

# NEWSLETTER

*January 2024*

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## REVISED FRAMEWORK FOR COMPUTATION OF NET DISTRIBUTABLE CASH FLOW (“NDCF”) BY INFRASTRUCTURE INVESTMENT TRUSTS (“INVITS”) AND BY REAL-ESTATE INVESTMENT TRUSTS (“REITS”)<sup>1</sup>

The Securities and Exchange Board of India (“SEBI”) has issued circulars dated December 06, 2023, bring a revised framework for the computation of NDCF by InvITs and REITs. Earlier the investment manager of these trusts had the discretion to define and calculate the NDCF.

The aim is to standardize the calculation methodology, promoting ease of doing business and hence the circulars establish revised framework for computation of NDCF by REITs, INVITs, and its holding company/special purpose vehicle (“SPV”) as per the computation formula in the circulars.

The circulars further mandate the concerned trust and its SPV to ensure that a minimum 90% distribution of NDCF be met for a given financial year on a cumulative periodic basis as specified for mandatory distributions in the regulations governing them. Additionally, any restricted cash should not be considered for NDCF computation.

The revised guidelines, detailed in Annexure A of the circulars, shall be applicable from April 01, 2024.

## PRINCIPLES OF FINANCIAL MARKET INFRASTRUCTURES<sup>2</sup>

The Securities and Exchange Board of India (“SEBI”) has issued a circular dated December 11, 2023, addressing the Principles of Financial Market Infrastructures (“PFMI”). SEBI, as a member of IOSCO, is committed to adopt and implement the CPSS-IOSCO Principles for Financial Market Infrastructures (“FMIs”). The PFMIs, comprising 24 principles, which are designated to ensure that the global

financial market infrastructure is well balanced and placed against financial shocks. The PFMIs are applicable to systematically important FMI entities which include the Central Counterparties (CCP), Central Securities Depository (CSD)/Securities Settlement System (SSS), Payment and Settlement Systems (PSS), and Trade Repository (TR). These entities play a very important role in clearing, settlement, and recording of monetary and other financial transactions.

SEBI regulates Depositories and Clearing Corporations, and they are termed by them as systemically important FMIs. These FMIs are required to comply with PFMIs as they play a very important role in order to provide essential facilities and perform systemically critical functions in the market. The issue of assessment of PFMI by SEBI regulated FMIs was deliberated in Secondary Market Advisory Committee of SEBI (SMAC). Based on their recommendations, SEBI emphasized the self-assessment of FMIs against PFMIs, classified as quantitative and qualitative. The periodicity includes quarterly quantitative assessments and annual qualitative disclosures.

FMIs will be monitored and assessed annually by the Regulatory Oversight Committee (ROC), with reports submitted to the governing board of the FMI and SEBI within 60 days from the end of the financial year.

This Circular shall come into effect from the quarter end of December, 2023.

## SIMPLIFICATION OF REQUIREMENTS FOR GRANT OF ACCREDITATION TO INVESTORS<sup>3</sup>

The SEBI has issued a circular dated December 18, 2023, addressing the simplification of requirements for granting accreditation to investors. The circular aims to enhance flexibility and streamline the accreditation process. For

<sup>1</sup> SEBI/HO/DDHS/DDHS-PoD/P/CIR/2023/184 & 185

<sup>2</sup> SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/190

<sup>3</sup> SEBI/HO/AFD/PoD1/CIR/2023/189

accreditation purposes, accreditation agencies, who also work as KYC Registration Agencies (“KRAs”), can now get the access of KYC documents from their database and other KRAs. The accreditation agencies will grant accreditation solely based on the KYC and financial information of applicants.

The circular further revises the validity period of accreditation certificates:

- If eligibility criteria of the applicant are met for the preceding one financial year, the certificate shall be valid for two years from the date of the issuance of the certificate.
- If eligibility criteria of the applicant are met for each of the preceding two financial years, the certificate shall be valid for three years from the date of the issuance of the certificate.
- If newly incorporated entities who meets the applicable net-worth criteria as on the date of application, who does not have financial information for the preceding financial year then accreditation certificate issued shall be valid for a period of two years from the date of issuance of the certificate.

This circular came into effect immediately, i.e. December 18, 2023.

## AMENDMENT TO CIRCULAR DATED JULY 31, 2023 ON ONLINE RESOLUTION OF DISPUTES IN THE INDIAN SECURITIES MARKET<sup>4</sup>

The SEBI has issued a circular dated December 20, 2023, amending the earlier **Online Resolution Circular**<sup>5</sup> dated July 31, 2023 which provided for the guidelines for online resolution in the Indian securities market.

The circular provides clarification on the parties that are involved along with the inclusion of institutional/corporate clients. It further amends on mediation, arbitration and conciliation processes by creating an importance of online nature and venue in India.

The circular amends clauses of the Online Resolution Circular in relation to the Online Dispute Resolution (“ODR”) portal, enrollment, fees for arbitration and initiation.

The circular further amends Clause 28(c) of the Online Resolution Circular whereby the slab of above INR. 50 Lakh is modified to ‘above INR. 50 Lakh – INR. 1 Crore’.

In addition to this, for claims which amount to INR. 1 Crore and above, *ad valorem* fees at 1% of the claim value or INR. 1,20,000/-, whichever is more, towards arbitrator’s fees and fees at INR. 35,000/- towards ODR Institution’s Fees, in addition to the arbitrator’s fees, together with applicable GST, Stamp Duty, etc. on actual outgoings, shall be applicable.

This circular shall come to immediate effect, i.e. on December 20, 2023.

<sup>4</sup> SEBI/HO/OIAE/OIAE\_IAD-3/P/CIR/2023/191

<sup>5</sup> SEBI/HO/OIAE/OIAE\_IAD-1/P/CIR/2023/131



The following are the main highlights in the Competition Law space for the month of December 2023:

## **THE HON'BLE DELHI HIGH COURT DISMISSES ULTRA TECH CEMENT'S APPEAL FILED AGAINST THE IMPLEADMENT OF BUILDERS ASSOCIATION OF INDIA BY CCI**

The Hon'ble High Court of Delhi, *vide* its [judgement](#) dated December 18, 2023, has rejected the writ petition submitted by Ultratech Cement Limited (**UCL**). The petition challenged the decision of the CCI, which permitted the inclusion of the Builders Association of India (**BAI**) in the ongoing proceedings.

Previously, on July 01, 2019, the CCI commenced an inquiry into grey cement manufacturers. The investigation was prompted by allegations of cartelization in the production and promotion of grey cement, building, and cement-related products.

Following the issuance of the *prima facie* order of investigation, the BAI submitted an impleadment application, which was initially rejected by the CCI. Dissatisfied with this decision, BAI sought recourse in the Hon'ble High Court of Delhi. Subsequently, the Hon'ble Court, through its order dated [September 26, 2022](#), granted permission to BAI to approach the CCI and file a fresh application for impleadment.

The High Court, in rejecting the appeal, analyzed Regulation 25 of the Competition Commission of India (General) Regulations 2009 and emphasized that the inclusion of a party at later stages does not conclusively determine the rights and obligations of the parties involved. Instead, it is a procedural step aimed at enabling the Competition Commission of India (CCI) to make an informed decision regarding potential violations within the framework of competition law in the country.

## **COMPETITION COMMISSION OF INDIA APPROVES THE ACQUISITION OF MAJORITY SHAREHOLDING OF GLENMARK LIFE SCIENCES LIMITED BY NIRMA LIMITED**

The CCI in its [press release](#) dated December 19, 2023, has approved Nirmal Limited (**Acquirer**) to acquire majority shareholding of Glenmark Life Sciences Limited (**Target**) by purchasing shares from the Target's promoter and the public shareholders under an open offer under the relevant provisions of SEBI.

The Acquirer has a geographical presence in India as well as the USA, and its operations in India includes soda ash, soaps, detergents, salt, caustic soda, linear Alkyl Benzene, and other industrial products. The Target is engaged in the manufacture and sale of Active Pharmaceutical Ingredients serving segments like cardiovascular disease, central nervous system disorders, pain management, and anti-diabetics.

Detailed orders from the CCI for the same are awaited.

## **CCI APPROVES THE ACQUISITION OF 100% SHAREHOLDING AND VOTING RIGHTS OF CONSTANTIA FLEXIBLES HOLDING GMBH (CONSTANTIA) BY CAPRIPACK BIDCO GMBH (CAPRIPACK)**

The CCI in its [press release](#) dated December 13, 2023, has approved the proposed acquisition of sole control by Capripack by way of acquisition of 100% shareholding and voting rights from Constantia Lux S.à.r.l. (**Seller**).

Capripack is an indirectly majority-owned acquisition vehicle managed and advised by a private equity firm named One Rock Capital Partners, LLC (**ORC**), headquartered in New York. It focuses on control-stake equity investments in middle-market companies and manages funds that invest in portfolio companies in various industries such as chemicals and process industries, food manufacturing and distribution,

specialty manufacturing and health care products, and business and environmental services.

Constantia is wholly owned by the Seller and the Seller and is a global producer of flexible packaging based in Austria. Its products range from packaging materials for everyday use like food, dairy, pet food, and household to personal care products, pharmaceutical products, and beverages.

A detailed order from the CCI for the said transaction is anticipated.

**CCI APPROVES THE SCHEME OF ARRANGEMENT BETWEEN 19 DIFFERENT ENTITIES IN YAARI DIGITAL INTEGRATED SERVICES LIMITED**

The CCI in its [press release](#) dated December 19, 2023, has stated its approval to the proposed scheme of arrangement of:

- i) Dhani Services Limited (**DSL**), and Indiabulls Enterprises Limited (**IEL**) into Yaari Digital Integrated Services Limited (**Yaari Digital**)
- ii) Savren Medicare Limited, Auxesia Soft Solutions, Gyansagar Buildtech Limited, Pushpanjali Finsolutions Limited, Devata Tradelink Limited, Evinos Developers Limited, Milky Way Buildcon Limited, Indiabulls Consumer Products Limited, Indiabulls Infra Resources Limited, Jwala Technology Systems Private Limited, Mabon Properties Limited, YDI Consumer India Limited, Indiabulls General Insurance Limited and Indiabulls Life Insurance Company Limited into Yaari Digital.
- iii) Juventus Estate Limited into Yaari Digital, and
- iv) Demerger of India Land Hotels Mumbai Private Limited (**ILHM**) into Indiabulls Pharmicare Limited by way of issuance of shares by Yaari Digital in its capacity as the holding company of Indiabulls Pharmicare.

DSL is an NBFC and operates, *inter alia*, as a real estate developer, technology company, e-commerce entity, stockbroker, etc. IEL carries on the business of equipment renting and leasing and maintenance services. Entities such as: Sarven Medicare Limited, Auxesia Soft Solutions, Gyansagar Buildtech Limited, Pushpanjali Finsolutions Limited, Devata Tradelink Limited, Evinos Developers Limited, Milky Way Buildcon Limited, Indiabulls Consumer Products Limited, Indiabulls Infra Resources Limited, Jwala Technology Systems Private Limited, and Mabon Properties

Limited are not actively engaged in the business they are authorized to conduct.

Furthermore, YDI Consumer India Limited is engaged in manufacturing and marketing cosmetics, toiletries, beauty, and cleaning products. Indiabulls General Insurance Limited carries on the business of general insurance and health insurance. However, as of the date of the approval of the scheme of arrangement, the company has not received the insurance license and has also decided to not pursue the life insurance business.

Juventus Estate Limited deals in real estate and ancillary services. ILHM is engaged in the development of commercial and industrial infrastructure along with investment and trading services. Indiabulls Pharmicare Limited has diversified its business from pharma to real estate activities. And lastly, Yaari Digital is engaged in promoting digital financial and other solutions. It also has proprietary rights to the digital platform 'Yaari'.

A detailed order from the CCI regarding this transaction is awaited.

**CCI APPROVES THE ACQUISITION OF 100% EQUITY SHARED OF AQUAPHARM CHEMICALS PRIVATE LIMITED BY PCBL LIMITED**

The CCI has, *via* [order](#) dated December 26, 2023, approved the acquisition of 100% equity share capital of Aquapharm Chemicals Private Limited (**Target**) by PCBL Limited (**Acquirer**). The Acquirer proposed to acquire the equity shares from the existing shareholders of Target, i.e., members of the Desai Group and Mangwani Group (**Proposed Combination**). Post the Proposed Combination, the Target will be a wholly owned subsidiary of the Acquirer.

The Proposed Combination will empower the Target entity with access to a more extensive pool of resources, facilitating its expansion and overall growth. Furthermore, the Proposed Combination presents the current shareholders of the Target with an attractive exit opportunity.

In its order, the CCI observed that the activities of the parties do not demonstrate any horizontal, vertical, or complementary overlaps within the conceivable relevant markets in India. In light of the same, the Proposed Combination was notified under the green channel route under Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).



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## ARBITRATION CLAUSES IN AN UNSTAMPED AGREEMENT ARE ENFORCEABLE BY THE COURT IN ORDER TO REFER THE DISPUTE TO ARBITRATION

A seven-judge bench of the Hon'ble Supreme Court in a curative petition titled "*Re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*"<sup>6</sup> unanimously held that an unstamped or insufficiently stamped instrument would be inadmissible as evidence, however, that does not make the agreement void or unenforceable as it is a curable defect.

The said issue was referred to the seven-judge bench by a five-judge bench in a curative petition to resolve the contradictions in the Arbitration & Conciliation Act 1996 ("**A&C Act**") and Indian Stamp Act, 1899 ("**Stamp Act**") to decide whether an arbitration clause embedded in an unstamped or insufficiently stamped agreement would be non-existent, unenforceable, or invalid in light of the larger ramifications and consequences of the decision in *N N Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.*<sup>7</sup> judgment ("**NN Global**"). It was broadly contended by the Petitioners that NN Global does not lay down the correct position of law as:

- (i) An Arbitral Tribunal has competence to rule on its jurisdiction, including issues pertaining to stamping;
- (ii) As per the doctrine of separability, arbitration clauses are self-contained agreements;
- (iii) The *non-obstante* clause in Section 5 of the A&C Act limits judicial intervention;
- (iv) The provisions of A&C Act and Stamp Act are to be read harmoniously; and
- (v) Lack or insufficiency of stamping does not render the instrument void as it is a curable effect and only makes the instrument inadmissible as evidence.

<sup>6</sup> Curative Pet(C) No. 44 of 2023, 13.12.2023; 2023 SCC OnLine SC 1666.

<sup>7</sup> (2023) 7 SCC 1

The Respondent in response submitted that the curative petition was not maintainable and lacked jurisdiction. On merits, it was contended that Courts have the authority to *prima facie* examine both the existence, and validity of an arbitration agreement. The same was in light of the mandatory legal requirement under Section 33 read with 11 of the Stamp Act to impound insufficiently or unstamped instruments.

In light of the foregoing, the Hon'ble Apex Court observed that Section 35 of the Stamp Act merely renders an unstamped or insufficiently stamped instrument inadmissible as evidence however, the same is a curable defect. It was also noted that the objective of the A&C Act is to retain arbitral autonomy and to ensure speedy redressal of disputes by keeping the procedure informal and flexible, and that of the Stamp Act is to secure revenue for the state. Therefore, upon harmoniously reading the two statutes, it was held that an unstamped or insufficiently stamped instrument does not make the agreement void or unenforceable.

## AN ARBITRATION AGREEMENT ENTERED INTO BY A COMPANY, PART OF A GROUP OF COMPANIES MAY BIND NON-SIGNATORY AFFILIATES TO THE ARBITRATION AGREEMENT

The Hon'ble Supreme Court in the case of "*Cox and Kings Ltd. vs. SAP India Pvt. Ltd.*"<sup>8</sup> unanimously upheld the validity of the Group of Companies Doctrine ("**GOCD**") on the basis that any non-signatory party/person who has a legal relationship with the person signing the arbitral agreement and intends to be bound by it through their conduct can be made a party to the arbitration proceedings. It was the case of the Petitioners that the definition of "party" under Section 2(1)(h) of the A&C Act cannot be

<sup>8</sup> 2023 SCC OnLine SC 1634.

restricted to mean only the “signatories” and the same needs to be deciphered based on the facts and circumstances of each case. Therefore, if the non-signatories tacitly or impliedly, by their conduct, depicted that they want to be bound by the arbitration agreement or have mutually, through common intentions and conduct, agreed to be bound by the agreement, without any formal written communication, then they should be made a party to the arbitral proceedings. It was also argued that the concept of a “party” is distinct from the concept of a “person claiming through or under” a party as, the latter does not step into the shoes of the “party” but rather claims an independent relief/right under the agreement. It was further submitted that the GOCD was a natural extension of the principle of “piercing the corporate veil” and since arbitration is in the realm of private law and a matter of choice and intent, it made perfect sense to affirm and integrate the said doctrine. The said contentions were contested by the Respondent stating that the GOCD lacked basis under both contract law and company law. Going on a more pragmatic approach it was argued that if a party has not chosen to sign an arbitration agreement, it is enough proof of their intentions to be not bound by it. Since an arbitration agreement sets out the executing parties, the same cannot be expanded to include non-signatory third parties.

The Hon’ble Supreme Court considering the arguments of both parties upheld the GOCD and made the following observations:

- (i) It is left open to the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement or not at the referral stage basis the facts and circumstances of the individual case;
- (ii) The doctrine of ‘piercing the corporate veil’ or alter ego and the principle of “single economic entity” is not the basis of application of the GOCD;
- (iii) “Party” under Section 2(1)(h) read with Section 7 of the A&C Act would include both signatories as well as non-signatories, however, the latter cannot be constrained to arbitrate;
- (iv) It was clarified that the concept of “party” and “persons claiming through or under” is distinct as the latter can only claim in an independent capacity and not as a party;
- (v) Consent is a fundamental requirement as arbitration is an agreement under contract law wherein the mutual intention of the parties is essential; and
- (vi) The discussion of GOCD in the present judgment should not preclude the courts from applying other doctrines and principles for binding non-signatories to the arbitration agreement.

## PROPERTIES SOLD IN AUCTION SALES BEFORE THE DECLARATION OF MORATORIUM CAN'T BE TREATED AS LIQUIDATION ASSET

The Hon’ble Supreme Court in the case of *Haldiram Incorporation Pvt. Ltd. vs. Amrit Hatcheries Pvt. Ltd. & Ors.*<sup>9</sup> held that the properties of a Corporate Debtor sold in an auction sale could not be treated as liquidation assets, if the sale was concluded before the declaration of a moratorium under the Insolvency and Bankruptcy Code 2016 (“Code”).

In the present case, Punjab National Bank (“PNB”) had advanced various credit facilities to the Amrit Hatcheries Pvt. Ltd. (“Corporate Debtor/ Defaulting Borrower”). In lieu of the aforesaid, the Defaulting Borrower had mortgaged two sets of properties (“Properties”), in the Howrah district, West Bengal, to PNB. Subsequently, on default of payment by the Defaulting Borrower, the Properties were sold to the Haldiram Incorporation Pvt. Ltd. (“Haldiram”/ “Appellant”) via auction sale. The aforesaid auction was completed on 16.08.2019, shortly thereafter, on 20.08.2019, the Corporate Insolvency Resolution Process (“CIRP”) was initiated against the Defaulting Borrower, thereby moratorium was imposed against the Corporate Debtor. The Hon’ble National Company Law Tribunal (“NCLT”) vide order dated 25.02.2020, adjudged the aforesaid transaction of handing over the property of the Corporate Debtor as illegal and accordingly, held that the Properties would continue to be assets of the Corporate Debtor. Subsequently, an Appeal was filed before the Hon’ble National Company Law Appellate Tribunal (“NCLAT”) challenging the Order dated 25.02.2020 passed by the Hon’ble NCLT, which was dismissed by the Hon’ble NCLAT, in 2022.

Shortly thereafter, a Civil Appeal was filed before the Hon’ble Supreme Court against the order of the Hon’ble NCLAT. When the captioned civil appeal was heard on merits, the Hon’ble Supreme Court observed that no reason was cited by the Respondents to demonstrate reason as to why the sale certificate would be held illegal. Further, the Hon’ble Bench held that Respondents had not raised any allegations *qua* any defect or default in forwarding the sale certificate in terms of Section 89(4) of the Registration Act, 1908. Therefore, the Hon’ble Court held that aforesaid sale certificates were valid in view of the order passed by the Hon’ble Supreme Court in *Esjaypee Impex Private Limited vs. Assistant General Manager and Authorised Officer, Canara Bank*<sup>10</sup>. The Hon’ble Supreme Court further noted that all the respondents concurred, during the course of hearing, that the sale stood concluded before the imposition of moratorium under section 14 of the code. Therefore, the Hon’ble Supreme Court allowed the appeal and held that the Properties cannot be treated as liquidation assets of the Corporate Debtor.

<sup>9</sup> Civil Appeal No. 1733 OF 2022

<sup>10</sup> (2021) 11 SCC 537

**HOMEBUYER(S) OR UNSUCCESSFUL RESOLUTION APPLICANT(S) IS NOT ENTITLED TO FILE AVOIDANCE APPLICATION BEFORE THE ADJUDICATING AUTHORITY, ONLY THE RESOLUTION PROFESSION IS EMPOWERED TO DO SO**

The Hon'ble National Company Law Appellate Tribunal ("NCLAT") in the case of *Ms. Amita Saurabh Bihani and Ors. vs. E&G Global Estates Limited and Ors.*<sup>11</sup> held that as per the Insolvency and Bankruptcy Code 2016 ("Code") homebuyer(s) of the corporate debtor's real estate project or an unsuccessful resolution applicant is not entitled to file to any application for avoidance of transactions which are preferential, fraudulent, undervalued or extortionate in nature, such applications can only be filed by a Resolution Professional ("RP").

In the present case, E & G Global Estates Ltd. ("**Corporate Debtor**") is engaged in the business of real estate development and was admitted into the Corporate Insolvency Resolution Process ("CIRP") by the Hon'ble National Company Law Tribunal ("NCLT") *vide* order dated 24.06.2020. Shortly thereafter, on 14.01.2021, a Forensic Audit Report ("**FAR**") was submitted by the Forensic Auditor. In furtherance of the FAR, the Resolution Professional ("**RP**") filed an application ("**RP's Application**") under Section 66 of the Code, alleging that fraudulent transactions were undertaken by certain allegedly illegitimate home buyers of the Corporate Debtor in collusion with suspended directors of Corporate Debtor. While RP's Application was pending

before the Hon'ble NCLT, the Homebuyers ("**Appellants**") filed an application ("**Homebuyers' Application**"), *inter alia* seeking removal of alleged illegitimate home buyers from the Committee of Creditors ("**CoC**") in view of the FAR. Thereafter, on 17.11.2021, the Hon'ble NCLT, while deciding upon RP's Application, the Hon'ble NCLT directed for removal of fraudulent homebuyers from the CoC and ordered for reconstitution of the CoC. The aforesaid order was challenged before the National Company Law Appellate Tribunal ("NCLAT"), whereby the Hon'ble Bench remanded the matter to Id. NCLT for re-consideration. Subsequently, the Hon'ble NCLT, *vide* order dated 11.08.2023, approved the plan of Successful Resolution Applicant and dismissed the Homebuyers' Application, while RP's Application was pending adjudication.

Aggrieved by the aforesaid, the Appellants filed an appeal against the order dated 11.08.2023 before the Hon'ble NCLAT. The Hon'ble Appellate Tribunal dismissed the appeal filed by the Appellants noting that when the Code, under Section 25(2)(j), clearly states that it is the duty of the Resolution Professional to determine the nature of such avoidance transactions and file an appropriate application before the Ld. Adjudicating Authority then only the person so authorised i.e. the RP can pursue avoidance applications and not the homebuyer(s) of the corporate debtor's real estate project or an unsuccessful resolution applicant, who are the Appellants in the present case. Accordingly, the Hon'ble NCLAT dismissed the appeal.

<sup>11</sup> Company Appeal (AT)(Insolvency) No. 1214 & 1215 of 2023

# EMPLOYMENT LAW

## THE EMPLOYEES' PROVIDENT FUND ORGANISATION RELEASES A CIRCULAR ON THE STANDARD OPERATING PROCEDURE FOR INSPECTION OF ESTABLISHMENTS AND RELATED CIRCULARS

The Employees' Provident Fund Organisation ("EPFO"), *vide* circular dated December 1, 2023, released a set of probable frequently asked questions related to the standard operating procedure for inspection of establishments and circulars related to the same. As per the aforementioned circular, the list of probable and illustrative but not exhaustive questions were prepared for the ready reference of zonal and field offices. The aforementioned circular also states that field offices may forward their suggestions/inputs, through their respective zonal office for further improvement at the end of the Central Analysis and Intelligence Unit, Head Office.

## NOTICE REGARDING PROVIDING SUPER SPECIALITY SERVICES TO EMPLOYEES STATE INSURANCE CORPORATION BENEFICIARIES IN CERTAIN AREAS OF DELHI

The Employees State Insurance Corporation ("ESIC") on December 4, 2023, issued a notice inviting applications from hospitals, diagnostic centres and blood banks which are empanelled with the Central Government Health Scheme for empanelment for 2 (Two) years for providing super speciality services (tertiary care only) to ESIC beneficiaries of ESIC hospitals of Delhi (Basaidarapur, Rohini, Jhilmil & Okhla) and the National Capital Region (Noida, Gurugram, Manesar, Faridabad, Sahibabad) as per Clause 14.7 of page no. 21 of the ESIC Operational Manual 2023 for Super Speciality and Speciality Services. Interested healthcare organisations were required to submit their applications by December 31, 2023, as per the ESIC Operational Manual 2023 for Super Speciality and Speciality Services.

## CHANGES IN ESIC AADHAR SEEDING APPLICATION DUE TO E-KYC CHANGES BY THE UNIQUE IDENTIFICATION AUTHORITY OF INDIA

The ESIC *vide* notification dated December 6, 2023, released a crucial guide for users, providing insights into the updated ESIC AADHAR seeding application and the necessary steps to ensure accurate AADHAAR seeding and ABHA generation. It addresses the implications of the e-KYC changes by the Unique Identification Authority of India ("UIDAI"), emphasises the importance of the precise demographic details and AADHAAR authentication and outlines the benefits of implementing AADHAAR for insurance purposes. The document also offers practical instructions for users and highlights the measures taken to address AADHAAR mismatch requests, ultimately aiming to streamline the AADHAAR seeding process for insurance persons and their family members.

The guide provides a comprehensive overview of the updated application, focusing on the process of AADHAAR seeding and ABHA generation for insurance persons and their family members. It emphasizes the recent changes made in response to the updated e-KYC response by UIDAI, particularly regarding the recording of date of birth. The document highlights that users can now select the date and month during the seeding process based on available documentary evidence, ensuring accurate Aadhaar seeding. It also addresses the implications of the e-KYC changes, emphasizing the need for precise demographic details captured through the e-KYC process of UIDAI and the authentication of AADHAAR numbers through one-time password.

Furthermore, the document outlines the purpose of seeding AADHAAR and displaying the AADHAAR status in the e-Pehchan Card, emphasising the benefits of implementing AADHAAR using e-KYC and AADHAAR authentication through one-time password/biometric methods. It

underscores the significance of these measures in preventing fraudulent activities in financial transactions and merging the contributions of duplicate insured persons. The document also includes an AADHAAR status report and provides detailed instructions for users on how to input the date and month during the seeding process, based on available documentary evidence. Additionally, it highlights the deletion of blank cases of AADHAAR mismatch requests from the backend and the need to approach the affected insured persons again for seeding their AADHAAR numbers in the ESIC portal.

### **THE UNIVERSITY GRANTS COMMISSION NOTIFIES ALL HIGHER EDUCATIONAL INSTITUTIONS TO CONSTITUTE AN INTERNAL COMPLAINT COMMITTEE**

The University Grants Commission has released a public notice on December 12, 2023. As per the public notice the University Grants Commission had notified the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, which highlights the importance of sub-regulation (1) of Regulation 4 of the aforementioned Regulations, which talks about an internal complaint committee with an in-built mechanism for gender sensitisation against sexual harassment. To address gender based violence and implement gender sensitisation programmes, the University Grants Commission has repeatedly encouraged higher educational institutions to establish an internal complaint committee in the institutions under their administrative jurisdiction. Additionally, the higher educational institutions have been asked to post the names and contact information of the internal complaint committee members on their websites and on notice boards throughout the institutions. Being statutory in nature, the aforementioned Regulations are binding on all higher educational institutions and any institution not following them will have a complaint lodged against it with the Gender Sensitization Cell of the University Grants Commission.

### **FREQUENTLY ASKED QUESTIONS FOR IMPLEMENTATION OF JUDGMENT OF THE SUPREME COURT OF INDIA ON HIGHER PENSION**

The EPFO *vide* circular dated December 13, 2023 issued a list of frequently asked questions for implementation of the judgement of the Supreme Court of India in the case of *Employees' Provident Fund Organisation & Anr vs. Sunil Kumar B. & Ors* dated November 4, 2022. As per the aforementioned circular, the questions are divided into 4 (Four) sections which are:

- proof of joint option under Paragraph 26(6) of the Employees' Provident Fund Scheme 1952;
- members of exempted provident fund establishments;
- computation of pension; and

- payment of arrears of pension.

### **THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS (AMENDMENT) RULES, 2023**

The Labour and Skill(E) Department of Kerala *vide* notification dated December 13, 2023 amended the Kerala Shops and Commercial Establishments Rules, 1961 suitably in accordance with the Kerala Shops and Commercial Establishments (Amendment) Act, 2021. As per the aforementioned amendment, the words "Labour Commissionerate Automated System", will be replaced with the words "Labour Commissionerate Automation System" wherever they occur in the Kerala Shops and Commercial Establishments Rules, 1961.

### **THE ANDAMAN AND NICOBAR MINIMUM WAGE NOTIFICATION**

The Office of the Labour Commissioner, Andaman and Nicobar Administration *vide* notification dated December 27, 2023, declared the minimum rate of wages in the Union Territory of Andaman and Nicobar Island with effect from January 1, 2024. As per the aforementioned notification, the rates of minimum wages shall be as under:

- Unskilled: INR 628 (Rupees Six Hundred Twenty Eight) per day;
- Semi-skilled/unskilled supervisory: INR 709 (Rupees Seven Hundred Nine) per day;
- Skilled/clerical: INR 832 (Rupees Eight Hundred Thirty Two) per day; and
- Highly skilled: INR 915 (Rupees Nine Hundred Fifteen) per day.

As per the aforementioned notification the minimum wages shall be uniform across all 3 (Three) districts i.e. South Andaman, North & Middle Andaman and Nicobar District. Additionally, the revised minimum wages shall be uniform across all 6 (Six) schedules of employment and shall also be applicable to daily rated mazdoor engaged by government departments under the Andaman and Nicobar Administration. The 6 (Six) schedules of employment are:

- shops, commercial establishments, residential hotels, lodging houses, restaurants, eating houses, theatres and places of public amusements or entertainment;
- wood based industries;
- educational institutes/schools/ nurseries/ kindergartens/ tutorials/ coaching institutes in the private sector other than Central Board of Secondary Education affiliated institutions;
- agriculture;
- construction or maintenance of roads or in the building operations or stone breaking or stone crushing; and
- loading and unloading.

## ENERGY

### **MINISTRY OF NEW & RENEWABLE ENERGY VIDE CIRCULAR DATED DECEMBER 07, 2023, ISSUES 'NATIONAL REPOWERING & LIFE EXTENSION POLICY FOR WIND POWER PROJECTS-2023 IN SUPERSESSION TO THE 'POLICY FOR REPOWERING OF THE WIND POWER PROJECTS' DATED 5TH AUGUST 2016**

This circular supersedes the earlier 'Policy for Repowering of the Wind Power Projects' dated 5th August 2016 establishes 'National Repowering & Life Extension Policy for Wind Power Projects-2023' as an outcome of revisions based on stakeholders' consultations. The circular aims to encourage the adoption of newer technologies to enhance the efficiency and longevity of wind power projects in alignment with evolving industry standards and permits repowering or replacement of older-generation turbines with more efficient models, even before the completion of their design life, providing flexibility for developers and owners.

Additionally, the revised policy addresses the refurbishment of wind turbines to extend their life beyond the design life, contingent upon safety and performance assessments in accordance with relevant standards. This refurbishment may involve modifications to various turbine components such as the gearbox, blades, generator, controller, among others. The overarching aim is to encourage the adoption of advanced technologies and enhance the overall efficiency and longevity of wind power projects.

### **MINISTRY OF POWER VIDE NOTIFICATION BEARING REFERENCE NO. 23/05/2020-R&R (PART-1) DATED DECEMBER 14, 2023, ISSUED THE DRAFT ELECTRICITY (RIGHTS OF CONSUMERS) SECOND AMENDMENT RULES, 2023**

Modifications are proposed in the Electricity (Rights of Consumers) rules, 2020. The amendment proposes to replace the existing rule 4 (11) and addition of sub rules 14.

Firstly, the new sub section 11 of rule 4 states that the Commission will define the maximum time frames for providing new connections or modifying existing ones. The specified periods are not to exceed three days in metro cities, seven days in other municipal areas, and fifteen days in rural areas, post submission of a complete application. The new amendment proposes that in cases where an extension of distribution mains or commissioning of new substations is required, then the distribution licensee must supply electricity immediately after such extension or commissioning, or within a timeframe specified by the Commission. Secondly, draft amendment rules introduce addition of Sub-rule 14 to rule 4 which addresses individual electricity connections for premises in Group Housing Societies, Residential Colonies, or similar bodies. It sets conditions, including a cap on tariffs and additional charges for single-point connections. The timeline for new Electric Vehicle (EV) charging system connections aligns with sub-rule 11 of Rule 4.

The draft amendment further proposes substitution of rule 5, sub-rule 7 by detailing the testing of meters by the distribution licensee within a specified timeframe upon consumer complaints. Additionally, if a consumer complains about meter readings, an additional meter must be installed within three days for verification, as per Commission specifications. Moreover, the draft amendment proposes substitution of rule 11 (7) and 11 (9) whereby sub-rule 7 focuses on completing technical feasibility studies within fifteen days, exempting rooftop solar installations up to 10 kW. Strengthening distribution infrastructure for larger installations is the responsibility of the Distribution Licensee.

While sub-rule 9 outlines the process post-installation of solar PV systems, including the submission of an installation certificate and the distribution licensee's responsibilities within a specified timeline not exceeding fifteen days from submission.

The amendments aim to streamline processes, address consumer complaints promptly, and encourage solar power installations.

**CENTRAL ELECTRICITY REGULATORY COMMISSION VIDE NOTIFICATION BEARING REFERENCE NO. L-1/236/2018/CERC DATED DECEMBER 15, 2023, ISSUED THE CENTRAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) (THIRD AMENDMENT) REGULATIONS, 2023**

Central Electricity Regulatory Commission (“CERC” or “Commission”) had notified the CERC (Terms and Conditions of Tariff) Regulations, 2019 (“Principal Regulations”) specifying the terms and conditions for determination of tariff of the generating stations and inter-State transmission systems covered under its jurisdiction. The Principal Regulations in Appendix-II provide the “Procedure for Calculation of Transmission System Availability Factor for a Month.” The Principal Regulations underwent modifications post receipt of letters issued by the Ministry of Power each dated 31.08.2021, 16.06.2022 and 03.08.2022. Thereafter, the draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Third Amendment) Regulations, 2023 were notified on 06.09.2022 for seeking stakeholder consultation, which are now duly considered and brought about amendments by addition of new sub clause (iii) after sub-clause (ii) of clause (4) of Principal Regulations, deletion of sub-clause (ii) to clause (5) under Appendix-II of Principal Regulations, addition of sub-clause (iii) after sub-clause (ii) of clause (5) under Appendix-II of clause (5) of Principal Regulations.

**MINISTRY OF EXTERNAL AFFAIRS VIDE NOTIFICATION DATED DECEMBER 19, 2023, RELEASED OFFSHORE WIND ENERGY LEASE RULES, 2023**

With the notification of these Offshore Wind Energy Lease Rules, 2023 (“Lease Rules”), India’s ambitions towards wind energy got strengthened. These Lease Rules specify that offshore wind energy sites shall be exclusively provided by the government on lease basis. The applicant is required to furnish payment of yearly lease fee accounted at a rate of INR. 1,00,000 (Rupees One lakh) per square kilometer per year in advance calculated for each square kilometer or part thereof covered by the lease. The fee is required to be deposited within one month from letter of demand from lease issuing authority.

The area under lease shall ordinarily extend to twenty-five kilometers to five hundred square kilometers and same may vary on size of project. However, before the grant of lease takes place for a project of like nature to be set up, approvals and licenses will be required from a lot of ministries such as Ministry of Defense, Ministry of Home Affairs, Ministry of Environment, Forest and Climate Change, Department of

Space and Ministry of Ports, Shipping and waterways etc., depending on the land/site.

Further, the Lease Rules specify that the validity of the lease extends to a period of three years, further extendable by an additional two years provided adequate reasons provided. The lease shall stand expired post a five-year lease period and all related clearances be withdrawn. However, for construction and operation of offshore wind energy project, the validity of lease stands extended for thirty-five years extendable further on case-to-case basis subject to financial viability and safety of the project.

**MINISTRY OF NEW & RENEWABLE ENERGY VIDE NOTICE DATED DECEMBER 19, 2023, ISSUED A FRAMEWORK FOR PROMOTING DRE LIVELIHOOD APPLICATIONS**

The Ministry of New and Renewable Energy (“MNRE”), Government of India, has issued a notice seeking comments from stakeholders on the proposed testing procedure for solar refrigerators. In line with the objective to establish an enabling ecosystem for the widespread adoption of Decentralized Renewable Energy (DRE) applications, MNRE had previously introduced a framework for promoting DRE Livelihood Applications on February 14, 2022. As part of this initiative, MNRE is formulating testing procedures for solar refrigerators. The Collaborative Labelling and Appliance Standards Programme (CLASP) has defined a testing method for off and weak-grid refrigerators, which is accessible through a provided link. The MNRE intends to align the testing procedure for solar refrigerators with CLASP’s method, but with necessary modifications to suit Indian conditions. However, this is still in the draft stage and open for stakeholders’ comments accepted till January 05, 2023, to contribute to the refinement of the testing method for off and weak-grid refrigerators.

**MINISTRY OF NEW & RENEWABLE ENERGY ISSUED ORDER DATED JANUARY 01, 2024, FOR SETTING UP OF A DISPUTE RESOLUTION MECHANISM**

In response to the Order dated 07.06.2023, a Dispute Resolution Mechanism has been established to address unforeseen disputes between Renewable Energy Power Developers/EPC Contractors and designated Renewable Energy Implementing Agencies (REIA) such as SECI, NTPC, NHPC, SJVN, or others designated by MNRE. This initiative aims to handle disputes that may arise during the implementation of contractual agreements, including issues beyond the contractual scope. The Dispute Resolution Committee (DRC), consisting of retired IAS officers Shri M.F. Farooqui, Shri Rajesh Bhushan, and Shri Kumar Alok, has been appointed to oversee the process. The approval of the Hon’ble Minister (Power & NRE) aligns with the issuance of this directive.

## INFRASTRUCTURE

### STREAMLINING THE PROCESS FOR VIVAD SE VISHWAS-II CASES

The National Highways Authority of India (“NHA”) *vide* policy circular bearing number 2.1.66/2023 dated December 18, 2023 (“**Policy Circular**”) has streamlined the processing of proposals under the Vivad Se Vishwas Scheme (“**Scheme**”).

Currently, under the Scheme, approvals for proposals are being solicited separately at different stages, such as:

Stage 1: Vetting of offer before uploading on the Government-E-Market Place (“**GeM**”) portal/offering to the contractor.

Stage 2: Post receipt of acknowledgement on the GeM portal for adding additional interest till the date of acknowledgement.

Stage 3: At the time of finalization of the settlement agreement for vetting the applicable taxes.

The Policy Circular prescribes that the aforementioned processes will be consolidated into a single stage. It states that the finance division of NHA shall provide an excel sheet for calculation along with the applicable taxes. The technical division of NHA will thereafter add interest till the date of acknowledgement along with the applicable taxes and calculations. This shall ensure swift and efficient resolution of cases under the Scheme.

### RELAXATION ON GLOBAL TENDER ENQUIRY UNDER RULE 161(IV) OF THE GENERAL FINANCE RULES, 2017 FOR PROCUREMENT OF MEDICAL DEVICES

The Public Procurement Division (“**PPD**”) Department of Expenditure (“**DoE**”), Ministry of Finance, *vide* office memorandum bearing number F.4/1/2023-PPD(I) dated December 19, 2023 (“**OM**”), has relaxed the Global Tender Enquiry (“**GTE**”) requirements under rule 161(iv) of the General Financial Rules, 2017 (“**GFRs**”) for the procurement of medical devices and drugs.

DoE *vide* office memorandum bearing number OM No. F. 12/17/2019-PPD dated May 15, 2020, and May 28, 2020 in relation to the amendment to Rule 161(iv) of the GFRs (“**GTE**

**OM**”), had stipulated that no GTE shall be invited for tenders up to INR 200 Crores (Rupees Two Hundred Crores) or such limit as the DoE may prescribe from time to time except in exceptional cases.

In this regard, on the recommendation of the Ministry of Health and Family Welfare (“**MoHFW**”), the DoE *vide* department office memorandum bearing number 4/1/2023-PPD dated April 03, 2023, had exempted procuring entities from seeking approval for floating GTEs with respect to 364 (three hundred and sixty four) medical devices and 70 (seventy) drugs till March 31, 2024.

In the above context, pursuant to a further request from MoHFW, 15 (fifteen) additional drugs were exempt from the instructions under the GTE OM by the DoE. Thus, as per the OM, 364 (three hundred and sixty four) medical devices (*detailed in Annexure A of the OM*) and 85 (eighty five) drugs (*detailed in Annexure B of the OM*) would be exempt from the instructions under the GTE OM till March 31, 2024.

### STANDARDIZATION OF THE TEMPLATE FOR FILING PETITIONS UNDER SECTIONS 34 AND 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 FOR WITHDRAWAL OF ONGOING COURT CASES AT THE DELHI HIGH COURT UNDER THE VIVAD SE VISHWAS-II SCHEME

The NHA *vide* policy circular bearing number 2.1.67 dated December 22, 2023 (“**Circular**”) issued standardized templates for filing petitions under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 (“**Act**”) for withdrawing ongoing cases at the Delhi High Court (“**Court**”) under the Scheme.

In this regard, NHA had issued standard operating procedure/guidelines *vide* policy circular bearing number 2.1.60/2023 dated July 04, 2023 (“**Guidelines**”) for one time settlement through the Scheme.

As per Clause (ix) to (xii) of the Guidelines, NHA and the contractors were instructed to withdraw ongoing cases before the Court which had been settled under the Scheme. In view of the same, the legal and arbitration division of NHA prepared a standardized template for filing petitions under Sections 34 and 37 of the Act to facilitate a seamless and efficient withdrawal process of court cases by NHA and the contractors.



## STATEMENT ON DEVELOPMENTAL AND REGULATORY POLICIES

The RBI, on December 08, 2023, issued a press release setting out various developmental and regulatory policy measures relating to (i) Financial Markets; (ii) Regulations; and (iii) Payment Systems and Fintech. The various policy measures *inter alia* cover the following:

- (i) The RBI has proposed to regulate lending by lenders to persons, who are in position of control or influence the decision making of lender. In this regard, the RBI proposes to release a draft circular on connected lending by lending institutions and entities regulated by RBI;
- (ii) The RBI has been constantly working on regulating several aspects of digital lending. One such key aspect is web aggregation of loan products by lending service providers (LSPs). The RBI proposes to release a comprehensive regulatory framework on such web-aggregation, which aims to focus on enhancing the transparency in the operations of aggregated loan products (or WALPs), increasing customer involvement and enabling the customer borrowers to make informed choices;
- (iii) Various players in the economy, including banks, financial institutions and entities, are currently using cloud services for storing their data. The RBI, through its wholly owned subsidiary Indian Financial Technology & Allied Services (IFTAS), plans to set up a cloud facility for the entities forming part of the financial sector in India. Gradually, the operations will be moved to a separate entity, being managed by financial participants; and
- (iv) The RBI proposes to set up a 'Fintech Repository', by

April 2024, which will contain essential information about Fintech entities, their activities, products, technology stack, financial information, etc. Through this move, the RBI aims to learn more about the Fintech ecosystem and take appropriate regulatory measures.

### Source

## PROCESSING OF E-MANDATES FOR RECURRING TRANSACTIONS

Pursuant to the Statement on Developmental and Regulatory Policies released by the RBI on December 08, 2023, the RBI has issued a notification bearing number CO.DPSS.POLC.No.S-882/02.14.003/2023-24, dated December 12, 2023, marking the upward revision in the limit of e-mandates for recurring online transactions without Additional Factor of Authentication (AFA) to INR 1,00,000/- from the existing INR 15,000/- for subscription to mutual funds, payment of insurance premium, and payments of credit card bills.

**DSK View:** Introduced in August 2019, the system for handling e-mandates in recurring transactions aimed to strike a balance between ensuring the safety of digital transactions and enhancing customer convenience. The existing threshold has been revised in light of the increase in the number and value of the digital transactions due to the growing popularity of e-mandates.

### Source

## CARD-ON-FILE TOKENISATION (COFT) – ENABLING TOKENISATION THROUGH CARD ISSUING BANKS

Under the Statement on Development and Regulatory Policies released by the RBI on October 06, 2023, the RBI had

announced the proposal for issuance of CoFT directly by card issuing banks as well as institutions. Accordingly, the RBI has issued a notification bearing number CO.DPSS.POLC.No.S-919/02-14-003/2023-24, dated December 20, 2023 setting out *inter alia* the following requirements for CoFT through the principal card issuer:

- (i) Generation of CoF Tokens for a card, through the card issuer, can be enabled through mobile banking and internet banking channels;
- (ii) CoFT generation must be done only on explicit customer consent, and with AFA validation. If a cardholder selects multiple merchants for tokenisation of their cards, AFA validation may be combined for all these merchants.
- (iii) The generated tokens will be made available on the merchant's payment page, in the cardholder's account.
- (iv) The card issuers must provide a complete list of merchants for whom they can provide tokenisation services. The cardholders will be required to select the merchants with whom they wish to maintain the tokens.
- (v) The card tokens can be issued by the card network or the card issuer or both.

**DSK View:** *This step of tokenisation of cards at the issuing bank level and moving it away from the e-commerce platforms inter alia ensures (a) data security during the process of tokenisation as the card details need not be shared with the e-commerce portal; (b) better control of the tokens in the hand of the users who can manage their tokens on the issuing bank portal.*

#### Source

#### **REGULATORY SANDBOX: ON TAP APPLICATION ON THEME 'RETAIL PAYMENTS' – COMPLETION OF TEST PHASE**

Under the 'On Tap' application facility by the RBI's Regulatory Sandbox, HDFC Bank (in partnership with Crunchfish AB) has devised an 'Offline Retail Payments' product for concluding payment transactions in offline mode. The HDFC Bank has successfully completed the 'test phase' of the product and exited from the Regulatory Sandbox. The RBI has announced that the product may now

be considered for adoption by 'Regulated Entities', subject to compliance with applicable regulatory requirements.

The product 'Offline Retail Payments' provides capability for customer and merchants to be able to transact in offline mode. It is implemented as a trusted application that uses certified virtual secure element as well as Public Key Infrastructure (PKI).

**DSK View:** *Users in areas having low network connectivity are usually reluctant in using digital payment modes due to several instances of failure in those transactions. This technology aims to make India's digital payment ecosystem more reliable, especially in no to low network connectivity areas and increase the diffusion rate of digital payments.*

#### Source

#### **PAYMENTS INFRASTRUCTURE DEVELOPMENT FUND (PIDF) – EXTENSION OF SCHEME**

The Payments Infrastructure Development Fund (PIDF) Scheme was operationalised by the RBI in January 2021, for a period of three years. The objective of the scheme was to encourage deployment of payment acceptance infrastructure such as physical Point of Sale (PoS) terminals, Quick Response (QR) codes, in tier-3 to tier-6 centres, North-eastern states and Union Territories of Jammu & Kashmir and Ladakh.

The RBI has now decided to extend the PIDF Scheme by a further period of two years, i.e., upto December 31, 2025. The RBI has also announced the following enhancements in the PIDF Scheme to widen the scope of beneficiaries and acceptance infrastructure:

- (i) Beneficiaries of PM Vishwakarma Scheme in all centres have been included as merchants under the PIDF Scheme;
- (ii) Sound Box devices and Aadhaar-enabled biometric devices are eligible for claim of subsidy under the PIDF Scheme; and
- (iii) Subsidy for special focus areas, viz., North-eastern states and Union Territories of Jammu & Kashmir and Ladakh, has been made uniform at 90% of the cost of device, irrespective of the type of device.

#### Source



## IMPLEMENTATION OF THE LOSS AND DAMAGE FUND AT COP28

The 28th Conference of the Parties to the United Nations Framework Convention on Climate Change ('COP28') marked a significant milestone with the unanimous decision to operationalize the Loss and Damage Fund (available [here](#)). This fund, vital for addressing the impacts of climate change, aims to compensate vulnerable countries grappling with its adverse effects.

Notably, the member countries have pledged an approximate of USD 700 million, for instance, noteworthy contributions include USD 100 million from the United Arab Emirates (UAE), GBP 40 million from the United Kingdom for the fund and GBP 20 million for other arrangements, USD 10 million from Japan, USD 17.5 million from the United States, and 225 million euros from the European Union, including Germany. These pledges collectively acknowledge the responsibility of these nations, particularly those historically contributing to greenhouse gas emissions. The operationalization of the fund would be initially managed by the World Bank for a period of four years.

The Loss and Damage Fund aims to aid developing countries, especially those vulnerable to the adverse effects of climate change, in responding to both economic as well as non-

economic loss and damage. The impacts range from tangible economic losses like infrastructure damage and agricultural revenue decline to intangible non-economic losses such as trauma, community displacement, and biodiversity loss. The fund's purpose aligns with the principle of climate justice, emphasizing the need for developed nations to compensate for the consequences of their historical emissions.

**DSK View:** *The inception of the Loss and Damage Fund at COP28 signifies a milestone in the global response to climate change. It represents a collective acknowledgment of historical responsibility and a commitment to address the impacts of climate change on the most vulnerable.*

*However, concerns regarding the fund's voluntary nature, absence of criteria for fund access, the possibility of funds being disbursed as loans rather than grants, and potential redirection of funds from other crucial areas like mitigation, humanitarian aid, and adaptation are still persistent for developing countries.*

*Thus, such issues underscore the need for continued negotiations on this aspect of climate finance and its transparent operationalization. It must be ensured that the fund is adequately resourced, operates transparently, and fulfils the intended purpose of climate justice.*

# MEDIA & ENTERTAINMENT



## **'SRIMANTHUDU' COPYRIGHT INFRINGEMENT CASE: TELANGANA HIGH COURT REJECTS PLEA TO QUASH PROCEEDINGS AGAINST FILM DIRECTOR AND SCREENWRITER**

The Telangana High Court (“THC”) rejected the plea to quash proceedings against Mr. Kortala Siva, the film director and scriptwriter of the movie “Srimanthudu”, regarding a copyright infringement case. The complaint in such case was filed by Sarath Chandra, claiming that Mr. Kortala Siva along with the producer, Yereni Naveen, and Mahesh Babu Entertainment Private Limited, intended to make ‘Srimanthudu’ in Hindi. According to Sarath Chandra, the blockbuster film was based on his novel titled ‘Chachchenta Prema’ that was published in a magazine in 2012. The complaint has been filed under Section 63 of the Copyright Act, 1957, along with Sections 420, 468 and 471 of Indian Penal Code, 1860.

The THC refused to quash the *proceedings* against Mr. Kortala Siva because a prima facie examination of the complaint revealed similarities in concept as well as storyline of the novel with the film. The THC observed that minor alterations to a story does not absolve one from copyright infringement.

## **DELHI HC RESTRAINS VIRAT KOHLI'S RESTAURANT CHAIN ONE8 COMMUNE FROM PLAYING SONGS OF PPL**

Phonographic Performance Limited (PPL) filed a copyright infringement suit against One8 Commune, attempting to prevent the use of PPL's songs in the chain's restaurants and cafés. PPL claimed that despite receiving a legal notice about the issue, One8 Commune continued to play PPL's songs without the necessary copyright licenses and therefore, One8 Commune did not follow the terms outlined in the legal notice sent by PPL.

Following the parties' submissions, the Delhi High Court ruled that One8 Commune could not play PPL's songs while the current lawsuit was pending.

The Delhi High Court's order stated, *“Till the next date of hearing, the defendants as well as all others acting on their behalf shall stand restrained from playing any of the recordings forming the subject matter of the plaintiff's copyright and figuring on the website <https://www.pplindia.org/songs>, without obtaining a prior license from the plaintiff.”*

## **DABUR ALLOWED BY DELHI HIGH COURT TO PUBLISH 'WORLD'S LEADING AYURVEDIC TOOTHPASTE' FOR DABUR RED PASTE**

Dabur India Limited (“Dabur”) filed a lawsuit in the Delhi High Court (“DHC”), requesting a stay of the order dated September 30, 2023, issued by the Advertising Standards Council of India (“ASCI”) regarding an advertisement for “DABUR RED PASTE,” which purported to be the “world's no. 1 Ayurvedic paste”. Vi-John Healthcare India LLP objected to this advertisement and filed a complaint with ASCI, which then asked Dabur to provide more information regarding the claim made in the advertisement.

In the contested order dated September 30, 2023, ASCI expressed its displeasure with the veracity of the claim and ordered Dabur to alter its advertisement and refrain from releasing it. The reason given for this directive was that the advertisement was deceptive and violated the ASCI Code by representing an unfair and exaggerated picture.

The DHC allowed Dabur to publish the aforementioned advertisement *via* an order dated December 12, 2023, but with a slight modification that they could use the phrase “World's leading Ayurvedic paste” rather than “World's number 1 Ayurvedic paste” in light of the submissions made and the fact that Dabur had not republished the

advertisement. The DHC further noted *'It is clear that advertising is part of commercial speech and some puffery is allowed as long as the same does not go beyond the grey areas and the assertions made are reasonable'*.

**THE SCREENWRITERS ASSOCIATION (SWA) TO HOLD TALKS WITH PRODUCERS AND OTT PLATFORMS TO DISCUSS ISSUES OF LOW PAY, DUE CREDIT ETC**

SWA will be discussing their long-standing complaints with leading Indian studios, producers and OTT platforms next month to discuss the grievances of writers in Bollywood and regional film industries. The SWA stated that it has drafted a minimum basic contract which can introduce several basic protections for the writers. According to the union, the basic contract will protect writers from arbitrary terminations, improper crediting and introduce a minimum fixed pay at least for films.

**HIMALAYA FILES A COPYRIGHT SUIT LEADING TO SCENES FEATURING 'VIMALAYA' PRODUCTS TO BE CUT IN THE KANNADA FILM AACHAR AND CO.**

The makers of the Kannada movie Aachar & Co have consented to change sequences where a woman is seen selling "Vimalaya" items. Himalaya Wellness Company filed a lawsuit in the Delhi High Court ("DHC") alleging copyright and trademark violation. The company was offended by certain movie scenes in which the lead character was seen going door-to-door selling "Vimalaya" items, specifically "Liv 52," "Geriforte," and "Evecare."

The filmmakers notified the DHC on December 15 that they would be willing to make six adjustments to the feature film to address the issues of the Himalayas fairly. The wellness company approved the concept. As a result, the filmmakers were given 15 days by Justice Pratibha M. Singh to make the suggested revisions and provide the corrected version to Himalaya's legal representative for verification.

Additionally, the Court mandated that a copy of the film's altered version be sent to the Censor Board of Film Certification (CBFC) for review and approval.

**DELHI HIGH COURT DISMISSES PLEA AGAINST THE BROADCASTING OF THE MOVIE "SHAMSHERA" ON GROUNDS THAT THERE IS NO COPYRIGHT IN IDEAS OR THEMES**

The Delhi High Court ("DHC") has dismissed an application seeking interim injunction against the streaming and broadcasting of the film "Shamshera" in a suit filed by Mr. Bikramjeet Singh Bhullar, claiming that the movie has infringed the copyright in his script titled 'Kabu Na Chhadien Khet'.

The DHC noted that concepts and themes cannot be protected by copyright, but the DHC made it clear that their findings would not affect the outcome of Bhullar's copyright infringement lawsuit, either at trial or at the final adjudication stage.

The DHC further stated that the differences between the script and the movie outweigh any purported similarities, and that the similarities were insufficient on their own to support Bhullar's claim of copyright infringement in the interim.

**OPENAI AND MICROSOFT SUED BY NEW YORK TIMES, AUTHORS GUILD AND 11 NON-FICTION WRITERS OVER COPYRIGHT INFRINGEMENT**

The New York Times has sued OpenAI and Microsoft in a lawsuit, which was submitted to the Federal District Court in Manhattan, claiming that automated chatbots, that now compete with the news outlet as a source of reliable information, were trained using millions of articles published by The Times.

Eleven nonfiction writers—among them Pulitzer Prize winners Kai Bird, Taylor Branch, and Stacy Schiff—have sued Microsoft and OpenAI and two tech companies, in federal court in Manhattan. The lawsuit claims that OpenAI's ChatGPT and other AI-driven software, as well as the writers' literary works and copyright, were improperly used to train artificial intelligence models. This legal action demands just compensation and redress for the contributions of the authors because OpenAI and Microsoft benefited greatly from the unauthorised use of their copyrighted works.

## CONSULTATION PAPER TO REVIEW THE PROVISIONS OF NCS REGULATIONS AND LODR REGULATIONS

Securities Exchange Board of India (“SEBI”) on December 09, 2023, issued a consultation paper (“**Consultation Paper**”) to review provisions under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”), and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”). The Consultation Paper aims to advance the ease of doing business (“**EODB**”) and lessen compliance burdens for corporate entities by proposing specific modifications to the LODR and NCS Regulations.

Some of the key highlights of the Consultation Paper are given below:

- (a) Change in face value of debt securities and non-convertible redeemable preference shares (private placement) from existing Rs. 1 Lakh to Rs. 10,000 to encourage investment by non-institutional investors;
- (b) Streamlining offer documents by allowing access to audited financial statements through a QR Code linked to the stock exchange's website;
- (c) Corporate entities given flexibility to provide information for the latest quarter of the current financial year;
- (d) Standardizing record dates to be 15 (fifteen) days before the due date of payment of interest or redemption;
- (e) Introduction of a format for due diligence certificate by the debenture trustee, in line with SEBI's Master Circular for Debenture Trustees and the NCS Regulations;
- (f) Introduction of concept of 'Fast Track' issuance for public listing of debt securities, subject to various

stipulated conditions, including compliance with LODR, a minimum "AA-" rating for debt securities, no significant rating downgrade in the last two financial years, etc.

**DSK View:** *The Consultation Paper aims to eliminate perceived barriers and include enhanced participation of retail investors. Streamlining public offerings in the debt market, giving discretion to publish financial results in newspapers, etc. will benefit stakeholders as well.*

## PROCESSING E-MANDATES FOR RECURRING TRANSACTIONS

The Reserve Bank of India (“RBI”) on December 12, 2023, vide Circular No. RBI/2023-2024/88, directed scheduled commercial banks and various financial institutions regarding the processing of e-mandates for recurring transactions. Previously, RBI had eased the Additional Factor of Authentication (“**AFA**”) for e-mandates and standing instructions, for cards, Prepaid Payment Instruments, and Unified Payments Interface (“**UPI**”), specifically for recurring transactions with values up to ₹15,000, subject to certain conditions. This limit has now been increased to ₹1,00,000 per transaction, specifically for, (a) subscription to mutual funds, (b) payment of insurance premiums, and (c) credit card bill payments.

This circular, issued under Section 10(2) read with Section 18 of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007).

**DSK View:** *The easing of limits vide the aforementioned circular, marks a significant change in the regulatory framework governing e-mandates and recurring transactions. It will impact a wide range of financial institutions by facilitating financial transactions while ensuring necessary regulatory safeguards.*

## **RBI UPDATED MASTER DIRECTION- NBFC HOUSING FINANCE COMPANY (RESERVE BANK) DIRECTION 2021**

RBI on December 15, 2023, issued master directions on Non-Banking Financial Company (“NBFC”) Housing Finance Company (“Directions”) vide Circular No. RBI/2020-21/73. These directions supersede the regulations/directions previously issued in this regard. The primary objective of the Directions is to regulate the financial system, especially with respect to Housing Finance Companies (“HFCs”). The update is aimed at preventing HFCs from conducting their affairs in a manner detrimental to the interests of investors and depositors.

## **RBI CIRCULAR ON INVESTMENTS IN ALTERNATIVE INVESTMENT FUNDS (“AIFs”)**

RBI vide circular bearing No. DOR.STR.REC.58/21.04.048/2-23-24 dated December 19, 2023 (“AIF Circular”) prohibited the ‘Regulated Entities’ (i.e., commercial banks, co-operative banks, non-banking financial institutions, financial institutions) (“REs”) from making investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE (being a company to which the RE currently has or previously had a loan or investment exposure anytime during preceding 12 (twelve) months). The move comes in the light of increase in transactions which entail substitution of direct loan exposure of the RE to borrowers with indirect exposure through investments in units of AIFs.

If any AIF scheme makes a downstream investment in a debtor company, the RE is required to exit its investment in the scheme within 30 (thirty) days from the date of such downstream investment. Any RE that is currently invested in a scheme having downstream investment in its debtor company as on date, needs to exit such investment within 30 (thirty) days from the date of issuance of the AIF Circular. REs who fail to liquidate their investments, within the stipulated time period, will need to make 100 % (one hundred percent) provision for such investments.

Investment in subordinated units of any AIF scheme with a priority distribution model will be subject to full deduction from RE’s capital funds.

**DSK View:** *The scope of the AIF Circular is extensive and impartial and may result in a significant reduction in funding from REs. It will be a challenge for REs also, to prevent overlapping investments. Since the consequences of breach stipulated by SEBI are grave, REs that prioritize compliance might refrain from investing in AIFs.*

## **CARD-ON-FILE TOKENISATION (COFT) – ENABLING TOKENISATION THROUGH CARD ISSUING BANK**

RBI has issued a circular dated December 20, 2023, vide Circular No. RBI/2023-24/91 (“COFT Circular”) which has a significant impact on Payment System Providers and Payment System Participants. The COFT Circular focuses on Card-on-File Tokenisation (“CoFT”) and permits tokenisation directly through card issuing banks. Previously, card tokenisation services were predominantly provided by card issuers and networks.

Some of the key features are covered below:

- (a) The tokens generated will be accessible on the merchant’s payment page within the cardholder’s account.
- (b) Cardholders will now have the flexibility to tokenize their card at their convenience, whether it be upon receiving a new card or at a later time.
- (c) The issuance of the card token may be executed by either the card network, the issuer, or a combination of both.

**DSK View:** *The COFT Circular aims to enhance flexibility for cardholders as per their preference, enabling them to tokenize their cards for multiple merchants through a more streamlined process. With the advent of digitisation and increased electronic transactions, such directives play the role of a catalyst in enhancing security, efficiency, and the overall user experience in electronic payment systems.*

## **RESERVE BANK OF INDIA (GOVERNMENT SECURITIES LENDING) DIRECTIONS, 2023**

The RBI vide circular bearing no. RBI/2023-24/97 FMRD. DIRD.No.05/14.03.061/2023-2024 dated December 27, 2023, issued the ‘Reserve Bank of India (Government Securities Lending) Directions, 2023’ (“GSL Directions”), in furtherance to the draft Reserve Bank of India (Government Securities Lending) Directions, 2023 (“Draft Directions”).

The Draft Directions were placed on the RBI’s website on February 17, 2023, to invite comments from banks, market participants and other interested parties. The GSL Directions have been finalised and issued based on the comments received in the Draft Directions, which shall come into immediate effect.

Some of the key stipulations as provided in the GSL Directions are provided hereinbelow:

- (a) The GSL Directions shall be applicable to all government securities lending (“GSL”) transactions undertaken in over the counter markets.

- (b) Government securities issued by the central government, excluding treasury bills, are eligible for lending/borrowing under a GSL transaction and government securities issued by the central government (including treasury bills) and the state governments are eligible for placing as collateral under a GSL transaction.
- (c) GSL transactions must have a minimum tenor of one day, aligning with existing market practices.
- (d) GSL transactions may be contracted using any mutually agreed trading process/platform, including but not limited to, bilateral or multilateral, quote driven or order driven process, anonymous or otherwise.
- (e) All GSL transactions shall settle on a delivery versus delivery basis.
- (f) Securities/collateral under a GSL transaction shall be valued transparently at prevailing market prices in the first leg of the transaction.
- (g) Participants must enter into a standard bilateral master GSL agreement with their counterparty.
- (h) The GSL Directions also provide detailed accounting guidelines applicable to GSL transactions for entities regulated by the RBI.

**DSK View:** The GSL Directions from the RBI, which came into effect on December 27, 2023, are designed to create a strong, open and well-regulated market, to benefit participants and maintain stability in the financial system.

#### **RBI CIRCULAR ON MINIMUM HOLDING PERIOD EXEMPTION FOR TRANSFER OF RECEIVABLES**

The RBI *vide* circular bearing no. RBI/2023-24/99 DOR.STR.REC.60/21.04.048/2023-24, dated December 28, 2023 (“**MHP Circular**”), amended clause 39 of the ‘Master Direction-Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021’ (“**MD-TLE**”) regarding the requirement of Minimum Holding Period (“**MHP**”) on transfer of loans.

The MHP Circular has exempted the transfer of receivables by eligible transferors acquired as part of the ‘factoring business’ as defined under the Factoring Regulation Act, 2011, from the MHP requirement subject to fulfilment of following conditions:

- (a) The residual maturity of such receivables, at the time of transfer, should not be more than 90 (ninety) days, and
- (b) The transferee conducts proper credit appraisal of the drawee of the bill, before acquiring such receivables as specified under clauses 10 and 35 of the MD-TLE.

**DSK View:** The RBI's decision to exempt the MHP for receivable transfers in the factoring industry is a calculated step aimed at promoting the expansion of the secondary market. This move may offer a significant advantage to

*financial institutions involved in factoring activities, promote increased liquidity and market efficiency.*

#### **AMENDMENT TO THE MASTER DIRECTION-LENDING TO MICRO, SMALL & MEDIUM ENTERPRISES (MSME) SECTOR, 2017**

The RBI *vide* circular bearing no. RBI/2023-24/100 FIDD.MSME & NFS. BC. No. 13/06.02.31/2023-24, dated December 28, 2023 (“**MSME Circular**”), has made certain amendments in the Master Direction-Lending to Micro, Small & Medium Enterprises (MSME) Sector dated July 24, 2017 (as updated on July 29, 2022) (“**Master Directions**”), including mandating all MSME enterprises to register online on the Udyam Registration portal and obtain Udyam Registration Certificate (“**URC**”). This classification will be referred to by banks for priority sector lending purposes.

**DSK View:** Mandatory registration online and obtaining the Udyam Registration Certificate which is required by banks to be referred to for their priority sector lending decisions shows a proactive approach by the RBI in creating a favorable and regulated environment for the growth of the MSME sector.

#### **FAIR LENDING PRACTICE - PENAL CHARGES IN LOAN ACCOUNTS: EXTENSION OF TIMELINE FOR IMPLEMENTATION OF INSTRUCTIONS**

The RBI *vide* circular bearing no. RBI/2023-24/102 DoR.MCS.REC.61/01.01.001/2023-24 dated December 29, 2023 (“**Circular**”), pursuant to paragraph 3(viii) of the RBI Circular on ‘Fair Lending Practice-Penal Charges in Loan Accounts’ dated August 18, 2023, (“**Existing Circular**”) has extended the timeline for implementation of the instructions contained in the Existing Circular by 3 (three) months in order to provide additional time to the Regulated Entities (“**REs**”) to reconfigure their internal systems and operationalize the Existing Circular.

Accordingly, the regulated entities shall ensure that the instructions of the Existing Circular are implemented in respect of all the fresh loans availed from April 01, 2024, onwards. In the case of existing loans, the switchover to new penal charges regime shall be ensured on the next review or renewal date falling on or after April 1, 2024, but not later than June 30, 2024.

#### **PAYMENTS INFRASTRUCTURE DEVELOPMENT FUND- EXTENSION OF SCHEME AND ENHANCEMENTS**

The RBI *vide* circular bearing no. RBI/2023-24/101 CO.DPSS.POLC.No.S940/02-29-005/2023-24, dated December 29, 2023 (“**Circular**”), has extended the Payments Infrastructure Development Fund Scheme (“**PIDF Scheme**”) which was introduced by the RBI circular ‘Operationalisation of Payments Infrastructure Development Fund (PIDF)

Scheme' dated January 05, 2021 (amended from time to time) by 2 (two) years i.e., upto December 31, 2025.

Further, the following significant enhancements are made to the PIDF Scheme:

- (a) The beneficiaries identified as part of the PM Vishwakarma Scheme, across the country, shall be included as merchants for deployment under the PIDF Scheme.
- (b) The existing PIDF Scheme subsidises deployment of acceptance infrastructure based on the category of device i.e., physical or digital. Therefore, it has been decided to also enable other contemporary devices, such as:
  - (i) Soundbox devices - providing instant audio payment confirmation along with payment acceptance by scan & pay and near field communication, and
  - (ii) Aadhaar enabled biometric devices - certified biometric scanner devices facilitating Aadhaar authentication, for acceptance of payment by merchant through BHIM Aadhaar Pay.
- (c) The amount of subsidy for devices deployed in special focus areas such as Northeastern
- (d) States, Union Territories of Jammu & Kashmir and Ladakh, is increased from 75% (seventy five percent) to 90% (ninety percent) of the total cost, regardless of the type of device, for installations made from October 01, 2023, onwards.

**DSK View:** *The extension and enhancements to the PIDF scheme by the RBI demonstrate a dedication to promoting a strong payment infrastructure in India. By incorporating additional beneficiary categories, expanding device eligibility, and providing increased subsidies in key regions, the RBI aims to expedite the digital payment methods, in the interest of consumers and merchants.*

#### **MASTER DIRECTION - RESERVE BANK OF INDIA (INTERNAL OMBUDSMAN FOR REGULATED ENTITIES) DIRECTIONS, 2023**

The RBI vide circular bearing no. RBI/CEPD/2023-24/108 CEPD.PRD.No.S1228/13.01.019/2023-24 dated December

29, 2023 ("**Master Directions**") has issued the 'Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023.'

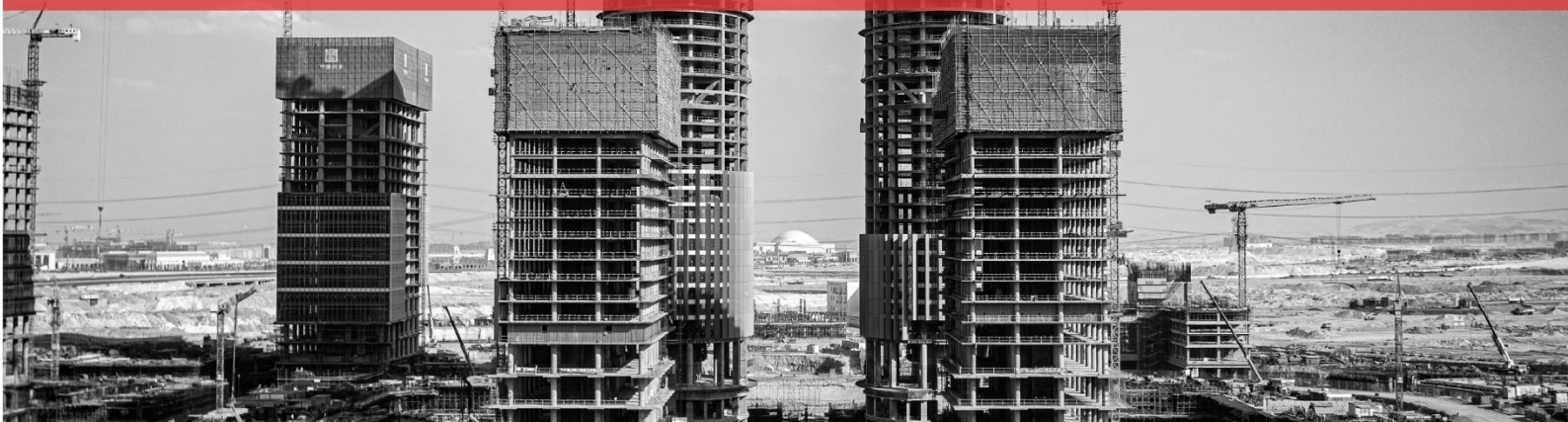
Some of the key stipulations as provided in the Master Directions are provided hereinbelow:

- (a) The Master Directions will apply to banks, non-banking financial companies, non-bank system participants and credit information companies as defined in the Master Directions and fulfilling the criteria as provided thereunder. Further any regulated entity ("**RE**"), reaching the thresholds prescribed in the Master Directions shall also come within the ambit of the Master Directions. RBI has also reserved the right to direct any RE to appoint an IO.
- (b) The Master Directions further lay down the framework for appointment, tenure, role, and responsibilities of the IO.
- (c) The Master Directions specify the procedure to be followed by the IO for redressal of complaints and mandate the IO and RE to issue a final decision to the complainant within 30 (thirty) days from the date of receipt of complaint by the RE.
- (d) REs are required to ensure a system of periodic reporting of information to the relevant department under the RBI, on a quarterly and annual basis.

**DSK View:** *The Master Directions are a step towards ensuring expedited redressal of customer complaints within a specific timeframe. The various provisions of the Master Directions including IO mechanism, role and responsibilities and reporting, may hopefully reinforce internal grievance redress system in REs and facilitate compliance.*

#### **FREQUENTLY ASKED QUESTIONS ON FRAMEWORK FOR ACCEPTANCE OF GREEN DEPOSITS**

The RBI vide dated December 29, 2023, has released frequently asked questions ("**FAQs**") on the RBI 'Framework for Acceptance of Green Deposits' dated April 11, 2023 ("**Framework**"). The FAQs have been released in order to provide clarity to market participants while raising and utilizing green deposits as per the provisions of the Framework. The FAQs may be accessed [here](#).



### JAMMU AND KASHMIR SPECIAL TRIBUNAL TAKES CHARGE AS APPELLATE AUTHORITY FOR RERA APPEALS

The Union Territory of Jammu and Kashmir (J&K) has appointed the J&K Special Tribunal as the Appellate Authority for appeals against the orders of the J&K Real Estate Regulatory Authority (“RERA”) until a regular Tribunal is established, as per a notification bearing no. HUD-RERA/7/2023 (C.No.7280205) issued by Principal Secretary to the Government, Housing and Urban Development Department.

Under the powers conferred by the Real Estate (Regulation and Development) Act, 2016 (“Act”), the government has designated the J&K Special Tribunal to hear appeals related to decisions, directions, or orders of RERA and the adjudicating officer. Individuals aggrieved by decisions of RERA and the adjudicating officer can file appeals before the Appellate Tribunal within 60 days from the date of receiving the order.

The Special Tribunal is granted powers similar to those of a civil court under the Code of Civil Procedure, 1908, for summoning witnesses, enforcing attendance, and examining individuals on oath. All proceedings before the Tribunal are considered judicial proceedings, and the Tribunal is deemed a civil court for certain legal purposes.

It may also be noted that a permanent Chairperson for the RERA is yet to be nominated and currently, the Principal Secretary to the Government, Housing and Urban Development Department is exercising the powers of the Chairperson of the Authority.

### KERALA HIGH COURT ORDERS PENALTY FOR NON-REGISTRATION TO BE IMPOSED ONLY IF PROMOTER DOES NOT COMPLY DIRECTION TO REGISTER REAL ESTATE PROJECT WITHIN 30 DAYS

The Hon’ble High Court of Kerala (“Court”), in a recent judgment bearing citation 2023/KER/75576, clarified the procedure under the Real Estate (Regulation and Development) Act, 2016 (“Act”), regarding penalties for non-registration of projects by promoters. The Court delved into the complexities surrounding the enforcement of Section 59(1) of the Act, by the Kerala Real Estate Authority (“Authority”). The Court, noting a notable lack of clarity, scrutinized the mode in which the Authority is expected to ensure compliance with this mandate.

Section 59(1) of the Act outlines penalties of up to 10% of the project cost if a property promoter fails to register their project, emphasizing the gravity of adhering to registration requirements. A pivotal aspect of this examination is Section 38 of the Act, which delineates the powers vested in the Authority. The said section empowers the Authority to impose penalties or interest concerning any contravention of obligations placed upon promoters, allottees, and real estate agents under the Act, its rules, and regulations made thereunder.

The Court clarified that if, during the process, the Authority determines that the project in question qualifies as an ongoing project requiring registration under Section 3 of the Act, it must issue an order instructing the promoter to register the project. This directive is to be executed within one month from the date of the order. In the event of non-compliance within (30) thirty days, the Authority is empowered, within the same order, to impose a penalty. The penalty, quantified within the order, is accompanied by a directive to the promoter to remit the specified amount as a consequence of failing to adhere to the registration requirement.

### **ASSAM REAL ESTATE TRIBUNAL CLARIFIES PROPERTY TAX PAYMENT NOT A CRITERION FOR DETERMINATION OF PROJECT COMPLETION**

The Assam Real Estate Appellate Tribunal (“**REAT**”) recently addressed a case where a promoter appealed against an order passed by the Assam Real Estate Regulatory Authority (“**Assam RERA**”) imposing a penalty of INR 2 Lakhs (Rupees Two Lakhs Only) for failing to register a real estate project as mandated by the Real Estate (Regulation and Development) Act, 2016 (“**Act**”).

In the present instance, the Assam RERA penalized the promoter for not registering the project within three months of the Act's commencement, considering it an ongoing project without a completion certificate. The Act's first proviso to Section 3(1) requires promoters of such projects to apply for registration within the stipulated time frame, and the violation thereof shall lead to imposition of penalty.

Further, the promoter contended that the payment of property tax for the year 2015-2016 on all flats implied

completion of the project by that time, asserting it predated the enactment of Section 3 of the Act. However, REAT firmly stated that the absence of an occupancy certificate (“**OC**”), as required by the Act, was crucial. Despite the construction starting before the commencement of the Act, the OC was only obtained after paying compounding fees for deviations from the sanctioned plan.

The REAT rejected the promoter's plea for a deemed OC, emphasizing that Section 11(b) of the Guwahati Building Construction (Regulation) Act, 2010, shall be applicable only if construction aligned with the approved plan, which was not the case here.

The decision highlighted that issuance of OC, in accordance with the Act, was pivotal. Any argument based on property tax payment was deemed irrelevant in the absence of the required OC, reinforcing the need for compliance with regulatory provisions for project registration.



## INFORMATION TECHNOLOGY

### MEITY ISSUES ADVISORY TO ALL INTERMEDIARIES TO COMPLY WITH EXISTING IT RULES, SPECIFICALLY TARGETING GROWING CONCERNS REGARDING MISINFORMATION POWERED BY AI-DEEPPAKES

The Ministry of Electronics and Information Technology (MeitY), on December 26 2023, issued an advisory to all the intermediaries, urging compliance with the IT rules, specifically focusing on the use of AI-deep fakes to spread misinformation. ([accessible here](#))

The advisory mandates clear communication of prohibited content to users, as outlined in Rule 3(1)(b) of the Intermediary Rules. It emphasizes informing users about legal consequences for violations, including provisions from the Indian Penal Code and the IT Act, 2000.

Rule 3(1)(b) also emphasizes due diligence for intermediaries, requiring the communication of rules, privacy policies, and user agreements in the user's preferred language. It aims to prevent the hosting, sharing, or publication of misinformation, false content, and deepfakes. The Union Minister Rajeev Chandrasekhar has emphasized the prohibition of misinformation under Rule 3(1)(b)(v) and has urged swift removal of such content.

MeitY has stated that it monitors intermediary compliance closely and is prepared to introduce further amendments or laws, if necessary. Recently, the IT Minister, Ashwini Vaishnaw, announced plans to establish regulation targeting deepfakes by early December, aiming to govern deepfakes, even those created outside India but employed within the country. While such regulation hasn't been unveiled yet, both Vaishnaw and Chandrasekhar have asserted during media interactions that platforms not removing deepfakes risk losing their safe harbour protection.

## TELECOMMUNICATIONS

### TELECOMMUNICATIONS BILL, 2023 RECEIVED PRESIDENTIAL ASSENT, OVERHAULS EXISTING TELECOMMUNICATION LAWS IN INDIA

The Telecommunication Act, 2023 ([accessible here](#)) received the presidential assent on 24<sup>th</sup> December 2023, repealing existing laws on telecommunication, most particularly the 138-year-old Indian Telegraph Act. The Telecommunication Act has been introduced subsequent to the revisions made in line with the comments received on the draft Telecommunications Bill, 2022 dt. September 21, 2022 ([accessible here](#)).

The Telecommunication Act, 2023 aims to establish a framework for the authorization/development and maintenance of telecommunication services, and telecommunication networks. The Act repeals three key laws regulating the telecommunications industry namely:

- (a) The Indian Telegraph Act, 1885 ([accessible here](#)),
- (b) The Indian Wireless Telegraphy Act, 1933, ([accessible here](#)) and
- (c) The Telegraph Wires (Unlawful Possession) Act, 1950 ([accessible here](#)).

However, it is pertinent to note that the provisions of Part-III of the Indian Telegraph Act, 1885 shall continue to apply to all cases of laying down transmission lines under Section 164 of the Electricity Act, 2003 ([accessible here](#)) until such time as the aforementioned section is amended.

The Act also puts into place a more simplified regulatory process, by removing the requirement of multiple authorizations/licenses, instead, just requiring companies to obtain authorization from the government under Section 3 of the Act.

Furthermore, the Act puts into place provisions for the protection of users from specified messages (i.e. messages offering, advertising, or promoting goods and services) by requiring entities to obtain consent before sending such messages. Additionally, the entities are also required to establish a grievance redressal mechanism. The Act, most pertinently, simplifies the restructuring of entities by requiring new entities formed through mergers or acquisitions to simply comply with laws and regulations as applicable to the original entity.

## FINTECH

### RBI RELEASES THE GOVERNOR STATEMENT, ANNOUNCES SEVERAL UPCOMING DEVELOPMENTS

The Reserve Bank of India (“RBI”) via the Governor’s Statement delivered on December 8, 2023 ([accessible here](#)) has indicated its intention to, *inter alia*:

#### (a) Set up a Fintech Repository

In light of financial entities such as banks and NBFC partnering with fintechs, the RBI has decided to establish a Fintech Repository. This is to allow for a better understanding of the developments in the Fintech Ecosystem. The Repository shall be operationalized by the RBI Innovation Hub in April 2024. The RBI has indicated that fintechs would be encouraged to provide relevant information to the repository. The information shall be

provided to the repository on a voluntary basis, however, the repository may be made compulsory in the future.

#### (b) Set up Cloud Facility for the Financial Sector

This decision has been made in light of Banks and financial entities maintaining an unprecedented volume of data by utilizing various public and private facilities. The RBI is now working to establish a cloud facility for the financial sector in India. The proposed facility would go leaps and bounds in offering security, integrity, and privacy of the data from the financial sector.

Furthermore, the repository is expected to enhance business continuity and scalability. The cloud facility shall initially be set up and operated by the Indian Financial Technology and Allied Services (IFTAS). The overarching plan is to, in the long term, transfer the facility to a separate entity owned by the financial sector participants.

#### (c) Regulatory Framework for Web-Aggregation of Loan Products

In the context of RBI receiving several concerns relating to web-aggregation of loan products harming consumers’ interest have come to our notice, it has been decided to lay down a regulatory framework for web-aggregation of loan products to enhance customer centricity and transparency in digital lending.

# WHITE COLLAR CRIME

## LIABILITY FOR DISHONOUR OF CHEQUE IS ONLY ON THE DRAWER OF THE CHEQUE

The *High Court of Punjab and Haryana* relying upon prior Supreme Court judgments held that the wife cannot be held liable for an offence committed by the husband under Section 138 of the Negotiable Instruments Act, 1881 only because the dishonored cheque was drawn from the joint bank account of the husband and wife. In this case, the proceedings against the wife were quashed as she was not the drawer and the signatory of the dishonored cheque.

*Case- Shalu Arora vs. Tanu Bathla (CRM M – 21768-2022)*

## PERIOD OF INCARCERATION IS AN IMPORTANT CONSIDERATION FOR BAIL

The *Supreme Court of India* relying on its earlier judgment in *Manish Sisodia vs. Central Bureau of Investigation*, 2023 SCC OnLine SC1393, granted bail to the appellant considering that the appellant was not an accused in the chargesheet, no money was paid to him or by him, and that the appellant had already suffered incarceration for 13 months when the trial had not commenced, and no charges were framed.

*Case – Benoy Babu vs. Directorate of Enforcement (SLP(CrI) No. 11644-11645/2023)*

## GRANT OF BAIL FOR A LIMITED PERIOD TO A PERSON OTHERWISE ENTITLED FOR BAIL IS ILLEGAL

The *Supreme Court of India* in a case under the Narcotics Drugs and Psychotropic Substances Act, 1985 held that when

a court concludes that an accused is entitled to bail, then it is illegal for the court to grant bail only for a limited period. Such an order violates the right to liberty granted to the accused under Article 21 of the Constitution of India. The Appellant filed an appeal against order of the High Court which granted him interim bail, despite observing that he was entitled to bail in view of the prolonged incarceration with no prospect of trial coming to an end soon. The court noted that it is cumbersome for the accused persons to keep re-filing the bail application for extension of such relief and allowed the appeal. The Appellant was finally enlarged on bail until final disposal of the case.

*Case- Manoranjan Rout vs. State of Odisha (Criminal Appeal No. 3633 of 2023)*

## PENDENCY OF CRIMINAL CASE CANNOT BE A GROUND TO DENY RENEWAL OF PASSPORT

The *High Court of Telangana* held that pendency of a criminal case against a person cannot be a ground to deny renewal of his passport and that under Article 21 of the Constitution of India, right to personal liberty includes the right to possess a passport. The High Court directed the passport officer to consider the renewal of the passport without taking into consideration the pending criminal case against the accused.

*Case- Ravikanti Venkatesham vs. Union of India & Anr (Writ Petition No. 32906 of 2023)*



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