

SEBI : Delisting 1
Regulations, 2021

SEBI : Extension of time 3
for holding Annual General
Meeting by top 100 listed
entities by market
capitalization.

Insolvency and Bankruptcy 4
Board of India: Amendment
to Insolvency and
Bankruptcy Board of India
(Insolvency resolution
Process for Corporate
Persons) Regulations, 2016.

Ministry of Corporate 7
Affairs: Amendment to
Companies (Incorporation)
Rules, 2014

High Court of Delhi: 9
Creation of the Intellectual
Property Division.

Case Summary - M/s 10
Solitare BTN Solar Private
Limited Vs Tamil Nadu
Electricity Regulatory
Commission and Ors

* Private Circulation Only

JULY 2021

SECURITIES EXCHANGE BOARD OF INDIA

Pursuant to powers conferred to Securities and Exchange Board of India (“SEBI”) vide Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulations 11, 37 and 94 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR 2015”) to protect the interest of the investors in securities and to promote the development of, and to regulate the securities market, issued *Circular dated July 06, 2021* (“Circular”) for standard operating procedure for listed subsidiary company desirous of getting delisted through a Scheme of Arrangement wherein the listed parent holding company and the listed subsidiary are in same line of business.

SEBI vide notification dated June 10, 2021, had notified the amendments made to the SEBI (Delisting of Equity Shares) Regulations, 2021 (“SEBI Delisting Regulations 2021”) wherein Chapter VI, Part C, and Regulation 37, special provisions for a listed subsidiary company for delisting through a scheme of arrangement had been inserted with respect to a listed holding company and the listed subsidiary company who are in the ‘same line of business’.

For the purposes of defining ‘same line of business’, the following criteria is required to be fulfilled:

1. The principal economic activities of both holding company and subsidiary company are under the same Group (3-digit numeric code) under the National Industrial Classification (NIC) Code 2008.
2. Not less than fifty percent (50%) of revenue from the operations of the listed holding and listed subsidiary company must come from the same line of business as per last audited annual financial results submitted by both the companies in compliance with SEBI (LODR) Regulations, 2015.
3. Not less than fifty percent (50%) of the net tangible assets of the listed holding and listed subsidiary must have been invested in the same line of business as per last audited annual financial results submitted by both the companies in compliance with SEBI LODR, 2015.



4. In case of change of name of the listed entities, within the last one (1) year, at least fifty percent (50%) of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has to be earned by it from the activity indicated by its new name.
5. The listed holding company and the listed subsidiary have to provide a self- certification with respect to both the companies being in the same line of business.

It is necessary that all the above mentioned criteria have to be certified by the statutory auditor as well as SEBI Registered Merchant Banker. Also, as per Regulation 37(2)(e) and (f) of the SEBI Delisting Regulations, 2021, the shares of the listed holding company and the subsidiary company shall be listed for at least three (3) years and the subsidiary company shall be a listed subsidiary of the listed holding company for a period of three (3) years.

SEBI also directed the recognised stock exchanges to bring to the light the provisions of Circular to listed companies and also promulgate the same on their website.



SECURITIES EXCHANGE BOARD OF INDIA

In exercise of the powers conferred on the Securities and Exchange Board of India (“SEBI”) by Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 101 and 102 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR 2015”) and rules made thereunder, *Circular dated July 23, 2021* was issued whereby it extended the time for conducting Annual General Meeting (“AGM”) by the top 100 listed entities by market capitalization for this financial year.

As per regulation 44(5) of the SEBI LODR, 2015, top listed entities by market capitalization are required to hold their AGM within a period of five (5) months from the date of closing of the financial year.

However, on request of various listed entities and the Institute of Company Secretaries of India for extension of time to hold AGM *inter alia* due to the COVID-19 pandemic, SEBI extended the timeline for AGM to be conducted by such entities. SEBI directed that these entities shall hold their AGM within a period of six (6) months from the date of closing of the financial year for 2020-21.



INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

In exercise of the powers conferred by Section 196 (1)(t) read with section 240 of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016/ Code**”), the Insolvency and Bankruptcy Board of India (“**IBBI**”) vide its *Notification dated July 14, 2021* amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”) to be called as the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021 (“**IBBI IRCPCP Regulations, 2021**”) and shall come into force on the date of their publication in the Official Gazette.

IBBI IRCPCP Regulations, 2021 shall apply to every Corporate Insolvency Resolution Process (“**CIRP**”) ongoing or commencing on or after the date of coming into force of these regulations.

In Regulation 3 sub-regulation 1 and 2, Regulation 4 and 4A sub-regulation 2(b), Regulation 19 sub-regulation (1) of the Principal Regulations, the words “a resolution professional”, shall be substituted by the words “an interim resolution professional or a resolution professional, as the case may be,”

Regulation 3, sub-regulation 3 of the Principal Regulations were amended to the effect that the interested interim resolution professional shall now be prohibited along with the interested resolution professional to act as the resolution or interim resolution professional in the CIRP of the concerned entity. Regulation 3 (3) is substituted to the following effect –

“(3) An interim resolution professional or a resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as the interim resolution professional or resolution professional, as the case may be, in a corporate insolvency resolution process, if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any other stakeholder in that corporate insolvency resolution process.”

In the Principal Regulations, after regulation 4A, the following regulation shall be inserted –



“4B. Disclosure of change in name and address of corporate debtor.

Where a corporate debtor has changed its name or registered office address during the period of two years preceding the insolvency commencement date, the interim resolution professional or resolution professional, as the case may be, shall disclose all the former name(s) and registered office address(es) so changed along with the current name and registered office address in every communication, record, proceeding or any other document.”

In the Principal Regulations, in Regulation 9A, in sub-regulation (1), for the word and figures “regulation 7, 8 or 9,”, the word and figures “regulation 7, 8, 8A or 9,” shall be substituted.

In the Principal Regulations, in Regulation 13, in sub-regulation (2), in clause (b), after the words “corporate debtor”, the words “or their authorised representatives” shall be inserted.

Regulation 27 of the Principal Regulations prior to introduction of IBBI IRCPCP Regulations, 2021 related to appointment of registered valuers which has been substituted as follows: -

“27. Appointment of Professionals.

(1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.

(2) The interim resolution professional or the resolution professional, as the case may be, may appoint any professional, in addition to registered valuers under sub-regulation (1), to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required.

(3) The interim resolution professional or the resolution professional, as the case may be, shall appoint a professional under this regulation on an arm’s length basis following an objective and transparent process:



Provided that the following persons shall not be appointed, namely: -

(a) a relative of the resolution professional;

(b) a related party of the corporate debtor;

(c) an auditor of the corporate debtor at any time during the period of five years preceding the insolvency commencement date;

(d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

(4) The invoice for fee and other expenses incurred by a professional appointed under this regulation shall be raised in the name of the professional and be paid directly into the bank account of such professional."

The words "under intimation to the Board" shall be deleted from Regulation 35A, in sub-regulation (2) of the Principal Regulations.

In the Principal Regulations, in regulation 40B, after sub-regulation (1A), the following sub-regulation shall be inserted under which a period of 140 (one hundred and forty) days has been prescribed for filing of Form CIRP 8 by resolution professional –

"(1B) The resolution professional shall file Form CIRP 8 intimating details of his opinion and determination under regulation 35A, on or before the one hundred and fortieth day of the insolvency commencement date:

Provided that the filing of Form CIRP 8 shall not become due unless a period of thirty days has elapsed from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021."

In the Principal Regulations, in Form H,-

(i) Regulation 35A under item 9, in the table, shall be deleted.

(ii) The following item shall be inserted after item 14, namely:

"14A. Whether the resolution professional has, in accordance with regulation 35A,-

(a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date: Yes / No

(b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: Yes / No"



MINISTRY OF CORPORATE AFFAIRS

In exercise of the powers conferred by Section 16(1) and 16(3), and Section 469 (1) and 469(2) of the Companies Act, 2013, the Central Government vide its *Notification dated July 22, 2021 (“Notification”)* has amended the Companies (Incorporation) Rules, 2014 (**“Principal Rules, 2014”**). As per the Notification, these rules shall now be known as the Companies (Incorporation) Fifth Amendment Rules, 2021 and shall come into force from September 1, 2021.

Vide the said Notification, Rule 33A has been inserted after rule 33 (alteration of articles) in the Principal Rules, 2014 which states that if a direction for change of name has been issued to a company and if the company doesn't abide by it, within three (3) months, then letters “ORDNC” along with the year of passing of direction, the serial number and existing Corporate Identity Number of the company shall together become the new name of the company and the same should be mentioned in bracket below the name of the company in all the places. The said rule has been reproduced below for ready reference

“33A. Allotment of a new name to the existing company under section 16(3) of the Act. (1) In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act within a period of three months from the date of issue of such direction, the letters “ORDNC” (which is an abbreviation of the words “Order of Regional Director Not Complied”), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C:

Provided that nothing contained in sub-rule (1) shall apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

(2) A company whose name has been changed under sub-rule (1) shall at once make necessary compliance with the provisions of section 12 of the Act and the statement, “Order



of Regional Director Not Complied (under section 16 of the Companies Act, 2013)” shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved:

Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.”

Further, Form No.INC-11C has been incorporated in the Annexure in pursuance to the aforesaid amendment.



HIGH COURT OF DELHI

The Tribunals *Reforms (Rationalization and Conditions of Service) Ordinance, 2021 ("Ordinance")*, dated April 4, 2021 issued by the Ministry of Law and Justice amended various Acts relating to protection of Intellectual Property Rights ("IPR") and dissolved the Intellectual Property Appellate board ("IPAB"). Pursuant to the said Ordinance all powers of the IPAB were conferred upon the High Court's having respective jurisdiction. In pursuance to the same, through an *Office order dated July 07, 2021* issued by the Hon'ble Delhi High Court an Intellectual Property Division ("IPD") was created by the Hon'ble Chief Justice D.N. Patel in consultation with the Committee consisting of Hon'ble Ms. Justice Prathiba .M. Singh and Hon'ble Mr. Justice Sanjeev Narula constituted for the purpose of streamlining and reviewing the manner in which the large quantum of IPR cases ought to be dealt by the Delhi High Court.

Thus, the IPD shall deal with the Writ Petitions (Civil), Civil Miscellaneous Mains, Regular First Appeal ("RFA"), First Appeal Order relating to IPR disputes (other than those which are to be dealt by the Division Bench), all fresh filings in the various IPR categories, IPR suits, revocation applications, cancellation applications, other original proceedings, appeals from the office of Registrar of Trade Marks, Controller of Patents, Copyright Registrar and all other proceedings which were hitherto maintainable before the IPAB, under the provisions of the Trade Marks Act, 1999; Copyright Act, 1957; Patents Act, 1970; Designs Act, 2000; Geographical Indications of Goods (Registration and Protection) Act, 1999; Protection of Plant Varieties and Farmers' Rights Act, 2001 and Semi-conductor Act 2000 along with the original and appellate proceedings.

It is to be noted that the original proceedings before IPD shall be governed by the Delhi High Court (Original Side) Rules, 2018 and the provisions of the Civil Procedure Code, 1908 as applicable to commercial disputes and the provisions of the Commercial Courts Act, 2015. For the purpose of governing the IPD, IPD Delhi High Court Rules are also under the process of being framed.

Further the Hon'ble Delhi High Court stated that, appeals if any, under Section 5C of the Cinematograph Act, 1952, shall be registered as RFA, whilst the ongoing process of framing of Rules in this regard and cases under other statutes viz., The Airports Authority of India Act, 1994, Customs Act, 1962, National Highways (Land and Traffic) Act, 2002, shall be registered as writ petitions (Civil) and should be listed before the Single Judge or Division Bench, as per the amendments in accordance to the Ordinance.



CASE SUMMARY

Case Name : *M/s Solitare BTN Solar Private Limited Vs Tamil Nadu Electricity Regulatory Commission and Ors. - Appeal No. 67 of 2021*
Court Name : The Appellate Tribunal For Electricity at New Delhi
Order Date : July 5, 2021

Facts of the Case:

1. The Tamil Nadu Generation & Distribution Corporation Limited (“**TANGEDCO**”) entered into a Power Purchase Agreement (“**PPA**”) with Solitaire BTN Solar Private Limited (“**Appellant**”) under the reverse auction mechanism for production of 100MW of solar power. The Appellant was made responsible under the PPA for obtaining transmission connectivity and access to the transmission system (“**Project**”) owned by TANGEDCO and Tamil Nadu Transmission Corporation Limited (“**TANTRANSCO**”).
2. According to said PPA, the Project was supposed to commission in its entire capacity on or before 24 months from dated of signing the PPA which was however delayed due to unavailability of transmission system on part of TANGEDCO. The Appellant requested TANGEDCO to expedite the connectivity works to evacuate the power but, no response was received and thus requested for an extension of Scheduled Commercial Operating Date (“**SCOD**”) affected by such delay.
3. The Appellant therefore approached Tamil Nadu Electricity Regulatory Commission (“**TNERC**”) for seeking extension of time for commissioning the said project as the delayed was attributable to TANGEDCO not complying with its obligation under the PPA. In the meantime, Ministry of New and Renewable Energy (“**MNRE**”) owing to the adverse impact caused by the outbreak of COVID-19 on the economy issued a blanket extension of five (5) months to all renewable generators including the Appellant for achieving various timelines under the PPA. Accordingly, the Appellant issued various force majeure notices and intimations to TANGEDCO citing impact of COVID -19 as a material event impairing its ability to complete the remaining project of 50MW capacity, which went unheard.
4. TNERC vide its Order dated November 24, 2020 (“**Impugned Order**”) however, condoned the delay for commissioning the project only for the first 50 MW of the contracted capacity while, for the balance 50MW



capacity arbitrarily directed the parties to renegotiate the tariff for supply of power. Aggrieved by the Impugned Order of TNERC, the Appellant had filed present appeal before the Hon'ble Appellate Tribunal for Electricity ("APTEL").

Judgement:

1. The Hon'ble APTEL was required to deal with three (3) issues, however, Issue No.3 viz., whether the Appellant can be granted extension of time for commissioning of its solar plant invoking the provisions of Force Majeure under PPA?
2. The Hon'ble APTEL noted that the delay caused in the implementation of the Project was due to the unavailability of transmission system which was a reason beyond the control of Appellant. In terms of the provisions 16 – "Force Majeure" of the PPA, the event of delay in granting the connectivity approval by the Respondents, TANGEDCO/TANTRANSCO is a Force Majeure event and the Appellant was thus, entitled for the extension of SCOD under the PPA. Appellant was therefore allowed an extended period of ten (10) months on account of Force Majeure event of unavailability of transmission system and further five (5) months' time on account of Force Majeure event of lockdown due to COVID-19 pandemic for completing the remaining project.
3. As per the provisions of PPA the maximum time period allowed for commissioning of the full Project capacity with encashment of Performance Bank Guarantee and payment of Liquidated Damages was thirty four (34) months from the date of signing of PPA i.e. July 27, 2020 and in case, the Project was not commissioned, within the said time, the PPA shall terminate automatically without any notice or order and the Distribution Licensee - TANGENDCO would encash the Additional Performance Bank Guarantee furnished towards Liquidated Damages.
4. The Hon'ble APTEL clarified that the blanket exemption granted by MNRE was for the lockdown period from March 25, 2019 to August 24, 2020 which falls in the PPA period. Therefore, the Hon'ble Tribunal held that State Commission's decision to not allow relief to the Appellant on the ground that the COVID-19 pandemic occurred outside the period of PPA was wrong and was therefore set aside.



5. TANGEDCO, was also ordered to forthwith return the Performance Bank Guarantee of Rs. 20,00,00,000/- (Rupees Twenty Crores Only) and Additional Performance Bank Guarantee of Rs. 7,60,00,000/- (Rupees Seven Crores Sixty Thousand Only) to the Appellant without any delay along with the cost of renewing such bank Guarantee.
6. It was also directed that the Appellant be paid full tariff of Rs. 3.47 per unit for the balance 50 MW with effect from February 08, 2021 onward i.e. the date on which this capacity was synchronized with the grid and TANGEDCO to pay the Appellant the differential tariff withheld along with carrying cost calculated as per the late payment surcharge as provided for in the PPA / TNERC Intra State Open Access Regulations, 2014 / CERC Regulations.
7. Further, the Respondents were also directed to take necessary steps to expedite the completion of pending works to provide permanent and adequate transmission system to facilitate evacuation of entire output of the solar PV plant of the Appellant.
8. The Hon'ble APTEL disposed of the Appeal by setting aside the Impugned Order and remitting the matter back to TNERC for consideration afresh.

Dear Readers,

In case you do not wish to receive our monthly update, please send us email on legalupdates@eternitylegal.com with the subject as “Unsubscribe”.

Warm Regards,

Dipali Sarvaiya Sheth

Founder



D-226, Neelkanth Business Park,

Vidyavihar (West), Mumbai– 400086

Email: contact@eternitylegal.com Tel no.: +91 22 2515-9001

Website: www.eternitylegal.com