SAGUS SPEAKS

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

REGULATORY AND POLICY UPDATES

SEBI issues circular for review of provisions pertaining to Electronic Book Provider platform[1]

The Securities Exchange Board of India ("SEBI") through a circular dated 16.05.2025 ("EBP Circular"), has introduced amendments to the Master Circular for issuance and listing of Non-Convertible Securities, Securitized Debt Instruments, Security Receipts, Municipal Debt Securities, and Commercial Paper dated 22.05.2024. These changes relate specifically to the provisions governing the Electronic Book Provider ("EBP") platform, which are as follows:

(1) Use of EBP Platform is now mandatory for private placement of debt securities, non-convertible redeemable preference shares, and municipal debt securities if:

(a) a single issue (inclusive of green shoe option, if any) is of Rs. 20 crore or more;

[1] SEBI Circular for review of provisions pertaining to EBP Platform.

(b) a shelf issue, across multiple tranches in a financial year, aggregates to Rs. 20 crore or more; or

(c) a subsequent issue, where the total amount of previous issues in a financial year by the same issuer equals or exceeds Rs. 20 crores.

(2) Issuer may voluntarily access the EBP platform for private placement of the instruments such as, securitised debt instruments, security receipts, commercial papers, certificates of deposit and units issued by Real Estate Investment Trusts ("REITs"), small and medium REITs and infrastructure investment trusts.

(3) Issuers may allocate securities to anchor investors at its discretion, provided the total allocation does not exceed the base issue size. Such allocation limits are up to 30% (thirty percent) for instrument having rating AAA/ AA+/AA/AA-, 40% (forty percent) for A+/A-, and 50% (fifty percent) for lower-rated instruments.

(4) Additionally, the EBP Circular amended the timeline for obtaining in-principle approvals from stock exchange(s), now requiring EBP issuers to obtain approval prior to T-2/T-3 instead of the earlier requirement of before T-2/T-5, where T refers to the issue date.

SEBI issues norms for internal audit mechanism and composition of the audit committee of MIIs[2]

SEBI has issued a circular dated 19.05.2025 ("MIIs Circular") to prescribe enhanced norms for the internal audit mechanism and the composition of the audit committee of Market Infrastructure Institutions ("MIIs") effective from 90th (ninetieth) day of notification i.e. 17.08.2025. Key provisions of the MIIs Circular are as follows:

(1) SEBI has mandated that all MIIs including stock exchanges, clearing corporations, and depositories must conduct an internal audit of all their functions and activities across Vertical 1 (Critical Operations), Vertical 2 (Regulatory, Compliance, Risk Management, and Investor Grievances), and Vertical 3 (Other Functions, including Business Development) at least once every financial year through independent audit firms. Internal auditors shall report directly to the audit committee of MIIs.

(2) The scope of the internal auditor must be approved by the audit committee of MIIs, and internal auditors are required to brief the audit committee at least once every six months, within 60 (sixty) days from the end of September and March of the relevant financial year, on critical issues concerning the MII, in the absence of management.

(3) Further, the audit committee of the MIIs shall exclude any executive director (including the managing director) of the MII. However, auditors and key management personnel may be invited to participate in meetings without voting rights.

SEBI issues amendments to the Alternative Investment Fund Regulations [3]

SEBI notified the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2025 ("AIF Amendment") *vide* Notification F. No. SEBI/LAD-NRO/GN/2025/248 on 21.05.2025, which has amended Regulation 17 of the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), and is effective with immediate effect.

The AIF Amendment amended Regulation 17(a) of the AIF Regulations, which deals with the investment conditions applicable to Category II Alternative Investment Funds ("AIFs"). Now, Category II AIFs shall invest primarily in unlisted securities and/or listed debt securities (including securitized debt) rated 'A' or below by a SEBI-registered credit rating agency either directly or through investment in units of other AIFs. Prior to this AIF Amendment, Category II AIFs primarily invested in unlisted companies, either directly or through investments in units of other AIFs.

SEBI issues circular on provisions relating to KMPs of a Market Infrastructure Institution (MII) [4]

SEBI has issued circular no. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2025/75 dated 26.05.2025 ("MII KMP Circular") in relation to the process for appointment, re-appointment, termination, or acceptance of resignation of specific Key Managerial Personnel ("KMPs") of Verticals 1 and Vertical

[2] Circular in relation to norms for internal audit mechanism and composition of the audit committee of MIIs.

[3] SEBI (Alternative Investment Funds) (Amendment) Regulations, 2025.

[4] Circular on provisions relating to KMPs of a MII.

2 of an MII, which shall become applicable from the 90th (ninetieth) day of notification, i.e., 24.08.2025, of the MII KMP Circular. Key provisions of MII KMP Circular are as follows:

(1) MIIs shall appoint suitable candidates as CO, CRiO, CTO, and CISO based on recommendations from an independent external agency, evaluated by the Nomination and Remuneration Committee ("NRC"). However, the final decision on the appointment of such KMPs shall be taken by the governing board of the MIIs, based on the NRC's recommendations.

(2) The NRC shall review and recommend re-appointment, termination, or resignation of the CO, CRiO, CTO, and CISO or other KMP to the governing board, which will make the final decision, ensuring due process. MIIs may extend this mechanism to other KMPs at their discretion.

(3) The mandatory 1(one) year cooling-off period for Public Interest Directors ("PIDs") and non-independent directors joining another MII has been replaced with a mechanism to be prescribed by the MII's governing board. The governing board must also define a cooling-off policy for KMPs (including the managing director) joining a competing MII, as defined under Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations, 2018.

(4) If a PID is not re-appointed after their first term, the governing board must record the rationale and inform SEBI.

RBI issues circular on reporting requirements for issuance of partly paid units by investment vehicles[5]

The Reserve Bank of India ("RBI"), through its notification bearing reference no. RBI/2025-26/40 dated May 23, 2025 ("RBI Circular"), has permitted investment vehicles to issue partly paid units to persons resident outside India, in accordance with the extant regulations. Any partly paid units issued prior to this RBI Circular may be reported in Form InVI within 180 (one-hundred and eighty) days from the date of the notification, i.e., 24.11.2025, without incurring late submission fees, whereas those issued thereafter must be reported within 30 (thirty) days, in accordance with the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019.

IBBI amended the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019[6]

The Insolvency and Bankruptcy Board of India ("IBBI") *vide* notification no. IBBI/ 2025-26/ GN/ REG125 dated 19.05.2025, has issued the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2025 ("Amendment to IRP for Personal Guarantors") to amend the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 with immediate effect. Pursuant to the Amendment to IRP Personal Guarantors, a new Regulation 17B has been inserted, requiring the resolution professional tofile an application before the adjudicating authority with the approval of the creditors, for notifying the non-submission of a repayment plan and to seek appropriate directions, if no repayment plan is prepared under Section 105 of the Insolvency and Bankruptcy Code, 2016.

IBBI notifies IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2025[7]

IBBI vide notification no. IBBI/2025-26/GN/REG126 dated 19.05.2025, has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2025 ("3rd Amendment to IRP for Corporate Persons") to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Principal Regulations") which shall come into force from 01.06.2025.

Pursuant to 3rd Amendment to IRP for Corporate Persons, Regulation 40B of the Principal Regulations which deals with filing of forms with respect to the Corporate Insolvency Resolution Process ("CIRP") which *inter alia* includes filing of Form IP-1 for pre-assignment, Form CIRP 1 from commencement of CIRP till issue of public announcement, Form CIRP 2 from public announcement till confirmation/replacement of the Interim Resolution Professional ("IRP"), Form CIRP 3 from appointment of

[5] RBI Reporting Requirement on issuance of partly paid units.
[6] IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2025.
[7] IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2025.

Resolution Professional ("RP") till issue of Information Memorandum ("IM") to members of Committee of Creditors ("CoC"), Form CIRP 4 from issue of IM till issue of Request for Resolution Plan ("RFRP"), Form CIRP 5 from issue of RFRP till completion of CIRP and Form CIRP 6 for certain events such as filing of application in respect of preferential undervalued, fraudulent, and extortionate transaction, etc., has been substituted with the following new filing requirements for various stages of the CIRP:

(1) Form CP-1 to be filed by IRP from the commencement of CIRP till the constitution of CoC on or before the 10th (tenth) day of the month following the filing of CoC constitution report with Adjudicating Authority ("AA");

(2) Form CP-2 to be filed by RP from the constitution of CoC till the issue of RFRP on or before the 10th (tenth) day of the month following issuance of RFRP;

(3) Form CP-3A to be filed by RP for filing of resolution plan/ liquidation/ closure application to be filed with AA on or before the 10th (tenth) day of the month following filing of application (s) with AA;

(4) Form CP-3B to be filed by RP for approval of resolution plan/ liquidation/ closure by AA within 7 (seven) days of the disposal of application by AA;

(5) Form CP-4 to be filed by RP for reporting avoidance transactions to AA on or before the 10th (tenth) day of the month following the filing or disposal of application(s) by AA; and

(6) Form CP-5 to be filed by IRP/RP for reporting of updates on the status of CIRP on a monthly basis on or before the 10th (tenth) of every month for the preceding month.

Further, any forms filed after their due dates, whether for correction, update, or otherwise, shall incur a late fee of Rs. 500 (Rupees Five Hundred only) per form for each calendar month of delay, effective from a date that will be notified separately by the IBBI. Additionally, the IRP or RP may face consequences, including the refusal to issue or renew their authorisation for the assignment, if they fail to file the required Form with requisite information and records, or submit inaccurate or incomplete information, or file forms with delay.

In addition to above Amendment to IRP for Corporate Persons, IBBI has also issued a circular *vide* IBBI/ CIRP/85/2025 dated 26.05.2025 for launch of revised forms for CIRP setting out the indicative templates of the aforementioned forms.

IBBI notifies IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025[8]

IBBI vide its notification dated 26.05.2025, has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025 to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Principal Regulations") with immediate effect. Key amendments to the Principal Regulations are as follows:

(1) A new sub-regulation (5) under Regulation 18 has been added, which permits the CoC to invite interim finance providers to attend its meetings as observers without voting rights.

(2) Regulation 36A(1A) has been inserted which now enables the RP, with CoC approval, to seek expressions of interest for resolution plans covering for the corporate debtor as a whole, or for the sale of one or more assets of the corporate debtor, or for both.

(3) Sub-regulation (6A) of Regulation 36B, which allowed the RP to issue a request for asset sale plans with CoC approval if no resolution plan was received, has been removed.

(4) A new proviso to Regulation 38(1) requires that in staged payments under a resolution plan, dissenting financial creditors must be paid at least pro rata and prior to consenting financial creditors in each stage.

(5) Regulation 39 has been amended to improve the handling of resolution plans by updating compliance requirements and requiring the RP to disclose details of non-compliant plans and any related transactions to the CoC.

[8] IBBI notifies IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025.

CERC issued draft guidelines for virtual power purchase agreements[9]

The Central Electricity Regulatory Commission ("CERC") through its notice dated 22.05.2025 issued Draft Guidelines for Virtual Power Purchase Agreements ("Draft VPPA Guidelines"), inviting comments from stakeholders by 20.06.2025. The salient features of the Draft VPPA Guidelines are as follows:

(1) A Virtual Power Purchase Agreement ("VPPA") is defined as a Non-Transferable Specific Delivery ("NTSD") based Over-the-Counter ("OTC") contract between a consumer or designated consumer, and a Renewable Energy ("RE") generator wherein the designated consumer guarantees payment of a mutually agreed price ("VPPA Price") to the RE generator for the entire duration of the agreement. The RE generator shall sell electricity through power exchange or any other mode authorised under the Electricity Act, 2003 ("EA 2003").

(2) VPPAs are non-tradable and non-transferable, and the contracting parties are bound by the contract terms for the entire period of the contract.

(3) The consumer shall have same meaning as defined under EA 2003 and designated consumer shall have the same meaning as defined under the Energy Conservation Act, 2001.

(4) A consumer or designated consumer may enter into a VPPA with an RE generator either directly, through a trader, or by listing on an OTC platform registered by CERC on mutually agreed terms.

(5) The project for which VPPA is to be entered must be registered in accordance with the CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022, as amended.

(6) The RE generator sells electricity through power exchange or other authorized modes, and the Renewable Energy Certificate ("REC") received thereby shall be transferred to the consumer or designated consumer who can use such RECs for Renewable Energy Consumption Obligations (RECO).

(7) Any disputes arising out of VPPAs shall be mutually settled by the parties in terms of the VPPA.

GOVERNMENT NOTIFICATIONS

Ministry of Finance amends Securities Contracts (Regulation) Rules, 1957[10]

The Department of Economic Affairs, Ministry of Finance, has amended Rule 8 of the Securities Contracts (Regulation) Rules, 1957 ("SCRA Rules"), *vide* Gazette Notification G.S.R. 318(E), issued on 19.05.2025 ("SCRA Amendment") which is effective with immediate effect.

Rule 8(1)(f) and 8(3)(f) of the SCRA Rules restricted brokers from engaging either as principal or employee in any business other than securities or commodity derivatives, except as a broker or agent that does not involve personal financial liability. The SCRA Amendment has introduced a new proviso to both such Rule 8(1)(f) and 8(3)(f) to clarify that the investments made by brokers will not be regarded as part of their business unless such investments involve client funds or securities or create financial liabilities for the broker thereby providing better clarity allowing members to make personal investments while safeguarding client interests.

Ministry of Home Affairs issues Foreign Contribution (Regulation) Amendment Rules, 2025[11]

The Ministry of Home Affairs ("MHA") *vide* its notification dated 26.05.2025 issued the Foreign Contribution (Regulation) Amendment Rules, 2025 ("FCRA Amendment") to amend the Foreign Contribution (Regulation) Rules, 2011 ("FCRA Rules"), which is effective with immediate effect. The FCRA Amendment primarily revises documentation and procedural requirements across various FCRA forms, which *inter alia* include the following:

(1) Form FC-3A (Application for FCRA Registration): Applicants seeking registration must submit the financial statements and audit reports for the last three financial years, activity-wise expenditure (or certificate from

[9] Draft Guidelines for Virtual Power Purchase Agreements.
[10] Amendment to Securities Contracts (Regulation) Rules, 1957.
[11] Foreign Contribution (Regulation) Amendment Rules, 2025.

chartered accountant ("CA")), activity reports, affidavits (Proforma "AA"), publication compliance (if applicable), and post-expiry Foreign Contribution ("FC") utilization affidavit (if previously registered). An additional affidavit is needed if spending is under Rs. 15 lakhs.

(2) Form FC-3B (Application for FCRA Prior Permission): Applicants seeking prior permission must now submit a donor commitment letter, detailed project report, declaration on administrative expenses (within 20% (twenty percent) of the amount of foreign contribution), chief functionary letter as per the MHA format, and compliance undertaking for Financial Action Task Force.

(3) Form FC-3C (Application for Renewal of FCRA Registration): Applicants seeking renewal of registration must now submit an affidavit in Proforma "AA" for key functionaries and an affidavit with FC utilisation and certified bank statements if registration has expired.

(4) Form FC-4 (Intimation - Annual Returns): FCRA Amendment now require detailed reporting of newly purchased movable and immovable assets from the proceeds of FC. Additionally, the CA certificate must confirm examination of all relevant records and certify receipt and utilisation of funds by activity, project, and location.

(5) Form FC-6A to FC-6E (Changes): Applicants must provide supporting documents such as authority approvals, bank letters, governing body resolutions, and Proforma "AA" for key personnel changes.

(6) Proforma 'AA': The FCRA Amendment requires the declarant to state their citizenship and Overseas Citizen of India (OCI) card details (if applicable), and to declare whether they have been convicted or are facing any pending prosecution under any law.

MoP issued directions to Gas-Based Generating Stations under Section 11 of the EA 2003[12]

The Ministry of Power ("MoP") through its Order dated 16.05.2025 issued directions to Gas-Based Generating Stations ("GBSs") under Section 11 of the EA 2003 to address the increasing electricity demand and to ensure uninterrupted power supply while maintaining grid stability ("MoP GBSs Order"). The MoP GBSs Order will remain valid from 26.05.2025 to 30.06.2025. Key highlights of the MoP GBSs Order are as follows:

(1) Based on monthly demand assessment GRID-INDIA will notify GBSs the expected number of days they are required to generate during a week, at least fourteen (14) days in advance. GBSs notified and scheduled by GRID-INDIA on a D-1 basis will be guaranteed despatch at a minimum of 50% capacity round-the-clock during designated high-demand periods.

(2) GBSs shall first offer power to Power Purchase Agreement ("PPA") holders. In case of multiple PPAs, if one of the Distribution Licensees fails to schedule any portion of the power as per its PPA, the unutilized power will first be offered to other PPA holders. If the power is not scheduled by any of the PPA holders or any other Distribution Licensee, then such unscheduled power can be offered in the power market. Further, any surplus is to be made available to GRID-INDIA for grid support to be despatched as per real time Grid requirements.

(3) GBSs with PPAs will offer capacity at the Energy Charge Rate ("ECR") determined by the appropriate commission. GBSs without PPAs are required to offer capacity based on a benchmark ECR determined by a designated Committee, unless a mutually agreed price exists. The benchmark rates will be reviewed every 15 days.

(4) The power offered in the power exchanges, other market segments, or for despatch by GRID-INDIA for grid support, shall not exceed hundred and twenty percent of the ECR plus applicable intra-state transmission charges. In case of realizations above the ECR, GBSs with PPAs are to first meet fixed costs. The liability for payment of fixed costs to extent not realised from sale in the market or despatch for grid support, shall remain with the PPA holder(s) as per the PPA.

(5) The payment security mechanism under the Late Payment Surcharge Rules, 2022 will apply. Payment will be made on weekly basis by procurer. Rebate will be applicable according to CERC norms or the PPA, whichever is higher. Payment for the power despatched

[12]Directions to Gas-Based Generating Stations (GBSs) under Section 11 of the Electricity Act, 2003.

by GRID-INDIA will be made from the statutory pool as per CERC Regulations.

(6) The provisions of this order shall apply notwithstanding any contrary provisions in any PPA or other agreement.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that CERC can exercise powers under Section 79(1) of the EA 2003 to address regulatory gaps and can impose compensation in the absence of specific regulations

The Supreme Court of India through its judgment dated 15.05.2025 in *Power Grid Corporation of India Limited v. Madhya Pradesh Power Transmission Company Ltd. and Ors.*[13] held that the CERC can impose liability of payment of compensation for delay attributable to a party even if the Tariff Regulations do not contain provisions for compensation in such a case.

Disputes arose between Power Grid Corporation of India Limited ("PGCIL") and Madhya Pradesh Power Transmission Company Ltd. ("MPPTCL") concerning delays in commissioning of intra-state transmission lines under the Western Region System Strengthening Schemes. PGCIL's transmission assets, constructed upon MPPTCL's request, were delayed due to MPPTCL's failure to complete downstream works. PGCIL sought approval of the commercial operation date and compensation before the CERC which allowed PGCIL to claim compensation for the delay. MPPTCL challenged the CERC orders before the High Court of Madhya Pradesh, in writ petitions despite the remedy for appeal under the EA 2003, leading to the appeal before the Supreme Court.

The Supreme Court held that CERC is enabled to exercise its regulatory powers by way of orders under Section 79 of EA 2003 and its purview is not limited to only adjudicatory orders but includes within its scope administrative functions as well. Further, it held that when there is an absence of regulation and guidelines, the EA Act mandates CERC to strike a judicious balance between the parties keeping in mind commercial principles and consumers interest in exercise of its general regulatory power under Section 79(1) of the EA 2003.

The Supreme Court relied on *PTC India Limited v. Central Electricity Regulatory Commission*[14] and *Energy Watchdog v. CERC*[15] and held that Sections 79 and 178 of the EA 2003 delineate distinct functions of the CERC. While Section 79 pertains to administrative or adjudicatory functions, Section 178 grants legislative power to enact statutory regulations. A regulation under Section 178 of the EA Act is of general application to the entirety of a particular subject matter as opposed to an order on case-to-case basis, which may be done by CERC under Section 79 of the EA Act.

The Supreme Court further held that making of regulations under Section 178 of EA 2003 has the effect of interfering with and overriding existing contractual relationships between the regulated entities. On the other hand, the orders under Section 79 of EA 2003 have to be confined to the existing statutory regulations and do not have the effect of altering the terms of contract between the specific parties before the CERC.

Supreme Court held that there is no requirement of an explicit written arbitration agreement between parties under section 11 of the SARFAESI Act

The Supreme Court through its judgment dated 23.05.2025 in *Bank of India v. M/s Sri Nangli Rice Mills Private Limited and Ors.*[16] held that there is no requirement of an explicit written arbitration agreement between parties under Section 11 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").

The Supreme Court further held that Section 11 of the SARFAESI Act creates a legal fiction by using the word "as if", which presumes the existence of an arbitration agreement among the designated parties, namely a bank or financial institution or asset reconstruction company or qualified buyer.

The Supreme Court further laid down twin requirements for Section 11 of the SARFAESI Act to be triggered i.e., the dispute must be between any bank or financial institution, or Asset Reconstruction Company ("ARC") or qualified buyer and the dispute must relate to securitisation or reconstruction or non-payment of any amount due including interest. Once the aforesaid twin requirements are fulfilled, the Debt Recovery Tribunal ("DRT") will have no jurisdiction, and

[13] C.A. Nos. 6847 of 2025 and 6848 of 2025.
[14] (2010) 4 SCC 603.
[15] (2017) 14 SCC 80.
[16] Civil Appeal No. 7110 of 2025.

the recourse will be only through Section 11 of the SARFAESI Act.

The Supreme Court observed the object underlying Section 11 of SARFAESI Act mandates arbitration or conciliation as the only mechanism for resolution of disputes between a bank, financial institution and ARC etc. It ousts the jurisdiction of the DRTs under Section 17 of the SARFAESI Act for adjudicating such disputes to ensure that ancillary or collateral disputes that may arise between competing secured creditors do not hinder the purpose of SARFAESI Act of facilitating recovery from the borrowers expeditiously by enforcement of secured assets or other means as provided thereunder.

NCLAT held that the adjudicating authority cannot reject resolution plan based on valuation when no objection is raised by stakeholders

The National Company Law Appellate Tribunal ("NCLAT") through its judgment dated 20.05.2025 in *Vashisth Builders and Engineers Ltd. v. Trishul Dream Homes Ltd.*[17] held that when no stakeholder objects to the valuation report, it is not open for the adjudicating authority to enter into the issue of valuation of assets of the corporate debtor and reject the resolution plan.

NCLAT held that provisions of Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC") requires the adjudicating authority to scrutinize the resolution plan and if the resolution plan meets the requirements of Section 30(2), it needs to be approved by the adjudicating authority. The provisions of Section 31(2) provide that in the event the resolution plan is in violation of Section 30(2) of the IBC, it can be rejected by the adjudicating authority.

The adjudicating authority in the present case did not observe a violation of Section 30(2) of the IBC. It noted that valuation was conducted as per Regulation 27 of Corporate Insolvency Resolution Process Regulations, 2016 and that no objections were raised by any stakeholders, including the Committee of Creditors. Hence, the resolution plan could not have been rejected.

CERC held that only persons directly affected can be considered to be aggrieved persons

The CERC through its judgment dated 19.05.2025 in *Adani Power Limited v. Gujarat Energy Transmission Corporation Limited and Ors.*[18] held that to be considered an '*aggrieved person*', there must be an actual legal injury, and only those directly affected can be considered aggrieved.

Adani Power Limited ("APL") entered into a Power Purchase Agreement ("PPA") with MPSEZ Utilities Limited ("MUL") for supply of power, under which MUL paid state transmission charges and APL reimbursed it under the PPA. APL filed a petition before the CERC seeking a refund of these charges, contending that it did not utilize the intra-state transmission system. The CERC noted that MUL was the entity directly paying the charges and held that any dispute regarding reimbursement should be resolved under the PPA between APL and MUL, dismissing APL's claim for lack of locus standi.

The CERC held that since the state transmission charges and losses were levied and paid by MUL, which was the affected party, and APL only reimburses these charges to MUL as per the PPA, APL is not the aggrieved party. It held that APL can be an aggrieved party under the PPA only if the payment liability of such transmission charges were not laid out clearly in the PPA. The dispute, if any, with regard to payment of the state transmission charges ought to have been raised by APL before MUL in accordance with the terms and conditions of the PPA. Thus, APL has no locus standi to a petition for refund of state transmission charges imposed on the power supplied by APL to MUL.

CERC held that it has jurisdiction to offset the adverse financial impact of a direction issued under Section 11 of the EA 2003

The CERC through its judgment dated 22.05.2025 in *Coastal Energen Pvt. Ltd. v. Tamil Nadu Generation and Distribution Company Ltd. and Anr.*[19] held that it has the jurisdiction to offset any adverse financial impact of a direction issued by the MoP under Section 11(1) of the EA 2003.

[17] Company Appeal (AT) (Insolvency) No. 732 of 2025.
[18] Petition No. 263/MP/2023.
[19] Petition No. 161/MP/2022.

The MoP issued directions under Section 11(1) of the EA 2003 on 05.05.2022 stating that all imported coal-based power plants with PPAs will receive a pass through of tariff *qua* the coal imported by them. It further provided that any surplus or remaining energy with the power plant will be sold through the power exchanges. In furtherance thereto, the MoP issued directions under Section 11(1) of EA 2003 on 13.05.2022, clarified on 20.05.2022 and 27.05.2022 (collectively referred to as "MoP Directions"), fixing the benchmark ECR for the power to be supplied by coal power plants, including the power plant of Coastal Energen Pvt. Ltd. ("CEPL"). The benchmark ECR did not reflect the actual ECR of CEPL in view of which it approached the CERC under Section 11(2) of EA 2003 to offset the financial impact.

The CERC held that as the MoP Directions itself envisage sale in the power exchanges or the open market i.e., sale in more than one State, therefore, CERC's jurisdiction will not be affected under Section 11(2) in terms of Section 79(1)(b) read with Section 79(1)(f) of the EA 2003.

CERC clarified that the benchmark ECR specified by the MoP was interim and compensation to be awarded to offset the adverse financial impact of MoP Directions is within the CERC's purview in terms of Section 11(2) of the EA 2003. It held that the Section 11(1) of EA 2003 does not provide for the MoP to decide the adverse financial impact at which distribution licensees have to make payments to the generators.

It further held that the adverse financial impact under Section 11(2) of the EA 2003 is the difference between the tariff based on actual prudent costs and the tariff approved under the existing PPA, adjusted by any payments already made based on the MoP's benchmark ECR. The only check to be exercised is that the rate of power decided by the CERC should cover the variable cost of the power plant plus a reasonable profit.

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.

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