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SHANTI ACT, 2025: RE-ENGINEERING INDIA'S CIVIL NUCLEAR LAW FOR SAFETY, INVESTMENT AND ENERGY SECURITY

Introduction

- The Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India Act, 2025 ("**Act**") (*formerly the "SHANTI Bill"*), repeals and replaces the Atomic Energy Act, 1962 ("**Atomic Energy Act**") and the Civil Liability for Nuclear Damage Act, 2010, ("**Civil Liability for Nuclear Damage Act**"), fundamentally restructuring India's civil nuclear framework.
- The Act marks a paradigm shift from a state-owned monopoly to a licence-based regulatory regime, enabling licensed private Indian entities and joint ventures to participate in non-strategic civilian nuclear activities, subject to stringent safety and regulatory controls.
- Strategic and sensitive nuclear functions including uranium enrichment beyond prescribed thresholds, spent fuel reprocessing, production of special nuclear materials, and high-level radioactive waste management remain exclusively within Central Government control, preserving sovereign and security interests.
- The Act is closely aligned with India's climate and energy transition commitments, particularly the goals of net-zero emissions by 2070 and 100 GW of nuclear capacity by 2047, and positions nuclear power especially Small Modular Reactors ("**SMRs**"), as a reliable baseload complement to renewable energy.

Constitutional & Federal Implications

- The Act falls within Parliament's exclusive legislative competence under Article 246(1) read with Entry 6 of the Union List of the Constitution of India, 1950 ("**Constitution**"), governing atomic energy and related resources.
- While legislative power rests with the Union, effective implementation requires coordination with State authorities on allied subjects, reflecting cooperative federalism.
- By granting statutory independence to the Atomic Energy Regulatory Board ("**AERB**") and strengthening regulatory oversight, the Act reinforces constitutional guarantees under Articles 14 and 21 of the Constitution, including the right to life, safety, and a healthy environment.
- Restrictions on access to sensitive nuclear information and participation in nuclear activities implicate Articles 19(1)(a) and 19(1)(g) and must satisfy the tests of reasonableness and proportionality under Articles 19(2) and 19(6) of the Constitution.



- The Act incorporates environmental principles under Articles 48A and 51A(g) of the Constitution by mandating obligations on radioactive waste management, decommissioning, and long-term financial safeguards.

Salient Features

1. Shift to License Based Regulation

- Ends state monopoly on ownership; introduces licensing for civilian nuclear operations.
- Private Indian entities and joint ventures permitted with regulatory approval.
- Government acts as policymaker, licensor, and regulator.

2. Permitted vs. Prohibited Activities

- **Permitted:** Licensed non-strategic civilian activities (siting, construction, operation, maintenance, decommissioning, equipment manufacturing, fuel handling) for power and non-power uses, under strict licensing and safety rules.
- **Prohibited:** Sensitive tasks (advanced enrichment, reprocessing, special nuclear materials production, high-level waste management) reserved for Central Government to safeguard strategic programme and non-proliferation.

3. Comprehensive Life-Cycle Licensing

- Licensing covers all stages: siting, construction, commissioning, operation, maintenance, decommissioning, and site restoration.
- Mandatory AERB safety authorization per stage.
- Licenses non-transferable; revocable on safety, financial, or security grounds.

4. Independent Statutory Regulator

- AERB granted statutory status with fixed tenure and enforcement powers.
- Separates promotion from regulation to avoid capture.

5. Enhanced Enforcement & Emergency Powers

- Powers include inspection, search, seizure, sealing, and suspension.
- Government can take direct control in emergency situations or security threats.

6. Reformed Nuclear Liability Framework

- The operator remains fully responsible for any nuclear accident, even if not at fault.
- Compensation limits vary by type of nuclear facility; anything above the limit is paid by a government fund.
- Suppliers are mostly not liable—only if they deliberately caused harm or as agreed in the contract.

7. Specialised Nuclear Damage Claims Mechanism

- Designates Claims Commissioners for routine cases; establishes Nuclear Damage

Claims Commission for severe incidents.

8. Promotion of Non-Power Applications

- Supports radiation use in healthcare, agriculture, food preservation, water management, industry, and environment.
- Encourages new research combining nuclear tech with Artificial Intelligence, quantum technology, and advanced materials.
- Separate streamlined regime for radiation facilities to aid innovation with safety.

9. Research & Private Sector Innovation

- Easier rules for non-sensitive nuclear research and development.
- Encourages Indian innovation, start-ups, and collaboration between universities and companies.

10. Controlled Foreign Participation

- Operating licenses are given only to companies controlled by Indians.
- Foreign companies can invest, share technology, or form joint ventures (including small modular reactors) through approved Indian partners.

11. Centralised Policy Control

- Central Government has wide powers to make detailed rules and grant exemptions.
- The Act overrides any conflicting laws; its effective implementation depends on the supporting rules issued later.

Conclusion

- The SHANTI Act represents a structural liberalisation of India's nuclear sector, aimed at unlocking investment while strengthening safety and regulatory oversight.
- Key risks include compensation caps disconnected from actual harm, dilution of supplier liability, centralisation of regulatory power, and limited public participation in rule making.
- The Act's long-term success will depend on transparent subordinate legislation, rigorous safety enforcement, and credible victim compensation mechanisms.
- If implemented with these safeguards, the Act has the potential to establish nuclear power as a stable and indispensable pillar of India's clean-energy transition.



FIRM POWER AFTER SYNCHRONISATION: SUPREME COURT REAFFIRMS REGULATORY SUPREMACY OVER POWER PURCHASE AGREEMENTS

Case Name: Tamil Nadu Generation and Distribution Corporation Limited vs. Penna Electricity Limited

Case No.: Civil Appeal No. 5700 of 2014

Court: Supreme Court of India, Civil Appellate Jurisdiction

Order Date: December 16, 2025

Introduction

The Hon'ble Supreme Court ("**Supreme Court**")'s decision in Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**") vs. Penna Electricity Limited ("**Penna**") marks a significant development in Indian electricity jurisprudence, particularly in relation to tariff determination, commercial operation dates, and the interplay between a Power Purchase Agreement ("**PPA**") and statutory regulations. By dismissing TANGEDCO's appeal and upholding the concurrent findings of the Ld. Tamil Nadu Electricity Regulatory Commission ("**TNERC**") and the Hon'ble Appellate Tribunal for Electricity ("**Tribunal**"), the Hon'ble Supreme Court has reaffirmed that statutory tariff regulations framed under the Electricity Act, 2003 ("**Act**") prevail over unapproved contractual provisions. The ruling clarifies that electricity supplied continuously after synchronization of a generating unit with the grid constitutes "firm power", entitling the generator to fixed charges, even if the overall project is commissioned at a later stage.

Factual of the Case

The dispute arose from a PPA originally executed on April 29, 1998 between the Tamil Nadu Electricity Board ("**TNEB**") predecessor of TANGEDCO and M/s DLF Power, whose rights were later acquired by Penna. The project had been selected through a competitive bidding process initiated in 1996.

Following the enactment of the Act, the parties executed a substantially amended PPA on August 25, 2004, introducing changes relating to project location, fuel, technology, and tariff. Penna established a combined-cycle power project comprising a gas turbine operating in open cycle mode and a steam turbine forming part of the combined cycle. The gas turbine unit was synchronized with the grid on October 29, 2005 and commenced continuous supply of electricity at approximately 30 MW. The steam turbine, however, was commissioned later, and the project achieved full combined-cycle operation only on July 01, 2006.



TANGEDCO treated the electricity supplied between October 29, 2005 and June 30, 2006 as “infirm power” and paid only variable charges, contending that under the amended PPA, the Commercial Operation Date/ Date of Commercial Operation (“**COD**”) of the project was July 01, 2006. Penna disputed this classification and claimed entitlement to fixed charges from the date of synchronization of the gas turbine unit.

Regulatory Context

The dispute arose within the statutory framework of the Act, which vests tariff determination and power procurement firmly within the regulatory domain. Section 61 of the Act mandates tariff fixation on principles that ensure recovery of reasonable costs, while Sections 62 and 63 of the Act provide for tariff determination by the appropriate State Commission or through competitive bidding, subject to regulatory oversight. Section 86(1)(b) of the Act specifically entrusts State Electricity Regulatory Commissions (“**SERCs**”) with the regulation of electricity procurement, including mandatory approval of PPAs.

Pursuant to these statutory powers, the Ld. Central Electricity Regulatory Commission (“**CERC**”) notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (“**CERC Regulations, 2004**”), which defines the COD with reference to individual generating units and draws a clear distinction between “infirm power” and “firm power”. The Ld. TNERC thereafter notified its Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 (“**TNERC Tariff Regulations, 2005**”), broadly aligned with the Central framework. These regulations clearly allow the declaration of COD on a unit-wise basis, which is especially important for combined-cycle power plants.

Issues

1. Whether electricity supplied by Penna after synchronization of its gas turbine unit, but prior to commissioning of the entire project, constituted “infirm power” or “firm power” under the applicable tariff regulations.
2. Whether the COD for tariff purposes was required to be determined project-wise or unit-wise, particularly in the context of a combined-cycle power station.
3. Whether the terms of an unapproved PPA could override or prevail over the statutory tariff regulations framed under the Act.
4. Whether correspondence, conduct, or interim arrangements between the parties could give rise to waiver or estoppel against the generator’s statutory entitlement to claim fixed charges.



Findings and Analysis of the Hon'ble Supreme Court

The Hon'ble Supreme Court undertook a comprehensive examination of the statutory framework under the Act, the applicable tariff regulations, and the contractual arrangements relied upon by TANGEDCO. At the threshold, the Hon'ble Supreme Court reaffirmed that tariff determination and the classification of power supply are matters of statutory and regulatory control, and not of private negotiation. It emphasized that contractual provisions, particularly those lacking approval of the appropriate regulatory commission, cannot override or dilute statutory mandates.

Further, upon analyzing the amended PPA, the Hon'ble Supreme Court identified a clear inconsistency between the contractual stipulations and the applicable tariff regulations. While the PPA sought to defer the COD until commissioning of the entire project, the CERC Regulations, 2004 and the TNERC Tariff Regulations, 2005 expressly recognize unit-wise declaration of COD, especially in the context of combined-cycle power stations. The Hon'ble Supreme Court held that a PPA cannot be construed in isolation from the governing regulatory framework and must necessarily be read in conformity with the State tariff regulations.

The Hon'ble Supreme Court, while addressing the classification of power supplied, rejected TANGEDCO's contention that electricity generated prior to the commissioning of the entire project must invariably be treated as infirm power. Interpreting the applicable tariff regulations, the Hon'ble Supreme Court held that "infirm power" is confined to electricity generated prior to the commercial operation of the generating unit. Once the gas turbine unit was synchronized with the grid and commenced continuous and reliable supply of electricity, the power supplied could not be characterised as infirm merely because the steam turbine, forming part of the combined-cycle configuration, was commissioned at a later stage. The Hon'ble Supreme Court, therefore, concluded that the electricity supplied during the relevant period constituted firm power, thereby entitling the generator to both fixed and variable charges.

The Hon'ble Supreme Court further considered and rejected the plea of waiver and estoppel raised by TANGEDCO. It reiterated the settled principle that there can be no estoppel against statute and held that statutory entitlements cannot be curtailed by correspondence, conduct, or interim arrangements between the parties. Accepting such a plea would undermine the statutory objective of ensuring recovery of reasonable costs by generating companies and erode the regulatory scheme envisaged under the Act.



In view of these findings, the Hon'ble Supreme Court dismissed the appeal filed by TANGEDCO and affirmed the concurrent orders of the Ld. TNERC and the Hon'ble Tribunal. The Hon'ble Supreme Court directed payment of the applicable fixed charges to Penna for the relevant period, with due adjustment of amounts already paid pursuant to interim directions and further ordered that any balance amount found payable be discharged within the stipulated time.

Conclusion

- The Hon'ble Supreme Court in TANGEDCO vs. Penna Electricity Limited reaffirmed the supremacy of statutory regulation in electricity tariff determination.
- The Hon'ble Supreme Court held that tariff entitlement and classification of power supply are governed strictly by the Electricity Act and applicable tariff regulations and cannot be overridden by contractual terms that lack regulatory approval or are inconsistent with the law.
- By recognizing unit-wise declaration of COD and treating power supplied after synchronization and continuous operation as firm power, the judgment brings clarity for combined-cycle power projects.
- The ruling protects generators from unjust denial of fixed charges, strengthens regulatory oversight, and promotes certainty, consistency, and investor confidence in the power sector.



ENHANCED TRANSPARENCY IN CORPORATE INSOLVENCY: SEVENTH AMENDMENT TO CIRP REGULATIONS

Introduction:

The Insolvency and Bankruptcy Board of India (“IBBI”) has further strengthened the integrity of India’s corporate insolvency framework by mandating enhanced disclosure requirements for resolution applicants. Through the Seventh Amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations, 2016**”) effective from December 22, 2025, the IBBI has reinforced transparency, accountability, and statutory compliance as foundational elements of the resolution process. The amendment marks a decisive step towards preventing misuse of the insolvency regime through opaque ownership structures and ineligible bidders.

Background

Issues relating to proxy bidding, layered corporate vehicles and indirect participation by ineligible or disqualified persons particularly those barred under Section 29A of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) have persisted since the inception of the IBC. In several cases, the absence of mandatory disclosures relating to ultimate beneficial ownership enabled concealed control and weakened the effectiveness of eligibility safeguards as well as the clean slate protection under Section 32A of IBC. Against this backdrop, the IBBI has sought to address these structural vulnerabilities by embedding ownership transparency and eligibility verification directly into the resolution plan framework.

Key Amendment

By inserting sub-regulation (3A) into Regulation 38 of the CIRP Regulations, 2016, the IBBI has made it mandatory for every resolution plan to include:

1. **A Beneficial Ownership Disclosure**, detailing all natural persons who ultimately own or control the resolution applicant, the complete shareholding structure, and the jurisdictions of all intermediate entities; and
2. **A Section 32A Eligibility Affidavit**, requiring the resolution applicant to formally declare its eligibility to avail statutory immunity under the IBC.

These disclosures, which were earlier treated as secondary requirements, are now mandatory compliance and eligibility conditions within the resolution process.



Implications

The amendment significantly enhances the ability of Resolution Professionals (“RPs”) and Committees of Creditors (“CoCs”) to identify the true economic and decision-making interests behind a resolution plan, thereby curbing proxy bidding and indirect participation by barred persons. The upfront Section 32A of IBC eligibility declaration reduces uncertainty surrounding the availability of statutory immunity, minimizes the risk of post-approval litigation, and strengthens the clean-slate doctrine by ensuring that immunity is granted only where control genuinely shifts to an eligible and unrelated person.

Further, the requirement to disclose the jurisdictions of intermediate entities brings Indian insolvency practice in line with global standards on financial transparency and beneficial ownership disclosure. It helps address issues such as offshore layering, round tripping and the use of tax havens, while strengthening the credibility of India’s insolvency framework in cross-border and institutional transactions. For stakeholders, the amendment requires greater due diligence by resolution applicants, closer scrutiny by RPs and CoCs, and provides adjudicating authorities with clearer information to assess statutory compliance.

Conclusion

- The Amendment clarifies that access to distressed assets under IBC is conditional upon full transparency and clear statutory eligibility.
- By mandating ownership disclosures and Section 32A declarations, the IBBI has strengthened accountability, integrity, and regulatory compliance within the resolution process.
- The Amendment enhances creditor confidence, curbs procedural abuse, and advances India’s insolvency regime towards a more robust, transparent, and globally aligned framework that balances speed and value maximization with legal certainty.



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Warm Regards,

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