Supplier's liability under the Civil Liability for Nuclear Damages Act, 2010 and Civil Liability for Nuclear Damages Rules, 2011

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It can be said that the Civil Liability for Nuclear Damages Rules, 2011 do not comprehensively deal with a supplier's liability. This is evident from the fact that the Rules are completely silent on the provisions of Section 46 of the Act, which clarifies that the Act is in addition to and not in derogation of any other law for the time being in force. The liabilities of an operator or a supplier under the Act are only qua "nuclear damage". Thus, if a supplier is otherwise liable for an act or omission under general laws, e.g. under laws of torts, then such liability will continue to exist.

The much awaited Civil Liability for Nuclear Damages Rules, 2011 (the Rules) are now in place, incidentally on the same day when the Civil Liability for Nuclear Damages Act, 2010 (the Act) was notified. This article examines the highly debated right of recourse that is available to an operator of a nuclear installation under the Act, which to some extent has been clarified by the Rules.

Under the Act, the primary liability to pay compensation in case of a nuclear incident is that of an operator of a nuclear installation. In particular, the liability of an operator is:

(i) Rs.1,500 crores in respect of nuclear reactors having thermal power equal to or above 10 MW

(ii) Rs. 300 crores in respect of spent fuel reprocessing plants

(iii) Rs. 100 crores in respect of research reactors having thermal power below 10 MW, fuel cycle facilities other than spent fuel reprocessing plants and transporta-tion of nuclear materials, is.

However, an operator, upon payment of the aforesaid compensation, has a right of recourse where:

(a) such right is expressly provided for in a contract in writing;

(b) the nuclear incident is the result of an act of supplier or his employee, including sub-standard services and supply of equipment or material with patent or latent defects;

(c) the nuclear incident is the result of an act or omission of an individual done with the intent to cause nuclear damage.

The provision of right of recourse in the Act is wider in scope as compared to its corresponding provisions in international conventions such as Vienna Convention 1963, Paris Convention 1961 and the Convention for Supplementary Compensation 1997. These three Conventions provide for right of recourse only in case of fulfillment of conditions (a) and (c) above, as compared to the Act, which grants such a right to the operator also where condition (b) exists.

However, there is ambiguity with regard to interpretation of the right of recourse under the Act. It is unclear as to whether the three conditions are to be read

conjunct-ively or disjunctively. The Rules also do not provide any guidance in this regard.

It is instructive to note that the Parliamentary Standing Committee on Science & Technology, Environment & Forests, while revising the Civil Liability for Nuclear Damages Bill had recommended that the word "and" be inserted at the end of condition (a), mentioned above. However, this recomm-endation seems to have been rejected. It may be stated that this recommendation shows the intention of the Legislature to give a separate treatment to condition (a). In light of this, there are two possible courses for interpreting the conditions:

(i) conditions (a), (b) and (c) have to be read independently, or

(ii) only condition (a) is to be read independently, and conditions (b) and (c) are to be read cumulatively.

However, this proposition is yet to be interpreted by the courts of law. Besides the above, it would be useful to examine the right of recourse under the Rules. The Rules clarify that the amount of liability of a supplier cannot be less than the operator's liability for the nuclear incident under the Act or the value of the contract itself, whichever is less (and in any case shall not exceed the actual amount of compensation paid by the operator up to the date of filing of such claim).

The duration of suppliers' liability is for the initial period of the license issued under the Atomic Energy (Radiation Protection) Rules, 2004 *viz*. five years or the product liability period, whichever is longer. The product liability period is the period for which the supplier has undertaken liability for patent or latent defects or sub-standard services under a contract. The Act and the Rules in a way seek to limit the amount and duration of the liability to a reasonable period in cases where such right is in a contract in express terms. Such provisions attempt to provide comfort to the supplier and strive to strike a balance between the interests of the diverse stakeholders.

It is interesting to note that Rules only refer to the right of recourse as expressly provided for in a contract in writing and do not deal with the other conditions for the right of recourse available under the Act. Therefore, the limits as to the amount and duration of supplier's liability under the Rules apply only where the right of recourse has been expressly provided for in a written contract. It is possible to argue that had it been Legislature's intent to limit the supplier's liability under conditions (b) and (c), the same would have been addressed in the Rules. However, the position of law in this regard is yet to evolve and emerge.

In some sense, it can be said that the Rules do not comprehensively deal with a supplier's liability. This is evident from the fact that the Rules are completely silent on the provisions of Section 46 of the Act, which clarifies that the Act is in addition to and not in derogation of any other law for the time being in force. The liabilities of an operator or a supplier under the Act are only qua "nuclear damage". Thus, if a supplier is otherwise liable for an act or omission under general laws, for e.g. under laws of torts, then such liability will continue to exist.

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