, the appellant sought interim relief in the form of being reinstated as critical retailer even though it had already been reinstated as such.

CCI dismisses abuse of dominance allegations against Microsoft

On 3 March 2025, the CCI dismissed abuse of dominance allegations against Microsoft Corporation and its Indian entity ("**Microsoft**"). Notably, the informant alleged that Microsoft's pre-installation of the Microsoft defender antivirus ("**Defender**") as the default antivirus on the windows operating system *inter alia* resulted in the imposition of unfair conditions, anti-competitive bundling, hindered market access and development and also raised concerns about the implementation of the Microsoft Virus Initiative ("**MVI**").

At the time of dismissing these allegations the CCI observed that Microsoft's inclusion of Defender does not impose unfair conditions on users or hinders competition as alternative antivirus software remains available in the market and original equipment manufacturers can pre-install competing security solutions.

The CCI also noted that Microsoft's actions had not impeded technical or scientific advancements in the cybersecurity market, as third-party antivirus firms continued to develop new features and remain competitive. On the allegations pertaining to illegal tying and bundling, the CCI held that Defender is integrated as a security feature rather than a separate product. Further, the CCI found no coercion by Microsoft as it did not force consumers to use Defender exclusively. Moreover, there was no substantial foreclosure of the antivirus market, as several major cybersecurity firms such as Norton, McAfee, and Bitdefender continued to thrive.

Regarding claims that Microsoft restricted access to the Microsoft store (and consequently the Windows operating systems) only to members of the MVI programme, the CCI concluded that participation in the MVI programme was not mandatory for antivirus developers to distribute their products, thus non-MVI apps could also coexist with Defender.

CCI orders the director general to investigate abuse of dominance allegations against Tamil Nadu State Marketing Corporation Limited

On 25 March 2025, the CCI ordered the director general ("**DG**") to investigate the conduct of the Tamil Nadu State Marketing Corporation Limited ("**TASMAC**") to determine whether it was abusing its dominance by preferencing certain specific brands of beer (such as "SNJ10000" and "British Empire") over other beer brands available in the market.

In its order, the CCI at the outset noted that the provisions of the Competition Act would be applicable to TASMAC, since it was an entity involved in economic activities (*i.e.* distribution and sale of alcoholic beverages in the state of Tamil Nadu) and further noted that due to TASMAC's monopolistic market position and the lack of competitive pressure/forces in the relevant market, it appeared that TAMSAC held a dominant position in the market.

While dealing with TAMSAC's averments that monthly procurements were undertaken after using certain software that automatically generated procurement details based on a weighted average sales calculation, the CCI observed that the demand for specific brands from the retail stores was not taken into account by the said formula, which instead placed reliance on historic sales in the 3 months preceding and the month immediately preceding the month of procurement. To this end, the CCI also observed that on account of this flaw, a brand which has already been stocked and sold (more than other brands) in the previous month will automatically be given higher orders in the present month, perpetuating the status quo of the sales and inventory position observed in the previous months. Additionally, it was also observed that the shares of brands of the two manufacturers i.e Kals Breweries Pvt. Ltd. and SNJ Breweries Pvt. Ltd. were significantly higher compared to other known beer brands. Relying on these facts, the CCI concluded that TASMAC *prima facie* appeared to be abusing its dominant position by limiting market access to certain brands of beer in the state of Tamil Nadu and consequently, ordered the DG to investigate the matter.

Merger Control

CCI imposes a penalty of INR 4 million on Goldman Sachs for gun jumping

On 14 January 2025, the CCI imposed a penalty of INR 4 million (USD ~46,776.48) on Goldman Sachs (India) Alternate Investment Management Private Limited, the investment manager of Goldman Sachs AIF Scheme-1 (GS AIF) (collectively "**GS**") for failing to notify a transaction involving the subscription to optionally convertible debentures ("**OCDs**") of Biocon Biologics Limited ("**Biocon**") representing 3.81% of the shareholding of Biocon (on a fully diluted basis) ("**Proposed Transaction**").

While taking note of the averments made by GS that the Proposed Transaction would be able to avail the benefit of the minority acquisition exemption ("**Minority Acquisition Exemption**") that is applicable when (a) there is an acquisition of less than 25% of the target entity; (b) there is no acquisition of control; and (c) the transaction is taking place solely as an investment ("**SI**") or in the ordinary course of business ("**OCB**"), the CCI at the outset delved into the nature of rights that GS acquired in Biocon pursuant to the Proposed Transaction and thereafter assessed whether such rights would meet the criteria discussed in the Minority Acquisition Exemption.

To this end, it was noted that pursuant to the Proposed Transaction GS would *inter alia* acquire:

- *Reserved Matter Rights*, that could be exercised jointly with other investors as part of an investor majority;
- *Information Rights*, pursuant to which GS would have access to (i) certified true copies of minutes of board/ committee/ shareholder meetings ("**Minutes Rights**"); and (ii) information relating to any direct change in certain shareholdings, and access to certified true copies of the latest capitalization table of Biocon; and
- *Access Rights*, that provided GS with access to the premises and personnel of Biocon.

Notably in its decision, the CCI concluded that GS' Information Rights and Minutes Rights went beyond the scope of ordinary shareholder rights, and also rejected averments that these rights were available to all shareholders of Biocon and as such should be considered 'ordinary rights'. Further clarifying that, the determination of 'ordinary rights' should not be done in the context of the rights available to the shareholders of a particular target company but rather rights generally available to passive investors. This order also reasoned that access to board meeting minutes, which contained confidential and commercially sensitive information, suggested a strategic interest rather than a pure investment motive.

Additionally, it was observed that any transaction which is made with the intent of remaining invested for a relatively longer period and involves the acquisition of any additional rights (compared to the rights of an ordinary shareholder) cannot be considered as in the ordinary course of business. Consequently on the basis of these observations, the CCI concluded that the Proposed Transaction would not have been able to avail the benefit of the Minority Acquisition Exemption since it was neither 'solely as an investment' nor had it been made 'in the ordinary course of business' and as such ought to have been notified.

CCI imposes a penalty of INR 500,000 on Matrix Pharma and others for gun jumping

On 7 March 2025, the CCI imposed a penalty of INR 500,000 (USD ~5,847.06) on Matrix Pharma Private Limited ("**Matrix**") and its related entities for failing to notify subsequent material changes to the structure of a transaction that had already been approved by the CCI.

Pursuant to the transaction approved by the CCI, Matrix was slated to acquire Tianish Laboratories Private Limited ("**Tianish**"), with funding from Kotak Strategic Situations India Fund II and Kotak Alternate Asset Managers Limited ("**Investors**"). However, after the CCI approved this transaction, and in order for Matrix to have sufficient capital for the acquisition of Tianish, it secured capital through alternate sources of funding ("**Alternate Funding**").

In relation to this Alternate Funding, the CCI *inter alia* noted that:

- *Acquirer Funding*: The shareholding and control structure of Matrix was changed, such that the erstwhile majority shareholder of Matrix (*i.e.* Mr Venkata Pranav Reddy Gunupati ("**Pranav**")) would now indirectly own Matrix through various holding companies ("**Acquirer Holding Entities**"), one of which included Mudra Lifesciences Private Limited ("**Mudra Lifesciences**"). Furthermore, the CCI noted that Pranav through the various Acquirer Holding Entities, had not only carried out the capital infusion into Matrix but also changed the (earlier notified) structure of the transaction prior to intimating the CCI of the same; and

- *Kingsman Funding*: Kingsman Wealth Fund PCC Aurisse Special Opportunities Fund ("**Kingsman**") would subscribe to compulsory convertible preference shares ("**CCPS**") of Mudra Lifesciences, such that after conversion, Kingsman's shareholding in Mudra Lifesciences would be 42.75% on a fully diluted basis. Notably this leg of the Alternate Funding was notified to the CCI under the green channel route.

- The Alternate Funding was necessary to complete the proposed acquisition of Tianish and as such the Alternate Funding was inter-connected to the proposed acquisition of Tianish.

At the time of coming to its findings that the revised transaction structure ought to have been notified prior to the consummation of any of the funding steps, the CCI *inter alia* reasoned that (a) owing to the change in the Acquirers' shareholding and control structure, the new transaction structure had materially deviated from what was originally approved by the CCI; (b) certain steps of the Acquirer Funding had already been completed at the time of approaching the CCI for a pre-filing consultation and that the CCI was only subsequently notified of the revised transaction structure after the completion of the (inter-connected) Acquirer Funding; and (c) the procedural requirement to notify a transaction to the CCI, would be applicable irrespective of whether there were overlaps.

That said, the CCI did not find the Kingsman Funding or the proposed funding through the Investors to be in contravention of the Competition Act because Kingsman Funding had been notified to the CCI under the green channel route; and the Investor funding had not been consummated. Further it may be noted that, at the time of determining the quantum of penalty to be imposed, the CCI considered mitigating factors such as voluntary disclosure of the change in transaction structure and extension of cooperation by making material / documents available.

CCI holds Torrent Power Limited liable for gun jumping

On 14 January 2025, the CCI found Torrent Power Limited ("**TPL**") to be in contravention of the gun jumping provisions of the Competition Act for failing to notify its acquisition of a 51% stake in Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited. However, no penalty was imposed on account of mitigating factors. Notably, this transaction was undertaken through a bidding process pursuant to a restructuring scheme under the Electricity Act, 2003 ("**Electricity Act**") where *inter alia* strict timelines were imposed on the winning bidder to close the transaction.

In its order the CCI, while dealing with the averments relating to the overlapping jurisdiction of the CCI and the Joint Electricity Regulatory Commission to regulate transactions in the electricity sector, it was held that the provisions of the Competition Act and the Electricity Act should be interpreted using the principle of harmonious construction. Further in this regard the CCI emphasized that while the Electricity Act governs sector-specific issues like tariffs and access, the Competition Act is a special statute for regulating competition across all sectors, including electricity. Consequently the CCI held that TPL was required to notify the transaction before its consummation *i.e.*, TPL should have filed the notice with the CCI immediately after issue of letter of intent in favour of TPL by the bid authority, but before the payment of consideration.

The CCI also emphasized that TPL should have sought CCI approval even if (a) there was lack of financial details of the target; and (b) the tendering process did not account for or build in timelines for CCI approval. That said, the CCI decided to not impose any penalty on TPL after considering factors such as (i) the structural issues inherent to the bidding process; (ii) ambiguity due to overlapping provisions in the two special acts, *i.e.*, Competition Act and Electricity Act; (iii) no appreciable adverse effect on competition in the relevant market; and (iv) cooperation by TPL in respect of the ongoing proceedings.

Developments in the Legal Framework

Updated Regulations on the Recovery of Monetary Penalty has come into effect

On 25 February 2025, the CCI notified the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations 2025 ("**2025 Regulations**"), which repealed the existing 2011 regulations. These regulations streamlined the process of recovery of penalty.

The 2025 Regulations introduced some major concepts/changes such as the (a) introduction of the concept of "person in default"; (b) recovery of penalty from legal heir in case the person in default is deceased; (c) increase in timeline from 30 days to 60 days for depositing the penalty as per the issued demand notice; (d) deduction in the interest on penalty from 1.5% to 1% in instances where the amount specified in the demand notice is not paid within the given period; and (e) postponement of the recovery proceedings by the CCI indefinitely if the income tax authority to which the reference has been made by the CCI initiates recovery proceedings.

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FINANCE

Regulatory Updates

RBI Directions on Credit Information Reporting

The Reserve Bank of India ("**RBI**") has, *vide* notification dated 6 January 2025, notified the Master Direction on Credit Information Reporting Directions, 2025. These directions consolidate the prior instructions of RBI in relation to the reporting of the credit information issued to banks, All India Financial Institutions, Non-banking Financial Companies, Asset Reconstruction Companies and Credit Information Companies.

RBI Directions on Non-resident Investment in Debt Instruments

The RBI has, *vide* notification dated 6 January 2025, notified the Master Direction on Non-resident Investment in Debt Instruments) Directions, 2025. These directions consolidate RBI's prior regulations to regulate non-resident investment in debt instruments in India.

Amendments to Guidelines on Settlement of Dues of borrowers by ARCs

The RBI has, *vide* notification dated 20 January 2025, issued revised guidelines in relation to settlement of dues payable by the borrowers of the Asset Reconstruction Companies ("**ARCs**"). The key aspects of the revised guidelines are set out below:

- The board-approved policy for settlement of dues payable by borrowers should now set out *inter alia* the cut-off date for one time settlement eligibility and methodology for arriving at the realisable value of the security.

- The earlier requirement of settling dues with the borrower after undertaking all other methods of recovery with no further prospects of recovery, has been modified. Settlements can now be done after all possible ways to recover the dues have been examined and settlement is considered as the best option available.

- Settlement of accounts pertaining to a borrower having aggregate value of more than INR 1,00,00,000 in terms of outstanding principal in the books of transferor/s, must be made in accordance with the board approved policy and be reviewed by an Independent Advisory Committee ("**IAC**"). The board of directors of the ARC shall deliberate on the recommendations of IAC and consider various recovery options before deciding whether the option of settlement of dues with the borrower is the best option and formally record its rationale in the minutes of the meeting. The same process will be applicable for settlement of dues payable by the borrowers classified as frauds or wilful defaulters, irrespective of the amount involved. In the erstwhile guidelines, this mechanism was applicable on settlement of dues with any borrower, irrespective of the aggregate outstanding dues.

- The settlement of accounts of a borrower having aggregate value of INR 1,00,00,000 or less must be made in accordance with the board approved policy, provided that no person involved in the asset acquisition shall be involved in approving its settlement and a quarterly report on the resolution of accounts shall be placed before the board of directors / its committee. Such format will *inter alia* provide the trends, fraud / wilful defaulter classifications, segment-wise data, and recovery timelines. Such provisions were not provided in the erstwhile guidelines.

Amendments to Guidelines for Private Placement of NCDs with maturity of more than one year by HFCs

The RBI has, *vide* its notification dated 29 January 2025, modified the 'Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021' regarding private placements of non-convertible debentures ("**NCDs**") (with maturity more than 1 year). The guidelines applicable to non-banking financial companies ("**NBFCs**") in this regard will now be applicable *mutatis-mutandis* to Housing Finance Companies ("**HFCs**"). Accordingly, the existing guidelines applicable to HFCs under Chapter XI of Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 have been repealed. The revised guidelines shall apply to all fresh private placements of NCDs (with maturity more than 1 year) by HFCs from the date of the notification.

Some of the key aspects of the new guidelines applicable to issuance of private placement of NCDs (with maturity more than 1 year) by an HFC are set out below:

- HFCs are no longer required to obtain a credit rating from approved agencies for issuing such NCDs.

- The erstwhile guidelines mandated the offer document for placement of such NCDs to be issued within 6 months from the date of the board resolution authorizing the issue. Such requirement has been done away with.

- The new guidelines have removed the requirement for mandatory appointment of a Debenture Trustee for each issue of NCDs. However, in case of listed NCDs, the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 will still apply, which mandate appointment of a Debenture Trustee and define their roles and responsibilities.

- The erstwhile guidelines provided that an HFC issuing NCDs shall ensure that at all points of time such debentures are fully secured. No such requirements have been provided under the new guidelines.

- According to the new guidelines, HFCs shall issue such NCDs only for deployment of funds on its own balance sheet and not to facilitate resource requests of group entities/parent company/ associates.

Amendment to the RBI Directions on Prudential Regulations on Investment Norms for All India Financial Institutions

RBI has, *vide* notification dated 17 February 2025, notified an amendment ("**Amendment**") to the RBI (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023 ("**Directions**").

The Directions specify that the investments held by All India Financial Institutions ("**AIFIs**") included under the Held to Maturity ("**HTM**") category shall not exceed 25% of the AIFI's total investments. The Amendment provides that the investments made by AIFIs in long-term bonds and debentures (*i.e.*, having minimum residual maturity of 3 years at the time of investment) issued by non-financial entities shall not be accounted for the purpose of the ceiling of 25% cap applicable to investments included under HTM category.

RBI Directions on Forward Contracts in Government Securities

RBI has, on 21 February 2025, notified the RBI (Forward Contracts in Government Securities) Directions, 2025 ("**Directions**") which will come into effect on 2 May 2025.

The Directions apply to forward contracts in government securities ("**Bond Forwards**") undertaken in the Over-the-Counter ("**OTC**") market in India. Some of the key provisions of the Directions are set out below:

- Bond Forward transactions may be undertaken by residents and non-residents who are eligible to invest in government securities ("**G-Secs**"). Any entity eligible to be classified as a non-retail user in terms of the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019, can undertake transactions in Bond Forwards as a user.

- Scheduled Commercial Banks (excluding small finance, payment, local area, and regional rural banks) and standalone primary dealers can act as market-makers (entities which provide prices to users and other market-makers) in Bond Forward transactions. A market-marker may undertake long positions without any limits and covered short positions.

- Every Bond Forward transaction must involve at least 1 market-maker or a central counterparty authorized by RBI for this purpose.

- An entity eligible to be classified as non-retail user under the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019, are eligible to participate in Bond Forward transactions as users.

- Bond Forward transactions may be settled physically or through cash. A physically settled bond forward transaction must be settled through Clearing Corporation of India Ltd. ("**CCIL**") or any other clearing agency or clearing arrangement approved by RBI, while cash-settled Bond Forward transaction may be settled bilaterally or through an RBI approved clearing arrangement.

- Market participant may exit its position in a Bond Forward by unwinding the position with the original counterparty or assigning the position to any other eligible market participant(s) through novation, subject to the provisions of the RBI circular on Novation of OTC Derivative Contracts dated 9 December 2013.

- The market timing for undertaking Bond Forward transactions shall be the market timing specified by the RBI for undertaking OTC rupee interest rate derivative transactions.

- Market-makers must report all Bond Forward transactions daily to the Trade Repository of CCIL before its closure, *inter alia* including details of counterparties, underlying G-Sec, settlement type and short position type. Any instances of unwinding, novation, bilateral settlement and settlement defaults must be reported.

- Market participants are required to comply with applicable prudential norms including those related to capital adequacy, exposure norms, related party transactions, etc., issued by the relevant regulators for Bond Forward transactions.

- G-Secs held to cover short positions in bond forwards are eligible to be reckoned for Statutory Liquidity Ratio (SLR) by the entity covering the short position, provided that the security is otherwise eligible to be reckoned for SLR.

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PROJECTS & INFRASTRUCTURE

Regulatory Updates

Insurance Surety Bonds for Mobilization Advance in EPC Contracts for road projects

The Ministry of Road Transport and Highways has, *vide* circular dated 2 January 2025, provided that Insurance Surety Bonds shall be accepted as security for mobilization advance in Engineering Procurement and Construction ("**EPC**") contracts with immediate effect, in replacement of the existing requirement of submission of bank guarantees. The relevant existing clauses vis-à-vis amended clauses of the standard documents for EPC shall be modified accordingly, and compliance with the same is required by all concerned parties.

Circular on Interest Rate Applicable for HAM Projects

The National Highways Authority of India ("**NHAI**") has, *vide* circular dated 6 January 2025, addressed the interest rate applicable under Clause 23.6.4 of the Model Concession Agreement (MCA) for Hybrid Annuity Model (HAM) projects. The abovementioned clause *inter alia* stipulates that interest shall be due on the reducing balance of the completion cost at a rate equal to the average of the one-year Marginal Cost of Funds-based Lending Rate ("**MCLR**") of the top five scheduled commercial banks plus 1.25%. The list of such banks is to be declared annually by the NHAI on 1 September, based on banks' balance sheet sizes as reported in their annual reports.

Accordingly, for the period from 1 January 2025 to 31 March 2025, the average one-year MCLR of the top five scheduled commercial banks has been computed and average applicable interest rate for the said period shall be 10.36% (i.e. 9.11% per annum plus 1.25%).

Amendment to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024

The Central Electricity Regulatory Commission has, *vide* notification dated 4 February 2025, notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2025 ("**Amendment Regulations**") and brought amendments to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 ("**Principal Regulations**”). Some of the key amendments are set out below:

- *Interest Rate Payment*: In the Principal Regulations, interest rates for certain charges and payments under Regulations 9, 10 and 27 (*e.g.* payment of interest on the recovery or refund of tariff, interest applicable in case of determination of supplementary tariff, etc.) were calculated based on the SBI MCLR-linked rate. Such references to the SBI MCLR-linked rate have now been replaced with the 'bank rate', which means the one year marginal cost of the lending rate as specified by the State Bank of India from time to time or any replacement thereof for the time being in force plus 100 basis points.

- *Self-insurance premium*: The permissible self-insurance premium has been increased from 0.09% to 0.12%. Additionally, the Amendment Regulations provide that self-insurance premiums be transferred to a separate fund, with utilization details to be provided to the Central Electricity Regulatory Commission as and when directed.

- *Interim Input Coal Price*: The Principal Regulations did not provide for interim input coal prices. Subsequent to the amendment, generating companies are now allowed to request interim input prices up to 90% of the claimed amount after the first hearing of the application, with adjustments made later based on the final or adopted price.

- *Coal Price Adjustment*: The Principal Regulations provided for coal price adjustments based on the notified price of Coal India Limited ("**CIL**"). The Amendment Regulations provide for the "price of alternative coal available" rather than the "notified price of CIL" for determining coal price adjustments. An explanation defines "alternative coal" as the least-cost option coal available to the generating station in case of shortages from linked mines.

- *Compensation for the operation of generating station below normative plant availability factor:* There was no specific mechanism for compensating generating stations for operational inefficiencies due to operating below the normative Plant Availability Factor (PAF) under the Principal Regulations. The Amendment Regulations provide a mechanism for compensating generating stations for operational inefficiencies (*eg.*, degradation of station heat rate, auxiliary energy consumption, and additional secondary fuel oil consumption) due to operating below the normative PAF. The financial gains computed, after considering compensation, will be shared between the generating station and beneficiaries.

Tariff Based Competitive Bidding Guidelines for Procurement of Storage Capacity/ Stored Energy from Pumped Storage Plants

The Ministry of Power has, vide resolution dated 6 February 2025, notified Tariff Based Competitive Bidding Guidelines for Procurement of Storage Capacity/ Stored Energy from Pumped Storage Plants ("**Guidelines**"). The Guidelines apply to developers, intermediary procurers, and end procurers, and are applicable for the procurement of storage capacity or stored energy by the procurers from existing, under-construction or new Pumped Storage Plants ("**PSPs**").

Some of the key provisions of the Guidelines are as follows:

- *Bidding parameters:* The Guidelines prescribe a single-stage, two-part (technical and financial) bidding process. Contract allotment shall be based on the tariff based competitive bidding process. The bidding agency may prescribe relevant bidding parameters specified under the Special Conditions of Bid ("**SCoB**") in the Request for Selection ("**RfS**"). Tariffs shall be quoted at the delivery point and specified in the RfS.

- *Mode of procurement*: The Guidelines provide 2 (two) modes of procurement. Under the first, PSPs will be developed on procurer-identified sites following the Build-Own-Operate-Transfer model. The second model allows procurement from PSPs developed on bidder-identified sites or existing PSPs under the Build-Own-Operate model.

- *Contractual framework*: PPAs will be signed between the procurer and the successful bidder or a special purpose vehicle. If an intermediary procurer is involved, it shall sign a PPA with the developer and a power supply agreement with the end procurer.

- *Transmission connectivity*: The

developer shall be responsible for securing transmission connectivity to the networks at its own cost. The developer shall bear transmission charges and losses up to the delivery point, while the end procurer shall bear beyond the delivery point.

Amendment to the Tariff Based Competitive Bidding Guidelines for Grid Connected Solar PV Power Projects

The Ministry of Power has, *vide* resolution dated 12 February 2025, notified an amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects ("**Guidelines**") dated 28 July 2023. Some of the key amendments to the Guidelines are:

- It shall be deemed as a default if the generator fails to maintain the minimum Capacity Utilisation Factor ("**CUF**") declared in the PPA for 2 consecutive years excluding the first contract year ending on 31 March immediately after commercial operation date of the project. Prior to the amendment, the time period of 2 years was not provided in the Guidelines. The generator's minimum yearly CUF obligation shall be reduced to the average CUF achieved during those two default years, with lump-sum damages payable equal to 24 months or the remaining PPA period (whichever is less) of the tariff for the reduced CUF obligation. Non-payment of these damages may also constitute an event of default under the PPA.

- The amendment newly introduces that the PPA and Power Sale Agreement should be signed within 30 days from the issuance of the Letter of Award ("**LoA**"). Extension of up to 12 months from the LoA date can be made, beyond which the LoA will be cancelled.

- The timeline for application by distribution licensee or intermediary procurer to the appropriate commission, for the purpose of the adoption of new tariffs has been revised to 30 days of discovering tariffs (as compared to 15 days, prior to the amendment) after completion of the transparent competitive bidding process.

- New instruments for establishment of earnest money deposits and performance bank guarantees have been introduced to allow insurance surety bonds which would be payable unconditionally like bank guarantees.

- The technical specifications have now been modified to include maintenance of GPS-enabled automatic weather stations by developer, adherence to applicable cybersecurity regulations by the developer, etc.

- The Performance Bank Guarantee or alternative payment security is required to be returned to the generator within 45 days from the actual commencement of supply date of the project instead of the scheduled commencement of supply date as stipulated prior to this amendment.

- The term 'Change in Law' was not defined in the Guidelines. It has now been defined as occurrence of any event related to the project from 7 days prior to the last date of bid submission.

Amendment to the Tariff Based Competitive Bidding Guidelines for Grid Connected Hybrid Projects

The Ministry of Power has, vide resolution dated 12 February 2025, notified an amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects ("**Guidelines**") dated 21 August 2023. Some of the key amendments to the Guidelines are:

- It shall be deemed as a default if the generator fails to maintain the minimum Capacity Utilisation Factor ("**CUF**") declared in the PPA for 2 consecutive years excluding the first contract year ending on 31 March immediately after commercial operation date of the project. Prior to the amendment, the time period of 2 years was not provided in the Guidelines. The generator's minimum yearly CUF obligation shall be reduced to the average CUF achieved during those two default years, with lump-sum damages payable equal to 24 months or the remaining PPA period (whichever is less) of the tariff for the reduced obligation. Non-payment of these damages may also constitute an event of default under the PPA.

- The technical specifications have now been modified to include maintenance of GPS-enabled automatic weather stations by developer, adherence to applicable cybersecurity regulations by the developer, etc.

- The amendment newly introduces that the PPA and Power Sale Agreement should be signed within 30 days from the issuance of the Letter of Award ("**LoA**"). Extension of up to 12 months from the LoA date can be made, beyond which the LoA will be cancelled.

- The timeline for application by distribution licensee or intermediary procurer to the appropriate commission, for the purpose of the adoption of new tariffs has been revised to 30 days of discovering tariffs (as compared to 15 days, prior to the amendment) after completion of the transparent competitive bidding process.

- New instruments for establishment of earnest money deposits and performance bank guarantees, have been introduced to allow insurance surety bonds which would be payable unconditionally like bank guarantees.

- The Performance Bank Guarantee or alternative payment security is required to be returned to the generator within 45 days from the actual commencement of supply date of the project instead of the scheduled commencement of supply date as stipulated prior to this amendment.

- The term 'Change in Law' was not defined in the Guidelines. It has now been defined as occurrence of any event related to the project from 7 days prior to the last date of bid submission.

Amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems

The Ministry of Power has, *vide* resolution dated 12 February 2025, notified an amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems ("**Guidelines**") dated 9 June 2023.

Some of the key amendments to the Guidelines are:

- It shall be deemed as a default if the generator fails to maintain the minimum Capacity Utilisation Factor ("**CUF**") declared in the PPA for 2 (two) consecutive years excluding the first contract year ending on 31 March immediately after commercial operation date of the project. Prior to the amendment, the time period of 2 years was not provided in the Guidelines. The generator's minimum yearly CUF obligation shall be reduced to the average CUF achieved during those two default years, with lump-sum damages payable equal to 24 months or the remaining PPA period (whichever is less) of the tariff for the reduced obligation. Non-payment of these damages may also constitute an event of default under the PPA.

- The technical specifications have now been modified to include maintenance of GPS-enabled automatic weather stations by developer, adherence to applicable cybersecurity regulations by the developer, etc.

- The amendment newly introduces that the PPA and Power Sale Agreement should be signed within 30 days from the issuance of the Letter of Award ("**LoA**"). Extension of up to 12 months from the LoA date can be made, beyond which the LoA will be cancelled.

- The timeline for application by distribution li,censee or intermediary procurer to the appropriate commission, for the purpose of the adoption of new tariffs has been revised to 30 days of discovering tariffs (as compared to 15 days, prior to the amendment) after completion of the transparent competitive bidding process.

- New instruments for establishment of earnest money deposits and performance bank guarantees, have been introduced to allow insurance surety bonds which would be payable unconditionally like bank guarantees.

- The Performance Bank Guarantee or alternative payment security is required to be returned to the generator within 45 days from the actual commencement of supply date of the project instead of the scheduled commencement of supply date as stipulated prior to this amendment.

The Battery Waste Management Amendment Rules, 2025

The Ministry of Environment, Forest and Climate Change has, on 24 February 2025, notified the Battery Waste Management Amendment Rules, 2025 to amend the Battery Waste Management Rules, 2022. The following are the key amendments:

- Producers whose packaging of battery or battery packs are covered under rule 26 of the Legal Metrology (Packaged Commodities) Rules, 2011, have been exempted from marking these with the Extended Producer Responsibility ("**EPR**") registration number.

- Producers are now permitted to fulfil the labelling requirement of marking their battery or battery packs with the EPR registration number by printing a barcode or a QR code containing the EPR registration number on (a) battery or battery pack; or (b) equipment having battery or battery pack; or (c) packaging of battery or battery pack; or (d) packaging of the equipment having battery or battery pack; or (e) bulk packaging of batteries or battery packs, not for retail sale, and by printing the EPR registration number on the product information brochure.

- Batteries containing cadmium concentrations less than or equal to 0.002% (20 parts per million) or lead concentrations less than or equal to 0.004% (40 parts per million) by weight are now exempt from the mandatory chemical symbol markings, *i.e.* 'Cd' or 'Pb'.

Supplementary Guidelines for Payment of Compensation in regard to Right of Way for Transmission Lines

The Ministry of Power has, *vide* notification dated 21 March 2025, issued supplementary guidelines for payment of compensation regarding Right of Way ("**RoW**") for transmission lines (“**Supplementary Guidelines**”). The said guidelines shall apply to inter-state transmission system ("**ISTS**") lines in cases where landowners have objected to the compensation because the circle rates are below the market rates, and only in those cases where state governments have not yet specified the manner of determination of market value of land.

The Supplementary Guidelines have, *inter alia,* laid down the following:

- Composition of the Market Rate Committee (“**MRC**”), which will determine the market rate of land based on the valuation by independent land valuers.

- The land valuation methodology, which provides for the appointment and qualifications of the valuers and how the market rate will be arrived at in case of differences in the market rates worked out by the said valuers.

- The compensation amount for RoW corridor for ISTS lines.

- The district collector may allow construction of ISTS lines to proceed without obstruction on the condition that compensation would be paid based on the market rate determined by the MRC (to be ideally completed within a month from the date of application by the transmission system provider).

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