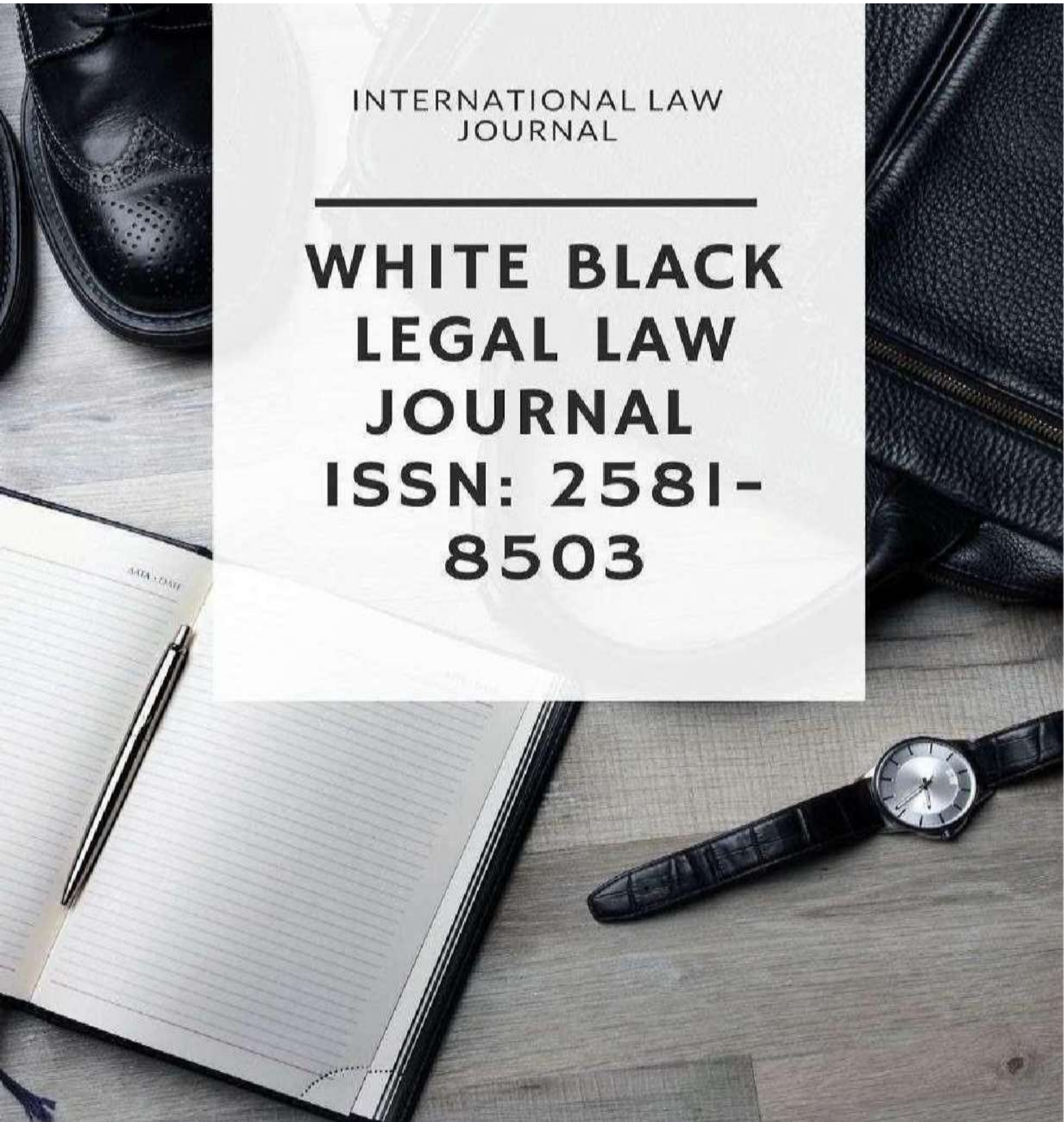

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NAVIGATING LATE PAYMENT SURCHARGES: AN IN-DEPTH ANALYSIS OF THE ELECTRICITY (LATE PAYMENT SURCHARGE AND RELATED MATTERS) RULES, 2022

AUTHORED BY – PRADUMAN & DR. SHEEBA AHAD

Chapter 1: Introduction

The Electricity (Late Payment Surcharge and Related Matters) Rules[1], were introduced in 2022, as a response to the formidable financial challenges faced by Distribution Companies (Discoms) within the power sector. Recognizing the need for intervention, the Ministry of Power had proposed a scheme aimed at mitigating the financial woes of Discoms struggling to fulfil their payment obligations[2].

"Specifically, the distribution of power is the most important link in the value chain of the power sector since it is the cash register for the entire sector" Thus delays in payments from Discoms to generating companies have far-reaching consequences, adversely affecting their cash flow. These challenges include the need to provision for crucial inputs such as coal and maintain sufficient working capital for the day-to-day operation of power plants. According to data from the PRAAPTI portal[3] as of May 18, 2022, Discoms' overdue payments, excluding disputed amounts and Late Payment Surcharge (LPSC), amounted to Rs. 1,00,018 Cr, with an additional Rs. 6,839 Cr in LPSC dues.

In response to this pressing issue, the proposed scheme offers[4] Discoms a structured approach to settle their financial dues through manageable instalments. A notable feature of the scheme is a one-time relaxation, freezing the outstanding amount as of the scheme's notification date, including principal and LPSC, without additional imposition of LPSC. Discoms are afforded flexibility in repaying the outstanding amount, with a maximum of 48 instalments. This strategic approach allows Discoms the

[1] Ministry of Power, Government of India. Electricity and Late Payment Related Matter Act, 2023

[2] Gupta, R., & Sengupta, M. "Challenges faced by Distribution Companies (Discoms) in India." International Journal of Engineering and Advanced Technology 8, no. 6 (2019): 3435-3440.

[3] Kumar, A., & Singh, S. "Financial Health of Distribution Companies (Discoms) in India: A Case Study." International Journal of Business and Management Invention 9, no. 5 (2020)

[4] Power Finance Corporation Limited. "PRAAPTI - Payment Ratification And Analysis in Power procurement for bringing Transparency in Invoicing of generators." [https://praapti.in/]

necessary time to stabilize their financial standing, while simultaneously ensuring generating companies receive assured monthly payments that were previously uncertain. The scheme incorporates safeguards, wherein any delay in Discoms' instalment payments triggers the imposition of Late Payment Surcharge on the entire outstanding dues, a provision that was previously exempted. Anticipating significant benefits, the scheme[5] was expected to result in substantial savings for Discoms, totalling Rs. 19,833 Cr in Late Payment Surcharge over the next 12 to 48 months. States grappling with substantial outstanding dues, such as Tamil Nadu and Maharashtra, are poised to save over Rs. 4,500 Cr each, while Uttar Pradesh, Andhra Pradesh, Jammu & Kashmir, Rajasthan, and Telangana are projected to save in the range of Rs. 1,100 Cr to Rs. 1,700 Cr.

As per the rules, Late Payment Surcharge (LPSC)[6] is levied on the payment outstanding by a Discom to a generating company at the base rate (pegged to SBI's Marginal Cost of Lending Rate (MCLR)). LPSC is applicable for the period of default at base rate for the first month of default and increases by 0.5% for every successive month of delay, subject to a maximum of 3% over base rate at any time. Evidence to the efficacy of these regulations is the discernible progress observed[7] in reducing the financial burdens within the power sector. Notably, the total outstanding bills, which stood at approximately Rs. 1.4 lakh crores in June 2022, have witnessed a drastic reduction, reaching around Rs. 48,000 crores by February 2024. This decline underscores the tangible impact of the Electricity Rules in curbing the persistence of unpaid bills and promoting financial stability across the industry. Such transformative outcomes underscore the significance of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 as a catalyst for positive change within the power sector[8]. This not only exemplifies the successful mitigation of cash flow challenges but also signifies a noteworthy achievement in cultivating a culture of timely payments, thereby fortifying the overall financial health of the electricity industry.

1.1 Literature Review

This literature review aims to comprehensively examine the impact and effectiveness of the Electricity (Late Payment Surcharge and Related Matters) Rules introduced in 2022 within the power sector. The primary objective is to analyse existing scholarly literature, regulatory documents, and reports to understand how these rules address cash flow challenges, particularly for generation and

[5] Interview with Mr. A. Kumar, Senior Official, Ministry of Power, Government of India (2023)
[6] Electricity and Late Payment Related Matter Act, 2023
[7] Central Electricity Authority. Annual Report, 2022
[8] Planning Commission, Government of India. Report on the Power Sector, 2019

transmission companies, and their influence on promoting timely payments across the industry.

As with any regulatory framework, the impact and effectiveness of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, would likely be subject to ongoing evaluation, and their success may be measured by factors such as the reduction of outstanding dues, improved cash flow for companies, and increased compliance with payment schedules across the sector

Chapter 2: Financial Challenges in the Power Sector

2.1 Importance of Timely Payments

In the power sector, timely payments play a critical role in ensuring the financial stability of electricity providers, including Distribution Companies (Discoms) and generating companies. Timely payments are essential for maintaining a steady cash flow, which is necessary for meeting operational expenses, servicing debt, and investing in infrastructure and maintenance.

Late payments disrupt the cash flow of electricity providers, leading to a cascade of financial challenges that can undermine the reliability and efficiency of the entire power sector. Moreover, delayed payments can strain the financial health of Discoms, leading to a vicious cycle of financial instability that ultimately affects the entire electricity supply chain.

2.2 Overview of Financial Challenges Faced by Discoms

Distribution Companies (Discoms)[9] are at the forefront of the power sector, responsible for distributing electricity to consumers and managing billing and revenue collection. However, Discoms face numerous financial challenges that stem from delayed payments, revenue leakages, and operational inefficiencies.

- Cash Flow Disruptions

Delayed payments from consumers and other stakeholders disrupt the cash flow of Discoms, making it difficult for them to meet their financial obligations, including payments to generating companies and other suppliers.

- Operational Constraints

Cash flow disruptions affect the operational capabilities of Discoms, hindering their ability to maintain and upgrade distribution infrastructure, procure electricity from generating companies, and

[9] Kumar, A., & Singh, S. "Financial Health of Distribution Companies (Discoms) in India: A Case Study." International Journal of Business and Management Invention 9, no. 5 (2020)

ensure uninterrupted power supply to consumers.\

- Accumulation of Dues

Delayed payments lead to the accumulation of dues, including outstanding bills to generating companies, fuel suppliers, and other creditors. This accumulation of dues further exacerbates the financial challenges faced by Discoms, leading to increased indebtedness and financial instability.

- Impact on Power Sector

The financial challenges faced by Discoms have far-reaching consequences for the entire power sector. Delayed payments disrupt the cash flow of generating companies, affecting their ability to invest in new projects and maintain existing infrastructure. Moreover, financial instability within the power sector undermines investor confidence and hinders the growth and development of the industry.

2.3 Impact of Delayed Payments

The impact of delayed payments extends beyond the financial realm, affecting the reliability, efficiency, and sustainability of the entire power sector.

- Reliability of Power Supply

Delayed payments undermine the reliability of power supply, leading to power outages, load shedding, and other disruptions that affect consumers, businesses, and industries.

- Operational Efficiency

Cash flow disruptions and financial challenges hinder the operational efficiency of electricity providers, affecting their ability to maintain and upgrade infrastructure, invest in new technologies, and provide quality services to consumers.

- Sustainable Development

Financial instability within the power sector hinders sustainable development by impeding investment in renewable energy, energy efficiency, and other initiatives aimed at reducing carbon emissions and mitigating climate change.

Chapter 3: Introduction of the Electricity and Late Payment Related Matter Act, 2023

The Electricity and Late Payment Related Matter Act, 2023[10], was introduced as a response to the formidable financial challenges faced by Distribution Companies (Discoms) within the power sector. Recognizing the urgent need for intervention, the Ministry of Power proposed a scheme aimed at mitigating the financial woes of Discoms struggling to fulfill their payment obligations.

3.1 Objectives of the Act

The primary objectives of the Electricity and Late Payment Related Matter Act, 2023, are:

- Addressing Financial Challenges:

The Act aims to address the financial challenges faced by Discoms by providing them with a structured approach to settle their financial dues through manageable instalments. By offering Discoms a one-time relaxation and freezing the outstanding amount as of the scheme's notification date, the Act aims to provide relief to Discoms burdened by overdue payments.

- Ensuring Timely Payments:

The Act seeks to ensure timely payments to generating companies by providing Discoms with flexibility in repaying the outstanding amount. Discoms are afforded the necessary time to stabilize their financial standing while simultaneously ensuring generating companies receive assured monthly payments that were previously uncertain.

- Strengthening Financial Stability:

By addressing the financial challenges faced by Discoms and ensuring timely payments to generating companies, the Act aims to strengthen the financial stability of the entire power sector. The Act is designed to promote a culture of timely payments and financial responsibility within the industry, thereby fortifying its overall financial health.

3.2 Key Provisions of the Act

- Structured Approach to Debt Settlement:

One of the key provisions of the Act is the introduction of a structured approach to debt settlement for Discoms. Under the scheme proposed by the Act, Discoms are offered a one-time relaxation, freezing the outstanding amount as of the scheme's notification date, including principal and Late

[10] Electricity and Late Payment Related Matter Act, 2023

Payment Surcharge (LPSC), without additional imposition of LPSC.

- Flexible Repayment Options:

Discoms are afforded flexibility in repaying the outstanding amount, with a maximum of 48 instalments. This strategic approach allows Discoms the necessary time to stabilize their financial standing while simultaneously ensuring generating companies receive assured monthly payments that were previously uncertain.

- Safeguards and Enforcement Mechanisms:

The Act incorporates safeguards to ensure compliance with its provisions. Any delay in Discoms' instalment payments triggers the imposition of Late Payment Surcharge on the entire outstanding dues, a provision that was previously exempted. The Act also establishes enforcement mechanisms to monitor compliance and penalize non-compliance.

3.3 Anticipated Benefits

- Savings for Discoms[11]:

The scheme proposed by the Act is expected to result in substantial savings for Discoms. It is projected to save Discoms a total of Rs. 19,833 Cr in Late Payment Surcharge over the next 12 to 48 months.

- Financial Relief for States:

States grappling with substantial outstanding dues are poised to save significant amounts through the implementation of the Act. States such as Tamil Nadu and Maharashtra are projected to save over Rs. 4,500 Cr each, while Uttar Pradesh, Andhra Pradesh, Jammu & Kashmir, Rajasthan, and Telangana are projected to save in the range of Rs. 1,100 Cr to Rs. 1,700 Cr.

Chapter 4: Implementation and Enforcement of the Act

4.1 Implementation Process

The successful implementation of the Electricity and Late Payment Related Matter Act, 2023[12],

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[11] Kumar, A., & Singh, S. "Financial Health of Distribution Companies (Discoms) in India: A Case Study." International Journal of Business and Management Invention 9, no. 5 (2020)

[12] Electricity and Late Payment Related Matter Act, 2023

requires a systematic and coordinated approach involving various stakeholders within the power sector. The implementation process involves the following steps:

- Notification and Publication

The Act is notified by the Ministry of Power and published in the Official Gazette. The notification includes the effective date of the Act and provides guidelines for its implementation.

- Dissemination of Information

Information about the Act and its provisions is disseminated to all stakeholders within the power sector, including Distribution Companies (Discoms), generating companies, regulatory authorities, and consumers. This ensures that all stakeholders are aware of their rights and responsibilities under the Act.

- Establishment of Implementation Mechanisms

Mechanisms are established at the national, state, and local levels to facilitate the implementation of the Act. These mechanisms include monitoring and enforcement bodies, dispute resolution mechanisms, and consumer grievance redressal forums.

- Capacity Building and Training

Capacity building and training programs are conducted for stakeholders to familiarize them with the provisions of the Act and to ensure effective implementation. Training programs are conducted for Discoms, generating companies, regulatory authorities, and consumer representatives.

4.2 Enforcement Mechanisms

The Electricity and Late Payment Related Matter Act, 2023, incorporates various enforcement mechanisms to ensure compliance with its provisions. These enforcement mechanisms include:

- Monitoring and Reporting

Monitoring mechanisms are established to track compliance with the Act's provisions. Discoms are required to submit regular reports detailing their compliance with the Act, including details of outstanding dues, instalment payments, and Late Payment Surcharge.

- Penalty for Non-Compliance

The Act imposes penalties on Discoms for non-compliance with its provisions. Any delay in Discoms' instalment payments triggers the imposition of Late Payment Surcharge on the entire outstanding dues. Additionally, Discoms may face other penalties, such as fines or suspension of their license, for repeated non-compliance.

- Dispute Resolution Mechanisms

The Act establishes dispute resolution mechanisms to address disputes between Discoms, generating companies, and consumers. These mechanisms include arbitration, mediation, and adjudication, and are designed to ensure timely resolution of disputes and grievances.

- Consumer Grievance Redressal

Consumer grievance redressal forums are established to address consumer complaints related to late payment surcharges and other issues. These forums provide consumers with a platform to voice their concerns and seek redressal for any grievances they may have.

4.3 Challenges in Implementation

Despite the provisions and enforcement mechanisms provided by the Act, the implementation process faces several challenges, including:

- Compliance by Discoms[13]

Ensuring compliance by Discoms with the provisions of the Act remains a challenge. Discoms may face difficulties in meeting their instalment payments due to financial constraints or operational challenges.

- Dispute Resolution

Dispute resolution mechanisms may face challenges in effectively resolving disputes between Discoms, generating companies, and consumers. Delays in dispute resolution may hinder the timely implementation of the Act's provisions.

- Consumer Awareness

Ensuring consumer awareness and participation in the implementation of the Act remains a challenge. Many consumers may not be aware of their rights and responsibilities under the Act or may face difficulties in accessing grievance redressal mechanisms.

[13] Gupta, R., & Sengupta, M. "Challenges faced by Distribution Companies (Discoms) in India." International Journal of Engineering and Advanced Technology 8, no. 6 (2019): 3435-3440

Chapter 5: Impact of the Electricity and Late Payment Related Matter Act, 2023

5.1 Reduction of Financial Burdens

One of the primary objectives of the Electricity and Late Payment Related Matter Act, 2023[14], is to reduce the financial burdens faced by Distribution Companies (Discoms) within the power sector. The Act aims to achieve this objective through various provisions aimed at addressing overdue payments and late payment surcharges.

- Reduction in Outstanding Dues

Since the implementation of the Act, there has been a noticeable reduction in the outstanding dues owed by Discoms to generating companies. Data from the Power Regulatory and Appellate Tribunal Payment Tracking (PRAAPTI) portal indicates a significant decrease in the total outstanding bills.

- Drastic Reduction in Unpaid Bills

As of June 2022, the total outstanding bills stood at approximately Rs. 1.4 lakh crores. However, by February 2024, this amount had witnessed a drastic reduction, reaching around Rs. 48,000 crores. This decline underscores the tangible impact of the Electricity and Late Payment Related Matter Act, 2023, in curbing the persistence of unpaid bills within the power sector.

5.2 Promotion of Financial Stability

In addition to reducing financial burdens, the Electricity and Late Payment Related Matter Act, 2023, aims to promote financial stability within the power sector. The Act achieves this objective through various provisions aimed at ensuring timely payments and strengthening the financial health of Discoms and generating companies.

- Assured Monthly Payments

One of the key provisions of the Act is to ensure assured monthly payments to generating companies by Discoms. By providing Discoms with a structured approach to settle their financial dues through manageable instalments, the Act aims to ensure a steady and reliable source of revenue for generating companies.

- Reduction in Late Payment Surcharges

[14] Electricity and Late Payment Related Matter Act, 2023

The Act is also aimed at reducing the burden of late payment surcharges on Discoms. By providing a one-time relaxation and freezing the outstanding amount as of the scheme's notification date, the Act aims to provide relief to Discoms burdened by overdue payments and late payment surcharges.

Chapter 6: Challenges Navigating Late Payment Surcharges

Despite the implementation of the Electricity and Late Payment Related Matter Act, 2023, electricity providers still face several challenges in navigating late payment surcharges. These challenges include:

1. Financial Constraints:

Many electricity providers, particularly Distribution Companies (Discoms), continue to face financial constraints that hinder their ability to make timely payments to generating companies. Financial challenges such as revenue leakages, operational inefficiencies, and high debt levels make it difficult for Discoms to meet their payment obligations.

2. Operational Challenges:

Operational challenges such as outdated infrastructure, technical losses, and power theft further exacerbate the financial challenges faced by electricity providers. These operational challenges not only increase the cost of electricity production but also hinder the efficient distribution of electricity to consumers.

3. Compliance Burden:

The compliance burden imposed by the Electricity and Late Payment Related Matter Act, 2023, adds to the challenges faced by electricity providers. Discoms are required to comply with various provisions of the Act, including timely payment of dues, submission of reports, and participation in dispute resolution mechanisms.

Chapter 8: Policy Recommendations

8.1 Strengthening Late Payment Surcharge Regulations

- Revision of Late Payment Surcharge Calculation

One of the key areas for improvement is the calculation of late payment surcharges. The current method, which is pegged to SBI’s Marginal Cost of Lending Rate (MCLR), may need revision to ensure that the surcharges adequately reflect the cost of delayed payments.

- Introduction of Maximum Late Payment Surcharge Limit

Consideration should be given to introducing a maximum limit on late payment surcharges to prevent the accumulation of excessively high charges. Setting a maximum limit would provide certainty to both Discoms and generating companies and prevent the imposition of disproportionately high surcharges.

- Review of Enforcement Mechanisms

The enforcement mechanisms under the Electricity and Late Payment Related Matter Act, 2023, should be reviewed to ensure their effectiveness. This may include strengthening penalties for non-compliance and streamlining dispute resolution mechanisms to expedite the resolution of disputes.

8.2 Technology and Innovation

- Adoption of Smart Metering Technologies

The adoption of smart metering technologies can help improve billing accuracy and enable real-time monitoring of electricity consumption. Smart meters can also facilitate the implementation of flexible billing and payment options, including pre-paid metering and automated payment systems.

- Implementation of Blockchain Technology

Blockchain technology can be leveraged to enhance transparency and accountability in billing and payment processes. By providing a secure and tamper-proof record of transactions, blockchain technology can help prevent disputes related to late payments and late payment surcharges.

- Development of Mobile Payment Solutions

The development of mobile payment solutions can help make bill payment more convenient and accessible for consumers. Mobile payment apps and platforms can enable consumers to make payments anytime, anywhere, using their smartphones, thereby reducing the incidence of late payments.

Chapter 9: Conclusion and Future Outlook

9.1 Summary of Key Findings

The Electricity and Late Payment Related Matter Act, 2023, has had a significant impact on the power sector since its implementation. The Act has helped reduce financial burdens, promote financial stability, and ensure timely payments within the electricity industry.

Despite the implementation of the Act, electricity providers continue to face challenges in navigating late payment surcharges. These challenges include financial constraints, operational inefficiencies, and compliance burdens. However, various strategies and solutions can help electricity providers and consumers effectively manage late payment surcharges.

Policy interventions such as strengthening late payment surcharge regulations, enhancing consumer education and assistance, and leveraging technology and innovation can help address the challenges associated with late payments in the electricity sector.

9.2 Future Outlook

- Technological Advancements

The future of the electricity sector is likely to be shaped by technological advancements such as smart metering, blockchain technology, and mobile payment solutions. These technologies have the potential to revolutionize billing and payment processes and enhance the efficiency and effectiveness of the electricity industry.

- Regulatory Reforms

Continued regulatory reforms will be necessary to address the evolving challenges within the electricity sector. Regulatory authorities will need to review and revise existing regulations to ensure their relevance and effectiveness in the face of changing market dynamics and technological advancements.

- Sustainable Development Goals

The electricity sector plays a crucial role in achieving sustainable development goals such as access to affordable and clean energy, climate action, and sustainable cities and communities. Future policy interventions should be aligned with these goals to ensure the long-term sustainability and resilience of the electricity industry.

9.3 Conclusion

The Electricity and Late Payment Related Matter Act, 2023, represents a significant step towards addressing the financial challenges faced by Distribution Companies (Discoms) within the power sector. By promoting timely payments, reducing financial burdens, and strengthening the overall financial health of the electricity industry, the Act has helped pave the way for a more efficient, sustainable, and resilient electricity sector.