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NEWSLETTER

April 2024

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EXPANDING THE FRAMEWORK OF QUALIFIED STOCK BROKERS TO MORE STOCK BROKERS

Vide circular dated February 06, 2023[1], the Securities and Exchange Board of India ("**SEBI**") had set out the parameters for the purposes of designating a stock broker as a Qualified Stock Broker ("**QSB**"). The parameters that were be taken into consideration for designating a stock broker as a QSB are as follows:

- The total number of active clients of the stock broker;
- Available total assets of clients with the stock broker;
- The trading volume of the stockbroker; and
- The end of day margin obligations of all clients of a stockbroker.

Vide circular dated March 11, 2024[2], SEBI has revised the abovementioned list by including additional parameters as follows:

- Compliance score of the stock broker;
- Grievance redressal score of the stock broker; and
- Proprietary trading volumes of the stock broker.

The circular further sets out the procedure for designating a stockbroker as a QSB. For every stockbroker, the percentage of a particular parameter compared to the aggregate of the respective parameter summed across all stock brokers will be calculated. Based on the percentage calculations, a stock broker will be designated as a QSB. A list of QSB shall be jointly released by the stock exchanges annually in consultation with SEBI.

For the purposes of promoting the compliance culture, SEBI has also given stock brokers an option to voluntarily designate themselves as QSBs which will mandate them to comply with enhanced obligation requirements as set out in the master circular for stock brokers dated May 17, 2023[3].

The provisions of the circular shall be implemented in a phased wise manner for the purposes of ensuring smooth adoption and effective implementation.

SAFEGUARDS TO ADDRESS THE CONCERNS OF THE INVESTORS ON TRANSFER OF SECURITIES IN DEMATERIALIZED MODE

Vide circular dated March 20, 2024[4], SEBI announced safeguards to address the concerns of investors while transferring securities from the Beneficial Owner ("**BO**") account.

SEBI has suggested the following safeguards:

- The depositories to give more emphasis on investor education particularly with regard to careful preservation of Delivery Instruction Slip ("**DIS**") by the BOs.
- The Depository Participants ("**DPs**") to not accept pre-signed DIS with blank columns from the BOs.
- The BO to intimate the DP immediately if the DIS Booklet is lost/stolen/not traceable in writing and on receipt of such intimation, the DP shall cancel the unused DIS of the said booklet and shall ensure that a new DIS booklet is issued.

The new safeguards come into effect from April 1, 2024.

[1] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24
[2] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/14
[3] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71
[4] SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/18

MANDATING ADDITIONAL DISCLOSURES BY FOREIGN PORTFOLIO INVESTORS ("FPIS") THAT FULFIL CERTAIN OBJECTIVE CRITERIA

Vide circular dated August 24, 2023[5] ("**Original Circular**"), SEBI had mandated additional disclosure requirements for FPIs in terms of Regulations 22(6) and 22(7) of the SEBI (FPIs) Regulations 2019 which were inserted vide SEBI (FPIs) (Second Amendment) Regulations, 2023. FPIs holding more than: (i) 50% (Fifty per cent) of their Indian equity Assets Under Management ("**AUM"**) in a single Indian corporate group, or (ii) INR 25,000 crore (Indian Rupees Twenty-Five Thousand Crores) of equity AUM in the Indian markets, had to disclose the granular details of all entities holding any ownership, economic interest, or exercising control in them, on a full look through basis, up to the level of all natural persons ("**Additional Disclosures**"). The circular also specified the FPIs that shall be exempted from making Additional Disclosures.

Vide circular dated March 20, 2024[6], SEBI has decided to exempt an FPI having more than 50% of its Indian equity AUM in a corporate group from making the Additional Disclosures provided it fulfill the following conditions:

- The apex company of such corporate group has no identified promoter;
- The FPI holds not more than 50 percent of its Indian equity AUM in the corporate group after disregarding its holding in the apex company (with no identified promoter); and
- The composite holdings of the FPI in the apex company is less than 3% of the total equity share capital of the apex company.

The circular dated March 20, 2024 further states that if an FPI that fulfills the abovementioned conditions and has failed to disclose the Additional Disclosures (which were required to be made on or before March 12, 2024), the consequences of non-disclosure as mentioned in the Original Circular shall not be applicable on them.

The provisions of the circular came into effect from March 20, 2024.

REGULATIONS FOR INDEX PROVIDERS - SECURITIES AND EXCHANGE BOARD OF INDIA (INDEX PROVIDER) REGULATIONS, 2024

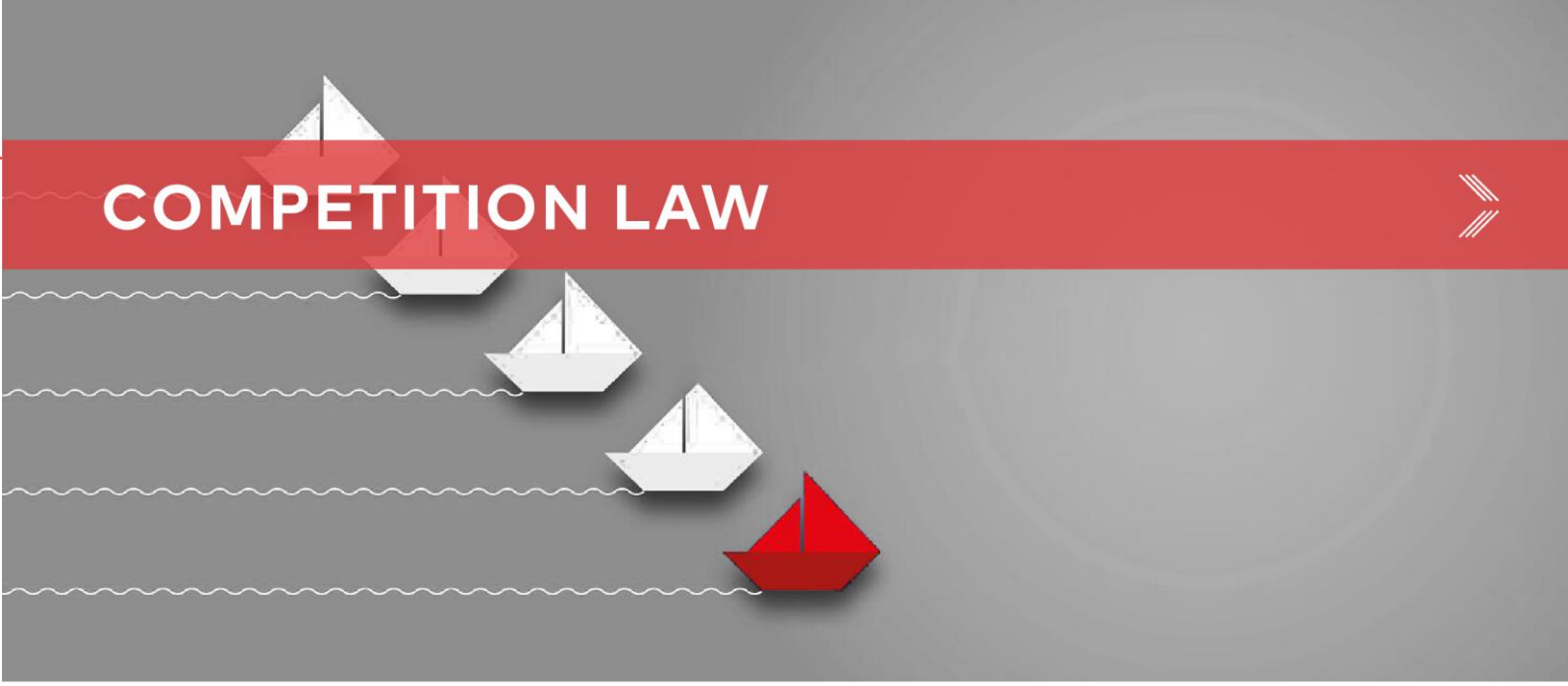
On March 8, 2024[7], the SEBI issued the Securities and Exchange Board of India (Index Provider) Regulations, 2024 ("**Index Provider Regulations**") which provides a regulatory framework for persons who control the creation, operation and administration of prices, estimates, rates or values in relation to securities ("**Benchmark or Index**") and are responsible for all stages of the administration process, whether or not it owns the Intellectual Property rights relating to the Benchmark or Index ("**Index Providers**").

The salient important features of the Index Provider Regulations are as follows:

- Mandating eligible Index Providers to obtain a certificate of registration. The eligibility criteria, application process and other ancillary conditions to be followed under Chapter II of the Index Provider Regulations.
- Establishing a code of conduct for the Index Providers and mandating them to establish a governing body for the purposes of protecting the integrity of the benchmark determination process, mitigating conflict of interest and segregating the persons responsible for index governance from the persons responsible for commercializing the Indices. The same have been detailed out in Chapter III of the Index Provider Regulations.
- Setting out provisions for maintaining the quality of Index by eliminating factors that may distort Index computation process under Chapter IV of the regulations.

The Index Provider Regulations came into effect on March 8, 2024.

[5] SEBI/ HO/ AFD/ AFD–PoD–2/CIR/P/2023/148
[6] SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/19
[7] SEBI/LAD-NRO/GN/2024/167



The following are the main highlights in the Competition Law space for the month of March 2024:

CCI TO PROBE GOOGLE'S BILLING SYSTEM FOR ABUSE OF DOMINANCE

The Competition Commission of India (**CCI**), *vide* its order dated March 15, 2024, initiated a probe against Google against its Users Choice Billing system as it was *prima facie* found to be violative of the Competition Act, 2002 (**Act**). The informants (People Interactive India, Mebigo Labs, IBDF and IDMIF) were primarily aggrieved with updated payment policies in relation to its app store (Google Play Store).

The Informants alleged that under the new policy, if an end user does a transaction using the alternative billing system (termed as user choice billing system), the service fee payable by that respective app developer would be either 11% or 26%.

The primary grievance of the app developers was that payment of such service fee is almost equivalent to the remaining 97% of app developers who avail of the services of Google on App Store free of cost. The CCI noted that such impositions result in app developers having fewer resources to enhance or develop their app offerings, thereby constraining the growth of the app market. Further, the CCI noted that Google's imposition of unfair service fees on app developers could force such app developers out of the market or deter them from entering due to increased operational costs, thus denying market access to such developers.

The CCI in its order dated 25.10.2022, had noted that it could not probe into Google's 'monetization model' due to lack of evidence at that point in time, and now since a *prima facie* violation was found, it directed an elaborate investigation into its conduct.

CCI APPROVES PROPOSED COMBINATION BETWEEN JSW VENTURES SINGAPORE PTE. LIMITED, JSW INTERNATIONAL TRADECORP PTE. LIMITED AND MG MOTOR INDIA PRIVATE LIMITED

CCI *vide* order dated January 23, 2024 approved the Proposed Combination between JSW Ventures Singapore Pte. Limited (**JSW Ventures / Acquirer**), JSW International Tradecorp Pte. Limited (**JSWIT**), and MG Motor India Private Limited (**MG Motor India / Target**).

The transaction entailed acquisition of up to 38% shareholding in the Target by way of acquisition and subscription of equity shares representing 35% of the share capital of the Target along with the acquisition of a right to subscribe to the Dealer Shares of up to 3% (**Proposed Combination**).

Based on the presence of the parties and their business activities, the CCI identified two vertical linkages, i.e., (i) vertical linkage between the Acquirer Group, i.e., JSW Steel Limited (**JSW Steel**), which is engaged in the manufacture and sale of cold rolled closed annealed steel (*upstream market*) and MG Motor India, which is engaged in the manufacture and sale of passenger vehicles (*downstream market*); and (ii) vertical linkage between the Acquirer Group, through JSW Steel, which is engaged in the manufacture and sale of surface coated steel products (*upstream market*) and MG Motor India, which is engaged in the manufacture and sale of passenger vehicles (*downstream market*).

With respect to the first vertical linkage, CCI noted that there was a miniscule percentage of the volume of steel procured by the Target of the total volume of such product produced by JSW Steel and noted that it was unlikely that JSW will have an incentive to foreclose input to the competitors of downstream entities of the Target. Similarly, the quantity of cold rolled and closed annealed steel procured by Target

from JSW Steel out of its total requirement for the said input for FY 2022 – 23 was also found to be insignificant.

With respect to the second vertical overlap, the CCI noted that since there was a miniscule market share of MG Motor, the Proposed Combination was not likely to confer any ability/ incentive on the part of the combined entity to engage in any foreclosure strategies. Further, the upstream as well as downstream markets are characterized by other significant players posing competitive constraints on the parties. The CCI noted that there have been entry of new players and the expansion by existing players in the upstream market.

CCI APPROVES PROPOSED COMBINATION BETWEEN TATA ELECTRONICS PRIVATE LIMITED, SMS INFOCOMM (SINGAPORE) PRIVATE LIMITED, WISTRON HONG KONG LIMITED AND WISTRON INFOCOM MANUFACTURING PRIVATE LIMITED

The CCI *vide* its order dated January 23, 2024, approved the proposed combination between Tata Electronics Private Limited (**Acquirer/ TEPL**), SMS Infocomm (Singapore) Private Limited (**SMS InfoComm**), Wistron Hong Kong Limited (**Wistron HK**) and Wistron Infocom Manufacturing Private Limited (**Target**).

The proposed combination pertained to the acquisition of 100% of the equity share capital by the Acquirer of Target from SMS InfoComm and Wistron HK. SMS InfoComm and Wistron HK hold 99.99% and 0.01% of Target's share capital on a fully diluted basis, respectively.

The CCI noted that the Acquirer and the Target exhibit a potential horizontal overlap in the market for provision of electronic manufacturing services (**EMS**) for smartphones in India as the Target is currently present in this market and the Acquirer proposes to provide EMS for smartphones in the near future. Further, it was found that the Acquirer and Target also exhibit a potential vertical linkage as the Acquirer is present in the upstream market for manufacture and supply of smartphone enclosures in India and the Target is present in the broad downstream market for manufacturing of smartphones and in the narrow downstream market for provision of EMS for smartphones in India.

The CCI in its analysis noted that the market shares of the parties did not raise a concern, either from the perspective of horizontal overlap or the vertical linkage. The combined market shares of the Acquirer and Target (CY 2022) in the market for Provision of EMS for smartphones in India was noted to be 10-15%, solely attributed to the activities of the Target as the Acquirer is yet to enter the market. As regards the vertical linkage, in the upstream market for manufacture and supply of smartphone enclosures in India, the market share of the Acquirer in terms of volume, is less than 1%.

As regards the downstream market, the market share of the Target is 0-5% in the broad downstream market for manufacturing of smartphones in India, and 10-15% in the narrow downstream market for provision of EMS for smartphones in India.

MINISTRY OF CORPORATE AFFAIRS REVISES PARTY TESTS FOR COMBINATION FILINGS UNDER THE ACT AND ISSUES THE DRAFT COMPETITION COMMISSION OF INDIA (DE MINIMIS) RULES, 2024 FOR PUBLIC COMMENTS:

The Ministry of Corporate Affairs (**MCA**) *vide* two separate notifications released on March 7, 2024, increased the key thresholds under the Act, namely: (i) thresholds allowing exemption from notification based on the assets and turnover of the target company (**De Minimis Target Exemption);** and (ii) Party Tests as prescribed under Section 5 of the Act (**Section 5 Thresholds**). The revised thresholds will be valid for a period of 2 years from the date of publication of its notification in the official gazette.

The De Minimis Target Exemption will now be available in case the assets or turnover of the target enterprise are less than either of the following revised thresholds: (i) assets of less than INR 450 crore; or (ii) turnover of less than 1,250 crore, in India.

The notifications propose to enhance the Section 5 Thresholds by "one hundred and fifty percent for the purposes of Section 5 of the said Act". The revised thresholds are set out below:

THRESHOLDS FOR FILING NOTICE				
		Assets		**Turnover**
Enterprise Level	**India**	More than INR 2500 crore (~USD 300 million)	**OR**	More than INR 7500 crore (~USD 900 million)
	World wide with India Nexus	More than USD 1.25 billion With at least INR 1250 crore in India (~USD 150 million)		More than USD 3.75 billion With at least INR 3750 crore in India (~USD 450 million)
OR				
Group Level	**India**	More than INR 10,000 crore (~USD 1200 million)	**OR**	More than INR 30,000 crore (~USD 3610 million)
	World wide	More than USD 5 billion		More than USD 15 billion

	with India Nexus	With at least INR 1250 crore in India (~USD 150 million) in India		With at least INR 3750 crore in India (~USD 450 million)

In an attempt to codify the laws proposed, MCA also released Draft Competition Commission of India (De Minimis) Rules, 2024 (**Draft De Minimis Rules**) for public comments. The Draft De Minimis Rules reiterate the asset and turnover thresholds provided in the De Minimis Target Exemption, and effectively codify the notification into rules, as the Amendment Act incorporates the de minimis exemption into the statute.

MINISTRY OF CORPORATE AFFAIRS RELEASED DRAFT COMPETITION COMMISSION OF INDIA (GREEN CHANNEL) RULES, 2024 FOR STAKEHOLDERS' COMMENTS:

The MCA has released the Draft Competition Commission of India (Green Channel) Rules, 2024 (**Draft Green Channel Rules**) for public comments. The Draft Green Channel Rules propose to consolidate the current criteria for filing a notice under the Green Channel route. The 'Green Channel' route is available if the parties, their respective group entities and/ or their 'affiliates' have no horizontal overlaps, or vertical or complementary linkages and the notified transaction is deemed approved on the day of the filing.

As per the Draft Green Channel Rules, an affiliate will be one which has:

(i) 10% or more of the shareholding or voting rights of the enterprise; OR
(ii) Right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; OR
(iii) Right or ability to access commercially sensitive information of the enterprise.

MINISTRY OF CORPORATE AFFAIRS RELEASES THE DRAFT COMPETITION COMMISSION OF INDIA (EXEMPTED COMBINATIONS) RULES, 2024 FOR PUBLIC COMMENTS

The Ministry of Corporate Affairs issued the Ministry of Corporate Affairs the Draft Competition Commission of India (Exempted Combinations) Rules, 2024 (**Draft Regulations**) for stakeholders' comments. These Draft Regulations not only introduce new provisions but also suggest the removal of Schedule I from the existing Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**).

The said schedule currently offers various significant exemptions from the mandatory pre-notification requirement. However, the Draft Exemption Rules propose to reinstate the exemptions outlined in Schedule I of the Combination Regulations. While the Combination Regulations indicate that such transactions were "*ordinarily not likely to cause an appreciable adverse effect on competition in India*" and therefore "*need not normally be filed*," the Draft Exemption Rules are more definitive in categorizing these as exemptions.

DRAFT REPORT ON DIGITAL COMPETITION LAW RELEASED BY MINISTRY OF CORPORATE AFFAIRS OPEN FOR PUBLIC COMMENTS

Furthermore, MCA, through a press release dated March 12, 2024, released the Report of the Committee on Digital Competition Law (**Committee**) along with a draft bill on Digital Competition Law. Formed by the MCA, the Committee was tasked with assessing the necessity of a distinct legal framework concerning competition in digital markets. In its findings, the Committee suggests the implementation of ex-ante measures to supplement the existing ex-post framework. This involves identifying major digital enterprises with a 'significant presence' in India across designated 'core digital services' and establishing predefined regulations governing their behavior.

The new law would apply to *systematically significant digital enterprises* (**SSDE**) that have a significant presence in India. The Committee proposes that the new law should be applicable to ten pre-identified core digital services susceptible to concentration. This list will be regularly updated to reflect the latest developments, considering the rapid evolution in the digital space. According to the report, an enterprise will be designated as an SSDE if it meets a dual criterion demonstrating 'significant presence'.

Firstly, it must pass the 'significant financial strength' test, which includes quantitative measures of economic power such as India-specific turnover, global turnover, global market capitalization, and gross merchandise value. Secondly, it must satisfy the 'significant spread' test, which assesses the extent of an enterprise's presence in providing core digital services in India based on the number of end-users and business users.

A COMPLAINT FILED BY A CORPORATE ENTITY IS MAINTAINABLE UNDER THE CONSUMER PROTECTION ACT 1986

The Hon'ble Supreme Court of India in ***M/s. Kozyflex Mattresses Private Limited ss. SBI General Insurance Company Limited & Anr.***[8] has held that a corporate entity/company wouldn't be barred under the old Consumer Protection Act of 1986 **("Act")** as it is treated as a 'person' under the Act and thus has the *locus* to file a consumer complaint. In the present case, the National Consumer Disputes Redressal Commission **("NCDRC")** rejected/invalidated the fire insurance claim of the Appellant amounting to Rs. 3,31,00,000/-. Before the Hon'ble Supreme Court, the Respondent/Insurance Company contended that the claim of the Appellant doesn't survive as it is a corporate entity working for commercial purposes and it doesn't fulfill the mandatory requirements of being a 'person' under Section 2 (m) of the Act.

The Hon'ble Supreme Court rejected the said contention and observed that the claim of the Appellant/Insured cannot be rejected merely on the ground that it doesn't fulfill the mandatory requirement of Section 2(m) of the Act. The Hon'ble Court further clarified that the definition of *'person'* as provided in the Act is inclusive and not exhaustive, thereby including 'company' in the definition of the *'person'*. The Hon'ble Supreme Court further clarified that the insurance policy in the present case was taken under the title *'Standard Fire and Special Perils Policy (Material Damage)'* and was covering the risk of these elements only, therefore no commercial purpose was involved to deny the Appellant's claim and thus the order of NCDRC was set-aside and the matter was remanded to NCDRC to be reheard and decided on merits afresh.

PARTY CLAIMING ADVERSE POSSESSION MUST KNOW WHO THE ACTUAL OWNER OF PROPERTY IS

The Hon'ble Supreme Court of India in ***M. Radheshyamlal vs. V Sandhya & Anr. Etc.***[9] has held that a party claiming adverse possession must know who the actual owner of the property is. In the present case, the Plaintiff/Appellant failed to prove the actual owner of the property against whom the claim of adverse possession was sought, and also the adverse possession of the Plaintiff was not known to the actual owner of the property. However, the Defendant/Respondent opposed the Plaintiff's claims and sought his dispossession from the property while stating that they had purchased the property from the persons upon whom the property is devolved based on the settlement deed after the death of the original owner.

The Ld. Trial Court and the Hon'ble High Court observed that the case of the Plaintiff/Appellant to claim ownership based on adverse possession is not sufficiently proved. Both the Ld. Trial Court and the Hon'ble High Court concluded several facts that weakened the Appellant's claim; **(i)** The plaintiff couldn't prove the actual owner of the property to whom it is known and the plaintiff was in adverse possession of the property for more than 12 uninterrupted years; **(ii)** Further, the bills of the property tax and water tax stood in the name of the original owner. Not a single document was produced by the plaintiff to support its claim that it had paid house tax; **(iii)** The plaintiff took no steps to repair the portion in the dilapidated condition; & **(iv)** The water tax and sewage tax were not paid for years together. The Hon'ble Supreme Court agreed with the findings of the Ld. Trial Court and the Hon'ble High Court and dismissed the appeal.

[8] Civil Appeal No(s). 7966 of 2022

[9] Civil Appeal Nos. 4322-4324 of 2024

RESOLUTION PLAN APPROVED BY COC CAN'T BE WITHDRAWN OR MODIFIED BY RESOLUTION APPLICANT

The Hon'ble Supreme Court of India, in the case of ***Deccan Value Investors L.P. & Anr. vs. Dinkar Venkatasubramanian & Anr.***[10] held that once a Resolution Plan has been approved by the Committee of Creditors ("**CoC**"), it can't be withdrawn or modified by the Resolution Applicant.

In the present case, the Resolution Applicant claimed that there were ambiguities, lack of specific details and data provided by the Resolution Professional and hence, sought to modify the Plan after it was approved by the CoC.

The Hon'ble Supreme Court relied on its judgement in *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another*[11] wherein the Hon'ble Bench elaborated and set out several reasons why the resolution applicant cannot be permitted to withdraw or modify the resolution plan after approval by the CoC, and before an order under Section 31(1) of the Code is passed. The Court noted that these reasons include delay, consequences of the delay and the uncertainty and complexities that would arise in the Corporate Insolvency Resolution Process ("**CIRP**"), which are unacceptable and not contemplated in law. The Hon'ble Court further noted that even the terms of the resolution plan, will not permit withdrawal or modification in the absence of a statutory provision, that allow withdrawal or amendment in the resolution plan after approval by the CoC. The resolution plan approved by CoC is a creature of the Code and not a pure contract between two consenting parties. The Hon'ble Court further noted that resolution plans are not prepared and submitted by lay persons. They are submitted after the financial statements and data are examined by domain and financial experts, who scan, appraise evaluate the material as available for its usefulness, with caution and scepticism. Further, the Hon'ble Court held that it is difficult to digest that the financial experts were gullible and misunderstood the details, figures or data. The assumption is that the resolution applicant would submit the revival/resolution plan specifying the monetary amount and other obligations, after in-depth analysis of the fiscal and commercial viability of the corporate debtor. In view thereof, the Hon'ble Court allowed the appeal and held that the Resolution Plan has been approved by the CoC, hence it cannot be withdrawn or modified by the Resolution Applicant.

EXAMINING THE VALIDITY OF ANY CONTRACTUAL AGREEMENT IS BEYOND THE SCOPE OF POWERS OF THE RESOLUTION PROFESSIONAL

The Hon'ble NCLAT in the case of *Mr. Umesh Kumar vs. Mr. Narendra Kumar Sharma* held that, examining the validity of any contractual agreement is beyond the scope of powers of the Resolution Professional ("**RP**").

In the present case, the Indirapuram Habitat Centre Pvt. Ltd. ("**Corporate Debtor**") entered into a Consultancy Agreement ("**Agreement**") with the Appellant for management consultancy on a retainership of Rs.10 lakhs per month. Shortly thereafter, Corporate Insolvency Resolution Process ("**CIRP**") was initiated against the Corporate Debtor and the RP was appointed. Subsequently, the Appellant filed its claim before the RP and the RP acknowledged the submission of the claim on the same day, while neither rejecting nor accepting the claim. Thereafter, the RP asked for additional documents to verify the claim of the Appellant, which the Appellant failed to provide. On a subsequent query being raised by the Appellant *qua* the status of its claims, RP rejected the claim questioning the legitimacy of the Agreement and the invoices raised. Aggrieved by the RP's rejection, the Appellant filed an Application before Hon'ble NCLT seeking acceptance of its claims, which was dismissed *vide* order dated 21.11.2023. Aggrieved by the aforesaid Order, the Appellant filed an Appeal before the Hon'ble NCLAT.

The Hon'ble NCLAT came to the conclusion that the RP was right in rejecting the claim of the Appellant basis the material on record. However, Hon'ble NCLAT noted that the validity/sustainability of any contractual agreement including its formatting etc. lies outside the purview of the charter of duties and responsibilities of the RP. In fact, determination of the tenability/validity of a contractual agreement falls in the realm of a civil dispute and therefore outside the scope and jurisdiction of both the Adjudicating Authority and the Appellate Tribunal. Be that as it may, this does not prevent the RP from seeking additional information from any creditor to substantiate its claims.

[10] CIVIL APPEAL NO. 2801/2020

[11] (2022) 2 SCC 401

THE GOVERNMENT OF GOA PUBLISHES THE GOA LABOUR WELFARE FUND (AMENDMENT) ACT, 2024

The Department of Law, Legal Affairs Division, Government of Goa, *vide* notification dated March 1, 2024, promulgated the Goa Labour Welfare Fund (Amendment) Act, 2024. The aforesaid amendment act amends Section 5 *(Constitution of Board)* and Section 20 *(Appointment and power of Secretary)* of the Goa Labour Welfare Fund Act, 1986. As per the said amendment:

(i) In Section 5 *(Constitution of Board)*, the term 'Commissioner Labour' is substituted for 'Secretary to the Government in Labour Department'; and

(ii) Under Section 20 *(Appointment and power of Secretary)* of the aforesaid Act, the government shall appoint the commissioner, Labour and Employment as secretary of the Goa Labour Welfare Board, and who shall also be the 'Chief Executive Officer' of the aforesaid board.

THE HIGH COURT OF KERALA OBSERVES THAT WRIT JURISDICTION CAN BE INVOKED FOR NON-PAYMENT OF RETIREMENT BENEFITS

The Division Bench, High Court of Kerala, *vide* order dated, March 4, 2024, in the case of *P.V. Nandakumar vs. State of Kerala*, held that a citizen can file a writ petition to seek remedy for non-payment of interest on retirement benefits, provided, there is no liability being fixed to the aggrieved employee. In the instant case, the appellant was aggrieved by delayed payment of retirement benefits and filed the writ petition in the High Court of Kerela seeking a remedy on delayed payment of his retirement benefits. His petition was dismissed by the single judge bench on grounds that he must approach other authorities or file a suit for realization of interest on delayed payments.

The High Court while relying on the decision of the Supreme Court in the case of *S.K. Dua vs. State of Haryana and Anr.*, held that in case where there is no liability fixed against the appellant, which was recoverable from the employer, he is entitled to payment of interest on his retirement benefits. Such a petition is distinguished from those that seek realization of delayed payments and interest together and in the instant case, the appellant was held entitled to interest on delayed payments. Therefore, an aggrieved party seeking remedy of interest claims on delay of payment of retirement benefits is entitled to file a petition before the High Court under Article 226 of the Constitution.

THE GOVERNMENT OF ANDHRA PRADESH NOTIFIES REALIGNMENT OF JURISDICTIONS AS PER NEW DISTRICTS UNDER FACTORIES ACT, 1948

The Labour Factories Boilers & Insurance Medical Services Department, Government of Andhra Pradesh, *vide* notification dated March 05, 2024, notified the realignment of jurisdiction as per new districts under Factories Act, 1948 for the joint chief inspector of factories, deputy chief inspector and assistant inspector of factories in the state. Further, the inspector shall not have the power to amend or rescind orders previously passed by him unless there are prior orders from director of factories or if he considers that any such action is necessary. For the purpose of sending notices and return to the inspectorate of factories, the areas in each circle shall comprise as per the realignment of jurisdictions notified as per the aforesaid notification.

CHANDIGARH GOVERNMENT ISSUES REVISED MINIMUM WAGES RATE FOR MULTIPLE CATEGORY OF INDUSTRIAL WORKERS

The Labour Bureau, Chandigarh, *vide* notification dated March 06, 2024, has revised the minimum wages for industrial workers. The revision is based on calculation of average cost of living index in Chandigarh.

The revision is based on calculation of average cost of living index in Chandigarh. The previous average cost of living index numbers was 2040 (Two Thousand and Forty) points (for the quarter ending March, 2023) which has been now revised to 2116 (Two Thousand One hundred and Sixteen). *Vide* the aforementioned notification, the minimum rates of wages for the workers under the categories of unskilled, semi-skilled, skilled, highly skilled, and class staff workers have been increased to INR 532 (Rupees Five Hundred and Thirty-Two) per month.

CONNECTION BETWEEN SERVICES BY EMPLOYEE AND THE SERVICES RENDERED BY THE INSTITUTE IS INTEGRAL TO DETERMINING WHETHER THE INSTITUTE CAN BE DEFINED AS "INDUSTRY"

The Jammu and Kashmir and Ladakh High Court, *vide* order dated March 7, 2024, in the case of *Ashok Kumar vs. Union of India and Ors.* while discussing the definition of the term 'industry' as defined in the Industrial Disputes Act, 1947 ("**ID Act**"), provided for the importance of nexus between the services of an employee and as an institute.

The appellant was terminated from his services, and thus approached the court stating that the Small Industries Service Institute was an 'industry' as defined under the ID Act and therefore, his termination was illegal. The High Court of Jammu and Kashmir and Ladakh, while interpreting the definition of industry under the ID Act, considered established principles used like the Dominant Nature Test and the principles laid down in the case of *Bangalore Water Supply and Sewerage Board vs. R. Rajappa and others*[12].

The High Court herein observed that a key determining factor was whether the element of cooperation between the employer and the employee exists while providing services. Merely being employed for an activity that is a systematic activity providing services calculated to human wants is not enough for the employee to seek applicability of the ID Act. Such systematic activity must be the effect of cooperation between the employer and the employee.

FAMILY MEMBERS IN NAYAGARH AND NABRANGPUR DISTRICTS OF ODISHA SHALL RECEIVE ESSENTIAL HEALTHCARE SERVICES

The Employees' State Insurance Corporation ("**ESIC**"), *vide* notification dated March 7, 2024, has published the date for extension of medical benefits to families of insured persons in all areas of Nayagarh and Nabrangpur districts of Odisha. As per the aforesaid notification, families of persons covered under the Employees State Insurance Scheme ("**ESI Scheme**") in the districts of Nayagarh & Nabrangpur, are entitled to medical insurance benefit from the date of March 01, 2024.

The aforementioned notification pertains to Regulation 95-A *(Medical benefit to families of insured persons)* of the Employees' State Insurance (General) Regulations, 1950, which provides for extension of medical benefits to family members of the insured persons, which may be notified in consultation with the State Government and in accordance with the Odisha Employee's State Insurance (Medical Benefit) Rules, 1958.

REVISION IN THE APPLICABILITY OF THE EMPLOYEES' STATE INSURANCE ACT, 1948 FOR DISTRICTS IN UTTARAKHAND

The Ministry of Labour and Employment, *vide* notification dated March 8, 2024, has notified April 1, 2024, as the date on which the following sections of the Employees' State Insurance Act, 1948 shall be applicable to the districts of Almora, Bageshwar, Chamoli, Champawat, Pithoragarh, Rudraprayag and Uttarkashi districts, in the State of Uttarakhand:

(i) Section 38 *(All employees to be insured)* to 43 *(Method of payment of contribution)*;
(ii) Section 45A *(Determination of contribution in certain cases)* to 45H *(Application of certain provisions of the Income-Tax Act)*;
(iii) Section 46 *(Benefits)* to 73 *(Employer not to dismiss or punish employee during period of sickness*
(iv) Section 74 *(Constitution of Employees' Insurance Court)* and 75 *(Matters to be decided by Employees' Insurance Court)*;
(v) Sub-section (2) to (4) of Section 76 *(Institution of proceedings, etc.)*; and
(vi) Section 82 *(Appeal)* and 83 *(Stay of payment pending appeal)*.

EMPLOYEES' PROVIDENT FUND ORGANIZATION PRESCRIBES ADDITIONAL DOCUMENTS MEMBER PROFILE UPDATION

The Employees' Provident Fund Organization ("**EPFO**"), *vide* circular dated March 11, 2024, prescribed a change in documents required for standard operating procedure under reference for correction in Father/Mother's name. The updated documents added in the list are AADHAR card of the member bearing the father/mother's name, PAN card; 10th (Tenth) or 12th (Twelfth) school certificate/marksheet bearing the father/mother's name or the driving license.

SUPREME COURT OF INDIA RULES THAT WORKERS EMPLOYED FOR EXECUTING WORK OF 'PERENNIAL' NATURE CANNOT BE TREATED AS CONTRACTUAL WORKERS

The Supreme Court of India, *vide* judgement dated March 12, 2024, in the case of *Mahanadi Coalfields Ltd., vs.*

[12] (1978) 2 SCC 213

Brajrajnagar Coal Mines Workers' Union, while upholding the decision of the Odisha High Court, stated that workers employed to execute work of 'continuing nature' cannot be treated as contractual workers.

In the present case the appellants Mahanadi Coalfields limited, employed 32 (Thirty Two) workmen in the year 1984 and the workers continued to be in the service of appellants till 1994, when the respondent Union sought permanent status as workers. Initially, by way of settlement, out of the 32 (Thirty Two) workmen, 19 (Nineteen) were regularized and given the status of permanent workers, the primary contention for not regularizing the workers being that the 13 (Thirteen) workmen were employed to do 'casual' work and not permanent work, therefore, they cannot be regularized. The matter was referred to the Tribunal, where it was held that the distinction created by the appellant is artificial and the remaining 13 (Thirteen) workers are also entitled to permanent employment. The High Court of Odisha upheld the Tribunal's decision.

The Supreme Court opined that upon examination it was clear that if in fact the nature of work, the continuing nature of work and continuous working of workmen is concurrent, then not granting permanent status and regularizing the workmen is wrongful denial of employment.

MADHYA PRADESH GOVERNMENT AMENDS THE BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE CESS ACT, 1996

The Labour Department, Madhya Pradesh, *vide* notification dated, March 12, 2024, has amended the Building and Other Construction Workers Welfare Cess Act, 1996. The notification inserts a proviso after clause (xii) of the earlier notification no. F-4E-2/2015/A-XVI, dated June 15, 2016. Previously, exemptions could be claimed for the cost of building and other construction works. Pursuant to the latest amendment, the total amount of such exemption claim must not exceed the upper limit of the miscellaneous/contingency costs mentioned in the technical sanction of the building. Further, the amount of total exemption from the 'cost of construction' shall not exceed 3% (Three Percent) of the total technical sanction of the building.

WOMEN WORKING ON 'CONTRACTUAL' BASIS ARE ENTITLED 26 (TWENTY SIX) WEEKS OF MATERNITY LEAVE UNDER THE MATERNITY BENEFITS ACT, 1961

The High Court of Delhi, *vide* order dated March 13, 2024, in the case of *Government of National Capital Territory vs. Rehmat Fatim*, ruled that contractual workers are entitled to maternity leave under the Maternity Benefit Act, 1961 ("**MB Act**"). The High Court of Delhi dismissed the state government's appeal against the order of a single judge bench's decision in the High Court of Delhi. In the instant case, the respondent, Ms. Rehmat Fatima, was employed as a stenographer with the Delhi State Consumer Forum since 2013 on a 'contractual basis'. On February 28, 2018, she submitted an application for the grant of maternity leave, as per the provisions of the MB Act, for 180 (One Hundred and Eighty) days. Her application was rejected as her contractual period as an employee was set to conclude on March 31, 2018. It was the appellant's contention that since the duration of employment for the female worker was ending before her period of maternity leave, she was not entitled to benefits under the provisions of the MB Act. Essentially implementing that for contractual worker, the benefit of maternity leave cannot extend beyond the period of employment mentioned in her contract.

The worker filed a writ petition before the High Court, where the single judge considered whether a contractual worker is entitled to benefits under the provisions of the MB Act. The High Court of Delhi held that the respondent is entitled to benefits under Section 5 of the MB Act which has incorporated within itself a *suo moto* benefit to employees regardless of their contractual work period expiring within the period of maternity leave sought. Thus, the division bench of the High Court of Delhi upheld the decision of the single judge bench.

THE GOVERNMENT OF HARYANA PRESCRIBES CONDITIONS FOR FACTORIES THAT APPLY FOR THE EXEMPTION FOR EMPLOYING WOMEN IN THE FACTORY

The Labour Department, Haryana, *vide* notification dated March 14, 2024, has prescribed conditions that must be followed by any factory seeking an exemption for employing women during night shifts (from 07.00 PM to 6:00 AM), under the Factories Act, 1948. The conditions have been prescribed keeping in mind the safety and security of the female workers with the object to ensure that no women shall be subject to sexual harassment while working in the factories. The notification imposes certain conditions on management of the factories where women workers are working in factories, *inter alia* including like installation of CCTV cameras, compliance with Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, providing transportation facilities to women workers, providing medical facilities by engaging a doctor/female nurse etc.

THE GOVERNMENT OF TRIPURA NOTIFIES ESTABLISHMENT OF DISTRICT EMPLOYMENT EXCHANGE IN THE SOUTH OF TRIPURA AND MAKES NOTIFICATION OF VACANCIES COMPULSORY FOR EMPLOYERS

The Department of Labour (Employment), Tripura, *vide* notification dated March 14, 2024, has declared the establishment of 'District Employment Exchange' in South Tripura. The aforesaid exchange shall be dedicated to implementation of National Career Service Project, registration of job seekers, employers, skill providers,

counselling of job seekers, conducting job-fair and recruitment drives etc., in South Tripura District. The area of the exchange will cover Belonia Sub-division, Santirbazar sub-division and Sabroom sub-division. The headquarters for the exchange will be in Belonia.

The central and state governments along with their undertakings and concerned private employers are required to notify their vacancies under the jurisdiction of South Tripura to the aforesaid exchange.

THE GOVERNMENT OF MANIPUR NOTIFIES THE MANIPUR LABOUR LAWS (EXEMPTION FROM RENEWAL OF REGISTRATION AND LICENSE BY ESTABLISHMENT) ACT, 2024

The Law and Legislative Affairs Department, Manipur *vide* notification dated March 15, 2024, has promogulated the Manipur Labour Laws (Exemption from Renewal of Registration and License by Establishment) Act, 2024. As per the aforementioned act, if the registration of an establishment lapses after 1 (One) year of obtaining the registration in relation to the acts detailed under Schedule 1 of the aforementioned act, renewal is not necessary. The aforementioned act states that an employer may renew his registration of establishment if the employer furnishes a self-certification in the manner detailed under Schedule 2 of the aforementioned act. While the aforementioned act does not grant pardon to any existing defaulting establishments, it becomes effective retrospectively, from December 23, 2023.

MAHARASHTRA GOVERNMENT PUBLISHES THE MAHARASHTRA LABOUR WELFARE FUND (AMENDMENT) ACT, 2024

The Labour Department, Maharashtra, *vide* amendment dated March 18, 2024, has published the Maharashtra Labour Welfare Fund (Amendment) Act, 2024, to amend the Maharashtra Labour Welfare Fund Act, 1953. The aforesaid amendment amends Section 6BB *(contributions),* of the Maharashtra Labour Welfare Fund Act, 1953, and has issued a revised rate of contribution payable by the employer. The amount of contribution payable for every employee whose name appears in the establishment register has been revised to INR 25 (Rupees Twenty-five) from INR 6 (Rupees Six) and INR 12 (Rupees Twelve), for workers drawing wages up to and inclusive of INR 3,000 (Rupees Three Thousand) and for workers drawing wages exceeding INR 3,000 (Rupees Three Thousand) respectively.

EMPLOYEE STATE INSURANCE CORPORATION UPDATES THE STATE WISE LIST OF NOTIFIED/NON-NOTIFIED DISTRICTS UNDER ESIC 2.0/VISION -2022

The ESIC *vide* circular dated March 18, 2024, has updated the district-wise list for the applicability of the ESI Scheme. The circular provides the latest consolidated status update for 778 (Seven Hundred and Seventy-Eight) districts where the ESI scheme is notified/partially notified, wherein, there are 565 (Five Hundred and Sixty-Five) fully notified Districts and 103 (One Hundred and Three) partially notified districts along with 103 (One Hundred and Three) non-notified districts.

ESIC NOTIFIES METHODS FOR UPDATING/CLEANSING EMPLOYERS DATA

ESIC, *vide* circular dated March 22, 2024 has issued guidelines on updating the status of employer data and taking action against faulty contributions by the employers. As per the aforesaid notification, the compliance report on updating the statuses of employers is required to be submitted by 17th (Seventeenth) and 3rd (Third) of each month. Further, the whole exercise must be completed within 2 (Two) months from the date of the notification.

EPFO NOTIFIES MANNER OF REPORTING IN NIDHI AAPKE NIKAT 2.0

The EPFO, *vide* circular dated March 23, 2024 has issued guidelines regarding the Nidhi Aapke Nikat 2.0 registration process. The zonal offices are instructed to maintain a register or the log of visitors in the prescribed format, with the name, address, registration of the visitor as a provident fund member.

THE GOVERNMENT OF HARYANA NOTIFIES THE INDUSTRIAL DISPUTES (AMENDMENT AND MISCELLANEOUS PROVISIONS) (HARYANA AMENDMENT) REPEAL ACT, 2024

The Law and Legislative department, Haryana, *vide* notification dated March 26, 2024 has notified the Industrial Disputes (Amendment and Miscellaneous Provisions) (Haryana Amendment) Repeal Act, 2024, which repeals the Industrial Disputes (Amendment and Miscellaneous Provisions) (Haryana Amendment) Act, 1957. The aforesaid repealing act had received the assent of the Governor on March 13, 2024.

ENERGY & INFRASTRUCTURE

ENERGY

THE MINISTRY OF POWER (NRE SECTION) VIDE SANCTION ORDER BEARING REFERENCE NO. F. NO. 42-26/1/2022-RCM (PART -1) APPROVED THE IMPLEMENTATION OF THE SCHEME FOR VIABILITY GAP FUNDING FOR DEVELOPMENT OF BATTERY ENERGY STORAGE SYSTEMS (BESS)

The viability gap funding scheme for the advancement of Battery Energy Storage Systems for the power sector has been approved by the Union Cabinet, chaired by the Hon'ble Prime Minister. The BESS projects, totalling 4,000 MWh, will be executed in phases. The Scheme, with an initial outlay of Rs. 9,400 Crore features a budgetary support of Rs. 3,760 Crore. The VGF is limited to 40% of the project capital cost, disbursed in five tranches. At least 85% of the BESS project capacity under the Scheme will be made available to DISCOMS. BESS developers will be selected for VGF grants through a transparent competitive bidding process. The Scheme aims to achieve a post-VGF levelized cost of storage (LcoS) of Rs. 5.50-6.60 per kilowatt-hour (kwh). This initiative is designed to reduce storage costs to affordable levels, thereby expediting the addition of renewable capacity in India.

THE MINISTRY OF NEW & RENEWABLE ENERGY (HYDROGEN DIVISION) VIDE NOTIFICATION BEARING REFERENCE NO. F NO. 353/7/2024-NT DATED MARCH 15, 2024 RELEASED SCHEME GUIDELINES FOR SETTING UP HYDROGEN HUBS IN INDIA UNDER THE NATIONAL GREEN HYDROGEN MISSION

These Scheme Guidelines are released with the objective to (a) identify and develop regions capable of supporting large-scale production and/or utilization of Hydrogen as Green Hydrogen Hubs; (b) development of green hydrogen projects inside the hubs in an integrated manner to allow pooling of resources and achievement of scale; (c) enhance the cost-competitiveness of green hydrogen and its derivates vis-à-vis fossil based alternatives; (d) maximize production of green hydrogen and its derivatives in India within the stated financial support; (e) encourage large-scale utilization and exports of green hydrogen and its derivatives; (f) enhance viability of green hydrogen assets across the value chain. It is planned to set up at least two such green hydrogen hubs by FY 2025-26. The budgetary outlay of the Scheme Guidelines is Rs. 200 Crore till FY 2025-26. The MNRE and its nominated Scheme Implementing Agencies (IA's) will be the Implementing Agency for these hydrogen hubs. The SIA will issue a Call for Proposal for the projects. SIA will be eligible for service charges at 0.5% of CFA released under the projects.

THE MINISTRY OF NEW & RENEWABLE ENERGY (HYDROGEN DIVISION) VIDE NOTIFICATION BEARING REFERENCE NO. 353/61/2023-NT DATED MARCH 15, 2024, RELEASED THE GUIDELINES FOR IMPLEMENTATION OF THE R&D SCHEME UNDER THE NATIONAL GREEN HYDROGEN MISSION

The Guidelines for R&D Scheme under the National Green Hydrogen Mission were issued by MNRE with the objective of (a) increasing affordability of the production of green hydrogen, its storage, transportation and utilization and enhancement, efficiency, safety and reliability of the relevant systems and processes, (b)to build industry-academia-government partnerships to leverage the chance to establish an innovation ecosystem for green hydrogen tech (c) facilitate scaling and commercialization of tech advancement by providing requisite policy and regulatory support. These guidelines have been issued with a budgetary outlay of Rs. 400 Crore till FY 2025-2026. The components of the Scheme include (a) Mission mode projects with short term (0-5 years) horizon (b) Grand Challenge projects with a mid-term (0-8 years) impact horizon (c) Blue Sky Projects having long term (0-15 years) horizon and (d) Centers of Excellence.

THE MINISTRY OF NEW & RENEWABLE ENERGY (HYDROGEN DIVISION) VIDE NOTIFICATION BEARING REFERENCE NO. 353/14/2024 – NT ON MARCH 16, 2024, RELEASED THE SCHEME GUIDELINES FOR ON-SKILLING, UP-SKILLING UNDER THE NATIONAL GREEN HYDROGEN MISSION

The Ministry issued the Scheme Guidelines for implementation of the on-skilling, up-skilling under the National Green Hydrogen Mission. The objectives of the Scheme include undertaking comprehensive skill gap analysis covering key areas of the green hydrogen ecosystem on a continuous basis, creation/updation of registry of skills as required by the value chain, design and development of curricular elements for use in schools, industrial training institutes, polytechnics etc. at various levels and segments of the green hydrogen value chain, development of qualification packs and training content including manuals and online study resources and encouraging private sector participation with focus on training in industries and on the job-training among other such objectives. The budgetary outlay for these scheme guidelines amounts to Rs. 35 Crores till end of FY 2029-30. The operation of the SCEHEME Guidelines is based on two components i.e. Short-Term training and RPL based training. The Scheme will be available to citizens of India who fulfil the eligibility criteria as laid down.

INFRASTRUCTURE

AMENDMENT IN GENERAL INSTRUCTIONS ON PROCUREMENT AND PROJECT MANAGEMENT

The Procurement Policy Division (**"PPD"**) Department of Expenditure ("**DoE**"), Ministry of Finance, *vide* office memorandum bearing number F.1/1/2021-PPD dated March 08, 2024 ("**OM**") issued certain amendments to the General Instruction on Procurement and Project Management ("**GIs**").

Amendment to Paragraph 15.2.2 (i) (a): Paragraph 15.2.2 (i) (a) deals with the competent authority to declare procurement as quality-oriented procurement ("**QOP**"). The same has been amended to state that, for declaring a procurement as QOP where the procuring entity/ project executing authority is covered by Rule 1 of the General Financial Rules, 2017 ("**GFRs**"), the competent authority shall be:

- Secretary of the ministry/department to which the procuring entity belongs; or
- Secretary of the public authority as defined in paragraph 5 (vi) of GIs with the concurrence of the procuring entity/project executing authority as defined in paragraph 5 (v) of the GIs. The procuring entity/project executing authority shall decide the level at which the concurrence is required to be given. The same need not be obtained at the level of the secretary in charge of the procuring entity/project executing authority; or
- Where the public authority is any Indian Institute Technology (IIT) or Indian Institute of Science (IISc), the director of such IIT or IISc (this provision is applicable for procurement declared as QOP on or before March 31, 2027, and will be reviewed thereafter).

Deletion of Paragraph 15.2.3 (vi): Paragraph 15.2.3 (vi) which provided a carve out stating that the persons referred to in paragraph 15.2.3 (i) to 15.2.3 (iii) of the GIs should not be persons working under the competent authority specified in the GIs and should not belong to any organisation under the control of or receiving funding from the procuring entity of the ministry/department to which the procuring entity belongs, has been deleted.

ONE TIME SETTLEMENT OF CONTRACTUAL DISPUTES ON SIMILAR AS VIVAD SE VISHWAS-II (CONTRACTUAL DISPUTES) UNDER THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

The National Highways Authority of India ("NHAI") *vide* policy circular bearing number 2.1.72/2024 dated March 11, 2024 ("Policy Circular") has adopted the one-time settlement of contractual disputes on similar as Vivad Se Vishwas-II (Contractual Disputes) under the Ministry of Road Transport and Highways ("MoRTH") ("OTS Scheme").

The key terms of the OTS Scheme are provided hereinbelow:

(i) The OTS Scheme has been implemented on the same principles and provisions as under the Vivad Se Vishwas Scheme ("VSV Scheme").

(ii) The following arbitral awards/orders shall be eligible for settlement:

  (a) Arbitral awards passed up to September 30, 2024.
  (b) Court orders passed up to December 31, 2024.

(iii) Claims may be submitted by the relevant parties till March 31, 2024 via the Government e-Marketplace ("GeM") portal. The GeM portal will provide a dedicated link for implementation of the OTS Scheme.

(iv) The OTS Scheme shall be applicable to MoRTH, NHAI and National Highways & Infrastructure Development Corporation Limited ("NHIDCL").

CHANGES IN THE MODEL BIDDING DOCUMENT MODEL CONCESSION AGREEMENT BEING USED FOR MONETIZATION OF PUBLIC-FUNDED OPERATIONAL NATIONAL HIGHWAY PROJECTS UNDER TOLLING, OPERATION, MAINTENANCE AND TRANSFER MODEL

MoRTH *vide* circular bearing number NH-24028/14/2014-H (Vol-II) (e-134863) dated March 15, 2024 ("**TOT Circular**"), notified amendments to the model bidding document/model concession agreement for monetization of public-funded operational national highway projects under tolling, operation, maintenance and transfer ("**TOT**") model ("**TOT MCA**").

A number of amendments have been introduced in the TOT MCA, including the following:

- *Amendment to Clause 24.1:* An additional target point ('Target Point 3') has been added to estimate the variation in toll collection.
- *Amendment to Clause 24.2:* Prior to the amendment, clause 24.2 dealt with modification in the concession period due to variation in 'Target Fee 1'. The clause now provides for modification in concession period due to decrease in target fee. It specifies that, if, the actual fee falls 5% (five percent) below the target fee, the remaining concession period shall be modified as per the provisions of clause 24.5.1 of the TOT MCA.
- *Amendment to Clause 24.3:* Clause 24.3 originally provided for modification in the concession period due to variation in target fee 2. The said clause has been amended to specify the modification in concession period due to increase in target fee. It states that, if, the actual fee exceeds the target fee by 5% (five percent) or more, the remaining concession period shall be modified as per the provisions of clause 24.5.2 of the TOT MCA.
- *Amendment to Clause 24.5.1:* As per the amended clause, if the actual fee falls short of the target fee by more than 5% (five percent), then for any 1% (one percent) shortfall compared to the target fee, the remaining concession period (subject to the TOT MCA) shall be increased by 1% (one percent). The decrease in target fee in fraction of 1% (one percent) or part thereof beyond 5% (five percent) variation will lead to an increase in the remaining concession period on a pro-rata basis.
- *Amendment to Clause 24.5.2:* In terms of the amendment, if the actual fee exceeds the target fee by more than 5% (five percent) of the target fee, then for any 1% (one percent) increase as compared to the target fee, the remaining concession period (subject to the TOT MCA) shall be decreased by 1% (one percent). The increase in target fee in fraction of 1% (one percent) or part thereof beyond 5% (five percent) variation will result in a decrease in the concession period on a pro-rata basis.

CHANGES IN THE PROVISIONS OF MODEL CONCESSION AGREEMENT FOR CAPACITY AUGMENTATION ON BOT (TOLL) BASIS

The MoRTH *vide* circular bearing number NH-24028/14/2014-H (Vol-II) (e-134863) dated March 15, 2024 ("**BoT Circular**"), notified amendments to the MCA for capacity augmentation on build operate transfer (toll) ("**BoT(Toll)**") basis ("**BoT MCA**").

The key amendments to the BoT MCA detailed in the BoT Circular *inter alia* include:

- *Amendment to Clause 4.1.3 (f):* As per this amendment, the concessionaire is required to deliver the duly attested details as provided in Schedule Y in addition to the requisite copies of the financial package and the financial model. Additionally, the same must be appraised and adopted by the senior lenders.
- *Amendment to Clause 4.4:* As per the amended clause, it has been clarified that in case the appointed date does not occur as per the conditions stipulated therein, all rights, privileges, claims and entitlements of the concessionaire under or arising out of the BoT MCA shall be deemed to have been waived by, and to have ceased with the concurrence of the concessionaire. Moreover, in such a case, the BoT MCA shall be deemed to have been terminated by the mutual agreement of the parties.
- *Addition of Clause 5.1.5:* This clause stipulates that the concessionaire must comply with all requirements of the escrow bank to provide to the authority the facility for online viewing and downloading the account statement of escrow account at all times during the concession period.
- *Amendment to Clause 6.3:* In relation to the obligations relating to competing roads, the authority shall in addition to paying compensation under the BoT MCA, have the right to increase the concession period as per the provisions of the BoT MCA. The payment of the aforementioned compensation and enhancement of

concession period shall be deemed to cure the breach under the BoT MCA.

- *Amendment to Clause 9.1*: The performance security shall be calculated at 3% (three percent) of the estimated project cost as specified in the request for proposal.

- *Amendment to Clause 10.3.5:* The timeline for construction works on all lands for which right of way is granted was increased from 120 (one hundred and twenty) days to 180 (one hundred and eighty) days of the appointed date.

- *Amendment to Clause 16.2.2:* The concessionaire is required to submit to the independent engineer, a detailed proposal in support of the impact of change of scope, details for options for implementing the change of scope and the costs for implementation of the change of scope.

- *Addition of Clause 25.5.1:* A new clause for provision of construction support has been added to the BoT MCA.

- *Amendment to Clause 31.4.1:* As per the amendment, outstanding concession fee shall be appropriated before 90% (ninety percent) of the debt due (excluding subordinated debt) from the escrow account upon termination.

- *Amendment to Clause 34.4:* Under the provision of political force majeure event, change in law shall be regarded as a political force majeure event only if it causes reduction in traffic and consequent increase in concession period is beyond 20% (twenty percent) of the concession period. Additionally, it has been clarified that force majeure costs shall be payable upon occurrence of a force majeure event after the appointed date till achievement of commercial operation date ("**COD**"). The amended clause further details the mechanism for determining force majeure costs.

- *Amendment to Clause 35.3:* The compensation and extension of concession period has been linked to any time after achievement of COD. The compensation for such period shall be inclusive of (a) interest on debt due and (b) operation and maintenance ("**O&M**") expenses determined from the original financing agreements.

- *Addition of Clause 37.2 A and 37.3.2 A:* A clause on termination on buy back of the project has been added to the BoT MCA. A notice period of 90 (ninety) days must be provided to the lenders' representative. Clause 37.3.2A provides for the mechanism for termination payment upon termination on account of buy back.

- *Amendment to Clause 37.6:* A provision has been added wherein the aggregate liability of the authority has under clause 37.3 of the BoT MCA has been limited to 115% (one hundred and fifteen percent) of the total project cost.

- *Deletion of Clause 37.8:* The said clause which provided for termination on account of concessionaire default occurring prior to COD has been deleted.

- *Amendment of definitions:* Some of the key definitions that have been amended in the BoT MCA inter alia include, definition of debt due, senior lenders, subordinated debt etc.

- *Amendments to and addition of Schedules*: Certain schedules like schedule E, G, F, L and S etc. have also been amended vide the BoT Circular. Schedule Y (Format for Intimation Financial Closure) has been added.

DSK View: *The amendments introduced vide the BoT Circular and TOT Circular are beneficial for the private sector and will provide greater incentive for private participation in such projects. The amendments also, provide clarity regarding debt due obligations, capacity augmentation, and compensation arrangements with authorities. However, the transformative potential of these changes in providing a boost to BoT(Toll) and TOT projects hinges upon implementation, which remains a critical factor in determining their efficacy and success.*

RBI BRINGS AMENDMENT IN ITS MASTER DIRECTIONS- CREDIT CARD AND DEBIT CARD- ISSUANCE AND CONDUCT

The RBI on March 07, 2024 came out with amendments in 'Credit Card and Debit Card – Issuance and Conduct Directions, 2022 which were originally released *vide* Master Direction DoR.AUT.REC.No.27/24.01.041/2022-23 dated April 21, 2022. Following is the summary of key amendments:

Paragraph of Master Direction	Existing Provision	Amendment Introduced
7 (c)	The provision focuses upon issuance of Business credit cards and corporate credit cards.	A new requirement has been added for card-issuers to implement an effective mechanism to monitor the end use of funds associated with business credit cards.
8(a)	The provision talks about the penalty levied on failure of the card-issuers to complete the process of closure within 7 (Seven) working days	The penalty has been modified to ₹500/- per calendar day of delay, payable to the cardholder, instead of per working day.
9(b)(iii)	The provision talks about the requirement of card-issuers to specify in the billing statement the threshold of unpaid amount beyond which the interest-free credit period benefits would not be available to cardholders.	The requirement for card-issuers to clearly state in the billing statement the amount of unpaid balance that would cancel the interest-free credit period benefit for cardholders has been removed.
9(b)(v)	The provision states that penal interest, late payment charges, and other related charges would be levied only on the outstanding amount after the due date, not on the total amount due.	The provision specifying that penal interest would be levied on the outstanding amount due has been removed.
12(b)	The provision illustrates the whole process required to be followed before reporting default status of a credit cardholder	The requirement for card-issuers to issue a 7 (Seven) day notice period to cardholders before reporting them as defaulters to Credit Information Companies has been removed. Instead, the card-issuers are now required to simply intimate the cardholder prior to reporting the default status.
14(c)	As per this provision, banks are prohibited from issuing debit cards to cash credit/loan account holders other than for linking with a debit card along with Pradhan Mantri Jan Dhan Yojana accounts.	The amendment includes the addition of Kisan Credit Card accounts as eligible for linking with a debit card, expanding the scope of accounts eligible for debit card linkage.
17(b)	The provision describes requirements while	The term "credit/debit" before the word card has been

	issuing a co-branded credit/debit card.	removed. This provides a broader scope to the issuers to issue other cards such as prepaid cards etc.
21(b)	The provision puts a restriction on the co-branding partner for accessing the information from the card issuer with respect to transactions undertaken through the co-branded card.	A new provision has been added allowing the co-branding partner to display transaction-related data from the card-issuer's system on their platform for cardholder convenience, with stringent security measures. However, the data displayed will only be visible to the cardholder and will not be accessed or stored by the co-branding partner.
22	The provision requires NBFCs seeking to enter co-branding arrangements for credit card issuers to adhere to specific guidelines outlined in the respective Master Directions applicable to NBFCs.	As per the amendment, banks (including payment banks) and NBFCs registered with the Reserve Bank do not need prior approval to become co-branding partners, and their role is governed by conditions stipulated under para 21. However, it is clarified that NBFCs will still require specific permission from RBI to enter into card-issuing business the pre-requisite for which is a minimum net owned fund of ₹100/- crore among others.
23(g)	The provision talks about taking the consent of customer while issuance, renewal, and blockage of the cards.	The requirement for explicit consent from the cardholder prior to the renewal of an existing card has been replaced with an option for the cardholder to decline the renewal before the card is dispatched.
26(c)	The provision talks about the duty of card-issuer to provide response to customer queries.	In the new amended provision, the maximum period for a satisfactory response from the card-issuer has been explicitly stated as "30 days" instead of "one month". Additionally, the option to approach the RBI Ombudsman for grievance redressal has been specified under the Integrated Ombudsman Scheme
28	Card-issuers shall ensure adherence to the guidelines on “Managing Risks and Code of Conduct in Outsourcing of Financial Services” as amended from time to time.	Specific reference is made to the Master Direction on 'Outsourcing of Information Technology Services' dated April 10, 2023. It is emphasized that card-issuers should not share card data (including transaction data) with outsourcing partners unless necessary for their assigned functions. It's mandated that storage and ownership of card data remain with the card-issuer.

The following provisions have been added: -

Para 3(a)(xxi)	"Total Amount Due" defined as the net payable amount by the cardholder at the end of a billing cycle.
Para 9(b)(vi)	Clarification that interest is levied only on the outstanding amount after adjustments for payments/refunds/reversed transactions.
Para 10(c)	Requirement for card-issuers to list authorized payment modes for credit card dues on their websites and statements, advising caution against unauthorized modes.
Para 10(e)	Mandate for debit to credit card accounts to adhere to Reserve Bank's authentication framework.
Para 10(i)	Flexibility in payment timeframes for business credit cards based on agreements between card-issuer and principal account holder.
Para 23(d)	Requirement for card-issuers to follow their board approved standard procedures for blocking/deactivating/suspending cards, and timely intimation to cardholders with reasons provided via electronic or other means.

DSK View: *The new amended provisions in the Master Direction encompass a range of changes aimed at enhancing transparency, flexibility, and security within the credit and debit card ecosystem. These changes include provisions for monitoring the end use of funds, revising penalties for delays, modifying billing cycle change options, and expanding eligibility for debit card linkage. The specific requirement of monitoring corporate credit card’s end use is to ensure that the corporate card holders do not pay the money to entities which could not have received money through card payments.*

Source

RBI ISSUES ADDITIONAL GUIDELINES ON ARRANGEMENTS WITH CARD NETWORKS FOR ISSUE OF CREDIT CARDS

The RBI in exercise of the powers conferred under Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007) has laid out:

(i) **Restriction on Card Issuers:** Card issuers shall not enter into any arrangement or agreement with card networks that restrain them from availing the services of other card networks.

(ii) **Customer Choice:** Card issuers must offer eligible customers the option to choose from multiple card networks when obtaining a card. Existing cardholders must be provided with this choice at the time of renewal.

Both card issuers and card networks must ensure compliance with the above provisions in existing agreements (at the time of their renewal) and new agreements. However, credit card issuers with 10 (Ten) lakh or fewer active cards are exempt from the requirement mentioned above. Card issuers who issue credit cards on their own authorized card network are not subject to the circular's applicability. The directive outlined above will be enforced 6 (Six) months from the date of issuance of this circular i.e. March 06, 2024.

DSK View: *The RBI via this notification has mandated card issuers to offer choices and prohibit restrictive agreements that will lead to consumers enjoying increased flexibility and convenience in their payment methods.*

Source

NPCI GRANTS APPROVAL TO ONE97 COMMUNICATIONS LIMITED (PAYTM) TO PARTICIPATE IN UPI AS A THIRD-PARTY APPLICATION PROVIDER (TPAP) UNDER MULTI-BANK MODEL

The National Payments Corporation of India (NPCI) has approved One97 Communications Limited ("Paytm") to participate in the Unified Payments Interface (UPI) as a Third-Party Application Provider (TPAP) under the multi-bank model in which four banks (Axis Bank, HDFC Bank, State Bank of India, YES Bank) will serve as Payment System Provider (PSP) banks to Paytm

RBI has further approved that:

(i) YES Bank will also function as the merchant acquiring bank for both existing and new UPI merchants associated with Paytm.

(ii) The "@Paytm" handle will be redirected to YES Bank, ensuring seamless UPI transactions and AutoPay mandates for existing users and merchants.

(iii) Paytm has been instructed to swiftly migrate all existing handles and mandates to the new PSP banks as needed.

Source

IMPLEMENTATION OF MAXIMUM UPI INWARD CREDIT LIMIT FOR P2PM MERCHANTS

P2PM, a category for UPI services was introduced *via* NPCI notification on June 17, 2019. It aimed to devise an approach to bring small vendors and unorganised retail sector into digital framework. A transaction under P2PM category is settled as P2P, but they are categorised as merchant transaction. On March 28, 2024, NPCI increased the limit for acceptance of such payments whereby, acquiring Banks/PSPs shall ensure the following maximum UPI inward credit limits allowed for P2PM merchants before April 30, 2024:

Particulars	Maximum UPI Inward Credit Limit in Rupees
Per Transaction	INR 10,000/-
Cumulative per day	INR 25,000/-
Cumulative per month	INR 1,00,000/-

It is to be noted that merchants with UPI payment inward credit of Rs 1,00,000/- per month or more consecutively for three months must be formally acquired by the payee PSP under P2M category.

Source

FONEPAY AND NPCI INTERNATIONAL JOIN HANDS FOR SWIFTENING CROSS-BORDER TRANSACTIONS

On March 08, 2024, NPCI International Payments Limited (NIPL) has partnered with Fonepay Payment Service Ltd, Nepal's largest payment network provider, to introduce Unified Payments Interface (UPI) in Nepal.

The features of this partnership are highlighted below:

(i) This partnership will enable Indian consumers to make instant, secure and convenient UPI payments across various business stores in Nepal by using UPI-enabled Apps.

(ii) Merchants acquired by the participating members of Fonepay Network can seamlessly accept UPI payments from Indian customers.

Source

NEW EV POLICY SCHEME TO PROMOTE DOMESTIC MANUFACTURING OF ELECTRIC PASSENGER CARS

Recognising the need to decarbonize transportation and capitalize on the global shift towards sustainable mobility, the Ministry of Heavy Industries ('**MHI**') has passed a scheme to promote the manufacturing of Electric Vehicles ('**EV**') in India vide Notification No. S.O. 1363(E) dated 15 March 2024 (available here).

As per the text of the Notification, the approved applicant companies are required to set up manufacturing facilities in India with a total minimum investment of Rs. 4,150 crore (USD 500 million) specifically for manufacturing electric four-wheelers ('**e-4W**'). It is emphasized that such manufacturing facilities must be operational within three years from the issuance of approval by the MHI and must achieve a minimum Domestic Value Addition ('**DVA**') of 25% within the same period. The applicants will further be required to achieve a minimum of 50% DVA by the end of the fifth year from the date of MHI approval.

The approved applicants may import Completely Built Units ('**CBUs**') for the e-4Ws to be manufactured by them, at a reduced customs duty of 15% for a period of 5 years from the date of approval by the MHI. However, the maximum total number of e-4Ws allowed to be imported at such rate would be capped at 8000 units per year.

Further, the maximum number of e-4Ws allowed to be imported by each importer shall be calculated by dividing the committed investment under each application by the maximum duty foregone per applicant.

The applicant's commitment to setup manufacturing facilities and achievement of DVA shall be backed by a bank guarantee, from a scheduled commercial bank in India, equivalent to the total duty to be foregone or Rs.4,150 crore, whichever is higher, to ensure commitment to the stated investment and DVA targets. The bank guarantee will be invoked in case of non-achievement of specified investment and DVA targets within the stipulated timelines.

It may be noted that the bank guarantee will be returned only when the applicant achieves 50% DVA and invests at least Rs.4,150 crore or the extent of duty foregone in five years, whichever is higher.

The Notification inviting applications shall be issued by the MHI within 120 days or more of announcing the above-mentioned scheme. It is highlighted that the applicant companies would be required to compile and submit audited annual financial statements and a statutory auditor's certificate along with the requisite documents and fees as mentioned in the application form, which is yet to be announced.

DSK View: *The MHI's initiative to promote EV manufacturing in India acknowledges the need to reduce transportation emissions to align with the nation's commitments under the Paris Agreement. By initially lowering customs duties on imports of CBUs, the scheme aims to cultivate a thriving EV manufacturing ecosystem within the country.*

On the flip side, to ensure accountability and safeguard domestic interests, the scheme mandates bank guarantees tied to investments in setting up manufacturing facilities in India, and sets targets for domestic value addition, aligning with the government's flagship "Make in India" initiative. The scheme also seeks to enhance India's industrial capabilities, create job opportunities, and foster self-sufficiency and economic development in the segment.

This initiative is expected to facilitate the entry of certain international EV companies, such as Texas-based Tesla, Inc., which had been seeking tariff exemptions to start manufacturing operations in India.

MEDIA & ENTERTAINMENT

CCPA ISSUES ADVISORY TO CELEBRITIES, PUBLISHERS, INTERMEDIARIES, SOCIAL MEDIA PLATFORMS, ETC. AGAINST PROMOTING/ENDORSING BETTING, GAMBLING THROUGH ADVERTISEMENTS

The Central Consumer Protection Authority (CCPA) has issued a warning advisory to various entities, including manufacturers, advertisers, social media platforms and celebrities, against promoting illegal activities such as betting and gambling through advertisements. The advisory emphasizes that endorsing such activities, especially by celebrities and influencers, could give the impression that they are acceptable, which is not the case. The CCPA chairman highlighted that violating the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, issued by the Ministry of Consumer Affairs in 2022 ("Guidelines"), will lead to strict actions as per the Consumer Protection Act, 2019. The advisory also reiterates that promoting illegal betting and gambling activities could render celebrities and influencers liable for participating in illegal activities, considering the unlawful status of such activities in most states. The advisory thus reinforces the Guidelines, prohibiting the promotion of products or services that are prohibited under any law, irrespective of the advertising medium used.

NCPCR URGES THE MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY (MEITY) TO TAKE ACTION AGAINST THE OTT PLATFORM "ULLU" FOR TRANSMITTING EXPLICIT CONTENT

The National Commission for Protection of Child Rights (NCPCR) has called upon MeitY, through a letter written by NCPCR's chairperson Priyank Kanoongo, to investigate the OTT platform "ULLU" ("Platform") for allegedly making explicit content easily accessible to minors, including sexual content involving school children. NCPCR has also sought action against Google Play and iOS for hosting the Platform on their app stores. According to the letter, NCPCR has received several complaints against the Platform by the group 'Gems of Bollywood' alleging that the Platform is disseminating highly objectionable content to subscribers, including minors. Additionally, the letter highlights that the Platform is easily available on the Google Play Store and Apple App Store without KYC requirements or age verification, potentially violating the POCSO Act, 2012. The Platform has earlier faced instances of content takedowns, including an order from the Digital Publishers Content Grievances Council in 2023. While the Digital Personal Data Protection (DPDP) Act, 2023, mandates verifiable consent from parents or guardians to protect children online, methods for age verification remain unspecified.

ANDHRA PRADESH HIGH COURT HOLDS THAT THERE IS NO COPYRIGHT PROTECTION FOR SCIENTIFIC WORKS; PIRATED ACADEMIC BOOKS ARE EXEMPTED FROM INFRINGEMENT ACTIONS

The Andhra Pradesh High Court ("Court") recently issued a significant ruling in the case of *Addala Sitamahalakshmi vs. State of Andhra Pradesh*, concerning copyright matters related to academic publications. The Court underscored that mathematical equations and scientific subjects, being reflections of natural laws, cannot be monopolized by their authors. Therefore, individuals have the right to utilize them without concerns of copyright infringement. By invoking Section 52 of the Copyright Act, the Court held that even if the petitioner's publications are assumed to be pirated copies of the publications of Deepthi Publications, who is one of the respondents to this petition, the same will be considered as an exception for educational purposes under Section 52. It also clarified that since the petitioner's books were non-literary and thus beyond the scope of Section 13 of the Copyright Act, they were protected under fair use provisions. Consequently, the Court dismissed criminal proceedings against the petitioner and directed authorities not to disrupt their business operations based on a government order. However, the Court declined to annul the

government order, stating that any challenge against such government order must be pursued through a public interest litigation demonstrating potential public harm if the government order is allowed to remain operative.

MIB NOTIFIES NEW CINEMATOGRAPH (CERTIFICATION) RULES 2024

The Ministry of Information & Broadcasting (MIB) has introduced the Cinematograph (Certification) Rules 2024 ("Rules"), representing a significant overhaul of India's film certification landscape. These Rules not only modernize the certification process but also address the challenges posed by the digital age and changing audience preferences. Notable updates include mandatory re-certification of films intended for television broadcast, ensuring that the films are adequately edited to obtain an unrestricted public exhibition certificate for the television broadcast as only films classified under the unrestricted public exhibition category can be aired. Additionally, accessibility features for individuals with disabilities are now mandatory for film certification. Online certification processes have also been adopted to improve efficiency and transparency, while certification timelines have been significantly reduced to expedite the process for filmmakers. Furthermore, age-based certification categories have been introduced to provide clearer guidance to parents and guardians regarding the suitability of film content for young viewers. The Rules also mandate greater representation of women on certification boards, promoting gender equality and sensitivity in the certification process. Another significant change is the introduction of perpetual validity for film certificates, eliminating the need for filmmakers to seek recertification after a certain period.

SUPREME COURT TO DECIDE WHETHER THE CBFC'S ADVISORY PANEL SHOULD INCLUDE DISABLED INDIVIDUALS TO HANDLE FILMS DEPICTING DISABILITY

In a special leave to appeal filed against the film "Aankh Micholi" produced by Sony Pictures Films India (P) Ltd., a three-judge bench of the Supreme Court of India ("Court"), comprising of CJI D.Y. Chandrachud and Justices J.B. Pardiwala and Manoj Misra, has issued a notice to the Union Government seeking its inputs on interpreting the relevant provisions of the Rights of Persons with Disabilities Act, 2016 (RPWD Act), particularly concerning films involving differently-abled individuals. The Court will examine the impact of Sections 3 and 6 of the Rights of Persons with Disabilities Act, 2016 (RPWD Act) on the statutory power to certify films. The petitioner had filed a petition before the Delhi High Court, alleging that the film "Aankh Micholi" received a 'U' certification from the Central Board of Film Certification (CBFC) despite containing derogatory references to differently-abled individuals in both the trailer and the film itself. During the proceedings, it was clarified that the petitioner did not seek to contest the certification or impede the film's screening. However, the respondents argued that the film aimed to highlight disabilities and promote dignity. The next hearing is scheduled for 05-04-2024.

3 AUTHORS ARE SUING NVIDIA OVER AI USE OF COPYRIGHTED WORKS

Nvidia is facing legal action from three authors who allege copyright infringement. The authors, Brian Keene, Abdi Nazemian, and Stewart O'Nan, claim that Nvidia used their copyrighted books without authorization to train its NeMo AI platform, which simulates everyday written language. The authors assert that their works were part of a dataset of approximately 196,640 books utilized to train NeMo. Nvidia took down the dataset in October 2023 following reports of copyright infringement. The lawsuit, filed in San Francisco federal court as a proposed class action, seeks unspecified damages for individuals in the United States whose copyrighted works contributed to NeMo's training over the last three years. This legal action reflects a broader trend of litigation concerning generative AI, where new content is generated based on various inputs, including text, images, and sounds.

BAD BUNNY FILES A LAWSUIT AGAINST A FAN REGARDING UNAUTHORIZED YOUTUBE VIDEOS AND PURPORTED COPYRIGHT VIOLATIONS

A Puerto Rican rapper and singer "Bad Bunny" has filed a lawsuit against a concert goer who refused to remove videos posted on YouTube, which contained significant portions of the singer's recent show in Utah. The lawsuit delves into copyright infringement, fair use, and the promotional value of fan videos online. The complaint alleges that the YouTuber, Eric Guillermo Madroñal Garrone, was asked to take down 10 videos featuring Bad Bunny's songs from the Salt Lake City concert. Despite a takedown request from Bad Bunny, Madroñal Garrone defended his right to post the videos, citing freedom of expression and public interest. Though YouTube has terminated Madroñal Garrone's account due to copyright infringement claims, his TikTok and Instagram pages remain operational.

MIB TAKES DOWN VARIOUS PLATFORMS PUBLISHING OBSCENE CONTENT

The Ministry of Information and Broadcasting ("**MIB**"), along with various intermediaries, took action to block /take down numerous OTT platforms, websites, mobile applications and social media accounts ("**Platforms**") which were publishing pornographic, vulgar and obscene content. Some of the Platforms include, Dreams Films, Neon x VIP, MoodX, Mojflix, etc.

The decision to take down the aforesaid Platforms was taken by MIB in accordance with the provisions of the Information and Technology Act, 2000, in consultation with other

governmental departments, and experts in women's and children's rights.

CRIMINAL PROCEEDINGS AGAINST 'THE VIRAL FEVER' QUASHED BY SUPREME COURT

The Supreme Court ("**SC**") quashed criminal proceedings against 'The Viral Fever' ("**TVF**") for their web-series 'College Romance' ("**Show**"). The Show is available to watch on OTT platforms such as YouTube, and in 2018, a complaint had been filed against the Show on the grounds that it was vulgar and obscene and portrayed women in an 'indecent form'. The Delhi High Court ("**Delhi HC**") had agreed with such complaint and had directed the filing of an FIR against the Show's director and actors.

TVF then appealed to the SC against such direction of the Delhi HC, and the SC quashing the Delhi HC order *inter alia* held: (i) the threshold for determining obscenity cannot simply be decency and common language, (ii) profanity and vulgarity cannot be equated with obscenity given that obscenity relates to material that arouses sexual and lustful thoughts, which is not the effect of abusive language or profanities used in the Show, (iii) the Delhi HC should have considered the contested portions in the context of the Show as a whole and not in its literal sense, and (iv) the standard for the test of obscenity could not be how an adolescent's or child's mind or a hypersensitive person who is susceptible to such influences would view the same.

DELHI HC GRANTS INJUNCTION AGAINST ROGUE CYBERLOCKER WEBSITES

8 (eight) global entertainment entities, including Warner Bros. Paramount, Netflix approached the Delhi High Court ("**Delhi HC**") for a permanent injunction against 'rogue cyberlocker websites' which were illegally hosting their copyrighted content. The Delhi HC directed for the take down of the infringing content and also sought disclosure of the revenues generated by the websites since their launch. The defendants have at present undertaken to takedown all infringing content and disable the feature on their platform allowing regeneration of links containing the infringing content. The matter is next listed for April 8, 2024.

ORDERS DIRECTING BLOOMBERG TO TAKE DOWN ITS STORY AGAINST ZEE ENTERTAINMENT SET ASIDE BY SUPREME COURT

Bloomberg published an article claiming that a USD 241 million accounting error had been discovered in the books of Zee Entertainment Enterprises Ltd. ("**Zee Entertainment**"). Zee Entertainment subsequently filed a defamation suit against Bloomberg and the trial court granted Zee Entertainment an interim injunction and directed Bloomberg to takedown the article. The Delhi HC upheld this order, which Bloomberg subsequently challenged before the Supreme Court ("**SC**"). The SC allowed Bloomberg's appeal and held that the threefold test for the grant of an injunction was not adequately evaluated by the trial court. However, the SC has granted Zee Entertainment liberty to approach the trial court afresh with its prayer seeking injunction.

RBI CIRCULAR ON ARRANGEMENTS WITH CARD NETWORKS FOR ISSUE OF CREDIT CARDS

The Reserve Bank of India ("**RBI**") *vide* Circular No. RBI RBI/2023-24/131 CO.DPSS.POLC.No.S1133/02-14-003/2023-24, dated March 06, 2024 ("**Card Networks Circular**"), issued directions on tie-up arrangements with card networks for issue of credit cards. The RBI observed on review that some arrangements between existing card networks and card issuers are not conducive to the availability of choice for customers. The choice of network for a card issued to a customer is determined by the card issuer and is linked to the arrangements that these card issuers have with card networks under the bilateral agreements.

Accordingly, RBI has directed the following in the interest of payment system and public interest:

(a) Card issuers shall not enter into any arrangement or agreement with card networks that would prevent them from using the services of other card networks.

(b) Card issuers shall give an option to their eligible customers to select from multiple card networks at the time of issue.

The above option may be provided at the time of the next renewal for existing cardholders.

The directions issued under the Card Networks Circular shall be effective 6 (six) months from the date of Card Networks Circular.

Card issuers and card networks shall comply with the above requirements at the time of amendment or renewal of the existing agreements and execution of all new agreements.

Credit card issuers may not be required to comply with the directive to offer customers the choice to select from multiple card networks at the time of card issuance, if the active cards issued by them are 10 (ten) lakh or less in number. The Card Networks Circular is not applicable to card issuers who issue credit cards on their own authorised card network.

DSK View: *The Card Networks Circular aims to remove any exclusivity amongst card networks and credit card issuers to ensure customers have the freedom to select from multiple card networks. This may create healthy competition among card networks, by developing a demand to offer cards with appealing features.*

AMENDMENT TO THE MASTER DIRECTION – CREDIT CARD AND DEBIT CARD – ISSUANCE AND CONDUCT DIRECTIONS, 2022

The RBI vide circular bearing no. RBI/2023-24/132 DOR.RAUG.AUT.REC.No.81/24.01.041/2023-24 dated March 07, 2024 ("**Amendment**") has made certain amendments to the Master Direction on Credit Card and Debit Card – Issuance and Conduct Directions 2022 dated April 21, 2022 ("**Master Direction**").

Given below are salient features of the Amendment, which shall be effective from March 07, 2024:

(a) Instructions relating to credit cards shall apply to all credit card issuing banks and non-banking financial companies ("**NBFCs**").
(b) Instructions relating to debit cards shall apply to every bank operating in India.

While RBI has made several amendments to the Master Direction, some of the key amendments are mentioned herein below:

(a) Paragraph 7(c) : The Amendment requires the card issuers to set up an effective mechanism to monitor end use of funds.

(b) Paragraph 8(a): The Amendment stipulates a penalty of ₹500 (Rupees Five Hundred) to be levied on a per calendar day basis, on the card issuers who fail to complete the card closure process within 7 (seven) working days.

(c) Paragraph 9(b)(v) - The Amendment has deleted the term "Penal Interest" from the latter part of the provision by stating that late payment charges and other related charges shall be levied only on the outstanding amount after the due date and not on the total amount due.

(d) Paragraph 21(b) – The Amendment has allowed the co-branding partner ("**CBP**") to acquire data relating to co-branded card transactions directly from the card issuers system in an encrypted form and display it in its platform with robust security. However, the information displayed through the CBP's platform shall be visible to the cardholder only and shall not be accessed or stored by the CBP.

Further, frequently asked questions ("**FAQs**") relating to provisions contained in the Master Direction have been released to provide more clarity on the Amendment.

DSK View: *The Amendment represents a notable advancement in promoting transparency, accountability, and consumer protection in the credit card industry. These changes have been made to cover different aspects of credit card issuance, conduct, and customer service. The goal of RBI is to ensure that regulatory frameworks are in line with the changing dynamics of the industry and the emerging challenges it faces.*

HIGH COURT OF KERALA CLARIFIES THAT REGISTERATION AUTHORITIES CAN CANCEL A REGISTERED DEED ONLY IN CASE OF FALSE IMPERSONATION

The Hon'ble High Court of Kerala, *vide* judgment dated February 29, 2024, in the case titled '*Mary Mohan Chacko and Anr. vs. Inspector General, Department of Registration Vanchiyoor and Ors.*[13]' , provided clarity on the jurisdiction and powers of registration authorities with respect to the revocation of documents registered under Registration Act of 1908 ("**Act**"). The Hon'ble Court elucidated the provisions outlined in Section 83A of the Act, which delineates the circumstances under which a registered document may be revoked.

The Hon'ble Court clarified that in terms of Section 83A of the Act, the power and authority to annul a registered document is vested exclusively in the Inspector General of Registration. This power can only be exercised in instances wherein it is found that an individual has falsely personated another and in his assumed character, he has fraudulently presented, admitted the execution, and thereby procured the registration for such document, and existence of such a document is detrimental to the interests of another individual.

The Court further clarified that once a document is registered under the Act, it is not open to the registration authorities to cancel a registration, even in the cases where his attention is invited to some irregularity committed during the registration process, in such cases, the aggrieved parties can only seek recourse through the civil court by contesting the registration and validity of such document.

UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY MANDATES STRINGENT LAND OWNERSHIP AND PROJECT REGISTRATION REQUIREMENTS FOR PROMOTERS

The Uttar Pradesh Real Estate Regulatory Authority ("**UPRERA**"), *vide* letter dated March 16, 2024, bearing reference no. 3676/UP RERA/Tak.Prakoshta/2023-24 clarified that in order to ensure compliance with the Real Estate (Regulation and Development) Act, 2016, the promoters must possess a valid legal title to the land on which their projects are situated. Further, in case the land is owned by another party, there must be a registered joint development agreement/ development agreement/ collaboration agreement in favor of the promoters.

KERALA REAL ESTATE REGULATORY AUTHORITY PROVIDES INSTRUCTIONS TO LOCAL SELF-GOVERNMENT INSTITUTIONS REGARDING OBTAINMENT OF DEVELOPMENT PERMIT/LAYOUT PERMIT

The Government of Kerala has issued a circular dated March 16, 2024, bearing reference no. LGSD-IBI/298/2022-LSGD ("**Circular**"), outlining the directions for all the secretaries of the local self-government institutions ("**LSGI**") in the state.

As per the said order, it was highlighted that Kerala Real Estate Regulatory Authority ("**KRERA**") had issued specific directions to be followed by promoters including obtaining a development permit/layout approval from local self-government for the development of their land parcels *vide* order dated November 09, 2022, bearing no. 102/K-RERA/T3/2019. The government in the Circular also highlighted that certain secretaries of LSGIs have denied the development permit to the project where the area of land parcels is less than 500 (five hundred) sq. mtrs. or the number of plots is less than 10(ten). The government clarified that irrespective of area or number of plots, the development permit is required to be obtained before the

[13] (W.P. (C) No. 33749 of 2023)

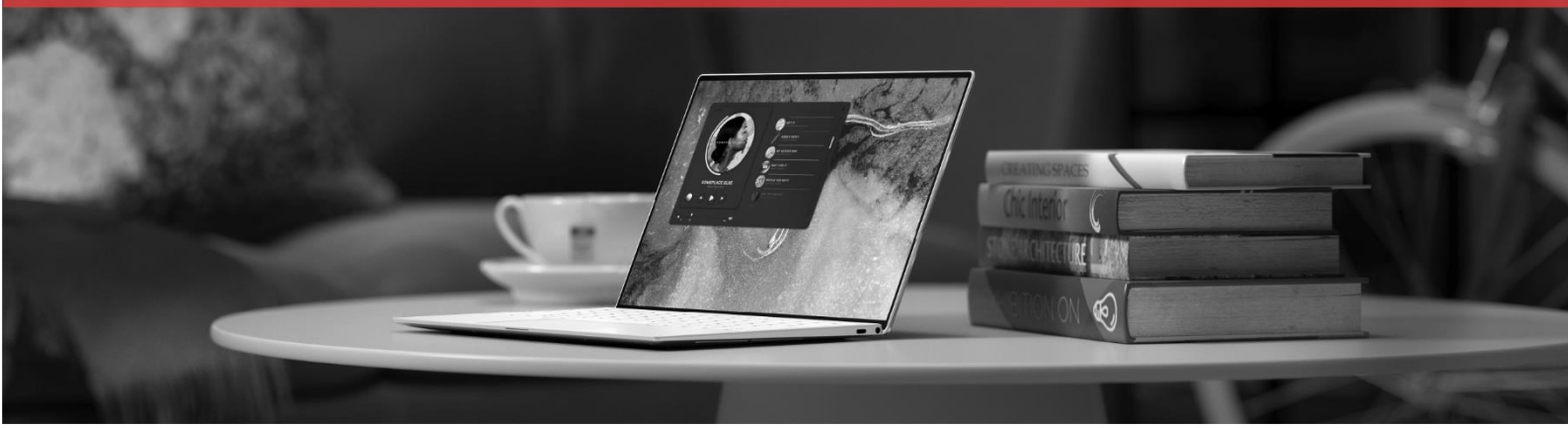
development of any land parcel as per the provisions of Kerala Panchayat Building Rules ("**KPBR**"), 2019 and Kerala Municipality Building Rules, 2019 ("**KMBR**").

In view of the aforesaid, and in compliance with the Real Estate (Regulation and Development) Act, 2016, KMPR, and KMBR, the government has issued certain directions *vide* Circular. As per the said directions, the secretary of LSGI is directed to issue a stop memo under the relevant provisions of Kerala Panchayat Raj Act, 1994/ Kerala Municipality Act, 1994 (whichever applicable) in case he receives information the land is being developed in his jurisdiction and require the developer to obtain a development permit/ layout approval as required under KPBR/KMBR, whichever applicable.

THE UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY DIRECTS INCLUSION OF CO-ALLOTTEE NAMES IN PENDING COMPLAINTS

The Uttar Pradesh Real Estate Regulatory Authority ("**UPRERA**") has issued an office order dated March 05, 2024, bearing reference no. 2853/UP-RERA/Prasha./2023-24, addressing a recurring issue in pending complaints across its various benches that complainants have failed to include the name of the co-allottee(s) as a complainant in their complaints.

In response, UPRERA has mandated that complainants in pending cases where units have been allotted to allottee along with co-allottee(s), and the name of the co-allottee(s) has not been added, then such co-allottee(s) shall ensure the inclusion of their name as a joint complainant. To facilitate this process, complainants will be provided with an edit option on the portal upon submission of their application.



MEITY NOTIFIES FACT CHECK UNIT (FCU) UNDER INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

The Ministry Of Electronics and Information Technology ("**MeitY**") in its notification dated March 20, 2024 (*accessible here*) has announced the establishment of the Fact Check Unit (FCU) under the Press Information Bureau ("**PIB**") of the Ministry of Information and Broadcasting ("**MIB**") to act as the official fact-checking body of the Central Government. The follows collaborative efforts between MIB and MeitY to address and combat the challenge of fake news, specifically on social media platforms. As per the notification, any information posted on social media platforms in relation to the business of the central government if flagged as fake by the FCU is required to be taken down by the concerned intermediary.

The FCU initially set up in November, 2019 under the PIB, aims to act as a deterrent body for creators and disseminators of fake news. The FCU will also provide an appropriate avenue to report suspicious information, counter misinformation on government policies and schemes, either *suo motu* or *via* complaints received and monitor the false information about the Government of India for prompt correction.

MIB ISSUES ADVISORY AGAINST PUBLICATION OF SURROGATE ADS PROMOTING OFFSHORE BETTING AND GAMBLING

In the wake of increasing advertisements promoting online betting and gambling, the MIB has issued an advisory on March 21, 2024 (*accessible here*) directing social media platforms and online advertisement intermediaries to refrain from publishing and broadcasting advertisements of offshore online betting on their platforms, in either direct or surrogate manner. The MIB, having the authority to clamp down on online advertisements, has also warned that failure to comply with the aforesaid directions may lead to proceedings against the intermediaries under the provisions of the Consumer Protection Act, 2019. Further, the MIB has also cautioned that the safe harbour protection under Section 79 of the Information Technology Act, 2000 will also not be available as a defense to the intermediaries who fail to expeditiously remove or disable access to unlawful content hosted on its platform, without vitiating any evidence.

MEITY ISSUES ADVISORY ON DUE DILIGENCE BY INTERMEDIARIES UNDER INFORMATION TECHNOLOGY RULES

The MeitY *vide* notification has issued an advisory dated March 15, 2024 (*accessible here*) regarding the obligations of intermediaries/platforms under the Information Technology (Intermediary Guidelines and the Digital Media Ethics Code) Rules, 2021 ("**IT Rules**"). Under the aforesaid notification, the MeitY has provided that any intermediary permitting or facilitating synthetic creation, generation or modification of a text, audio, visual or audio-visual in a manner which may be potentially used as misinformation or deepfake, must label such information or embed it with permanent unique metadata or identifier for the purposes of identification of the relevant users and computer resources.

Further, particularly, in relation to the use of artificial intelligence model/LLM/Generative AI, software or algorithm, the intermediaries/platforms must ensure compliance with the measures set forth below.

(i) The use of such models on or through their computer resource should not permit the users to host, display, upload, modify, publish, transmit, store, update or share any unlawful content as outlined under the IT Rules and other laws in force.

(ii) The computer resource, in itself or through such AI models, should not permit any bias or threaten the integrity of the electoral process.

(iii) Under-tested/ unreliable AI models or models requiring further development should be made available to users in India only after appropriate labelling of the possible inherent fallibility or unreliability of the generated output. For providing such information, 'consent popup' or equivalent mechanisms may be used.

(iv) The users should be informed, through the terms of service and user agreements, about the consequences of dealing with unlawful information, including disabling of access to or removal of such information; suspension or termination of access or usage rights of the user to their user account.

MEITY NOTIFIES LIMITED ACCESS TO CRITICAL INFORMATION INFRASTRUCTURE OF CERSAI

The MeitY *vide* its notification dated March 06, 2024 (*accessible here*), has released a list of persons who will be authorised to access the computer resources relating to the Central Know-Your-Client (CKYC) records registry application and repository, and Security Interest Records Registry Application and Repository along with the computer resources of their associated dependencies under the Central Registry of Securitisation Asset Reconstruction and Security Interest of India ("**CERSAI**"). Set forth below is the list of authorized persons for the aforesaid purpose:

(i) Any designated employee of the CERSAI authorised by the CERSAI to access the protected system;

(ii) Any team member of contractual managed service provider or a third-party who has been authorised by the CERSAI for need-based access; and

(iii) Any consultant, regulator, government official, auditor and stakeholder authorised in writing by the CERSAI on case-to-case basis.

CCPA AND ASCI JOIN HANDS TO STRENGTHEN ADVERTISING REGULATIONS IN INDIA

In a significant step, the Advertising Standards Council of India (ASCI) and the Central Consumer Protection Authority (CCPA) have joined hands to ensure effective resolution of issues relating to advertising regulation in India, whereby the CCPA has requested ASCI to forward to it any advertisement that is non-compliant with the ASCI Code and could potentially violate the Consumer Protection Act, 2019 and its guidelines for appropriate action. Notably, the ASCI's guidelines on issues such as misleading advertisements, dark patterns, influencer guidelines, greenwashing etc. substantively seek to achieve objectives which are similar to the goals enshrined in the Consumer Protection Act. In light of such alignment, this collaboration is expected to effectively address the challenges arising from the dynamic advertising landscape in India.

TRAI RECOMMENDATIONS ON USAGE OF E-SIM

With an aim to streamline the regulatory landscape concerning machine-to-machine (M2M) embedded SIM (E-SIM) in India, the Telecom Regulatory Authority of India ("**TRAI**") *vide* press release dated March 21, 2024 (*accessible here*), has set out some recommendations in relation to usage of E-SIM for M2M communications. The key highlights of TRAI's recommendations are as set forth below:

(i) M2M E-SIM fitted on international roaming should be converted into profiles of Indian telecom service providers (TSPs) within six months from the date of activation of such international roaming;

(ii) Certain license holders and the license holders holding M2M service provider registration should be permitted to own and manage Subscription Manager-Secure Routing ("**SM-SRs**") in India;

(iii) Flexibility should be given to Original Equipment Manufacturers ("**OEMs**") and M2M service providers ("**M2MSPs**") for carrying out installation of profiles of Indian telecom service providers on M2M E-SIMs fitted in the devices imported in India;

(iv) Integration of SM-SRs with Subscription Manager-Data Preparation (SM-DP) should be carried in accordance with the GSMA's specifications and to be completed within three months from the date of formal request from the concerned OEM/M2MSP; and

(v) The use of 901.XX IMSI series allocated by International Telecommunication Union should be prohibited for providing M2M services in India.

TRAI RELEASES TELECOMMUNICATION MOBILE NUMBER PORTABILITY (NINTH AMENDMENT) REGULATIONS, 2024

The TRAI *vide* press release dated March 14, 2024 (*accessible here*) has issued the Telecommunication Mobile Number Portability (Ninth Amendment) Regulations, 2024. Such regulations are in furtherance to the Telecommunication Mobile Number Portability Regulations, 2009 which prescribe the regulatory framework for Mobile Number Portability (MNP) in the country for enabling the subscribers to switch service providers while retaining their mobile numbers seamlessly. TRAI has released the aforesaid press release setting out an additional criterion for rejection of the request for allocation of unique porting code (UPC). Specifically, the UPC should not be allocated if the request

for UPC has been made before the expiry of seven days from the date of SIM swap or replacement of the mobile number.

Preventing the allocation of UPCs in such circumstances will help in safeguarding against unauthorized or fraudulent porting activities that may occur due to SIM swaps or mobile number replacements. This measure adds an extra layer of protection to prevent potential misuse of the porting system and unauthorized transfers of mobile numbers.

WHITE COLLAR CRIME

STATUTORY RESTRICTION DOES NOT RESTRAIN THE COURT FROM GRANTING BAIL UNDER ARTICLE 21 OF THE CONSTITUTION

The ***Bombay High Court*** granted bail to the Applicant who had been in judicial custody for almost 5 years in relation to an offence punishable under Section 447 of the Companies Act, 2013, but for which the trial has not even commenced. Bail for an offence under Section 447 is subject to the twin conditions under Section 212 of the Companies Act, 2013. The High Court reiterated the position that existence of statutory restrictions on bail (such as in Section 212 (6) of the Companies Act, 2013) do not restrain constitutional courts from exercising their power to grant bail in cases of violation of Article 21 of the Constitution, which guarantees the right to speedy trial.

Case - *Hari Sankaran vs. Serious Fraud Investigation Office Mumbai and Anr. (Criminal Bail Application No. 2937 of 2022)*

ED MUST RELEASE PROPERTIES ATTACHED UNDER PMLA UPON APPROVAL OF RESOLUTION PLAN UNDER IBC

The Bombay High Court has held that, once a resolution plan is approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), the corporate debtor stands discharged from all offences and no actions (including attachment) can be taken against the property of such corporate debtor pursuant to Section 32A of the IBC (provided the requirements of Section 32A were met). Consequently, any attachment under the Prevention of Money Laundering Act, 2002 ("**PMLA**") on such property comes to an end by operation of Section 32A and Directorate of Enforcement ("**ED**") has to necessarily release all such property attached.

Case *- Shiv Charan and Ors vs. Directorate of Enforcement & Ors. (Writ Petition (L) No. 9943 of 2023)*

SUPREME COURT TO CONSIDER WHETHER THE TWIN BAIL CONDITIONS UNDER PMLA APPLY POST ISSUANCE OF SUMMONS

The ***Supreme Court*** has expressed a *prima facie* view that ED's power to arrest under Section 19 of the PMLA cannot be exercised once cognizance of ED's complaint has been taken by the PMLA Special Court under Section 44 of the PMLA. While calling for submissions on this proposition, the Supreme Court has framed two questions for its consideration i.e., (i) whether an accused who appears before the Special Court pursuant to the summons issued by the Special Court is required to apply for bail under Section 437 of the Code of Criminal Procedure, 1973 ("**CrPC**"), and (ii) if yes, whether such bail will be subject to the twin conditions under Section 45 of the PMLA. These questions are of seminal importance and can potentially and drastically change the field on this subject. Currently, it is common for an accused who is not arrested by ED during investigation to file an application under Section 88 of the CrPC when such accused appears pursuant to the summons issued by the Special Court post cognizance of ED's complaint.

Case - *Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office (Special Leave to Appeal (Crl.) No. 121 of 2024)*

CO-OPERATION DOES NOT ENTAIL SELF-INCRIMINATION

The Supreme Court has held that an accused, while joining investigation as a condition for bail, is not expected to make self-incriminating statements under the threat that the interim protection will be taken away. In this case, the accused had allegedly taken a bribe to sign a government proposal. The State argued against anticipatory bail sought by the accused stating that he did not co-operate with the police, or recover the bribe amount, and disclose any other fact. The Supreme Court held that such alleged conduct cannot be treated as instances of non-cooperation justifying refusal of anticipatory bail.

Case *- Bijender vs. State of Haryana (SLP (Crl) No. 1079 of 2024)*

ORDER OF BAIL DEVOID OF ANY COGENT REASONS CANNOT BE SUSTAINED

The ***Supreme Court*** quashed an anticipatory bail order issued by the High Court of Jharkhand as the High Court had failed to provide any grounds for the grants of such bail. The Supreme Court reiterated that grant of bail (including anticipatory bail) calls for exercise of Court's discretion in a judicious manner and not as a matter of course bereft of any cogent reason.

Case *- State of Jharkhand vs. Sandeep Kumar (SLP (Crl) No. 10499 of 2023)*

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