

NEWSLETTER

April 2022

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AUTOMATION OF DISCLOSURE REQUIREMENTS UNDER SEBI TAKEOVER REGULATIONS, 2011- SYSTEM DRIVEN DISCLOSURES - EASE OF DOING BUSINESS

SEBI *vide* circular SEBI/HO/CFD/DCR-3/P/CIR/2022/27 dated March 7, 2022 (“**Circular**”), pursuant to the recent amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”) and the System Driven Disclosures implemented through prior circulars, has relaxed the manual filing requirements in relation to Regulation 29 (*Disclosure of acquisition and disposal*) and Regulation 31 (*Disclosure of encumbrance*) of the Takeover Regulations.

As per the Circular, only the following transactions under Regulations 29 and 31 would require manual filing:

- (a) Triggering of disclosure requirement due to acquisition or disposal of the shares, by the acquirer together with persons acting in concert (PACs).
- (b) Triggering of disclosure requirement in case the shares are held in physical form by the acquirer and/or PACs.
- (c) Listed companies who have not provided PAN of promoter(s) (including member(s) of the promoter group) to the designated depository or companies which have not appointed any depository as their designated depository.

Further, with a view to streamline the capture and dissemination of the information related to “encumbrances”, the Circular states that:

- (a) All types of encumbrances (as defined under Regulation 28(3)) shall necessarily be recorded in the depository system.
- (b) The Depositories shall capture details of the ultimate lender along with the trustee acting on its behalf. In case of debentures, the name of the issuer shall be captured.

- (c) Further, the reasons for encumbrance shall also be captured.

The provisions of the Circular shall come into effect from July 01, 2022.

SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATE INVESTMENT FUNDS) (2ND AMENDMENT) REGULATIONS, 2022

The Securities and Exchange Board of India *vide* its notification dated 16th March 2022 has published the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2022 (“**2nd Amendment Regulations**”) to further amend the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012. Pursuant to the 2nd Amendment Regulations, Category III Alternative Investment Funds (“**Category III AIFs**”) shall not invest more than 10 per cent of the investible funds in an investee company directly or through investment in units of other AIFs. The large value funds for accredited investors of Category III AIFs may invest up to twenty per cent of the investible funds in an investee company, directly or through investment in units of other AIFs.

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2022

The Securities and Exchange Board of India *vide* its notification dated 22nd March 2022 has published the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 pursuant to which Regulation 17(1B) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 has been deleted. Consequentially, the mandatory separation of the role of the chairman of the board of

directors of the Company and the managing director for a listed entity has now been deleted.

CHANGE IN CONTROL OF SPONSOR AND/OR MANAGER OF ALTERNATIVE INVESTMENT FUND INVOLVING SCHEME OF ARRANGEMENT UNDER COMPANIES ACT, 2013

The Securities and Exchange Board of India *vide* a circular dated March 23, 2022 has streamlined the process for approval with respect to change in control of sponsor and manager of alternative investment funds involving a scheme of arrangement under the Companies Act, 2013. Applications seeking approval for the proposed change in control of the Sponsor and/or Manager of an alternate investment fund can be filed with the Securities and Exchange Board of India prior to filing the applications with the National Company Law Tribunal (NCLT). If compliance requirements are met, an in in principle approval will be given by the Securities and Exchange Board.

CLARIFICATION ON APPLICABILITY OF REGULATION 23 OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 IN RELATION TO RELATED PARTY TRANSACTIONS

The Securities and Exchange Board of India *vide* its notification dated 30th March 2022 has issued clarification and guidance for smooth implementation of the amended regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015. Amongst others, the following are some important clarifications which have been provided:

- (i) For a related party transaction that has been approved by the audit committee and shareholders prior to April 1, 2022, there shall be no requirement to seek fresh approval from the shareholders.
- (ii) A related party transaction that has been approved by the audit committee prior to April 1, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first general meeting held after April 1, 2022.



COMPETITION COMMISSION OF INDIA DISMISSES CASE AGAINST AMAZON

By an order dated March 03, 2022, the Competition Commission of India (“CCI”) has dismissed a case of anti-competitive conduct against the e-commerce platform - Amazon. The complaint was filed by the All India Online Vendors Association (“AIOVA”) for violation of Section 3 of the Competition Act, 2002 (“Act”), which pertains to anti-competitive conduct. The allegations made were related to vertical restraint in the form of ‘deep discounting’ and ‘lack of platform neutrality’, as sellers who are partly owned by Amazon Seller Services Pvt. Ltd. (“Amazon”) get an unfair advantage.

The allegations were against Amazon and related parties - Amazon Seller Services, Amazon Wholesale India, Amazon Retail India, Cloudtail India, Prione Business Services. It was also alleged that all accused parties are colluding and using the data of successful manufacturers/ sellers on Amazon to float private labels and sell them at massive discounts to underpin competition. They exploit the competitor data to build their products, without having to invest the time and resources in testing the products, unlike their ‘competitors’ and get better placement on Amazon, which is a paid service for the ‘competitors’.

The case was dismissed for lack of sufficient information, admissible and requisite evidence. AIOVA also did not file the information and additional information as per required compliance despite repeated reminders.

DSK View: The information relied mainly on the E-Commerce study conducted by CCI and deposition of the big four technology companies before the Department of Justice, USA.

COMBINATIONS APPROVED

CCI has approved the following combinations in view of the notices filed under Section 31(1) of the Act:

- **March 09, 2022** – Acquisition of 26% of the equity share capital of equity shares of **Prione Business Services Private Limited by Amazon Asia-Pacific Resources Private Limited.**
- **March 09, 2022** – Acquisition of up to of 100% share capital of **L&T Investment Management Limited** (and its nominees) by **HSBC Asset Management (India) Private Limited.**
- **March 15, 2022** – Acquisition of 25% of the equity share capital of **Future Generali India Insurance Company Limited (“FGIIC”)** by **Generali Participations Netherlands N.V. (“GPN”)**. Post combination GPN’s aggregate (direct and indirect) shareholding in FGIIC will stand increased from 49% to 74%.
- **March 15, 2022** – Acquisition of minority stakeholding in **Micro Life Sciences Private Limited by South Elm Investments B.V.**
- **March 23, 2021** - Acquisition of 7% equity shareholding in **Busybees Logistics Solutions Private Limited by TPG Growth V SF Markets Pte. Ltd.**
- **March 23, 2021** - Acquisition of equity shareholding on a fully diluted basis in **Busybees Logistics Solutions Private Limited by BXG Xenon HoldCo Limited.**

DSK View: Transactions beyond a certain threshold requires CCI’s approval. The CCI has introduced an automatic system of approval for combinations under ‘Green Channel’. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. This

system would significantly reduce the time and cost of transactions and thereby contributing towards ease of doing business in India.



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APPLICATION FOR APPOINTMENT OF ARBITRATOR CANNOT BE FILED BEFORE A HIGH COURT IF NO PART OF CAUSE OF ACTION HAD ARISEN WITHIN ITS JURISDICTION

In *Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*¹, the Hon'ble Supreme Court considered a Special Leave Petition against an order of the Hon'ble Calcutta High Court, allowing an arbitration petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. The novel issue raised was whether Calcutta High Court had jurisdiction to entertain the application when no part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.? In this regard, the court noted that an application under Section 11(6), shall necessarily have to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits.

'SUM IN DISPUTE' UNDER THE FOURTH SCHEDULE OF THE A&C ACT MEANS CLAIM AND COUNTER CLAIM

Recently, a Division of the Hon'ble Delhi High Court comprising of Hon'ble Mr. Justices Vipin Sanghi and Amit Bansal in *Jivanlal Joitaram Patel vs. National Highways Authority of India*² has held that the term 'sum in dispute' as mentioned in the Fourth Schedule of the A&C Act ("Schedule IV") to hold that the term 'sum in dispute' includes the aggregate value of the claims as well as counter claims.

Additionally, the Division Bench also cleared the confusion arising out of the conflicting judgments as rendered by the Delhi High Court in *Chandok Machineries v. S.N. Sunderson*³. and *NTPC v. Amar India Ltd*⁴ and the held that the NTPC case

were in the context of interpreting Section 38(1) and 31A of the Act where the arbitral tribunal is free to fix its own fees. Accordingly, the Court disposed of the petition by observing that Sections 31(8) and Section 31A of the Act would not apply, where the fees of the tribunal is either fixed by an agreement between the parties or in terms of the Schedule IV of the Act.

SUPERTECH DECLARED INSOLVENT BY NCLT, NEW DELHI

By an order dated March 25, 2022, the NCLT, Delhi admitted the plea of Union Bank of India over the non-payment of dues by Supertech and appointed an Interim Resolution Professional.⁵

The application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by Union Bank of India/ Financial Creditor to initiate the Insolvency Resolution Process for alleged default on part of the Corporate Debtor/Supertech Limited, in settling an amount of Rs. 431,92,53,302. The NCLT declared a moratorium as per Section 14 and directed the IRP to make an immediate public announcement.

NCLAT HELD THAT THE NCLT IN THE EXERCISE OF ITS JURISDICTION UNDER RULE 49(2) NCLT RULES IS FULLY COMPETENT TO RECALL EX-PARTE ORDER

In a recent judgement of March 10, 2022, in the matter of *Haxad Infotech Pvt. Ltd. v. Skootr Global Pvt. Ltd* the Hon'ble National Company Law Appellate Tribunal, decided an Appeal filed by the Corporate Debtor through its Ex-Management, challenging the order dated November 30, 2021, passed by the National Company Law Tribunal, New Delhi Bench, rejecting the Application filed by the Appellant

¹ SLP(C) 17397-17398/2021.

² Judgment dated 08.03.2022 in FAO (OS)(COMM) 70/2017

³ 2018 SCC OnLine Del 11000

⁴ 2020(6) RAJ 409 (Del)

⁵ IB-204/(IND)/2021

to recall the ex-parte order dated February 8, 2019, and admission order dated April 10, 2019, passed by Adjudicating Authority. The question of law which fell for consideration of the NCLAT was that whether the Adjudicating Authority has committed an error in observing that it has no jurisdiction to recall/ review order.

The Hon'ble NCLAT held that the NCLT in the exercise of its jurisdiction under Rule 49(2) NCLT Rules is fully competent to recall ex-parte order. The NCLAT relying on its previous judgments in the matter of Suspended Management of Jay Polypack Pvt. Ltd. v. SGV Foils Pvt. Ltd. & Anr.⁶, held the case present before it is where Application to recall of order was filed much before the constitution of CoC. Hence, the aforesaid judgment relied on by the learned Counsel for the Respondent is not attracted to the facts of the present case and is clearly distinguishable.

NOTICE SERVED TO THE ADDRESS SHOWN IN THE ROC RECORDS IS VALID

The Principal Bench of the National Company Law Tribunal, New Delhi in a Section 9 petition filed by M/s. Jones Lang Lasalle Building Operations Pvt. Ltd./Operational Creditor against M/s. Celebration City Projects Pvt. Ltd (decided by the National Company Law Tribunal on March 21, 2022)⁷ gave a relevant finding with respect to serving of notice.

NCLT admitted the plea of M/s. Jones Lang Lasalle Building Operations Pvt. Ltd and declared M/s. Celebration City Projects Pvt. Ltd. as insolvent and appointed IRP and while relying on the judgment passed by the High Court of Delhi in Hotline Teletubes & Components Ltd v. AS Impex Ltd⁸ in relation to the petitioner's apprehension with respect to the period of change of registered office and service of notice. The address of the corporate debtor had been changed at the time of serving the notice, but this change of address was not brought to the notice of ROC. In the ROC record, the previously registered address was shown. The NCLT after appreciating the fact held that demand notice had to be taken to be validly served if delivered at the previously registered address prior to the recording of change of address in records of the Registrar of Companies.

⁶ Company Appeal (AT) (Ins.) No. 362 of 2021

⁷ IB-652(PB)/2019

⁸ 2004 SCC OnLine Del 463

ARBITRATION LAWS

MERE USE OF THE WORD 'ARBITRATION' IN THE HEADING IN A CLAUSE OF THE AGREEMENT BETWEEN THE PARTIES COULD NOT LEAD TO THE INFERENCE THAT THERE EXISTS AN AGREEMENT BETWEEN THE PARTIES FOR SEEKING RESOLUTION OF DISPUTES THROUGH ARBITRATION

The Delhi High Court recently in the case of *Foomill Pvt. Ltd. Vs Affle (India) Ltd.*⁹ while dismissing the petition under Section (11)(6) of the Arbitration and Conciliation Act, 1996, held that mere use of the word 'Arbitration' in the heading of a Clause of the agreement between the parties could not lead to the inference that there exists an agreement between the parties for seeking resolution of disputes through arbitration.

In the instant case, on the basis of the heading of the Clause 11 of the Master Service Agreement noting the word 'Arbitration', the Petitioner claims resolution of disputes arising between the parties through arbitration. The Hon'ble Court while relying on the case of *Avant Garde Clean Room & Engg. Solutions Pvt. Ltd. vs. Ind. Swift Limited.*¹⁰ further reaffirmed that the use of word 'Arbitration' in the heading of an Agreement would not entail existence of an arbitration agreement and there is no binding agreement between the parties.

The Hon'ble Court further noted that the intention of the parties to enter into an arbitration agreement has to be gathered from the terms of the agreement and held that the main body of the Clause 11 of the Master Service Agreement in this case does not create, even prima facie, any willingness by the parties to enter into an arbitration.

DSK View: *The parties who are willing to adjudicate their dispute arising from the Agreement, should be more careful while drafting the dispute resolution clause, as mere mention of word 'Arbitration' in the heading will not suffice the intent of the parties.*

RIGHTS OF AN AWARD HOLDER ARE ENHANCED UNDER SECTION 19 OF THE MSME ACT COMPARED TO SECTION 36(3) OF THE ARBITRATION ACT

A single judge bench of Hon'ble Calcutta High Court in the case of **BHARAT HEAVY ELECTRICALS LIMITED-ELECTRIC DIVISION V. OPTIMAL POWER SYNERGY INDIA PVT. LTD.**¹¹ considered the intent and application of section 19 of MSME Act along with Section 36(3) of Arbitration and Conciliation Act, 1996 (Arbitration Act).

In the instant case BHEL is the buyer and Optimal is the supplier as defined under Sections 2(d) and (n) respectively

⁹ Judgment dated 25.03.2022 in Arbitration Petition No. 325/2022.

¹⁰ (2014) 210 DLT 714.

¹¹ AP 175/2020 & EC 156/2020 dated 23.03.2021

of the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act). The Court noted that the discretion conferred upon the Court to stay an award or a decree under Section 36(3) of the Arbitration Act is subject to the impositions of conditions provided for in the statutory provision. The Court further observed that Section 19 of the MSME Act is in line with the object of the Act and has wider power while dealing with issue for stay of an award / decree compared to Section 36(3) of Arbitration Act. Court observed that the right of an award-holder to withdraw a certain percentage of the amount deposited by the award-debtor pending an application for setting aside of the award is absent in Section 36(3) of the Arbitration Act and is indeed a remarkable step-up in respect of the rights of an award-holder under MSME Act.

The second question before the Court was whether Optimal can withdraw 75% of the principal amount without requiring furnishing of security. The Court considered the proviso to section 19 of the MSME Act which contemplates exercise of discretion in considering stay of an award. The Court held that, under MSME Act, it is empowered to not only decide on the nature of conditions which may be imposed on the supplier for withdrawing the money but also whether imposition of conditions is at all necessary in the facts of the case. The Court also considered single bench judgment of the Delhi High Court in *Indian Oil Corporation Ltd. vs. FEPL Engineering (P) Ltd. & Anr.*¹² where the Delhi High Court recognized this 2-step discretion under Section 19 of the MSME Act.

Accordingly, the Court while staying the impugned award until disposal of the pending proceedings allowed Optimal to withdraw the 75% of the principal amount without furnishing security for withdrawing the said amount.

DSK View: *The Calcutta High Court examined the provisions of Section 19 of MSME Act and Section 36 of the Arbitration Act with respect discretion conferred upon the Court for stay of the proceeding and right of the award holder to withdraw the deposited amount. The Court reiterated the position that under MSME Act the Court is given discretionary power to impose any condition for withdrawing the deposited amount unlike under Arbitration Act which is silent on this aspect. In other words, under MSME Act, the Court is statutorily mandated to ensure that the supplier can withdraw a part of the amount deposited by the buyer and is empowered to decide whether to impose any terms for such withdrawal.*

SECTION 36 OF THE ARBITRATION ACT CONTEMPLATES AN AWARD DEBTOR BEING OBLIGED TO FURNISH SECURITY TO OBTAIN STAY OF THE ARBITRAL AWARD

A single judge bench of Calcutta High Court in **DAMODAR VALLEY CORPORATION VS RELIANCE INFRASTRUCTURE LTD.**¹³ has considered the scope of Section 36 of Arbitration and Conciliation Act, 1996 (Arbitration Act).

The Court held that amended Section 36 of the Arbitration Act contemplates an award debtor being obliged to furnish security to obtain stay of the arbitral award. The Court observed that the purpose of security is to ensure and facilitate the fulfillment and enjoyment of a right or a potential right which has now vested in the award holder. The Court further held that there may be cases where an award debtor is entitled to an unconditional stay of the award. The Court noted that discretion by a Court is to be exercised judicially and not arbitrarily and in the interests of justice depending on the facts and circumstances of the case and is obliged to furnish reasons under the said Section. The Court after finding that it is ex facie evident that the award debtor has more means to secure the award, rejected the prayer of the award debtor to secure only 50% of the awarded amount.

Re: withdrawal of Rs 303 crores unconditionally or on the basis of undertaking

Further, while deciding the second application, the Court relied upon a Full Bench Judgment of the Calcutta High Court in *Union of India v Amitava Paul*¹⁴ and Hon'ble Supreme Court's Judgment in *Sihor Nagar Palika Bureau v Bhabhulubhai Virabhai & Co.*¹⁵ which inter alia held that there is mandatory obligation of furnishing security in terms of Rule 5(5) of Order 41 of the Code of Civil Procedure for seeking stay of execution of a money decree. It was held that the said provision cannot be said to operate as an absolute clog on the discretion of the Court to direct the deposit of the decretal amount as a condition for grant of stay of execution of the decree in appropriate cases more particularly when such direction is coupled with the liberty to the decree-holder to withdraw a portion thereof in part satisfaction of the decree without prejudice and subject to the result of the appeal. The Court held that to permit the award holder to withdraw the sum of Rs. 303 crores unconditionally or even on the basis of the undertaking would tantamount to unconditional enforcement of the award notwithstanding the pendency of the application under Section 34 of the Act.

¹² OMP (Comm) 144/2019 dated 25.03.2021

¹³ AP No. 40/2020

¹⁴ AIR 2015 Cal 89

¹⁵ (2005) 4 SCC 1

Re: withdrawal of the balance of Rs. 595 crores upon furnishing of bank guarantees

The Court noted that in granting a stay of execution of a money decree, the Court must balance the equities between the parties and ensure that no undue hardship is caused to the decree holder due to stay of execution of the decree. Hence, in appropriate cases, the Court in its discretion may direct deposit of a part of the decretal sum so that the decree holder may withdraw the same without prejudice and subject to the result of the appeal. However, exceptions ought not to stultify or thwart the interpretation of the law. Accordingly, the prayer of the award holder to permit withdrawal of the sum of Rs. 595 crores upon furnishing of bank guarantee(s) was allowed.

Re: direction of the award debtor to deposit the entirety of the awarded amount i.e., Rs.898 crores by way of cash security

The Court held that the security directed by a Court should be real and realizable and the same ought not to be illusory, unrealisable or enforcement which may lead to protracted litigation. From the perspective of an award debtor, the mode of security would always have an impact on the finances and working capital of the award debtor. Thus, after considering all these aspects, the Court held that the award holder is entitled to a limited modification of the order and directed the award debtor to furnish an amount of Rs. 595 crores by way of cash security and remaining amount of Rs 303 crores by way of bank guarantee.

DSK View: The Hon’ble High Court considered the scope of Section 36 of the Arbitration and Conciliation Act, 1996. The Court reiterated the settled legal principle that while deciding on the stay of execution, discretion is conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. This Judgment further brings clarity as to what is the Court’s considers while imposing conditions for granting stay of the execution of the award.

INFRASTRUCTURE PROJECTS

COURTS SHOULD RELEGATE THE PARTIES TO SEEK DAMAGES FOR THE WRONGFUL EXCLUSION RATHER THAN INTERFERING IN THE GRANT OF TENDER OR INJUNCTING THE EXECUTION OF THE CONTRACT

Recently, the division bench of the Hon’ble Supreme Court in the case of **N.G. Projects Limited v. Vinod Kumar Jain**¹⁶ held that courts should refrain from interfering in the grant

of tender even if it is found that there is total arbitrariness or that the tender has been granted in a malafide manner. Instead, courts should relegate the parties to seek damages for the wrongful exclusion rather than injuncting the execution of the contract.

The Hon’ble Supreme Court while disposing an appeal challenging award of tender involving construction of road observed the injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for that Governments are expected to work towards. Moreover, it was held that courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues.

Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the division bench observed that the High Court would have been well advised to exercise of caution and hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India should be mindful that there should not be any interim order derailing the entire process of the services meant for larger public good.

DSK View: The Supreme Court has clarified that judicial interference in the grant of tender should be very restrictive. This clarification is required as otherwise in the recent past, the Courts had tried to interfere with contracts involving technical issues and questioned the commercial wisdom of the state entity which had resulted in delay in execution of important projects across India. That said, there cannot be total non-interference of the Court in such tender proceedings as it ensures that there is proper check and balance and scrutiny of executive’s decision so that state instrumentalities do not take decisions arbitrarily and in biased manner. Total judicial non-interference would make power conferred to writ courts redundant and which will ultimately result in loss of public money.

¹⁶ Civil Appeal No. 1846 of 2022 dated 21.03.2022

EMPLOYMENT LAW

EXTENSION OF THE PROVISIONS OF THE EMPLOYEES' STATE INSURANCE ACT, 1948 TO ANDAMANS AND NICOBAR ISLANDS

The Ministry of Labour and Employment, vide its notification dated March 28, 2022, has intended to extend the provisions of the Employees' State Insurance Act, 1948 ("ESI Act") to the following classes of establishments located in areas of the Union territory of Andaman and Nicobar Islands:

- (i) Shops;
- (ii) Hotels;
- (iii) Restaurants;
- (iv) Road motor transport establishments;
- (v) Cinemas including preview theatres;
- (vi) Newspaper establishments as defined in clause (d) of section 2 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
- (vii) Educational Institutions (including public, private aided or partially aided) run by an individual, trust, society, or other organisation; and
- (viii) Medical institutions (including corporate, joint sector, trust, charitable and private ownership hospitals), nursing homes, diagnostic centers, and pathological labs.

The objections and suggestions may be addressed to Shri Madan Chaurasia, Under Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001 (E-mail: madan.c@nic.in) within a month of publication of this notification.

DECLARATION OF CARRIAGE OF PASSENGERS OR GOODS, BY LAND OR WATER AS A PUBLIC UTILITY SERVICE

The Ministry of Labour and Employment, vide its notification dated March 24, 2022, declared the services in the transport for the carriage of passengers or goods, by land or water

(other than railways) ("Transport Industry"), to be a public utility service for the purposes of the Industrial Disputes Act, 1947 for a period of 6 (Six) months with effect from March 24, 2022. The Central Government had previously declared the Transport Industry to be a public service utility for the purposes of the Industrial Disputes Act, 1947 for a period of 6 (Six) months with effect from July 30, 2021, however, the Central Government has further extended the public utility service status to the Transport Industry for another 6 (Six) months.

THE EMPLOYEES' STATE INSURANCE (CENTRAL) AMENDMENT RULES, 2022

The Ministry of Labour and Employment, vide its notification dated March 7, 2022, amended the Employees' State Insurance (Central) Rules, 1950 ("ESI Rules"). The amended ESI Rules shall be deemed to have effect from January 20, 2017. A proviso is added to Rule 55(1) of the ESI Rules which provides for sickness benefits. The said proviso to the rule states that in case of an insured woman who is in receipt of maternity benefit and due to reason of which a shorter contribution period is available to her in the contribution period in which the maternity benefit falls, she shall be qualified to claim sickness benefit in the corresponding benefit period if the contribution in respect of her was payable for not less than half the number of days available for working in such contribution period.

THE CENTRAL BOARD RECOMMENDS 8.10% RATE OF INTEREST TO ITS SUBSCRIBERS FOR THE YEAR 2021-2022

The Employee Provident Fund, the Central Board, vide its press release dated March 12, 2022, recommended an 8.10% (Eight Point Ten Percent) annual rate of interest to be credited on EPF accumulations in the members' accounts for the financial year 2021-22. Traditionally, Employee Provident Fund Organization ("EPFO") has been able to give a higher rate of interest on retirement savings because of its

prudent investment policy of investing in long tenor high yielding securities for several decades. For the financial year 2022, EPFO decided to liquidate some of its investment in equities and the recommended interest rate is a result of combined income from interest received from debt investment and income realized from equity investment. This enabled EPFO to provide a higher return to its subscribers and also allowed EPFO with a surplus to act as a cushion for providing a higher return even in the future. Thus, there is no over-draw on the EPFO corpus due to this income distribution.

MSME HAS EXTENDED THE CREDIT GUARANTEE SCHEME FOR SUBORDINATE DEBT TILL MARCH 31, 2023

The Ministry of Micro, Small, and Medium Enterprises, vide its press release dated March 14, 2022, extended the Credit Guarantee Scheme for Subordinate Debt (“CGSSD”) up to March 31, 2023. The CGSSD scheme was launched on June 24, 2020, to provide credit facilities through lending institutions to the promoters of stressed Micro, Small, and Medium Enterprises (“MSMEs”) viz. Special Mention Account-2 and Non-Performing Assets accounts, who are eligible for restricting as per the Reserve Bank of India guidelines on the books of the lending institutions. Initially, the scheme was valid till March 31, 2021, however, in order to keep the avenues of assistance open to stressed MSMEs, the scheme has now been extended up to March 31, 2023.

MAHARASHTRA SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (AMENDMENT) ACT, 2022

The Government of Maharashtra, vide its notification dated March 17, 2022, introduced the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Act, 2022. The following provisions stand amended in Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (“Maharashtra S&E Act”):

- (i) Sub-section 1(3) of the Maharashtra S&E Act has been substituted with sub-section (3)(a) which states that the provisions of Maharashtra S&E Act, except Section 7, shall apply to the establishments wherein 10 (Ten) or more workers are employed. Further, the provisions of Section and Section 36A shall apply to the establishments wherein less than 10 (Ten) workers are employed.
- (ii) Under Section 17 of the Maharashtra S&E Act clause (g), which states that the identity card of the worker shall contain the Aadhar card number that has been omitted.
- (iii) Section 36 has been inserted into the Maharashtra S&E Act which states that the name board of every

establishment under Section 6 or Section 7 shall be in the Marathi language in Devnagari script. Further, the employer of such an establishment may also have the name board in any other language and script in addition to Marathi. The lettering in the Marathi language shall be written in the beginning of the name board and the font size of the letters shall not be smaller than the font size of the letters in any other language. No establishment where liquor is served or sold shall have a name board in the name of legends or forts.

AMENDMENT TO ANDHRA PRADESH FACTORIES RULES, 1950

The Governor of Andhra Pradesh, vide its notification dated March 8, 2022, amended the Andhra Pradesh Factories Rules, 1950 (“AP Factories Rules”). This amendment aims to reduce the compliance burden on businesses. Following are the key amendments to the AP Factories Rules:

- (i) As per the amended Rule 4(1), the occupier of every factory shall, before commencement of any manufacturing process in any factory, apply to the inspector online through the ‘Single Desk Portal’ or any other online portal as may be notified by the State Government from time to time, for the registration of the factory and the grant of a license in the form as prescribed on the online portal from time to time, along with the annual license fee as prescribed in the Andhra Pradesh Factories Rules, 1950.
- (ii) As per the amended Rule 5(1), the occupier or the owner of a factory shall, within 15 (Fifteen) days of the occurrence of any change of name, or in the particulars of the maximum horsepower installed or the maximum number of persons employed, send to the inspector an application online through Single Desk Portal or any other online portal as notified by the state government from time to time for the amendment of the original license stating the nature of the amendment to be made and the reasons therefore together with the prescribed fee paid online.
- (iii) As per the amended Rule 8, a license may be transferred from one occupier to another consequent to any transfer of the factory and both transferor and the transferee shall inform the details of the transfer followed by an online application by the transferee to the inspector concerned along with transfer fee of INR 50 (Rupees Fifty). The mere submission of such application shall be deemed to be the endorsement of transfer until the transfer is formally endorsed by the inspector unless the application has been refused by a speaking order in writing within a period of 7 (seven) days from the date of applying through single desk portal or any other online portal as may be notified by the State Government from time to time.

- (iv) As per the amended Rule 37, the drinking water supply shall be only from a source, certified for its fitness for human consumption by any of the NABL accredited laboratories. However, this shall not apply to any source water therein is filtered and treated to the satisfaction of the Health Officer before it is supplied for consumption.

IMPLEMENTATION OF NATIONAL CAREER SERVICE TO PROVIDE VARIETY OF EMPLOYMENT RELATED SERVICES BY MINISTRY OF LABOUR AND EMPLOYMENT

Ministry of Labour and Employment, vide its press release dated March 21, 2022, has declared the implementation of the National Career Service (“NCS”) project which shall provide a variety of employment related services like job search and matching, career counselling, vocational guidance, information on skill development courses, etc., all of which can be accessed on the NCS portal. The portal allows job seekers to add their relevant skill certificates through DigiLocker on NCS. The certificate of candidates undertaking Pradhan Mantri Kaushal Vikas Yojana training is also accessible to NCS through integration with Skill India Portal. The candidate registered on the NCS portal can also provide information related to their key skills and education etc. based on which they can find relevant jobs. The government also announced the linking of the NCS portal with the Atmanirbhar Skilled Employee-Employer Mapping portal of the Ministry of Skill Development and Entrepreneurship, Government of India, the e-Shram portal of Ministry of Labour and Employment, and the UDYAM portal of the Ministry of MSME.

EMPLOYERS TO TAKE ACTION FOR MAINTENANCE OF SAFE WORKING ENVIRONMENT FOR WOMEN

The Ministry of Human Resources Development, vide its circular dated March 21, 2022, has requested all employers to take the following actions to sensitize the issue related to maintenance of safe working as per Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal, Act, 2013 (“SHWW Act”):

- (i) Constitution of an Internal Complaints Committee (“ICC”) and a special cell in the institutions under the employer’s administrative control to deal with issues relating to gender-based violence and conduct programs on gender sensitization.
- (ii) Display banners/posters at conspicuous places in the buildings and campuses to create awareness amongst employees about what is sexual harassment and how to prevent it.
- (iii) Display names and contact details of the members of the ICC on notice boards in the institutions.

- (iv) Upload the SHWW Act, Constitution of ICC, and members of the ICC on the institute’s portal at a prominent place.
- (v) Conduct training programs to sensitize the employees on issues related to the maintenance of a safe working environment.

INSTRUCTION TO PURSUE AUTO-RENEWAL PROCESS UNDER ANDHRA PRADESH SHOPS AND ESTABLISHMENTS ACT, 1988

The Government of Andhra Pradesh, vide its memo dated March 22, 2022, has instructed all the Deputy Commissions of Labour, Assistant Commissioners of Labour, and Assistant Labour Officers in the state to pursue the auto-renewal process by all the shops and establishments in order to inform the employers/stakeholders to utilize the facility and remit requisite fee directly through ‘Mee-Seva’. Therefore, the employers in the state of Andhra Pradesh shall avail the facility of auto-renewal system on the portal and comply accordingly.

EXEMPTION ON WORKING HOUR UNDER THE MADHYA PRADESH SHOPS AND ESTABLISHMENTS ACT, 1958

The Government of Madhya Pradesh, vide its notification dated March 8, 2022, directs that the provisions on opening and closing hours of restaurants and eating houses under Section 14(1) of the Madhya Pradesh Shops and Establishments Act, 1958 shall not apply to restaurants and eating houses located in the whole state of Madhya Pradesh following the terms and conditions mentioned hereinafter:

- (i) Every employee shall be given 1 (One) day holiday in a week; and
- (ii) No employee shall be called for work for more than 48 (Forty-Eight) hours in a week.

EXEMPTION TO CONDITIONS FOR WOMEN EMPLOYEE UNDER THE PUNJAB SHOPS AND ESTABLISHMENT ACT, 1958

The Governor of Punjab, vide its notification dated March 3, 2022, formulated a scheme for shops and establishments under the Punjab Shops and Commercial Establishment Act, 1958 for giving exemption under Section 30 of the Punjab Shops and Commercial Establishment Act, 1958. The following are the key terms and conditions for seeking exemptions:

- (i) The establishment must be registered / renewed under the Punjab Shops and Commercial Establishment Act, 1958.
- (ii) The total number of hours of work of an employee in the establishment shall not exceed 9 (Nine) hours on any 1 (One) day and 48 (Forty Eight) hours in a week.

- (iii) The total number of hours of overtime work shall not exceed 50 (Fifty) in any 1 (One) quarter and the person employed for overtime shall be paid remuneration at double the rate of normal wages payable to him calculated by the hour.
- (iv) The management will ensure the protection of women from sexual harassment at the workplace in terms of the direction of the Hon'ble Supreme Court in the case of *Vishaka & Others v. State of Rajasthan*, vide judgment dated August 13, 1997.
- (v) The management will provide adequate security and proper transport facility to the women workers including women employees of contractors during the evening/night shifts.
- (vi) In case the management is not providing transport facility or security through employees directly recruited by him and proposes to provide through service providers then the management shall execute the security and transport facility contract with an appropriately licensed/registered security agency.
- (vii) The management will ensure that women employees will board the vehicle in the presence of security guards on duty.
- (viii) The management will ensure that the security in-charge/management has maintained the boarding register or computerized record consisting of the date, name of the model and manufacturer of the vehicle, vehicle registration number, name of the driver, address of the driver, phone/contact number of the driver and time of pickup of women employees from the residence to the establishment and vice versa.
- (ix) The management will ensure that the attendance register of the security guard is maintained by the security in-charge/management.
- (x) The management will also ensure that the transport vehicle in-charge/security in-charge/management maintains a movement register.
- (xi) No employee of any establishment shall knowingly employ a woman and no woman shall engage in employment in any establishment during 6 (six) weeks following the day of her confinement or miscarriage.
- (xii) The management will ensure that the vehicle does not have black or tinted glasses and also ensure that there are no curtains in the vehicle and occupants of a vehicle are clearly visible from all sides.
- (xiii) The management will ensure that emergency call numbers are prominently displayed inside the vehicle. The management will also ensure that the driver will not pick up any women employee first for the workplace and will not drop her last at home/her accommodation.
- (xiv) The management will ensure that the driver will not leave the dropping point before the women employee enters her accommodation.
- (xv) The management will ensure that there is an annual self-defence workshop/training for women employees.
- (xvi) In the night shift, a minimum of 5 (Five) women employees shall be employed.
- (xvii) The manager of the establishment will be required to abide by the provisions of SHWW Act.
- (xviii) Such other conditions as may be specified in this regard by the labour department from time to time.

REVISED RATES OF MINIMUM WAGES

- (i) Tamil Nadu: The Government of Tamil Nadu, vide its notification dated March 16, 2022, has declared the statement showing details of dearness allowance payable with effect from April 1, 2022, based on the average consumer price index of Chennai city for the calendar year 2021 in respect of various scheduled employments notified under the Minimum Wages Act, 1948.
- (ii) Kerala: The Government of Kerala, vide its notification dated March 8, 2022, has declared the consumer price index numbers for agricultural labourers and industrial workers for the month of January 2022. The consumer price index numbers are applicable to employees in employment under the Minimum Wages Act, 1948.
- (iii) Telangana: The Government of Telangana, vide its notification dated March 7, 2022, has declared the average state industrial workers' consumer price index numbers at 1,657 (One Thousand Six Hundred and Fifty-Seven) for industrial workers and 1,228 (One Thousand Two Hundred and Twenty Eight) for agricultural workers, for the half-year ending December 2021. The price consumer index numbers are applicable for the period from April 1, 2022, to September 30, 2022, for various scheduled employments under the Minimum Wages Act, 1948 in the state of Telangana for the purpose of calculation of variable dearness allowance.



ENERGY

IMPLEMENTATION OF THE INTRA-STATE TRANSMISSION SYSTEM GREEN ENERGY CORRIDOR PHASE-II

On March 4, 2022, the Ministry of New and Renewable Energy (“**MNRE**”) vide sanction order no. 367-12/1/2022-GEC, conveyed that the scheme “Intra-State Transmission System Green Energy Corridor (GEC) Phase II” (“**GEC Phase II Scheme**”) has received the approval of the President of India for implementation.

The objective of the GEC Phase II Scheme is to add 10,753 circuit kilometers (ckm) of transmission lines and 27,546 Mega Volt-Amperes (MVA) capacity of sub-stations in seven States, namely Gujarat, Himachal Pradesh, Karnataka, Kerala, Rajasthan, Tamil Nadu and Uttar Pradesh, to facilitate power evacuation from renewable energy (“**RE**”) power projects of approximately 20 GW capacity located in the said States.

The GEC Phase II Scheme will be implemented by the respective State Transmission Utilities (STUs) and is stated to be completed by Financial Year 2025-26. As per the order, the total estimated project cost is Rs. 12,031.33 crore (Excluding the Interest during Construction (IDC)) and the approved Central Financial Assistance (CFA) @ 33 percent of the project cost is Rs. 3970.34 crore. The balance 67% of the project cost is available as loan from KfW Development Bank/REC Limited/Power Finance Corporation. Further a joint declaration of concessional loan for establishment of Green Energy Corridor has been signed between the Government of India and Germany, under which a total of EUR 400 million is available as committed by KfW, Germany.

The order provides a list of projects sanctioned under the GEC Phase II Scheme and states that States will not be able to use the fund for GEC Phase II Scheme for projects

sanctioned under GEC Phase-I. Further, for States implementing GEC Phase-I, the CFA under GEC Phase II Scheme will be disbursed after commissioning of all projects under GEC Phase-I in that State.

For the purpose of implementation, the State Transmission Utilities (STUs) may divide the projects into various packages for ease of tendering and implementation. The STUs have been directed to submit the list of packages along with their respective DPR costs (i.e., the cost excluding the Interest during Construction (IDC) already approved by the Central Electricity Authority (CEA)) to the MNRE within four weeks of issue of the order. The CFA under the GEC Phase-II Scheme will be given at 33% of DPR cost or awarded cost-whichever is lower and will be computed for each package separately. All packages are required to be tendered and awarded to the contractors by the STUs within a period of two years, i.e., by December 31, 2023. For a particular package, variation in project components and cost after award of project within a State may be allowed with the approval of Minister-in-Charge of MNRE without any enhancement in CFA approved for that particular State.

TIME-EXTENSION IN SCHEDULED COMMISSIONING DATE OF WIND ENERGY PROJECTS CONSIDERING DISRUPTION DUE TO POST-COVID SUPPLY CHAIN AND OTHER DISRUPTIONS

Vide Office Memorandum dated March 7, 2022, the MNRE, in respect of wind power projects for which the power purchase agreement was signed and orders for wind turbine generators (WTGs) placed before June 15, 2021, has allowed an additional time extension of three months in the Scheduled Commissioning Date (SCOD). This extension is in addition to the time extension granted by the MNRE to RE projects under office memorandum dated June 29, 2021, vide which, in order to facilitate the ease of doing business

and as a measure of relief to RE projects in light of the pandemic, the MNRE had directed that the period of April 1, 2021 to 15 June, 2021 would be allowed as extension. Subsequently the MNRE received various representations from wind industry requesting additional time extension for wind power projects, considering the supply chain disruption due to the second COVID-19 surge followed by disruptions caused on account of monsoon, as a result of which manufacturing of WTGs was disrupted. It was submitted that WTGs require large number of components and to carry out installation work, transportation of heavy/large components such as nacelle, tower, blades etc as well as movement of construction machinery at the site was required. The wind power generators also submitted that the broad disruption period considered by MNRE during second covid wave ended on June 15, 2021 but was immediately followed by monsoon season in various parts of the country, during which movement of heavy machinery required for installation of WTGs became a constraint. In light of the said submissions, MNRE granted further extension.

GUIDELINES FOR PROCUREMENT AND UTILIZATION OF BATTERY ENERGY STORAGE SYSTEMS AS PART OF GENERATION, TRANSMISSION AND DISTRIBUTION ASSETS

The Ministry of Power (“**MoP**”), on March 11, 2022, issued the Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services (“**Guidelines**”) under Section 63 of the Electricity Act, 2003 for procurement of energy from Battery Energy Storage System (“**BESS**”) by the ‘Procurers’, through competitive bidding, from grid connected projects to be set up on “Build-Own-Operate” or “Build-Own-Operate-Transfer” basis, with following minimum project size and bid capacity requirements:

- (a) For Intra-State Projects: minimum individual project size of 1MW and above with suitable energy rating based on application at one site with minimum bid capacity of 1MW; and
- (b) For Inter-State Projects: minimum individual project capacity of 50 MW and above with suitable energy rating based on application at one site with minimum bid capacity of 50 MW at the minimum voltage level as specified by the applicable regulations/detailed procedure.

The Guidelines also aim to: a) facilitate procurement of BESS, as part of individual RE power projects or separately for addressing the viability/firming power supply/increasing energy output/extending the time of supply from an individual RE project or a portfolio of RE projects, augmenting of existing RE projects and/or to provide

ancillary, grid support and flexibility services for the grid; b) facilitate procurement of BESS for optimum utilization of transmission and distribution network, c) ensure transparency and fairness in procurement processes/ and to provide a framework for an Intermediary Procurer as an Aggregator / Trading licensees / Implementing Agency for the inter-state/intra-state sale-purchase of power, and d) provide standardization and uniformity in processes and a risk-sharing framework between various stakeholders, involved in the energy storage and storage capacity procurement, thereby encouraging competition and enhanced bankability of the projects.

The Guidelines also provide requirements to be followed during the bidding process, conditions to be met by the procurer, bid structure, bidding parameters, bidding process, qualification requirements to be met by bidders, bid submission and evaluation, award of contract, bank guarantee requirements, technical specifications, procedure for implementation of the project, battery storage purchase agreement, details on financial closure, stipulations regarding commissioning and commercial operations date, transmission connectivity, compensation for off-take constraints, payment security mechanism, force majeure, ownership requirements among others.

Setting up Power Foundation

Vide office memorandum dated March 8, 2022, the MoP set up the Power Foundation, a society registered under the Societies Act, 1860. The Power Foundation aims to be a policy advocacy body which would engage in national dialogues on power and allied sectors, providing authoritative analysis, data, policy recommendations, real-world solutions to help States provide secure and sustainable energy for all and to create smooth pathway for energy transition. The Power Foundation also aims to undertake efforts in commissioning independent and evidence based research studies, through credible institutions on various aspects of energy transition in power sector and thereafter disseminate the information through appropriate communication channels for creating awareness amongst the identified stakeholders.

GOVERNMENT HAS SET A TARGET TO RAISE THE SHARE OF NATURAL GAS IN ENERGY MIX TO 15% IN 2030

According to a press release dated March 24, 2022, by the Press Information Bureau, the Minister of State for Petroleum and Natural Gas, in a written reply to a question in the Lok Sabha has informed the Government’s decision to raise the share of natural gas in energy mix to 15% in 2030 from about 6.7% currently. The Hon’ble Minister further informed that various steps have been taken by the

Government in respect of the same, including expansion of National Gas Grid Pipeline, expansion of City Gas Distribution (CGD) network, setting up of Liquefied Natural Gas (LNG) Terminals, allocation of domestic gas to Compressed Natural Gas (Transport) / Piped Natural Gas (Domestic) CNG (T)/PNG (D) in no cut category, allowing marketing and pricing freedom to gas produced from high pressure/high temperature areas, deep water & ultra-deep water and from coal seams, Sustainable Alternative Towards Affordable Transportation (SATAT) initiatives to promote Bio-CNG, etc. As on December 31, 2021, the Petroleum and Natural Gas Regulatory Board (“PNGRB”) has authorized approximately 33,768 km length of Natural Gas Pipeline Network across the country, out of which 20,334 km length of natural gas pipelines including spur lines are operational and a total of

15,194 km length of pipelines are under various stages of construction. With an aim to increase coverage of CGD Networks in the country, the PNGRB authorized 268 GAs for development of CGD Network in the country. Further, Letters of Intent have been issued for 21 GAs. PNGRB has also launched 11A CGD bidding round for development of CGD Networks in 6 GAs (covering 27 districts), after which the CGD network shall potentially cover 98% population and 88% geographical areas of the country. The number of CNG stations established by various authorized entities increased from 1,742 on March 31, 2019 to 3,878 on January 31, 2022. The pipelines being laid by the CGD entities also increased from 1,61,992 inch kms to 3,52,961 inch kms on January 31, 2022.

INFRASTRUCTURE

NATIONAL LAND MONETIZATION CORPORATION

The Union Cabinet has approved the establishment of the National Land Monetization Corporation (“NLMC”) as a special purpose vehicle owned by the Government of India for monetization of non-core assets (such as building and lands) belonging to central public sector enterprises (“CPSEs”) and other Governmental entities. It is expected that this will facilitate substantial revenues for the Government by unlocking the economic value of these assets. It must be noted that for CPSEs whose divestment is currently in closing stages, NLMC shall own, hold, manage and monetize both surplus land and buildings, and for CPSEs whose divestment is ongoing, the NLMC shall deal with surplus lands only. The role of NLMC shall also include identification of potential surplus non-core assets and monetizing them as an agent of on-going CPSEs and CPSEs under strategic divestment.

MANDATORY E-TENDERING ON CENTRAL PUBLIC PROCUREMENT PORTAL FOR NATIONAL HIGHWAYS AND ALL CENTRALLY SPONSORED ROAD WORKS

The Ministry of Road Transport and Highways *vide* circular bearing number RW/NH-34048/6//12-S&R(B)Pt. dated March 25, 2022, has notified that all State public works departments are required to mandatorily invite bids through the Central Public Procurement Portal (“CPPP”) for all national highways and the centrally sponsored road works irrespective of the amount. In the event of any deviation, such departments shall not be reimbursed by the Government for such works. It must be noted that the directions are in line with Rule 159 (i) of the General Financial Rules, 2017 whereby all regulated Governmental entities are

required to publish the details of the tender enquiries and the process on the CPPP.

JUDICIAL INTERVENTION ON GOVERNMENT CONTRACTS

In *M/s N.G. Projects Limited v. M/s Vinod Kumar Jain & Ors.*¹⁷, the Hon’ble Supreme Court (“SC”) has upheld the principles of judicial review of Governmental contracts. In the said matter, the Road Construction Department of Jharkhand invited tenders for the reconstruction of Nagaruntari-Dhurki-Ambakhoriya road whereby the bid of Vinod Kumar Jain (“Respondent 1”) was rejected due to non-responsiveness, and the contract was subsequently awarded to N.G. Projects Limited (“Appellant”). Thereafter, the Respondent 1 filed a writ petition challenging the award in the Hon’ble High Court of Jharkhand (“HC Order”), who ordered for the contract to be set aside. The present petition was filed challenging the HC Order. Taking cognizance of the facts, the SC *inter alia* observed that construction of roads is an essential part of infrastructure development in a State, and thus any form of judicial intervention in matter relating to awarded contracts is unwarranted and may adversely affect public interest. Judicial review of government contracts should be subject to inherent limitations, in the absence of which there can be needless interference of Courts in commercial matters.

The SC concluded that construction of an important and integral infrastructure project like a road should not be stayed taking into consideration the intent of the legislature, and the High Court should hold its hand to stay the construction of such a project.

¹⁷ Civil Appeal No. 1846 of 2022, Hon’ble Supreme Court of India

CLARIFICATION REGARDING CONSIDERATION OF WIDENING/RE-CONSTRUCTION/UPGRADATION OF WORKS ON MAJOR DISTRICT ROAD (“MDRS”) WITHOUT LOAN ASSISTANCE

The National Highways of India (“NHAI”) vide policy circular bearing number 11.35 dated March 2, 2022 has clarified that for the purposes of technical evaluation of bidders pursuant to request for proposals for projects on engineering, procurement, and construction (“EPC”) mode, ‘core sector’ shall include civil construction of power sector, commercial setups (SEZs etc.), airports, industrial parks, logistics parks, pipelines, irrigation systems, water supply systems, sewerage, and real estate development, including projects under the Rural Infrastructure Development Fund, the Pradhan Mantri Gram Sadak Yojana, link road, city roads etc. (which may further be considered as Category 4 for evaluation purposes to determine the technical capacity pursuant to the Model Request for Proposal for EPC). Considering the nature of these ‘core sector’ projects, widening/re-construction/upgradation of works on MDRs without loan assistance from multilateral agencies shall be considered within the scope of ‘core sector’ for both EPC and hybrid annuity mode projects.

APPLICABILITY OF ENVIRONMENTAL CLEARANCE FOR BITUMEN EMULSION, MODIFIED BITUMEN, ROAD BOND FROM BITUMEN ETC

The Ministry of Environment, Forest and Climate Change (“MoEFCC”) vide office memorandum bearing number F. No. 22-29/2020-IA.III [E142566] dated March 9, 2022, has directed that unit operations and unit processes involved in the production of bitumen emulsion, modified bitumen, road bond bitumen resulting in discharge of liquid effluents, air emissions etc. do not require obtaining prior environmental clearance (“EC”) as it does not attract the provision of the Gazette notification bearing number S.O. 1533 (E) dated September 14, 2006 (“EIA Notification”).

PROCEDURE FOR SURRENDERING PRIOR EC FOR DEVELOPMENTAL PROJECTS

The MoEFCC vide office memorandum bearing number F. No. IA3-22//10/2020-IA.III [E 177258] dated March 29, 2022, has notified that for project proponents who abandon developmental project or allied activities without implementation due to reasons such as delay in land acquisition, legal issues, financial constraints etc., shall be required to surrender the prior EC granted for such project. In this regard, an application shall be required to be made along with requisite documents through PARIVESH to the competent authority, and the same shall be considered in accordance with the process laid down in the said office

memorandum. Further, the project proponent shall be accountable for ensuring compliance of the EC conditions till closure of the project.

CLARIFICATION REGARDING ACTIVITIES FOR SECURING LAND PRIOR TO GRANT OF EC

The MoEFCC vide office memorandum bearing number F. No. IA3-22//10/2022-IA.III [E17258] dated March 29, 2022, has notified certain activities can be undertaken while securing of land for a certain project. These include:

- fencing of the project site using civil construction, barbed wire etc.
- construction of temporary sheds for personnel and storage of materials; and
- provision of temporary electricity and water supply.

However, the MoEFCC has further clarified that the same shall be subject to the following: (a) land should be in legal possession of the project proponent, and all applicable permits should be obtained, (b) requisite forest and wildlife clearances should be obtained, (c) the dispensation would not entitle the project proponent to claim the grant of EC or any other requisite applicable permit. Further, it has been clarified that the works would not have any bearing on the appraisal of the project or the due process for grant of EC.

STANDARD OPERATING PROCEDURE FOR AWARD OF WAYSIDE AMENITIES ALONG NATIONAL HIGHWAYS AND EXPRESSWAYS

The NHAI vide policy circular bearing number 18.79 dated March 11, 2022, has notified the standard operating procedure for identification of land parcels, finalization of land monetization, tender process, signing of lease agreement etc. towards development, operating and maintaining wayside amenities along national highways and expressways (“SOP”). Key highlights pertaining the SOP are *inter alia* as follows:

- Project implementation Units (“PIUs”) and regional offices (“ROs”) shall identify, and report unused or underutilized land parcels acquired by NHAI on “Surplus land Entry Form” on Datalake portal. In this regard, the PIUs or ROs shall be required to, inter alia, certify that the said land identified for monetization is free from encumbrances and mutated in the name of MoRTH and is suitable for handing over to the selected entity.
- The PIUs and ROs shall include land identification and monetization plan for these land parcels as part of all

upcoming national highway projects (greenfield, brownfield, bypasses, ring road projects etc.) proposal for the consideration of the land allotment committee. The cost of development shall also be included as part of the said proposal.

- The 'Model Lease Agreement for Operationalization of Wayside Amenities' has been approved by NHAI, and the provisions of the 'Policy Guidelines for Development of Wayside Amenities along National Highways and Expressways' shall be followed for preparation and finalization of the land monetization scheme for each of these wayside amenities.
- Bids will be invited for development, operation, and maintenance of wayside amenities as per the prescribed timelines. In this regard, the request for proposal document shall have key provision relating to minimum annual net worth of the interest bidders, bid security, performance security for each amenity etc. A brief overview of the tender process has been detailed below:
 - the designated evaluation committee shall evaluate the bids received;
 - clarifications shall be sought from the bidders;
 - the results of technical evaluation shall be published 7 (seven) days prior to opening of the financial proposal;
 - the bid parameter shall be 5% (five percent) of the land cost, or land/construction cost for sites where construction of wayside amenities has been undertaken;
 - contract shall be awarded to the highest bidder.
- The tender process shall be completed with the issuance of the letter of award. In this regard, the selected bidder shall be required to submit a development performance security within 30 (thirty) days of issuance of the letter of award.
- Within 10 (ten) days of receipt and verification of performance security, the lease agreement shall be signed with the project proponent whereby vacant, and litigation free land shall be handed over, and land ownership documents shall be awarded indicating MoRTH as the rightful owner of the land.

GRANT OF EX POST FACTO EC

In *M/s Pahwa Plastics Pvt. Ltd. v. Dastak NGO & Ors.*¹⁸, the SC has laid down that *ex post facto* EC may be granted in light of exceptional circumstances and considering all related environmental factors. In the present matter, the National Green Tribunal had ordered M/s Pahwa Plastics Private Limited to stop operations of all manufacturing units since it did not have an EC in place. After taking into cognizance the facts of the matter, the SC held that when an industry has been providing livelihood to people and thereof contributing to the economy of the country, it ought not be closed down basis the sole ground of a technical irregularity of not obtaining prior EC, irrespective of whether or not the unit causes pollution. Thus, in such exceptional circumstances where adverse consequences of denial of an EC outweighs the consequences of regularization of operations, an *ex post facto* EC may be granted, subject to the caveat that such *ex post facto* grant of EC shall not be a regular occurrence. The SC has added that irrespective of such *ex post facto* grant of EC, the project proponent may be penalized basis the 'polluter pays' principle, and the cost of restoration of environment may also be recovered.

¹⁸ Civil Appeal No. 4795 of 2021, Hon'ble Supreme Court of India

MEDIA & ENTERTAINMENT



FILM PRODUCTION HOUSES MUST SET UP INTERNAL COMPLAINTS COMMITTEES (ICC) FOR SEXUAL HARASSMENT

The Kerala High Court issued orders emphasising the need to create Internal Complaints Committee (ICC) in film industry organisations and production units and political parties. Chief Justice S Manikumar and Justice Shaji P Chaly held that, in addition to production companies that directly employ actors, organisations affiliated with the film industry must maintain an ICC if they employ ten or more individuals to administer office buildings and pay wages to women. Political parties, on the other hand, that do not have an employer-employee relationship with their members and are not involved in any commercial industry, undertaking, enterprise, institution, establishment, or similar activity in the context of a 'workplace' are not needed to maintain ICC. The Court issued its decision in response to a group of public interest litigation petitions filed by various organisations seeking to establish a grievance redressal mechanism for sexual harassment in accordance with the Supreme Court's directions in *Vishakha v. State of Rajasthan* and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

DELHI HIGH COURT REVIVES PPL APPLICATION FOR REGISTRATION AS A COPYRIGHT SOCIETY AND SETS ASIDE RMPL'S REGISTRATION

The Delhi High Court, vide its order dated March 09, 2022, has set aside the Central Government's order dated May 21, 2021 rejecting the application filed by Phonographic Performance Limited (PPL) for re-registration as a copyright society and the Certificate of Registration granted to Recorded Music Performance Limited (RMPL) on June 18, 2021. The Court held the Government had failed in a conscious application of mind while rejecting PPL's re-registration application without any opportunity of being heard and ignoring to take into consideration the

correspondences between PPL and Government in 2018. The Court further justified the setting aside of RMPL's registration as per the grounds mentioned in Section 33(3) of the Copyright Act, read along with Rule 49 of the Copyright Rules, which states that only one copyright society can be registered for administering the rights related to the same class of work i.e. sound recording. In view of the submissions filed, the Court directed the Government to re-consider the registration application of PPL on merits, as if it was filed in time.

THE KARNATAKA GOVERNMENT MOVES TO THE SUPREME COURT CHALLENGING THE HIGH COURT'S ORDER OF STRIKING DOWN THE LAW AGAINST ONLINE GAMBLING

Challenging the Karnataka High Court's judgement of striking down the Karnataka Police (Amendment) Act, 2021, the State Government has filed an appeal before the Supreme Court. The State through its appeal submitted that the amendment introduced by it, in no way prohibited a game of skill which could be suitably pursued by a person or an entity and the High Court "gravely erred" in considering the necessity of the State Government to maintain "public order" and "public health". The Karnataka High Court had proceeded to strike down the Act, after various petitions were filed before it, claiming that a game of skill, irrespective of the risk of money involved in it, cannot be considered as wagering or betting. However, the Division Bench of the High Court had clarified that "*nothing in the judgement will prevent the enactment of an appropriate legislation in accordance with the Constitution*".

NCPCR SOON TO ROLL OUT NEW GUIDELINES FOR CHILDREN WORKING IN FILMS AND SERIES PUBLISHED ON OTT PLATFORMS

The National Commission for Protection of Child Rights (NCPCR) will soon be rolling out a new set of guidelines to safeguard the rights and regulate the participation of child

actors in web series and films on OTT platforms, reality shows and TV programmes. NCPDR chief, Priyank Kanoongo, said that *“the new guidelines are necessary to make participation of children in any show on different media platforms compliant with safeguards laid out in laws like the POCSO Act that came in 2012 and has been amended further and the Juvenile Justice Act 2015 and the child labour laws”*. Suggestions from the state representatives of the 27 states and union territories will be included in the guidelines.

TELANGANA COURT DISMISSES A PETITION FILED BY FILMMAKER NANDI CHINI KUMAR AGAINST FILM “JHUND”

A local Court at Kukatpally, Telangana has dismissed a petition filed by the filmmaker Nandi Chini Kumar against the release of Amitabh Bachchan starrer *“Jhund”*, produced by Super Cassettes (T-Series). Earlier in September 2020, a similar suit was filed by Kumar against the producers stating that the life rights of one of Vijay Barse’s disciple, on whose life events the film is based on, is owned by him. However, in January 2021, the matter was disposed recording an out of court settlement between the parties. In the current suit, the filmmaker had alleged that the settlement agreement was based on misrepresentation and fraud, however the respondents contended that the filmmaker has approached the Court with unclean hands and has suppressed various material facts including the pending proceedings before other courts and out of court settlement amount of Rs. 5 crores, received by the filmmaker, etc. The Court refused to entertain the matter taking on record the above contentions of the respondents and imposed a fine of Rs. 10 lakhs as costs on Kumar, to be paid to the Prime Minister COVID-19 Relief Fund within one month. If the filmmaker fails to pay the amount, the Hyderabad District Collector should recover the same as arrear of land revenue from the filmmaker within 30 days.

BOMBAY HIGH COURT DISMISSES PLEA FILED AGAINST THE FILM “THE KASHMIR FILES”

The Bombay High Court has dismissed a plea filed against the release of the film *“The Kashmir Files”*, which released on March 11, 2022. The Public Interest Litigation (PIL) was filed by Intezar Hussain Sayed, a resident of Uttar Pradesh, seeking a stay on the release of the film, alleging that the trailer of the film hurt the sentiments of the Muslim community, by depicting that the film is about the killing of Kashmiri Pandits by Muslims. The petitioner further alleged that the film is capable of triggering violence and immeasurable destruction across the country, possibly igniting the members of the Hindu community, by showcasing a one-sided view of the incident. However, the High Court questioned the petitioner whether they have filed a RTI to find out if the film has been granted a CBFC certificate or not, in reply to which the Petitioner submitted that *“RTI takes at least one month and they did not have the time to challenge the CBFC certificate for The Kashmir*

Files as their constitutional rights were being infringed”. Following which, the Court dismissed the PIL, reserving the detailed order to be given on a later date.

PVR - INOX LEISURE SIGN AN ALL-STOCK MERGER DEAL, TO FORM A NEW ENTITY BY THE NAME OF “PVR INOX LIMITED”

An all-stock amalgamation of the shares of *“PVR Limited”* and *“INOX Leisure Limited”* was approved by the respective board of directors of both entities. Upon obtaining all the approvals from the stakeholders of the respective entities, stock exchanges, SEBI and other regulators, INOX will merge with PVR and the new entity will be named as *“PVR INOX Limited”*. New screens to be opened after this deal shall be branded as *“PVR INOX”* however, the branding of the existing screens will be continued as PVR and INOX respectively. With 1,546 screens across 109 cities, the combined entity is being said to become the largest film exhibition company in India.

SUPREME COURT STAYS CENTRAL GOVERNMENT’S BAN ON CHANNEL “MEDAIONE”

In the plea filed by Madhyamam Broadcasting Ltd., owner of the channel *“MediaOne”*, against the Kerala High Court’s order of upholding the ban on the telecast of the channel, imposed by the Ministry of Information & Broadcasting, a three-judge bench of the Supreme Court has stayed the government decision of not granting the security clearance *“on the basis of intelligence inputs which are sensitive and secretive in nature”*. The Court having due regard to the content of the files submitted by the central government, held that the petitioners have made out a case for the grant of interim relief and pursuant to this they are allowed to resume their broadcast and operations as before January 31, 2022. The Court further referred to the observations of the division bench of the Kerala High Court in the matter, where it noted that *“the government files do not dwell on the impact, gravity and depth of revoking the licence and did not contain too many details”*.

KARNATAKA HIGH COURT QUASHES FIR FILED AGAINST FOUNDERS OF “DREAM 11”

In a plea filed by Bhavit Sheth and Harsh Jain, the founders and directors of Sporta Technologies Private Limited, promoters of the online gaming app *“Dream 11”*, the Karnataka High Court quashed the proceedings initiated by the police against them under sections 79 and 80 of the Karnataka Police (Amendment) Act, 2021, which prohibits online gaming and gambling in the state. The Petitioners submitted before the Court that *“the activity of fantasy sports has been held as a game of skill and certainly not one in the nature of gambling, betting or wagering as upheld by various High Courts”*. The complainant alleged the accused of making unlawful earnings by putting people and their

money at risk. However, the Court in its order stated that, as per an earlier order, the Division Bench had struck down the amendment while holding certain provisions, such as sections 2, 3, 6, 8 and 9 of the Act to be *ultra vires* to the Constitution and in light of this the charges levied on the Petitioners need to be dropped.

GOOGLE WINS BATTLE OVER SONG LYRICS COPYRIGHT INFRINGEMENT ISSUE WITH “GENIUS”

Google has won a legal battle against a song lyrics platform Genius, who had claimed that Google has been scraping its transcribed lyrics from its website without permission. In reply to the accusations made by Genius, Google submitted that *“We do not crawl or scrape websites to source these lyrics. The lyrics that you see in information boxes on Search come directly from lyrics content providers, and they are updated automatically as we receive new lyrics and corrections on a regular basis”* and to make it clearer from where the lyrics are coming from, the search website had also started including attribution to the third party providers of these digital lyrics text. A three-judge bench affirmed that earlier decision passed by a Single Judge Bench in 2020 that held that even though the claims in the suit appear to be credible a claim of copyright violation cannot exist as Genius is not the actual copyright owner of the lyrics.

ORDER AGAINST KATY PERRY TO PAY DAMAGES OF \$ 2.9 MILLION IN “DARK HORSE” PLAGIARISM CASE IS SET ASIDE BY THE US CIRCUIT COURT OF APPEALS

In the appeal filed against the order of the US District Judge, which set aside the earlier order of a Los Angeles jury that awarded Marcus Gray (popularly known as “Flame”) and two other plaintiffs damages of \$ 2.9 million, including \$ 550,000

from Katy Perry and \$ 2.9 million from her label Capitol Records, the 9th US Circuit Court of Appeals, in a 3-0 decision, held that Katy Perry and her team are not liable to pay any damages for copyright infringement. The respondents claimed that Perry’s song “Dark Horse” was a copy of Marcus’ rap song “Joyful Noise”. The Appeals Court agreed that the jury verdict shall not stand, as the eight-note pattern lacked the *“quantum of originality needed for copyright protection”* because of entirely consisting of *“commonplace musical elements”*.

WARNER BROS. TO RELEASE HYBRID NFT TRADING CARDS BASED ON DC COMICS

Warner Bros. has announced that they would create 6 million trading cards based on DC comics and bundled with redeemable non-fungible tokens (NFTs). These will be 'hybrid' trading cards. The hybrid card packs will range from \$5 to \$120. Users will need to download a mobile application called Hro in order to redeem the NFT components of their physical cards. Each DC Hybrid Trading Card will have an exclusive QR code that will link the physical card to its digital "twin" on the Hro app. Once linked, the Hro app provides purchasers with access to a 24-hour worldwide marketplace where they may buy, sell, and trade their way to completing their collection. The cards, which will depict 155 different superheroes across the DC Universe, will be designed by Cartamundi Group, a card, and board firm and will be minted on the Ethereum based Immutable X sidechain (a layer-2 protocol).

LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2022

The MCA *vide* its notification dated March 4, 2022 (accessible [here](#)), has notified the Limited Liability Partnership (Second Amendment) Rules, 2022 ("LLP Amendment Rules") to amend the existing Limited Liability Partnership Rules, 2009 ("LLP Rules").

The key provisions of the LLP Amendment Rules have been summarized below:

- (i) **Increase in allotment of DPINs at the time on incorporation:** The LLP Amendment Rules have provided for the application for a maximum of 5 (five) Designated Partner Identification Numbers ("DPINs") at the time of incorporation of LLP, from the existing limit of 2 (two) DPINs which could be applied for at the time of incorporation of a Limited Liability Partnership ("LLP").
- (ii) **Allotment of PAN and TAN at the time on incorporation:** The Permanent Account Number and the Tax Deduction Account Number would also be allotted to LLPs along with the Certification of Incorporation itself.
- (iii) **Relaxation in compliance for name change application:** According to the erstwhile provision in the LLP Rules, whenever an application for the name change of LLP was to be made, the person making the application was required to attach (a) the authority under which he/she is making such an application; and (b) a copy of the incorporation certificate of the LLP or the company or the registration certificate of the entity, as the case may be. Now, pursuant to the LLP Amendment Rules, the requirement of attaching the authority under which such person is making an

application has been done away with, reducing compliance burden on the LLPs.

- (iv) **Signing of statement of accounts & solvency of LLP during Corporate Insolvency Resolution Process ("CIRP"):** The LLP Amendment Rules have introduced provisions regarding the signing of the Statement of Account and Solvency of the LLPs under insolvency. Under the LLP Amendment Rules, it is prescribed that the Statement of Account and Solvency may be signed on behalf of the LLP by an interim resolution professional ("IRP") or resolution professional ("RP"), or liquidator or LLP Administrator in case where the CIRP has been initiated against the LLP under the Insolvency and Bankruptcy Code, 2016 ("IBC") or the LLP Act, 2008 ("LLP Act").

Further, where the CIRP has been initiated against the LLP under the IBC or the LLP Act having turnover upto INR 5,00,00,000 (Rupees Five Crore) during the corresponding financial year or contribution upto INR 50,00,000 (Rupees Fifty Lakh) has come under liquidation under IBC or the LLP Act, the annual return of an LLP may be signed on behalf of the LLP by IRP or RP, or liquidator or LLP Administrator and no certification by a designated partner shall be required.

- (v) **Web-based forms for LLP Incorporation:** Pursuant to the LLP Amendment Rules, the LLP formation process has also become web based just like the SPICE+ forms for company incorporation. Further, all forms of LLPs have now become web-based forms.
- (vi) **Merging of Form 28 and Form 29:** Under the LLP Amendment Rules, Form 28 (Return of alteration of incorporation documents, partner, designated partner etc.) and Form 29 (Notice of alteration relating to business of foreign LLP in India) have been merged into one single Form 28. As a result of which, Form 28 shall

be required to be filed for the notice of **(a)** alteration in the certificate of incorporation or registration; **(b)** alteration in names and addresses of any of the person(s) authorized to accept the service on behalf of

foreign LLP; **(c)** alteration in the principal place of business in India of a foreign LLP; and **(d)** cessation of having a place of business in India.

INTEREST EQUALIZATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT – EXTENSION

The Reserve Bank of India (“RBI”) on behalf of Government of India (“Government”) vide its circular dated December 4, 2015 bearing reference number RBI/2015-16/259 DBR.Dir.BC.No.62/04.02.001/2015-16 announced the Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit (“Scheme”). The Scheme was made effective from April 2015 and has been extended from time to time.

In this connection, the RBI vide its circular dated March 08, 2022, bearing reference number RBI/2021-22/180 DOR.STR.REC.93/04.02.001/2021-22 has further extended the Scheme up to March 31, 2024, with effect from October 1, 2021. The modifications include revision of interest equalization rates to 2% (two per cent) and 3% (three per cent) for certain specified types of manufacturer exporters and merchant exporters operating in the MSME sector and stipulation of documents/information requirements by banks to ensure transparency and accountability in the operation of the Scheme.

The extended Scheme will not be available to those beneficiaries who are availing the benefit under any Production Linked Incentive (PLI) scheme of the government.

DSK View: *The Scheme has been extended to boost outbound shipments. Additionally, the requirement of submitting documents and information to banks for availing benefits, has been brought to ensure greater transparency and accountability with respect to the Scheme.*

MASTER DIRECTION – RESERVE BANK OF INDIA (REGULATORY FRAMEWORK FOR MICROFINANCE LOANS) DIRECTIONS, 2022

The RBI vide its circular dated March 14, 2022, bearing reference number RBI/DOR/2021-22/89 DoR.FIN.REC.95/03.10.038/2021-22 has issued master directions on microfinance loans (“Master Directions – Microfinance Loans”).

The Master Directions – Microfinance Loans will be effective from April 01, 2022 except for provisions pertaining to loan repayment obligations of households and ‘not for profit’ entities exempt from compliances of a non-banking finance company under the RBI Act.

The Master Directions – Microfinance Loans are applicable to Commercial Banks (including Small Finance Banks, Local Area Banks, and Regional Rural Banks) excluding Payments Banks, Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks; and Non-Banking Financial Companies (including Microfinance Institutions and Housing Finance Companies).

The key features of Master Directions – Microfinance Loans include defining what a ‘microfinance loan’ is, indicative methodology for assessing eligibility for a microfinance loan, laying down limits on loan repayment obligations, basis for pricing of loan, applicability of prepayment penalty or any other penalties and minimum requirement of microfinance loans for micro-finance institutions.

DSK View: *A microfinance loan is a collateral-free loan given to a household with an income of up to INR 3 Lakhs. The Master Directions – Microfinance Loans is a step towards increasing the footprint of microfinance lenders in the micro-credit industry. However, it is a possibility that since the said master directions have removed the cap on interest that may be charged by micro-finance institutions to borrowers, this may result in an increased credit cost for borrowers.*



HON'BLE SUPREME COURT'S RULING PROVIDES RELIEF TO MILLIONS OF HOMEBUYERS AWAITING DELIVERY/POSSESSION AS HOME BUYERS GETS PRIORITY OVER BANKS

The Hon'ble Supreme Court has, in the matter of Union Bank of India vs Rajasthan Real Estate Regulatory Authority and Others, held that, in cases of conflict between the Real Estate (Regulation and Development) Act, 2016 (the "RERA Act") and recovery proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "SARFAESI Act"), the RERA Act will prevail.

The Bench comprising of Hon'ble Justice MR Shah and Hon'ble Justice BV Nagarathna (the "Bench") dismissed an appeal by the Union Bank of India (the "UBI") against an order passed by the Hon'ble Rajasthan High Court which stated that complaints against banks can be filed before the Real Estate Regulatory Authority (the "RERA") if they have taken possession as a secured creditor, following default by the promoter.

The Hon'ble Rajasthan High Court held that complaints against banks can be filed before RERA, if lenders took possession of a project as a secured creditor, following a default by the promoter in repaying loans. It further held that:

"The moment the bank takes recourse to any of the measures under sub-section (4) of Section 13, it triggers statutory assignment of right of the borrower in the secured creditor. Till this stage arises the bank or financial institutions in whose favor secured interest may have been created may not be ... amenable to the jurisdiction of RERA. However, the moment the bank or the financial institution takes recourse to any of the measures available in the Section 13(4) of the SARFAESI Act, RERA would have jurisdiction to entertain the complaint filed by an aggrieved person."

Upholding the verdict of Hon'ble Rajasthan High Court, the Hon'ble Supreme Court stated that it was in 'complete agreement' and dismissed the appeal of the UBI. The Bench, however, further clarified that the ruling of Hon'ble Rajasthan High Court would only be applicable to cases where the proceedings in RERA are initiated by homebuyers to protect their interest.

NEXT MEETING FOR GOVERNMENT APPOINTED 'CENTRAL ADVISORY COUNCIL' ON APRIL 12, 2022

The homebuyers, in a letter sent to the Minister, Shri. Hardeep Puri, Ministry of Housing and Urban Affairs, stated that:

"To ensure that RERA remains on track and the fruit of the RERA reaches the last homebuyer and also that the vision of Prime Minister Narendra Modi with regard to real estate sector is achieved, it is necessary that Central Advisory Council (CAC) meets more often and reviews the working and performance of RERA across India so that necessary and corrective action can be taken from time to time."

The Central Advisory Council ("CAC") was set up by the Government for effective implementation of real estate law in the country. Its primary role is that of an advisory body which is tasked with the function of finding more effective means to ensure the efficient implementation of the RERA. While it held its first two meetings on May 14, 2018, and April 29, 2020, it will hold its next meeting on April 12, 2022. To represent homebuyers in the CAC, the Government has inducted President of the Forum for People's Collective Efforts and Federation of Apartment Owners' Association's as the Chairman. The CAC also comprises of a representative of real estate brokers and construction workers.

HARYANA RERA'S ORDER ON ASSURED RETURN SCHEME

Until recently, customers who had invested in assured return schemes of various developers were left rather confused

with respect to enforceability of schemes, especially in light of the Securities and Exchange Board of India (“SEBI”) restrictions and orders from the RERA in Maharashtra and Haryana. As per Maharashtra RERA (“MRERA”) and Haryana RERA (“HRERA”), it had no jurisdiction over assured return schemes offered by developers.

Further, the precedents suggested that only the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC) or civil courts would entertain complaints for adjudication on assured return schemes. However, the recent decision of the HRERA in the case of ‘Madhushree Khaitan vs Vatika Limited’ has indicated/stated that RERA shall have the power to adjudicate on such schemes (at least for agreements prior to 2016).

In the said order, the HRERA established that developers cannot wriggle out of their contractual obligations under an agreement executed prior to the RERA Act coming into force simply because: (i) the original agreement to sell was not entered in a format prescribed for an ‘agreement to sell’ under the RERA Act (or rewritten as per prescribed format), or (ii) due to the applicability of provisions of the Banning of Unregulated Deposit Schemes Act, 2019 (the “BUDS Act”).

The HRERA held that money taken by the developer as payments in advance, against allotment of immovable property cannot be considered as ‘deposits’ for the purpose of the BUDS Act. This view was taken due to the following exemption from the definition of deposit:

“Advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.”

The legality of the assured return schemes was first put to test in the case of Viswas Real Estates and Infrastructure India Limited (“VREIL”). In this case, following a complaint, SEBI deemed a scheme of guaranteed assured returns offered by VREIL to be a ‘collective investment scheme’ which requires registration with SEBI under the SEBI (Collective Investment Schemes) Regulations, 1999.

The MRERA and HRERA have adjudicated matters relating to assured return schemes. Until recently, the entire catena of judgments passed by RERA have consistently declared that RERA has no jurisdiction over assured return schemes.

The MRERA has even held that where a complainant has invested money with the sole intention of gaining profits out of a project, then the complainant is in the position of co-

promoter and cannot be treated as an ‘allottee’. Similar views were traditionally adopted by the HRERA as well in its previous judgements. Assured return schemes are generally favored by developers because such schemes give them access to money at interest rates lower than ordinary loans from scheduled banks.

UTTAR PRADESH RERA PENALIZES ANSAL HOUSING, ATS REALTY AND 7 OTHERS OF OVER RS. 1.40 CRORE FOR NON-COMPLIANCE OF ORDERS

The Uttar Pradesh RERA (“UP RERA”) has imposed a penalty of more than Rs. 1.40 crore on 9 promoters, including Ansal Housing and ATS Realty, for non-compliance with its orders. The UP RERA had reviewed the status of compliance of its orders by the promoters. The Authority had noted that some of the promoters indulged in non-compliance of its orders besides being granted sufficient time for the same. The Authority is making constant efforts to ensure the enforcement of orders and provide speedy justice to the agreed allottees.

It also expressed its decision to impose an appropriate penalty against the promoters to ensure compliance with its orders and protect interests of the home buyers.

FORUM FOR PEOPLE’S COLLECTIVE EFFORTS (FPCE) DEMANDS DEVELOPMENT AUTHORITIES AND RERA TO REGULATE CONSTRUCTION QUALITY FROM START OF REALTY PROJECT

The Forum for People’s Collective Efforts (“FPCE”), an apex body for home buyers, has demanded that development authorities and regulators under RERA should monitor the construction quality from the beginning of a project to fulfil their responsibilities of protecting the interest of home buyers. Real estate developers are definitely to be blamed for poor construction quality, but the onus also falls on the development authorities and RERA.

The FPCE alleged that “*issue of Occupation Certificate (OC) is now merely a formality rather than actual physical inspection, which is mostly obtained through illegal means by builders. Sadly, the RERA authorities merely rubber stamp such certificates which certainly does not absolve them from their prime responsibility to protect the interest of home buyers*”.

The partial collapse of a tower at Chintels Paradiso housing project in Gurugram, Haryana has exposed serious lapses in the working of both development authorities and real estate regulators in the state under the RERA Act, according to the FPCE.



RBI INTRODUCES FRAMEWORK FOR GEO-TAGGING OF PAYMENT SYSTEM TOUCH POINTS

In order to facilitate nuanced spread of acceptance infrastructure and inclusive access to digital payments, Reserve Bank of India (“RBI”) vide a notification dated March 25, 2022, has released the Framework for Geo-tagging of Payment System Touch Points (“**Geo-tagging Framework**”) (accessible [here](#)). Geo-tagging refers to capturing of the geographical coordinates of payment touch points, which are deployed by merchants to receive payments from their customers. The said framework envisages obligations on bank and non-bank payment system operators to record the geographical data with respect to payment touch points and also introduces reporting guidelines for such operators. Geo-tagging of payment touch points has certain benefits such as providing insights on the level of penetration of digital payments in different regions of the country, monitoring infrastructure density across different regions and facilitating focused digital literacy programmes. The Geo-tagging Framework becomes vital in light of the rapid developments taking place in the payment ecosystem wherein a bouquet of payment systems, platforms, products and services have been made available to the consumers.

AMENDMENTS TO THE PAYMENT AND SETTLEMENT SYSTEMS REGULATIONS, 2008

RBI, vide a notification dated March 17, 2022, has carried out amendments to the Payment and Settlement Systems Regulations, 2008 (“**PSS Regulations**”). With this amendment, certain monthly/quarterly/ annual returns prescribed in Regulation 6(2)(a) to 6(2)(g) have been discontinued and a set of redundant operational guidelines listed in the schedule to Regulation 5 therein have been removed. The said amendment aims to reduce the compliance burden on the regulated entities by rationalising certain returns prescribed in the PSS Regulations. The updated PSS Regulations can be accessed [here](#).

RBI’S ACTION AGAINST PAYTM PAYMENTS BANK

RBI vide its order dated March 11, 2022 (“**Order**”), has directed Paytm Payments Bank Limited (“**Paytm Bank**”), under the provisions of Section 35A of Banking Regulation Act, 1949, to stop onboarding new customers with immediate effect. RBI has cited ‘material supervisory concerns in Paytm Bank’ as the reason behind such order. Additional directions to Paytm Bank have been issued, whereby it has been directed to appoint an information technology (IT) audit firm for the purpose of conducting a comprehensive system audit of its IT system. The Order further stipulates that any onboarding of new customers by Paytm Bank shall be subject to a prior approval of RBI post its review of the IT audit report.

AMENDMENTS TO THE CONSOLIDATED FDI POLICY OF 2020

The Department for Promotion of Industry and Internal Trade has issued the Press Note 1 of 2022 (accessible [here](#)) on March 14, 2022 (“**Press Note**”) to amend certain provisions of the Consolidated Foreign Direct Investment Policy of 2020 (“**FDI Policy**”) for *inter-alia* permitting foreign investment in IPO bound Life Insurance Corporation of India Limited (“**LIC**”) and bringing further clarity to some other provisions of the FDI Policy. Below are some of the key changes introduced under the Press Note:

- (i) Foreign investment of up to 20% (Twenty percent) is now permitted in LIC under the automatic route.
- (ii) Such foreign investment in LIC is subject to the compliances with the provisions of the Life Insurance Corporation Act, 1956 and Insurance Act, 1938.
- (iii) Changes in the definition of ‘*Real Estate Business*’ to exclude Real Estate Investment Trusts. The new definition is read as follows:

“Real estate business’ means dealing in land and immovable property with a view to earning profit there from and does not include development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014. Further, earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.”

- (iv) Part 4 of Annexure 3 of FDI Policy has been modified to provide for issue of ‘capital instruments’ (such as equity shares, fully, compulsorily and mandatorily preference shares, fully compulsorily and mandatory convertible debentures and warrants) in case of restructuring of an Indian company as opposed to issuance of ‘shares’ as allowed under the erstwhile provision of FDI Policy.
- (v) Part 5 of Annexure 3 of FDI Policy has been modified allowing Indian companies to issue ‘share based employee benefits’ to its employees and/or directors who are resident outside India.

CCI DISMISSES AIOVA’S COMPLAINT AGAINST AMAZON

Vide an order dated March 3, 2022 (accessible [here](#)), Competition Commission of India (“CCI”) has rejected the anti-trust complaint filed by AIOVA Sellers Association (“AIOVA”) against Amazon, on account of failure to provide sufficient information to establish a *prima facie* case against Amazon. It had been alleged that Amazon’s agreements with

its partners are anti-competitive in nature and thus, lead to ‘deep discounting’ and ‘lack of platform neutrality’ on Amazon’s online marketplace. It was further alleged that Amazon charges higher platform fees from independent sellers in comparison to its partners; and there has been usage of data of successful manufacturers/sellers on its marketplace to float private labels and sell them at massive discounts to underpin competition. However, the said allegations have been rejected by CCI owing to lack of sufficient material on the matter and discrepancies in the information so provided by AIOVA to CCI.

CCI DISMISSES COMPLAINT AGAINST SHOPEE

Vide an order dated March 3, 2022 (accessible [here](#)), CCI has dismissed the complaint filed against Sppin India Pvt. Ltd. which operates the online platform ‘Shopee’. It had been alleged that Shopee is engaged in anti-competitive activities by way of offering ‘deep discounts’ on its e-commerce platform and thus, hampered the competitors in the Indian market. It was further alleged that its *modus operandi* is similar to that of Amazon and Flipkart, and therefore, its anti-competitive practices will have an adverse effect on the competition and while presently Shopee is in nascent stage, such practices would tantamount to abuse of dominant position once Shopee acquires a new-dominant position in the Indian marketplace. CCI dismissed the said complaint, noting that Shopee is a newly launched e-commerce platform and presently does not appear to possess significant market power, much less dominance, in a market where giants like Myntra, Nykaa, Flipkart, Amazon and so on, currently function.

WHITE COLLAR CRIME

APEX COURT HOLDS THAT SANCTION UNDER SECTION 188 CRPC IS NECESSARY ONLY IF 'ENTIRE' OFFENCE IS COMMITTED OUTSIDE INDIA

The Supreme Court in the case of **Sartaj Khan v. State of Uttarakhand (Criminal Appeal No.852 OF 2018)** while hearing an appeal from an order passed by the Uttarakhand High Court, held that the requirement for a sanction from the Central government under Section 188 of the Code of Criminal Procedure (CrPC) for prosecuting an offence committed outside India, is necessary only if the entirety of the offence is committed outside India. Under Section 188 CrPC, even if an offence is committed outside India, (a) by a citizen whether on the high seas or anywhere else or (b) by a non-citizen on a ship or aircraft registered in India, the offence can still be tried in India provided the conditions mentioned in said Section are satisfied. The court observed that in the facts and circumstances of the case, a part of the offence was committed on Indian soil and therefore could be looked into and tried by Indian courts. The court thus concluded that since the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 of the Code and there was no necessity of any sanction as mandated by the proviso to Section 188. Initially, the Uttarakhand High Court had reversed the acquittal recorded by the Trial Court and convicted the accused of the offence. However, dismissing the appeal, the court observed that the offences alleged against the appellant were rightly invoked and fully substantiated.

DSK View: The Apex Court in its judgement has successfully addressed a gap in the law as Section 188 of CrPc does not specifically state whether the offence must be committed in entirety or partially outside India to necessitate a sanction from the Central government. The Court has clarified that the Section gets attracted when the entirety of the offence is committed outside India; and the grant of sanction would enable such offence to be enquired into or tried in India. The Court's decision was a step towards promoting timely

criminal justice in this particular case. However, the Court's decision with respect to the Section is very peculiar to the facts of this case, the accused allegedly having imported a minor girl, who is the resident of Nepal to India, for exploitation. It could probably have been the endeavour of the Court to ensure timely conclusion of the case without necessarily attracting the provisions of the Section since the facts in the case were sensitive in nature.

SUPREME COURT HOLDS THAT POWER U/S.319 OF CRPC IS EXTRAORDINARY AND IS TO BE USED SPARINGLY

The Supreme Court in the case of **Sagar v. State of U.P. & Anr (Criminal Appeal 397 of 2022 arising from SLP Criminal (No.) 7373 of 2022)** held that the power under Section 319 CrPc is to be used sparingly. Section 319 CrPc deals with power of the court to summon a person who appears to be guilty of an offence. The court held that merely a prima facie case which might lead to a conclusion that the person accused is guilty is not sufficient to summon such person. According to the Court, one should show evidence which is more than prima facie in nature. The Apex Court when outlining the scope and ambit of Section 319 of the Code, relied on the decision in **Hardeep Singh v. State of Punjab and other (2014) 3 SCC 92** which stated that 'the test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction' In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPc.

DSK View: The Courts reiteration that powers under Section 319 of the CrPc must be used sparingly is much needed and relevant. In Section 319 CrPc, the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". Establishing a test to determine whether only a prima facie case has been made out or if it is a case wherein

summons should be issued ensures transparency and prevents courts from abusing their powers. Criminal jurisprudence has consequences on to the fundamental right of life and liberty of an individual therefore before summoning an accused it is important that a case is looked at exhaustively.

A MERE BREACH OF THE CONTRACT IS NOT SUFFICIENT TO CLASSIFY AS A CRIMINAL OFFENCE: SUPREME COURT

The Supreme Court in the case of **Vijay Kumar Ghai & Ors. v. State of West Bengal & Ors. (Criminal Appeal No. 463 of 2022 arising from SLP (Criminal) No. 10951 of 2019)** held that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. Relying on the judgement in the case of **Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr [(2000) 4 SCC 168]**, the Court noted that the distinction between a mere breach of contract and cheating, which is a criminal offence, is a fine one. The court made these observations while hearing an appeal filed by the managing director and the directors of a company challenging an order of the Calcutta High Court which refused to quash proceedings against them in a case of cheating and criminal breach of trust. The Apex Court noted that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 IPC can be said to have been made out.

DSK View: It is evident that the Apex Court's decision is a step forward in preventing litigants from adding a colour of criminality to a case without looking into the relevant facts and the law. It is important to look at the complaint/FIR and charge sheet to properly analyse the averments and allegations therein and whether they constitute offences under the relevant statute. Levying charges of a criminal offence on an individual merely on the basis of a breach of contract is arbitrary. If the essential ingredient of culpable intention at the time of the 'promise in the contract' is there, it is evident that the accused has a mala fide intent. Hence, rightfully so, courts should not just look at whether the contract has been breached but also the element of mala fide intent which is necessary to constitute an offence of 'cheating'.

DELHI HIGH COURT: IN CASE THE ALTERNATIVE AND EFFICACIOUS REMEDIES UNDER CRPC ARE NOT EXHAUSTED, POLICE CANNOT CONDUCT INVESTIGATION

The Delhi High Court in the case of **Lalit Raj v. UOI Ministry Of Home Affairs & Ors. W.P.(CRL) No. 580 of 2022** observed that a writ to compel police to conduct an investigation can be denied for not exhausting the alternative and efficacious remedy available under the provisions of the Code of Criminal Procedure. The Court stated that the exceptions to the rule of alternate remedy arise where (i) the writ petition

has been filed for the enforcement of a fundamental right or (ii) when there has been a violation of the principles of natural justice or (iii) in cases where order or proceedings are wholly without jurisdiction or (iv) when vires of a legislation is challenged. The Court dismissed a plea filed under Article 226 & 227 seeking immediate arrest of accused persons and taking appropriate action against the investigation officer for delay in lodging FIR.

DSK View: Statutory provisions are made with the intention of providing a right to justice to litigants. It is important that petitioners first exercise and exhaust the alternative remedies available under the provisions of the CrPC including approaching the Magistrate by taking recourse to Section 156(3) of the Code. Reiterating what is rightfully held by the court, it is the prerogative of the police/investigation agency to determine whether custodial interrogation is required. Pre-mature writ petitions for arrest violate fundamental principles of right to life and liberty enshrined in the Constitution of India.

CRIMINAL PROCEDURE (IDENTIFICATION) BILL, 2022

On March 23, 2022 the Criminal Procedure (Identification) Bill, 2022 (**Bill No. 93 of 2022**) was introduced in the Lok Sabha. According to the bill, it is mandatory for certain individuals, convicted and accused of offences, to share biological personal data. As stated in the Bill, its purpose is "to authorise for taking measurements of convicts and other persons for the purposes of identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto". The Criminal Procedure (Identification) Bill (i) defines measurements (e.g. finger impressions, palm-print and foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, etc. (ii) It empowers the National Crime Records Bureau (NCRB) to collect, store and preserve the record of measurements and for sharing, dissemination, destruction and disposal of records. (iii) Empowers a Magistrate to direct any person to give measurements (iv) Empowers police or prison officers to take measurements of any person who resists or refuses to give measurements. The bill also police to record signatures, handwriting or other behavioural attributes referred to in Section 53 or section 53A of the Code of Criminal Procedure, 1973, for the purposes of analysis. Refusal to comply to the provisions would be deemed to be an offence under section 186 of the Indian Penal Code (IPC) among drawing other penalties.

DSK View: It can be argued that the Bill violates fundamental right of citizens by infringing upon their right to privacy and therefore lies beyond the scope of legislative competence of the Parliament. Any state action infringing upon the right to privacy needs to be backed by legislation. According to Article 20 (3) of the Indian Constitution, no person accused of any offence shall be compelled to be a witness against himself. However, a bare reading of the Bill makes it clear

that accused are not required to be witnesses against themselves but merely comply with certain procedures to allow one to meet the ends of justice. The intention is not to grant the police and other authorities arbitrary powers to abuse their position but rather make provisions for the use of

modern techniques to capture and record appropriate body measurements. This is good step to pave the way for world class crime solving technology which will in turn benefit the citizens and their right to freedom and a safe environment.

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DSK Legal Knowledge Center

Contact Details for any queries: knowledge.management@dsklegal.com

Mumbai

1203, One World Centre, Tower 2B,
Floor 12B, 841, Senapati Bapat Marg,
Elphinstone Road,
Mumbai - 400013.
Tel +91 22 6658 8000

Mumbai

C-16, Dhanraj Mahal,
3rd Floor,
Apollo Bunder, Colaba,
Mumbai - 400001.
Tel +91 22 6152 6000

Bengaluru

206 & 207, 2nd Floor,
HM Geneva House,
14, Cunningham Road,
Bengaluru - 560052.
Tel +91 80 6836 1111

New Delhi

Max House, Level 5,
Okhla Industrial Area, Phase 3,
New Delhi - 110020.
Tel +91 11 4661 6666

Pune

301, 3rd Floor, Power Point, Lane 6,
North Main Road, Koregaon Park,
Pune - 411001.
Tel +91 20 6763 7900

✉ contactus@dsklegal.com

in DSK Legal

🌐 www.dsklegal.com

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