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NEWSLETTER

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FRAMEWORK FOR ADMINISTRATION AND SUPERVISION OF RESEARCH ANALYSTS AND INVESTMENT ADVISERS

In terms of Regulation 38A of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2016 ("**SECC Regulations**") notified on April 26, 2024, a recognized Stock Exchange may undertake the activities of administration and supervision over specified intermediaries on such terms and conditions and to such an extent as may be specified. Accordingly, Stock Exchange shall now be recognized as Research Analyst Administration and Supervisory Body ("**RAASB**") and Investment Adviser Administration and Supervisory Body ("**IAASB**") under Regulation 14 of the SEBI (Research Analysts) Regulations, 2014 ("**RA Regulations**") and SEBI (Investment Advisers) Regulations, 2013 ("**IA Regulations**") for administration and supervision of Research Analysts ("**RAs**") and Investment Advisers ("**IAs**") respectively.

As per clause (xi) of Regulation 6 of RA Regulations and clause (n) of Regulation 6 of IA Regulations, an applicant seeking registration as RA and IA is required to be enlisted with RAASB and IAASB respectively.

The existing framework for administration and supervision of IAs as specified *vide* SEBI circular dated June 18, 2021[1] and subsequently under the head "Administration and Supervision of Investment Advisers" of Master Circular for Investment Advisers dated June 15, 2023[2] are rescinded.

A stock exchange shall be granted recognition as RAASB and IAASB under Regulation 14 of RA Regulations and IA Regulations respectively based on the fulfilment of the following criteria specified by SEBI *vide* circular dated May 02, 2024[3], –

- Minimum net worth of recognised stock exchange – INR 200 crores;
- Stock exchange having nation-wide terminals;
- Investor grievance redressal mechanism including Online Dispute Resolution Mechanism;
- Capacity for investor service management gauged through reach of Investor Service Centers (ISCs): Stock exchange having ISCs in at least 20 cities.

In order to ensure efficiency in the system and economies of scale, RAASB and IAASB shall be one and the same stock exchange. The provisions of this circular shall become effective on July 25, 2024.

FACILITATING COLLECTIVE OVERSIGHT OF DISTRIBUTORS FOR PORTFOLIO MANAGEMENT SERVICES (PMS) THROUGH APMI[4]

Regulation 23 (11) of SEBI (Portfolio Managers) Regulations, 2020 ("**PM Regulations**") inter-alia states that the portfolio manager shall ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with the PM Regulations and circulars issued thereunder from time to time. Additionally, Portfolio Managers are required to ensure that distributors abide by the Code of Conduct as specified in Annexure 2B to the Master Circular dated March 20, 2023[5] for Portfolio Managers.

To simplify and ease compliances, a working group was constituted to review the present regulatory framework under PM Regulations and recommend measures to promote ease of doing business. Based on the recommendations of the working group, a public consultation was carried out. Pursuant to the above, to facilitate collective oversight of PMS distributors at the

[1] SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579
[2] SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89
[3] SEBI/HO/MIRSD/MIRSD-SEC-3/P/CIR/2024/34
[4] SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/32
[5] SEBI/HO/IMD/IMD-POD-1/P/CIR/2023/38

industry level, *vide* circular dated May 02, 2024[6], it has been decided that any person or entity involved in the distribution of portfolio management services shall obtain registration with APMI. Portfolio Managers shall ensure that any person or entity engaged in the distribution of its services has obtained registration with APMI, in accordance with the criteria laid down by APMI.

The provisions of this circular shall come into effect from January 01, 2025. APMI shall issue the criteria for registration of distributors by July 01, 2024.

PORTFOLIO MANAGERS – FACILITATING EASE IN DIGITAL ON-BOARDING PROCESS FOR CLIENTS AND ENHANCING TRANSPARENCY THROUGH DISCLOSURES

Vide circular dated May 02, 2024[7], SEBI introduced measures to enhance transparency of the digital on-boarding process for clients. Regulation 22(1) of SEBI (Portfolio Managers) Regulations, 2020 (“**PM Regulations**”) inter-alia states that a portfolio manager shall, before taking up an assignment of management of funds and portfolio on behalf of a client, enter into an agreement in writing with such client that clearly defines the inter-se relationship and set out their mutual rights, liabilities and obligations relating to management of portfolio containing the details as specified in Schedule IV of PM Regulations.

While on-boarding a client, Portfolio Manager shall ensure that:

- The client has understood the structure for fees and charges.
- The new client has separately signed the annexure on fees and charges and added a note, that they have understood the structure for fees and charges, in the following manner:
  - Handwritten, in case the client is on-boarded through physical mode.
  - Typed using keyboard or written electronically using fingers/a stylus pen, in case the client is on-boarded through digital mode.

The standard procedure for on-boarding of client through digital mode shall be specified by APMI, in consultation with SEBI.

Additionally, Portfolio Manager shall provide a fee calculation tool to all clients that highlights various fee options with multi-year fee calculations. Such tool shall incorporate the high watermark principle, wherever applicable.

Vide Master Circular dated March 20, 2023[8], SEBI had provided certain additional fees disclosures that stand amended as per the current circular. Firstly, the PMS-client agreement shall also contain the following additional fee illustrations:

- One year and multi-year fee illustrations that cover different scenarios viz. increase in the portfolio value by a certain percentage, decrease in the portfolio value by a certain percentage and when the portfolio value remains unchanged. The said illustrations shall also suitably incorporate the high watermark principle.

Secondly, in partial modification to the format of periodic report to be provided to the client, as specified in Annexure 5D to the Master Circular[9], Portfolio Manager shall also provide an annexure detailing the fee calculation.

The above provisions shall be applicable from October 01, 2024.

ENTITIES ALLOWED TO USE E-KYC AADHAAR AUTHENTICATION SERVICES OF UIDAI IN SECURITIES MARKET AS SUB-KUA

The Master Circular on Know Your Client (“**KYC**”) norms for the securities market, dated October 12, 2023[10], inter alia had detailed the provision for the adaptation of Aadhaar based e-KYC process and e-KYC Authentication facility for Resident Investors under section 11A of the Prevention of Money Laundering Act, 2002 (“**the Act**”) in securities market as sub-KUA and on-boarding process of sub-KUA by UIDAI.

Department of Revenue, Ministry of Finance (“**DoR-MoF**”) has from time to time issued gazette notifications notifying entities, to undertake Aadhaar authentication service of UIDAI under Section 11A of the Act. DoR-MoF has *vide* Gazette Notification, dated April 30, 2024[11], notified one entity which is permitted to use Aadhaar authentication services of UIDAI under section 11A of the Act.

The above-mentioned entity shall follow the process as detailed in SEBI circular, dated October 12, 2023[12] and as may be prescribed by UIDAI from time to time. *Vide* circular dated May 06, 2024[13]The KUAs shall facilitate the on-boarding of the entity as sub-KUA to provide the services of Aadhaar authentication with respect to KYC.

[6] SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/32
[7] SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/35
[8] SEBI/HO/IMD/IMD-POD-1/P/CIR/2023/38
[9] Id
[10] SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169
[11] S.O. 1863(E)
[12] SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169
[13] SEBI/HO/MIRSD/SECFATF/P/CIR/2024/36

PERIODIC REPORTING FORMAT FOR INVESTMENT ADVISERS

Vide Circular dated May 07, 2024[14], SEBI has issued a periodic reporting format for Investment Advisers ("**IAs**"). In terms of Regulation 15(12) of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**"), investment advisers are required to furnish to SEBI, information and reports as may be specified by SEBI from time to time. Investment Advisers Administration and Supervisory Body ("**IAASB**") has the role of supervising and administration of the IAs in its compliance of regulation 14 of the IA Regulations.

Based on the recommendations of Industry Standards Forum ("**ISF**") to SEBI, a standardized periodic reporting format for submission of information by IAs pertaining to their activities on periodic basis has been prepared.

Pursuant to ISF's direction, IAs shall submit periodic report for half-yearly periods ending on September 30 and March 31 of every financial year. The provisions of this circular shall become applicable with immediate effect from May 07, 2024.

SECURITIES AND EXCHANGE BOARD OF INDIA (DEPOSITORIES AND PARTICIPANTS) (AMENDMENT) REGULTIONS, 2024

On May 10, 2024[15], SEBI amended the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 ("**Original Regulation**"). Regulation 9 of the original regulation is substituted with the following regulation, namely, -

- "***Payment of annual charge***
9. A depository shall, within fifteen days from the end of each month, pay as provided in Part A of the Second Schedule, a percentage of the annual custody charges received by it from the issuers during the month, to the Board in the manner provided in Part B thereof."

The Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2024 came into effect on May 10, 2024.

CERTIFICATION REQUIREMENT FOR KEY INVESTMENT TEAM OF MANAGER OF AIF

In terms of Regulation 4(g)(i) of SEBI (Alternative Investment Funds) Regulations, 2021 ("**AIF Regulations**"), certification of at least one key personnel is required in the key investment team of manager of Alternative Investment Fund ("**AIF**") for obtaining certification of registration as an AIF.[16] Additionally, this requirement is reiterated in the amendment of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007[17].

Following the above amendments, *vide* circular dated May 13, 2024[18], SEBI specifies that the requirement for obtaining the aforesaid certification, shall be applicable as an eligibility criterion to all the applicants for registration of AIFs and launch of schemes by AIFs filed after May 10, 2024.

Further, the aforesaid requirement of obtaining the certification shall be complied with on or before May 09, 2025, for the following –

- Existing schemes of AIFs and,
- Schemes of AIFs whose application for launch of scheme pending with SEBI as on May 10, 2024.

The trustee/sponsor of AIF shall ensure that the compliance test report prepared by the manager in terms of SEBI Master Circular dated May 07, 2024[19], includes compliance with the provisions of this circular.

The provisions of this circular shall come into effect on May 13, 2024.

REVIEW OF VALIDATION OF KYC RECORDS BY KRAs UNDER RISK MANAGEMENT FRAMEWORK

SEBI *vide* circular dated Oct 12, 2023[20] had specified the Risk Management Framework at KRAs wherein the attributes for verification by KRAs had been mentioned. Based on shareholders feedback, following clauses of the master circular stand modified *vide* circular dated May 14, 2024[21], –

- Para 96 shall read as follows:
As a part of risk management framework, the KRAs shall verify the following attributes of records of all clients within 2 days of receipt of KYC records:
  - *Permanent Account Number (PAN)*
  - *Name*
  - *Address*
- Para 100 shall be read as under
The records of those clients in respect of which all attributes mentioned in para 96/97 above are verified by KRAs with official databases (such as Income Tax Department database on PAN, Aadhaar XML / Digilocker / M-Aadhaar) and PAN-Aadhar linkage has also been verified as referred to in Rule

[14] SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2024/38
[15] SEBI/LAD-NRO/GN/2024/173
[16] SEBI/LAD-NRO/GN/2024/175
[17] SEBI/LAD-NRO/GN/2024/176
[18] SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/42
[19] SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/39
[20] SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169
[21] SEBI/HO/MIRSD/SECFATF/P/CIR/2024/41

114 AAA of the Income Tax Rules, 1962 shall be considered as Validated Records.

The Exchanges/Depositories/concerned intermediaries shall complete the necessary technical change in their systems by May 31, 2024.

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2024

Vide notification dated May 17, 2024[22], SEBI amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). The amendments are as follows:

(a) SEBI has changed the method for calculating the market capitalization of listed entities. Instead of using the market capitalization as of March 31, the calculation will now be based on the average market capitalization over the six-month period from July 01 to December 31.

(b) The stock exchange would list of entities based on the average market capitalization and the listed entities on the basis of their rank would have to comply with the relevant provisions as on either the beginning of the next financial year or three months after 31st December (if the Financial Year ("**FY**") ends in December). However, if the ranking of the entity changes and such change results in the listed entity remaining outside the applicable threshold for a period of 3 (Three) consecutive years, then for such entities the provisions would cease to apply.

(c) In Regulation 21 (3C), the ambit between two consecutive meetings of the risk management committee has been increased from 180 (One Hundred and Eighty) days to 210 (Two Hundred and Ten) days.

(d) In Regulation 26A (1) and 26A (2) a new proviso has been added providing a statutory time limit of 6 (Six) Months to fill up a vacancy for which regulatory, government or statutory approval is required.

(e) Regulation 29 (1) has been amended to provide for a prior intimation of 2 (Two) working days for the stock exchange in respect of board meetings where certain transactions are to be discussed. Further, following clauses were added to the proviso for which a prior intimation would be required to be given to the stock exchange–

- If any alteration in the form or nature occurs for any securities listed on the stock exchange or for any change in the rights or privileges of the holder thereof;
- If any alteration occurs on the date on which the debentures or redemption amount of redeemable shares or debentures is payable.

(f) In Regulation 30 (11), a proviso has been inserted specifying that when a listed entity confirms any reported event or information on which pricing norms provided under (i) Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, (ii) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or (iii) Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 are applicable, within 24 (Twenty Four) hours from the trigger of material price movement, then the effect on the price of the equity shares of the listed entity due to material price movement may be excluded for calculation of the price for that transaction as per the framework as may be specified by SEBI. On the basis of this insertion, relevant amendments have been made to other applicable regulations issued by SEBI. SEBI has also issued a circular dated May 21, 2024[23] providing a framework for considering unaffected price for transactions influenced by market rumors as follows:

- Identify the variation in the daily Weighted Average Price ("**WAP**") from the day of material price movement till the end of the next trading day after the rumor has been confirmed. ("**WAP variation**").
- Exclude the WAP variation from the daily WAP during the look back period from the day of the material price movement. The adjusted daily WAP from the day of material price movement till the end of the next trading day after confirmation of the rumor must be same as the daily WAP on the trading day preceding the day of material price movement.
- The adjusted Volume Weighted Average Price for the look back period will be calculated based on the adjusted daily WAP calculated as mentioned above.

(g) Additionally, a new sub-regulation (11A) is inserted that mandates the promoter, director, key managerial personnel, or senior management of a listed entity to provide adequate, accurate and timely response to the queries sought by the listed entity and the same shall be disseminated to the stock exchanges to ensure compliance with the requirements of sub-regulation (11).

The provisions of the circular dated May 21, 2024 would be applicable to top 100 (Hundred) listed entities with effect

[22] SEBI/LAD-NRO/GN/2024/177

[23] SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/51

from June 01, 2024 and to top 250 (Two Hundred and Fifty) listed entities with effect from December 01, 2024.

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2024

Vide notification dated May 17, 2024[24], SEBI amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**").

In Regulation 14, the requirement of holding at least 5 (five) per cent of the post-issue capital is added for contributing towards the Minimum Promoters' Contribution ("**MPC**") and any entity forming part of promoter group other than the promoters is added to within the scope of consideration. Further, the same criterion is reflected in Regulation 15 (1)(b), Regulation 16, 236, 237, 238, 266, 292 and schedule XIII.

Additionally, an exception under Regulation 15 (1)(b) is inserted as clause (iv) which includes equity shares arising from conversion of fully paid-up compulsorily convertible securities, including depository receipts, that have been converted prior to filing of the offer document, provided that full disclosures of the terms of conversion or exchange are made in such draft offer document. The same exception would also be inserted under Regulation 237 (1)(b) as clause (iv).

The minimum period of subscription as specified in Regulation 46 is reduced from 3 (Three) working days to 1 (One) working day. Further, the same change is reflected in Regulation 142 and Regulation 203.

In Regulation 166, a new sub-regulation (2) has been inserted that excludes the change in price of the equity shares of the company due to material price movement and confirmation of reported event or information as per the framework specified under regulation 30 (11) of LODR Regulations for determination of the price for a preferential issue in accordance with regulations 164, 164A, 164B or 165 of ICDR Regulations.

Additionally, a new sub-regulation 176 (5) is inserted that excludes the change in price of the equity shares, which are offered as consideration, of the entity due to material price movement and confirmation of reported event or information for calculation of the issue price under this regulation.

Regulations 38, 80, 135, 197 and 259 are omitted from the amended ICDR Regulations. The provisions of this notification shall come into effect on May 17, 2024.

NORMS FOR SHARING OF REAL TIME PRICE DATA TO THIRD PARTIES

Vide circular dated May 24, 2024[25] SEBI has regulated the sharing of real time price data of listed companies by gaming platforms, apps, websites, etc. ("**platforms**") to third parties. Based on the recommendations of Secondary Market Advisory Committee to curb misuse or unauthorized use of such data, sharing of real time price data with third parties shall be subject to the following –

(a) Market Infrastructure Institutions ("**MIIs**") and registered market intermediaries will ensure that no real time price data is shared with any third party including various platforms, except where sharing of such information is required for orderly functioning of the securities market or for fulfilling regulatory requirements.

(b) Any sharing of real time price data between MIIs or market intermediaries and specified entity will require an appropriate agreement that contains the details of the activity for which the real time price data is required. The details specified in the agreement will be reviewed by SEBI of the MIIs or market intermediaries at least once in a financial year.

(c) Market price data may be shared, with a lag of 1 (One) day, for investor education and awareness activities without offering any kind of monetary incentive to the participants.

(d) MIIs and market intermediaries are required to exercise due diligence while sharing such data and the agreement entered into by the parties must have provisions to prevent any kind of misuse of the same by the entities with whom the data is being shared.

(e) MIIs and market intermediaries on best effort basis would take necessary steps to avoid misuse of price data by such entities.

The provisions of the circular shall come into effect from the 30th day of the issuance of the circular.

AUDIOVISUAL (AV) PRESENTATION OF DISCLOSURES MADE IN PUBLIC ISSUE OFFER DOCUMENTS

Vide circular dated May 24, 2024[26], SEBI has decided that salient disclosures made in the Draft Red Herring Prospectus ("**DRHP**"), Red Herring Prospectus ("**RHP**") and Price Band Advertisement ("**PBA**") for public issues shall also be made

[24] SEBI/LAD-NRO/GN/2024/178
[25] SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/56
[26] SEBI/HO/CFD/CFD-TPD-1/P/CIR/2024/55

available in Audio Visual ("**AV**") format for ease in understanding the features of public issues.

Further, such AV will be in bilingual format, i.e. English and Hindi, which will be placed in the public domain for all main board public issues. The AV should be uploaded on the website of the Issuer and Association of Investment Bankers of India ("**AIBI**") within 5 working days of the filing of DRHP with SEBI.

Additionally, the AV should also be made available on digital/social media platforms of the Issuer and AIBI. The web link of the said AV should be made available on the websites of both the Stock Exchanges and the Lead Managers to the issue. The AV should also be made accessible through QR code pertaining to the public issue.

The Issuer and all Lead Managers to the public issue will be responsible for the content and information made available in the AV.

The contents of the AV will be as per the following guidelines–

- The contents of the AV should be in compliance with the provisions prescribed under Schedule IX of SEBI ICDR Regulations.
- The AV should contain the following disclosures for the investors –
  - That the investors are advised to rely on any other document, content or information provided in respect to the public issue.
  - That the investors are advised to rely only on the information contained in the Offer document and PBA for making investment decisions.
- The duration of each bilingual version of the AV shall be approximately 10 minutes.
- The total duration of the AV should be equitably distributed to cover all the material disclosure made under the DRHP and RHP.
- The content of the AV must be factual, non-repetitive, non-promotional and should not be misleading in any manner.

The provisions of this circular shall be made applicable to all DRHP filed with SEBI on or after July 01, 2024 on voluntary basis and October 01, 2024 onwards on mandatory basis.

ELIGIBILITY CRITERIA FOR LAUNCHING OPTIONS WITH COMMODITY FUTURES AS UNDERLYING BY STOCK EXCHANGES HAVING COMMODITY DERIVATIVE SEGMENTS

Vide circular dated May 27, 2024[27], SEBI has decided that for launching Options contracts on agricultural and agri-processed commodities, the average daily turnover of underlying futures contracts of the corresponding commodity during the previous 12 (Twelve) months shall be INR 100 crore instead of existing INR 200 crore.

Chapter 6 of SEBI Master Circular dated August 4, 2023[28] for Commodity Derivatives Segment prescribes Product Design and Risk Management Framework for Options on Commodity Futures. Because of the current circular, paragraph 6.1.2. of the Master Circular stands revised with the limit being reduced to INR 100 crore as prescribed.

The provisions of this circular shall be applicable on or after June 01, 2024.

[27] SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/61

[28] SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/136

COMPETITION LAW

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

CCI APPROVED THE COMBINATION INVOLVING THE ACQUISITION OF LANCO BY ADANI

The Competition Commission of India (**CCI**), *vide* order dated March 26, 2024, approved the acquisition of 100% share capital and control of the Lanco Amarkantak Power Limited by Adani Power Limited, which is under the Corporate Insolvency Resolution Process.

The CCI noted that the parties to the proposed combination, including its group entities exhibit horizontal overlaps in the market for power generation in India and in the sub-segmented market of power generation through thermal sources in India.

Moreover, as per the assessment of the CCI, parties exhibit vertical overlaps, in: (a) the upstream market for power generation in India; and (b) the downstream market for power transmission and vice versa.

However, given the minuscule market share of the parties to the proposed combination, the CCI opined that the same is not likely to raise any competition concerns and approved the combination.

NCLAT STATES NO INTERVENTION IS NECESSARY IN CCI'S DECISION ON THE BURMAN FAMILY'S ACQUISITION OF RELIGARE'S SHARES

The National Company Law Appellate Tribunal (**NCLAT**) *via* its order dated 01 May 2024 while allowing the appeal filed by Religare Enterprises' (**REL**), refused to grant the sought stay on the CCI's approval for the Burman family's proposed acquisition of shares of REL. REL had challenged the CCI's approval before the NCLAT alleging that there were five tranches to the transaction, of which, one was not notified, and that CCI should have taken cognizance of the same while approving the impugned combination. Moreover, REL alleged that the order of the CCI was premature since the investigation was still ongoing even after the order approving the same was published.

NCLAT agreed with the arguments of the CCI and stated that the domain of the CCI is only limited to the approval being sought by parties, and not regarding any previously consummated transaction. That even if a proceeding were to be initiated, it would only be under Section 4A3A of the Competition Act, 2002 (**Act**) and wouldn't anyway affect the combination at hand.

CCI APPROVES THE PROPOSED ACQUISITION OF KESORAM'S CEMENT BUSINESS BY ULTRATECH CEMENT

The CCI, in an order dated March 19, 2024, approved the acquisition of the cement business of Kesoram Industries Limited (**Kesoram**) by UltraTech Cement Limited (**UltraTech**).

UltraTech is a listed public limited cement manufacturing company engaged in the manufacture of grey cement, white cement, ready mix concrete, clinker, and building products in India. Kesoram is a listed public limited company engaged in the manufacture and sale of grey cement, rayon, transparent paper, and chemicals in India.

As per the order, the CCI held the relevant product to be market for grey cement for the purpose of assessment of the Proposed Combination. Further, the CCI held the relevant geographic market to be the area comprised of the states of Karnataka, Telangana, Maharashtra and Andhra Pradesh.

As per CCI's findings, the proposed combination would not result in a concentrated market. The unconcentrated and fragmented market structure was also reflected in the presence of more than 30 companies. Thus, the CCI decided that the proposed combination was not likely to result in an appreciable adverse effect on competition in the relevant market and thus, approved it under Section 31(1) of the Act.

CCI AMENDS THE CCI (GENERAL) REGULATIONS, 2009:

On May 10, 2024, the Competition Commission of India (CCI) enforced the CCI (General) Amendment Regulations, 2024, which revised the CCI (General) Regulations, 2009 thereby amending the Regulations 35, 37, and 50, regarding confidentiality. These amendments are rooted in a public consultation initiated by the CCI on February 26, 2024, inviting feedback on proposed changes.

Key features of the amendments are detailed below:

- Parties seeking confidentiality must now self-certify their claims through affidavits. Previously, only a simple undertaking was required. Parties in the confidentiality ring must file an affidavit within 10 days of the order, extendable by 5 days at CCI's discretion.
- Previously, CCI could establish a confidentiality ring at its discretion. Now, parties can request a confidentiality ring by filing an affidavit within 10 days of receiving the non-confidential version of the DG Report, extendable by 7 days at CCI's discretion.
- Parties in the confidentiality ring can apply to inspect documents within 7 days of submitting their undertakings. The inspection must be completed within 21 days, extendable by 7 days at the CCI Secretary's discretion. In exceptional cases, CCI may further extend these timelines.
- Within 7 days of inspection, parties can apply for certified copies, which will be provided within 14 days of the application.
- Inspection charges have increased from INR 1,000 to INR 2,500 per day per case. Charges for certified copies remain at INR 20 per page.

CCI DISMISSES ALLEGATIONS OF UNFAIR PRICING PRACTICES AGAINST MARUTI SUZUKI INDIA LIMITED

CCI addressed a complaint filed by one Mr. Harmit Ahuja (**Informant**) against Maruti Suzuki India Limited (**MSIL**) under Section 19(1)(a) of the Act. The complaint alleged that MSIL violated Section 4 of the Act.

The Informant, a customer of MSIL, claimed that the company engaged in unfair pricing practices with the launch of its Sports Utility Vehicle (**SUV**) 'Jimny' in the Indian market. The Informant alleged that MSIL opened bookings for Jimny without disclosing the price or delivery timeframe. When the prices were eventually announced, they were higher than expected, leading to customer dissatisfaction. Furthermore, MSIL introduced a new model called 'Thunder' at a significantly lower price, which reduced the resale value of the initial models.

The Informant communicated his grievances to MSIL *via* email, requesting a refund for the excess amount paid for the Jimny. MSIL responded by denying any price reduction and attributing discounts to dealer-specific factors.

As per CCI, although MSIL had a significant market share in the passenger vehicle segment, it did not appear to be dominant in the SUV sub-category. The CCI found no competition issues arising from the Informant's allegations. The dispute over product pricing did not raise concerns under the Act, as a buyer cannot claim future discounts once they have purchased a product at a given price.

Thus, the CCI concluded that there was no prima facie case of contravention of Section 4 of the Act by MSIL and closed the matter *via* its order dated April 2, 2024.

CCI APPROVES ACQUISITION OF PRITAM INTERNATIONAL PRIVATE LIMITED BY INDIA ADVANTAGE FUND, HCL CORPORATION, AND MIRABILIS INVESTMENT TRUST

On January 19, 2024, CCI received a notice from India Advantage Fund S5 I, HCL Corporation Private Limited, Mirabilis Investment Trust, and two individuals(**Acquirers**). The notice followed a Shareholders Agreement and Share Subscription Agreement signed on December 22, 2023, with Pritam International Private Limited (**Target**) and its promoters.

The Acquirers intended to subscribe to Compulsorily Convertible Preference Shares of the Target, resulting in an equity shareholding of 21.3% to 24.1%. Additionally, the Target would increase its shareholding in certain group companies and undergo an internal reorganization among the promoter family members.

CCI found no horizontal overlaps between the parties and their affiliates. However, a potential vertical relationship was identified.

While approving the proposed combination, the CCI decided not to define the relevant market, observing that the proposed combination was unlikely to adversely affect competition in any plausible market in India. Based on the material provided and the assessment under Section 20(4) of the Act, the CCI concluded that the acquisition would not impact competition. Consequently, the CCI approved the combination under Section 31(1) of the Act *via* its order dated April 2, 2024.

THE LIQUIDATOR CAN NOT ADJUDICATE THE CLAIMS INVOLVING DISPUTES

The Hon'ble National Company Law Appellate Tribunal, Chennai ("**NCLAT**") in the matter titled as ***M/s. FL Smidth Private Limited vs. Lanco Infratech Ltd.***[29] has held that the Liquidator cannot adjudicate the claims, where both claim and counterclaim are involved, and must be settled by a competent Civil-court or Arbitrator.

In the present case, Lanco Infratech Limited ("**CD**") had issued a purchase order for a total value of Rs. 95.17 crores in favour of the Appellant. While the Appellant was engaged in executing the obligation under the purchase order, CD did not open an irrevocable letter of credit to the tune of Rs. 73.602 Crores and refused to take delivery of the supplies. Subsequently, on 07.08.2021 Corporate Insolvency Resolution Process ("**CIRP**") was initiated against the CD, wherein the Respondent was appointed as the Resolution Profession ("**RP**"). Pursuant thereto, the Appellant had filed a claim of Rs. 71.09 Crores before the RP. Considering the claim and supporting documents, the RP admitted a sum of Rs. 13.47 Crores out of the claim filed by the Appellant. Gradually, CD went into liquidation as per an order of the Adjudicating Authority ("**AA**") and Respondent was appointed as a Liquidator. Simultaneously, Appellant filed its claim under Form-C to the tune of Rs. 31.71 Crores. On 12.12.2018, the claim filed by the Appellant was rejected by the Respondent. Aggrieved by the rejection of the claim, the Appellant filed an Interlocutory application ("**IA**"), which was further dismissed by the AA on 15.10.2019. Aggrieved by the order dated 15.10.2019 Appellant approached the NCLAT.

The Hon'ble NCLAT affirmed that the Respondent had provided sufficient reasons for disallowing the Appellant's "*due payable*" claims due to insufficient supporting documentation. Moreover, to co-relate the claim amount, no relevant documents were available in the records of the CD. The observation was concurrently in line with Sections 38, 39, and 40 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") which outlines the process for submission, verification, and admission or rejection of claims by the Liquidator.

Adjacently, it was observed that the rejected claim is merely due to non-performance of CD which would require adjudication by a competent authority such as Civil Court or by an Arbitrator before the claim can be categorised under "*dues*" under the framework of the Code. Therefore, the Appeal was dismissed with liberty to approach an appropriate forum for the remedies available under the provisions of law.

SET-OFF WITH REFUND OF CLAIM DURING THE INTERVENING PERIOD AMOUNTS TO A VIOLATION OF PROVISIONS OF MORATORIUM UNDER SECTION 14 OF THE CODE

Hon'ble National Company Law Appellate Tribunal, New Delhi ("**NCLAT**") in the matter titled as ***Mr. Devarajan Raman vs. Principal Commissioner Income tax and Ors.***[30] has categorically held that no claim amount can be set-off with the asset belonging to the Liquidation Estate, during the expiration of Corporate Insolvency Resolution Process ("**CIRP**"), and before passing of the liquidation order.

Kotak Urja Private Limited ("**CD**") was admitted into CIRP on 18.11.2019, and subsequently, the Appellant was appointed as the Resolution Professional ("**RP**"). As per Public announcement, the Respondent filed its claim to the tune of Rs. 11.59 Crores, which was admitted by the RP. On 10.02.2021, while Moratorium under Section 14 of the Insolvency and Bankruptcy, 2016 ("**Code**") was in force, the Respondent adjusted a tax refund amounting to Rs. 90.42

[29] Company Appeal (AT) (INS) No. 1353 of 2019

[30] Company Appeal (AT)(Ins) No. 977 of 2023

Lakhs ("**Tax Refund**") against its claim amount of Rs. 11.59 Crores. Since, the liquidation was pending before the Adjudicating Authority ("**AA**"), the RP filed an Interlocutory Application ("**IA**") seeking refund of the tax refund amount adjusted by the Respondent against the past Income tax dues. Vide order dated 03.10.2022, liquidation order was passed by the AA and thereon the Appellant/RP was appointed as the liquidator. Subsequent to the liquidation order, the Respondent filed its revised claim of Rs. 10.69 Crores (after adjusting the tax refund). However, vide order dated 16.06.2023, the IA was dismissed by the AA and hence the present Appeal was filed before the Hon'ble NCLAT.

While adjudicating the matter, the Hon'ble NCLAT examined, whether a set–off by the Respondent, during the intervening period amounts to a violation of the provisions of Moratorium under Section 14 of the Code.

Hon'ble NCLAT after considering averments and provision of the Code, observed that as per Section 14(1)(a), (b) and (c) of the Code, there is a prohibition of action whatsoever of foreclosure, recovery or enforcement of any "*security interest*" which has been created from the property of the CD. The said provision implicitly also bars any adjustment of the tax refund amount created during the Moratorium period. The Hon'ble NCLAT further held that the Respondent does not have any right to adjust the past income tax amount with the liquidation estate available with the liquidator. The Hon'ble NCLAT also observed that the set-off of claim by the Respondent shall distort the objective to maximize the value of the Assets of the CD in the interest of the remaining creditors and stakeholder.

Hence, it was directed that the Respondent will refund a sum of Rs. 90,42,174/- to the liquidator and liberty was granted to the Respondent to file a fresh claim with the Liquidator for recovery of its dues.

DISTINGUISHING SEAT AND VENUE OF ARBITRATION

The Hon'ble Delhi High Court has recently provided significant clarifications on the distinction between the "*seat*" and the "*venue*" of arbitration, by way of ***Delhi Tourism and Transportation Development Corporation vs. M/S Satinder Mahajan***[31]. The Hon'ble Court emphasized the critical role of the arbitration agreement in determining jurisdiction. These rulings underline the importance of clearly defining the seat of arbitration in contracts to ensure appropriate jurisdictional oversight and facilitate smoother arbitration processes.

In this case, arbitration proceedings were conducted by the Facilitation Council in Pathankot. The court assessed whether the Agreement contained an exclusive jurisdiction clause and whether the seat of arbitration was in Delhi. Despite an exclusive jurisdiction clause related to an Integrity Pact, the court found that disputes under the main Agreement were intended to be arbitrated without an exclusive jurisdiction clause, leaving the venue at the arbitrator's discretion.

The Hon'ble Delhi High Court highlighted the fundamental difference between the "*seat*" and the "*venue*" of arbitration. The "*seat*" of arbitration refers to the legal jurisdiction that governs the arbitration, which determines which court supervises the arbitration process. On the other hand, the "*venue*" of arbitration is merely the physical location where arbitration hearings take place. This differentiation is crucial because the seat of arbitration confers exclusive supervisory jurisdiction to the courts in that location, regardless of where the hearings occur. Thus, even if arbitration hearings are held in a different location, the court with jurisdiction over the seat retains authority over arbitration-related matters.

The seat of arbitration is typically derived from the agreement between the parties involved. If the agreement explicitly mentions a location as the seat, the courts in that jurisdiction have exclusive authority over arbitration-related matters. However, if the agreement does not specify a seat, courts assess the agreement and its context to determine the seat, often considering related contractual documents. The court clarified that the cause of action in the underlying dispute does not determine the seat of arbitration. Instead, the legal jurisdiction tied to the arbitration proceedings is crucial. Therefore, even if the cause of action arises elsewhere, the court with jurisdiction over the seat handles arbitration-related challenges.

Thus, the Hon'ble Court's ruling reaffirms the importance of clearly defining the seat of arbitration in agreements. Such clarity ensures that the appropriate jurisdictional oversight is maintained, reinforcing the significance of the seat over the venue in arbitration disputes. By explicitly specifying the seat of arbitration, parties can avoid jurisdictional ambiguities and ensure a more streamlined arbitration process.

PROCEDURAL OBJECTIONS RELATED TO THE MERITS OF THE CASE SHOULD BE ADJUDICATED BY THE ARBITRATOR, AND NOT PROCEEDINGS UNDER SECTION 11

In a significant ruling, the Delhi High Court in ***Delhivery Limited vs. Far Left Retail Private Limited*** [32] emphasized that objections regarding the insufficiency of service should be considered on their merits and must be raised before the arbitrator. This decision highlights the procedural protocol in arbitration disputes, underscoring the autonomy of the arbitral process.

[31] O.M.P. (COMM) 337/2021, decided on 01.05.2024

[32] Arb. P. 481/2024, decided on 17.05.2024

The dispute stemmed from a Service Agreement between Delhivery Limited ("**Petitioner**") and Far Left Retail Private Limited ("**Respondent**"). The Petitioner alleged that the Respondent failed to make payments for invoices issued under the terms and conditions of the Service Agreement. Despite multiple email reminders from the Petitioner between November 10, 2022, and January 24, 2023, the Respondent acknowledged the outstanding amounts but did not settle the dues. Consequently, the Petitioner issued a Demand Notice, which the Respondent ignored, failing to either amicably resolve the dispute or pay the outstanding amount of Rs. 8,69,743.78, including delay interest as specified in Clause 5.3 of the Service Agreement.

The Hon'ble Court held that the Respondent's objection regarding the insufficiency of service is related to the merits of the case and should therefore be raised before the arbitrator, not in the Section 11 proceedings for the appointment of an arbitrator. The court noted that such objections are best addressed within the arbitration process, which is specifically designed to handle disputes arising out of or in connection with the Service Agreement.

Accordingly, the Delhi High Court confirmed the validity of the arbitration agreement between Delhivery Limited and Far Left Retail Private Limited. It directed the Coordinator of the Delhi International Arbitration Centre to appoint an arbitrator in accordance with the provisions of the Arbitration Act. This ruling reinforces the principle that procedural objections related to the merits of the case should be adjudicated by the arbitrator, thereby upholding the integrity and efficiency of the arbitral process.

EMPLOYMENT LAW

DELHI LABOUR COMMISSIONER ISSUES NOTIFICATION REGARDING FEES FOR THE GRANT OF LICENSES TO PRIVATE PLACEMENT AGENCIES

The Office of the Labour Commissioner, Government of NCT of Delhi, *vide* notification dated May 02, 2024, has issued a fee of INR 5,000 (Rupees Five Thousand), which is required to be deposited for the grant of license by private placement agencies. The said fees will be deposited in the head "0230 Labour" and "Employment 00106" fees under The Delhi Contract Labour (Regulation and Abolition Rules), 1972.

THE EMPLOYEES PROVIDENT FUND ORGANISATION CREATES A SEPARATE EMAIL ADDRESS FOR NATIONAL PENSION SYSTEM RELATED CONCERNS

The Employees Provident Fund Organisation ("**EPFO**"), *vide* notification dated May 03, 2024, has issued a circular to all Central Provident Fund Commissioners clarifying that the National Pension System-related matters must be addressed to a separate E-mail address at epfohq.nps@epfindia.gov.in. Furthermore, all pending references sent earlier may also be forwarded to the new E-mail address provided herein.

THE EPFO PERMITS THE PROCESSING OF CLAIMS WITHOUT AN AADHAAR CARD VERIFICATION

The EPFO, *vide* notification dated May 17, 2024, has issued a circular that permits the processing of physical claims in death cases without seeding AADHAAR as a temporary measure. The circular has been issued in light of references received from field offices regarding their inability to authenticate details in death cases due to inaccurate/incomplete member details in AADHAR, unavailability of AADHAAR in respect of pre-AADHAAR death cases, deactivated AADHAAR, technical errors in validating AADHAAR from the UIDAI database, etc. However, processing of physical claims without the AADHAAR can be done only with the due approval of the officer-in-charge, where such officer-in-charge may carry out necessary due diligence to avoid any fraudulent withdrawals.

Moreover, the aforementioned circular only permits the processing of claims without AADHAAR where AADHAAR details are incorrect but details in the Universal Account Number are correct. In the event the details in the Universal Account Number are inaccurate or incomplete, the prescribed standard operating procedure must be strictly adhered to by the field offices.

THE HIGH COURT OF ALLAHABAD HOLDS THAT THE AGE OF RETIREMENT IS NOT RELEVANT TO AN EMPLOYEE'S ENTITLEMENT TO GRATUITY

The High Court of Allahabad, *vide* order dated May 07, 2024, in the case of *Sehrun Shah vs. State of UP and Others* held that the age of retirement is not relevant to an employee's entitlement to gratuity under the Payment of Gratuity Act, 1972 ("**Gratuity Act**")

In the aforementioned case, the petitioner had sought voluntary retirement at the age of 57 (Fifty Seven) and his request for gratuity was denied by the district minority welfare officer as he had not completed 60 (Sixty) years of age on service.

In the instant case, the High Court of Allahabad considered whether the employee was entitled to payment of gratuity since the petitioner had retired early. The court held that retirement at 60 (Sixty) itself is not an entitling fact, which leads the employee to acquire a right to receive gratuity which he otherwise does not have. Gratuity is given to an employee based on the number of years he serves and therefore, even if the employee retires before 60 (Sixty) years of age, he is still entitled to gratuity.

THE HIGH COURT OF ORISSA HOLDS THAT THE EMPLOYER DECIDES WHEN THE SERVICES OF AN EMPLOYEE ARE REGULARISED

The High Court of Orissa, *vide* order dated May 9, 2024, in the case of *Jawaharlal Mohanta vs. State of Odisha and Others*, held that the employer decides when the services of an employee are regularised.

In the aforementioned case, the petitioner was appointed as a science teacher in the Water Resources Department of the Government, on a contractual basis for a period of 3 (Three) months or until the posting of regular teachers (whichever was earlier). The petitioner approached the Odisha Administrative Tribunal, Cuttack Bench praying for regularisation of his service. The aforementioned tribunal rejected the request for regularisation since the school was about to be closed down as there is no proper cadre in the water resources department, however, the school was directed to pay the minimum scale if the petitioner was continually utilised as a teacher. On appeal, a division bench of the High Court of Orissa held that since the appointment of teachers was done under the sanction of the Governor, it could not be held that there was no cadre and directed for the petitioner to draw a regular pay scale.

In the instant case, the High Court of Orissa considered whether the petitioner is entitled to be considered regularised in service from the date of his initial appointment. The court held that the matter of deciding the point of regularization is to be decided by the employer based on the circumstances of the employment. In this case, the employee was appointed without the process of recruitment corresponding to a sanctioned vacancy, which is sufficient grounds as per circumstance for the employer to decide the date of regularisation.

THE HIGH COURT OF PUNJAB AND HARYANA HOLDS THAT AN EMPLOYEE IS ENTITLED TO PAYMENT OF INTEREST ON DELAYED PAYMENT OF RETIRAL BENEFITS

The High Court of Punjab and Haryana, *vide* order dated May 09, 2024, in the case of *Hira Lal Karakara vs. the State of Punjab and Others*, held that an employee whose retiral benefits have been delayed is entitled to payment of interest on such delay.

In the instant case, the petitioner had filed an instant writ petition under Articles 226 and 227 of the Constitution of India before the High Court of Punjab and Haryana for seeking interest on the retiral benefits paid to him by the respondent. The petitioner contended that even though the dues of his retiral benefits had been cleared by the respondent, he is entitled to interest for the inordinate delay caused in releasing benefits. The court considered the precedent set in the case *of A.S. Randhawa vs. State of Punjab and Others* (1997) 3 SCT 468, where it was held that in case the state commits a default on paying rightful dues of an employee and provides no justifiable reason for the same, the employee is entitled to payment of interest on such dues.

The Punjab and Haryana High Court ruled in favour of the petitioner and held that he was entitled to an interest of 6% (Six Percent) per annum on the delayed payment of retiral dues.

THE HIGH COURT OF TRIPURA HOLDS THAT THE GRATUITY ACT IS APPLICABLE TO ANGANWADI WORKERS AND HELPERS

The High Court of Tripura, *vide* order dated May 09, 2024, in the case of Smt. *Bina Rani Paul and Others vs. Child Development Project Officer and Others* held that the Gratuity Act is applicable to Anganwadi workers and helpers.

In the aforementioned case, petitioners are Anganwadi workers and helpers engaged in the Intensive Child Development Services Scheme whose engagement was discontinued after they attained the age of 60 (Sixty) years. However, the engagement of some of the petitioners was continued by way of re-engagement even after they had attained the age of 60 (Sixty) years and later on the same was discontinued. The workers' and helpers' requests for grant of gratuity and other post-retiral benefits were rejected as they were not in 'continual' service for 10 (Ten) years.

In the instant case, the High Court of Tripura considered whether the provisions of the Gratuity Act are applicable to Anganwadi workers and helpers. As per section 1(3)(b) of the Gratuity Act, the Gratuity Act is applicable to every shop or establishment and the precedent set by the Supreme Court of India in the case of *State of Maharashtra & Another vs. Bhagwan & Others*, the word 'establishments' as mentioned can be "establishments within the meaning of any law for the time being in force in a State in relation to establishments". The High Court of Tripura further considered the Eighth Report of the Committee on Empowerment of Women, Parliament of India, Lok Sabha 'Working Conditions of Anganwadi Workers' and held that even though the Anganwadi centres are run by less than 10 (Ten) persons as mentioned under the Gratuity Act, but all Anganwadi centres are under the umbrella of Social Welfare and Social Education Department of Government of Tripura.

Therefore, the Gratuity Act is applicable to Anganwadi workers and helpers as an Anganwadi centre is an establishment within the meaning of the Act.

CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH RULES THAT CHILD CARE LEAVE MUST BE GRANTED IN EXTENSION OF SERVICE TENURE

The Central Administrative Tribunal, Chandigarh *vide* order dated May 10, 2024, in the case of *Nidhi Sinha vs. Post Graduate Institute of Medical Education & Research, Chandigarh*, held that a request from an employee seeking leave under the Maternity Welfare Act, 1961 ("**Maternity Act**"), must be viewed sympathetically by the employer.

In the instant case, the applicant had requested an extension on her child care leave to take care of her newborn child. The respondent had rejected the request for an extended leave and further issued a charge sheet against the applicant under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965 for absenteeism after the leave. The aforementioned tribunal held that such rejection of the child care leave by the respondent company is illegal and in contravention of the Maternity Act. The respondent's argument was that child care leave was not a right to be sought by the employee. The tribunal while agreeing with the respondent held that an employer must be sympathetic to the concerns of the mothers and that any staff shortage caused by granting the leave to the appellant can be resolved through the means of short-term appointment.

THE GOVERNMENT OF WEST BENGAL EXTENDS THE LAST DATE OF FILING OF RETURN UNDER WEST BENGAL STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENT RULES, 1979

The Office of the Commissioner of Commercial Taxes and Profession Tax, Directorate of Commercial Taxes, West Bengal, *vide* order dated May 14, 2024, has notified an extension on the last date of filling return in Form III under section 6 of the West Bengal State Tax on Professions, Trades, Callings and Employment Act 1979 for the year ending on March 31, 2024. The last date for electronic transmission of return, which was earlier May 15, 2024, has been extended to May 31, 2024. Additionally, the last date for furnishing the paper form of the return for the year ending on March 31, 2024, has been extended to June 15, 2024, from May 31, 2024.

THE OFFICE OF LABOUR COMMISSION DELHI ISSUES CLARIFICATION REGARDING DISBURSEMENT UNDER THE EMPLOYEES COMPENSATION ACT, 1923

The Office of the Labour Commissioner, Government of the National Capital Territory of Delhi, *vide* clarification dated May 15, 2024, has provided clarification regarding the disbursement of Compensation amount under the Employees Compensation Act, 1923.

On January 31, 2023, the office of the labour commissioner, Government of National Capital Territory of Delhi, issued an advisory to all employees of compensation commissioners. The advisory elucidated a revised standard operating procedure to implement uniform practice amongst all compensation commissioners in the National Capital Territory of Delhi. As per para 10 of the advisory, in case an appeal before the High Court is filed against the commissioner's orders and the management/respondent has filed an application on affidavit that states that such appeal is preferred and requests the amount deposited by them is not disbursed. In such cases, a notice of 15 (Fifteen) days must be given to the management or the respondent before proceeding with disbursement. The notice would grant an opportunity to the respondent or management for providing reasons as to why a claimant's request should not be disbursed.

THE HIGH COURT OF PUNJAB AND HARYANA HOLDS THAT TRANSFERRING AN EMPLOYEE WITHOUT PRIOR AGREEMENT IN THE APPOINTMENT LETTER OR THE CERTIFIED STANDING ORDERS, TRANSFERRING THE EMPLOYEE VIOLATES THE INDUSTRIAL DISPUTES ACT, 1947

The High Court of Punjab and Haryana, *vide* order dated May 16, 2024, in the case of Pa*ppu Giri Son of Sewa Giri vs. Presiding Officer, Industrial Tribunal cum Labour Court, Panipat and Another*, held that transferring an employee without prior agreement in the appointment letter or the certified standing orders, transferring the employee violates the Industrial Disputes Act, 1947 ("**ID Act**").

In the instant case, the court adjudicated on the challenge to 17 (Seventeen) awards passed by the Industrial Tribunal-cum-Labour Court, Panipat. The issue pertains to workmen who were transferred by their employer and then refused to join at the transferred place. Pursuant to the refusal workmen were not allowed to continue working at their original place of work. The workmen contented that not allowing them to work amounts to a violation of section 25-F (conditions precedent to retrenchment of workmen) of the ID Act. Whereas the employer contended that since there is a provision in the certified standing order of the company that permits the company to transfer employees any transfer made during the employment is legal. The labour court of Panipat ruled in favour of the employer and held that since the certified standing orders provide for the transfer the appointment letter does not have bearing on the matter.

The High Court of Punjab and Haryana considered if the transfers made by the company were legal and whether the employees had been dismissed in violation of section 25F of the act. The court considered the ruling of the Gauhati High Court in the case of *Estate vs. Management of Bijlibari Tea Estate* that the employer cannot transfer his employee to another place where the business starts after the appointment of the employee when there was no condition of service as such.

In the instant case as well, the employees were transferred to a place that had not been established at the time of appointment of the workmen. And since there was no clause either in the standing orders or in the appointment letter that permitted the employer to transfer employees to new premises of the company, the decision of transfer was against the law and in violation of section 25F of the ID Act.

ENERGY & INFRASTRUCTURE

AMENDMENT TO REQUEST FOR PROPOSAL OF THE PERFORMANCE BASED MAINTENANCE CONTRACT

NHAI *vide* circular bearing number 9.4.29/2024 dated May 17, 2024, ("**Amendment Circular**") issued an amendment to Clause 16.1. of Section II: Instruction to Bidders to the request for proposal ("**RFP**") of the performance-based maintenance contract ("**PBMC**"). As per the Amendment Circular, the performance guarantee/additional performance guarantee (if any) may be submitted by the bidder in the form of insurance surety bonds, bank guarantee (including e-bank guarantee) or online payment (NEFT or RTGS).

GUIDELINES FOR MONITORING PROJECTS AND ISSUANCE OF PROVISIONAL CERTIFICATE/COMPLETION CERTIFICATE

NHAI *vide* policy circular bearing number 9.2.40/2024 dated May 24, 2024 ("**Circular**") issued certain guidelines to monitor the issuance of provisional completion certificate ("**PCC**")/completion certificate ("**CC**") for engineering procurement and construction ("**EPC**") /hybrid annuity model ("**HAM**")/build operate transfer ("**BOT**") projects.

The contractor/the concessionaire under the EPC/HAM/BOT models is required to make the request for PCC/CC with notice to carry out the tests as per the respective contracts. The PD/RO of NHAI thereafter appoint representatives to witness the tests.

NHAI observed that the tests were being reported in different formats by the independent engineer ("**IE**")/ authority engineer ("**AE**"). Additionally, the NHAI officials from the project implementation unit ("**PIU**") were not supervising the tests and the works on completion leading to the issuance of an erroneous PCC/CC.

To overcome the said issue, NHAI *vide* the Circular provided a checklist (annexed as Annexure A thereto). In this regard, the following was stipulated:

(i) The AE/IE shall prepare a detailed checklist in accordance with the checklist enclosed as Annexure A in the Circular and the contract agreement. The checklist is dynamic in nature and shall be updated from time to time based on the approval of various drawings/designs and approval of various works. It must be further noted that the checklist may vary from contract to contract and is indicative in nature. The same shall be finalised by the AE/IE, and the PD and RO as per the independent contracts in respect of the project.

(ii) During site visits, the RO/PD must review the checklist with the routine test to be conducted at the site and laboratory.

(iii) A meeting shall be carried out by RO/PD, 3 (three) months prior to probable issuance of the PCC/CC to assess the site preparedness of the site for PCC/CC.

Upon successful compliance with the items in the checklist, contractual requirements and successful tests on completion, the PCC/CC shall be issued as per the format mentioned in the contract agreement to the concessionaire/ contractor.

FINTECH

RBI ISSUED FRAMEWORK ON FINTECH SELF-REGULATORY ORGANISATIONS (SROS)

The Reserve Bank of India (RBI), on May 30, 2024, issued a press release on the 'Framework for Self-Regulatory Organisations(s) in the Fintech Sector' ("**SRO-FT Framework**"). This framework envisions self-regulation in the Fintech sector and highlights the significant role of FinTech in revolutionizing financial services through enhanced efficiency, accessibility, and cost reduction.

The SRO-FT Framework has been issued after receiving industry wide inputs on the 'Draft Framework for Self-Regulatory Organisations(s) in the Fintech Sector' ("**Draft Framework**") released by the RBI on January 15, 2024.

Key highlights of the SRO-FT Framework are as follows:

(a) Fintech

The SRO-FT defined 'FinTech' as follows:

FinTechs may be defined as entities that provide technological solutions for delivery of financial products and services to businesses and consumers or encompass regulatory and supervisory compliance in partnership with traditional financial institutions or otherwise. This definition may be taken as a broad guidance for deciding on membership eligibility.

[Note: This definition is new and was not provided in the Draft Framework]

(b) SRO-FT:

Incorporation of Fintech SRO ("**SRO-FT**") which will be industry led entity responsible for establishing and enforcing regulatory standards, promoting ethical conduct, ensuring market integrity, resolving disputes, and fostering transparency.

(c) Characteristics of SRO-FT

(i) It will derive its strength from membership having members from the FinTech Sector including those which are currently regulated by RBI (except Banks);

(ii) A member can have membership in multiple SRO-FT;

(iii) It will be development oriented, actively contributing to growth and evolution of the industry;

(iv) It will operate independently, free from the influence of any independent member;

(v) It will act as legitimate arbiter of disputes;

(vi) It shall promoter compliance amongst its members; and

(vii) It shall maintain repository of information of its members' activities.

(d) Key Responsibilities of the SRO towards the regulator

(i) Collaboration with RBI to enhance regulatory compliance and sector development;

(ii) Regularly inform RBI about sector developments and report member violations;

(iii) Submit an Annual Report and provide data/information as advised by RBI;

(iv) Establish clear standards of conduct and consequences for violation;

(v) Facilitate collection of market intelligence inputs and feed them to RBI;

(e) Key Eligibility Criteria for recognition as SRO-FT And Membership

(i) The applicant should be set up as a not-for-profit company;

(ii) No entity should, alone or acting in concert hold more than 10% (Ten Percent) of shareholding of SRO FT; [Note: This requirement is new and was not provided in the Draft Framework]

(iii) The applicant should have a minimum net worth of INR 2,00,00,000/- (INR Two Crore) within a period of 1 (One) year after recognition as an SRO-FT by RBI, or before commencement of operations as an SRO-FT, whichever is earlier; [Note: This requirement is new and was not provided in the Draft Framework]

(iv) The applicant should be domiciled/registered in India however, it can also have FinTechs domiciled outside India as its members;

(v) The SRO-FT should not set up entities / offices overseas without the prior approval of the RBI; and

(vi) Membership in the SRO-FT should be primarily from FinTechs that are currently not regulated by any financial sector regulator or other Regulated Entities other than banks.

(f) **Governance of SRO-FT**

(i) The SRO-FT should be professionally managed, it should have independent board and it should be compliant with RBI Regulations;

(ii) At least one-third members of the Board, including the chairperson, should be independent, and without any active association with a FinTech entity. Further, majority of non-independent directors must be representative of FinTechs that are currently not directly regulated;

(iii) The Board should, among others, frame a policy on rotation of directors for important positions in the Board; and

(iv) It should maintain functional autonomy and impartiality.

DSK View: *The SRO-FT Framework shows the shift in RBI's approach in FinTech regulation from feather touch-to-light touch and finally to a combination of RBI regulation & self-regulation. The aim of the Framework seems to ensure responsible innovation and adherence to regulations.*

Source

LAUNCH OF PRAVAAH PORTAL

The Reserve Bank of India (RBI) launched the PRAVAAH portal. PRAVAAH stands for 'Platform for Regulatory Application, Validation and Authorisation'. PRAVAAH is a secure and centralised web-based portal to seek authorisation, license or regulatory approval from the RBI. The PRAVAAH portal aims to streamline the process of applying for various regulatory approvals, making it convenient for individuals and entities to submit applications online. This portal will also enhance the efficiency of processes related to granting regulatory approvals and clearances by the RBI.

Source

INDIA'S CHABAHAR PORT DEAL AND POTENTIAL RISK OF SANCTIONS

At the outset, the Chabahar port is a seaport in Chabahar located in southeastern Iran in the Sistan-Baluchistan province, on the Gulf of Oman. It is Iran's only oceanic port and consists of two separate ports named – *Shahid Kalantari* and *Shahid Beheshti.*

India's interest in the port

India and Iran first agreed to develop the Shahid Beheshti port in 2003 but were not able to do so due to sanctions against Iran. Consequently, there was minimal progress in the development of the port between the countries until May 2016, when India and Iran signed a bilateral agreement in which the former agreed to refurbish one of the berths at the Shahid Beheshti port and reconstruct a 600-metre-long container handling facility at the port. This port is of high strategic importance to India.

India's interest in the Chahbahar port stems from its strategic location and the consequent enhancement of trade between India and Afghanistan as it is 800 kilometers closer to the border of Afghanistan than Pakistan's Karachi port. The port also provides access to Afghanistan's Garland Highway using the existing Iranian road network and the Zaranj-Delaram road, constructed by India in 2009.

In October 2017, India's first shipment of wheat to Afghanistan was sent through the Chabahar Port. In December 2018, India took over the port's operations following the 2016 bilateral agreement between India and Iran. However, following the re-imposition of sanctions against Iran, foreign companies became reluctant to participate in the port's expansions, and only 10% of the port's 8.5-million-ton total capacity was utilized in 2019. Notably, India has supplied 2.5 million tonnes of wheat and 2,000 tonnes of pulses to Afghanistan through the Chahbahar port.

With its significant oil and gas reserves, Iran stands as a crucial potential supplier for India's energy needs. The Chabahar port, with its strategic position, plays a pivotal role by allowing India to access Iranian energy resources while avoiding naval chokepoints like the Strait of Hormuz. By actively supporting connectivity projects like Chabahar Port and emphasizing sustainability, transparency, and respect for national sovereignty, India presents a proactive and alternative approach to infrastructure development. This aims to strengthen the bilateral as well as international trade relations between India and markets of countries in Central and West Asia by ensuring stable and efficient supply chains. It is highlighted that India imports methanol, bitumen, liquefied propane, and inorganic/organic chemicals from Iran, while it exports pharmaceuticals, rice, tea, sugar, and fruits to the Middle Eastern countries.

India's active engagement in projects like the International North-South Transport Corridor ('**INSTC**') and Chabahar underscores its strategic aims to foster relationships with Central Asia and Afghanistan. The integration of Chabahar with the INSTC holds immense promise for global trade. With Russia showing interest in utilizing Chabahar to facilitate India's access to its resource-rich regions, these developments are poised to significantly boost India's trade connectivity with Russia and Eurasia. This integration not only strengthens India's links to the substantial Russian and Eurasian markets but also enhances the strategic value of Chabahar Port and the INSTC, reinforcing their importance in global trade dynamics.

The Chabahar-Zahedan railway project

Sanctions also played a role in reducing India's involvement and investment in the 1.6-billion-dollar Chabahar-Zahedan railway project. According to sources, Iran was insistent on having Khatam al-Anbiya constructions to handle the civil work.

India objected to the fact that the company belongs to Iran's Islamic Revolutionary Guard Corps ('**IRGC**') - one of the entities proscribed by the United States of America (‘**US**’). These entities are part of the secondary sanctions imposed by the US and under such sanctions, countries cannot work with a designated entity in Iran even if it is for certain development projects that enjoy waiver from the US scrutiny.

The US trade sanctions applicable to Iran are not encapsulated in any single statute or other easily identifiable source but rather are incorporated into a rather complex web of statutes, regulations, and executive orders. Typically, such sanctions may be imposed on the foreign person (which includes a natural person, a business organization and its successor, a governmental entity operating as a business enterprise, or a successor to any such entity) engaging in the sanctionable conduct.

Exemptions for India

In November 2018, the US exempted India from certain sanctions for developing the port and the construction of the above-mentioned railway line. US had granted a narrow exemption under Section 1244 of the Iran Freedom and Counter-Proliferation Act of 2012 (‘**IFCA**’) to allow a limited number of activities that support the reconstruction and development of Afghanistan, a key US national security interest.

The exception allows three principal activities –

1. Development and maintenance of Chabahar port and an associated railway link to Afghanistan;
2. Afghanistan’s imports of refined petroleum products from Iran including gas, diesel, and liquid petroleum gas;
3. The shipment of non-sanction goods through Chabahar port to Afghanistan.

The exception did not allow the importing or exporting of Iranian crude. It also did not allow transactions with individuals or entities designated under the US counter-terrorism or non-proliferation authorities such as Iran’s IRGC and its officials, agents, and affiliates. Thus, in essence, no entity with which Indian companies engage should have direct or indirect ties to the IRGC.

It was directed that financial transactions must not involve the Central Bank of Iran and any current or future financial transactions that involve the Central Bank of Iran could expose Indian companies and individuals to a sanctions risk. It was clarified that other sanctions would still apply to entities engaging in certain activities at Chabahar, including the sale, supply, or transfer to or from Iran of materials that could be used by the country's construction sector.

However, India and Iran signed a long-term contract on 13th May 2024, allowing India Ports Global Private Limited (‘**IPGPL**’), and Indian state-owned entity to manage and operate a terminal in the port for a period of 10 years, instead of having to renew a short-term contract every year.

US Response to the deal

The officials of the US emphasized that India should address their foreign policy and relationship with Iran and that the US sanctions on Iran would remain in place and be enforced in case need arises. Thus, any entity engaged in doing business with Iran was directed to exercise caution.

DSK View: *The Iranian port is not only a flagship project of the India-Iran bilateral trade but also a key maritime node in the International North-South Transport Corridor (‘**INSTC**’), a 7,200 km-long multimodal connectivity project that connects India to Europe through the Caucasus, Iran, Russia, and Central Asia. INSTC is projected to reduce transit time between India and Europe by 40% and transit costs by 30% and has gained immense significance especially post the Red Sea crisis.*

Indian investors and shipment companies were reluctant to invest in the Chabahar Port as India mainly used short-term agreements for port operations; however, the ten-year contract with Iran will boost the confidence of the Indian investors.

It may be noted that the US has only ever imposed limited sanctions on India twice in the past, in 1974 and 1998, in relation to nuclear tests. Since India-US ties have strengthened significantly, it is anticipated that the US may not impose any sanctions on the Indian firms unless they have been approved by the United Nations. However, it is suggested that all Indian entities intending to engage in business operations in Iran must undertake a risk assessment analysis to identify the possibility of US-led sanctions on their exports and/or imports and aim to cooperate with them in order to safeguard their interests.

MEDIA & ENTERTAINMENT

COPYRIGHT NOTICE ISSUED AGAINST RAJINIKANTH'S UPCOMING FILM TITLED "COOLIE"

The renowned music composer, Ilaiyaraaja has sent a formal copyright notice to the producers of Rajinikanth's upcoming film "Coolie", alleging that the producers have used Ilaiyaraaja's song "Vaa Vaa Pakkam Vaa", from the 1983 film "Thanga Magan", in the title announcement promo of "Coolie" without Ilaiyaraaja's permission, who is the original owner of the song and music. The notice, which was sent to the production team, demands that they obtain Ilaiyaraaja's approval to remix the song or remove the portion containing it from the promo video. Failure to comply with this request may result in legal action against the producers for infringement of Ilaiyaraaja's rights under the Copyright Act of 1957. The said film is scheduled to release in 2025.

INSOLVENCY PLEA AGAINST ZEE ENTERTAINMENT WITHDRAWN BY IPRS

The Indian Performing Right Society (IPRS) has withdrawn its insolvency plea against Zee Entertainment Enterprises ("**Zee Entertainment**"), marking a significant development in the long-standing dispute between the two parties. The dispute between the two parties had arisen in the year 2021 when IPRS, who represents the rights of music composers, lyricists, and publishers, had filed an insolvency petition against Zee Entertainment before the National Company Law Tribunal (NCLT) because of Zee Entertainment's failure to pay royalties and other dues to IPRS (to the amount of approx. Rs. 211 crores) for the use of copyrighted music in Zee Entertainment's content. After several rounds of negotiations, Zee Entertainment and IPRS reportedly reached a settlement agreement, which led to the withdrawal of IPRS' insolvency plea. Though the terms of this settlement agreement remain confidential, it is understood that a significant portion of the outstanding amounts due to IPRS have been agreed to be paid by Zee Entertainment.

MADHYA PRADESH HIGH COURT ISSUES NOTICE TO KAREENA KAPOOR KHAN FOR THE USE OF THE WORLD 'BIBLE' IN HER BOOK TITLE

In the current case of *Christopher Anthony vs. Kreena Kapoor Khan*, the applicant, a resident of Jabalpur and an advocate himself, has sought the registration of a case against actor Kareena Kapoor Khan and others. The primary issue at hand is whether the use of the word "bible" in the title of Kareena Kapoor Khan's book (Kareena Kapoor Khan's Pregnancy Bible) constitutes an act that offends religious sentiments, particularly those of Christians. The applicant has alleged that the usage of the word "bible" in the book title infringes upon the religious sensitivities of Christians and was used by Kareena Kapoor Khan to gain cheap publicity for her book.

In response to this, the Madhya Pradesh High Court ("**Court**") has issued notices to Kareena Kapoor Khan and others (including publishers and sellers). The Court has deemed it necessary to seek an explanation from Kareena Kapoor Khan and the other respondents regarding the rationale behind mentioning the word "bible" in the title of the book.

The matter is currently pending further proceedings.

DELHI HIGH COURT RECOGNIZES JACKIE SHROFF'S PERSONALITY RIGHTS – GRANTS ORDER PROTECTING HIS NAME, NICKNAME AND LIKENESS

Jackie Shroff ("**JS**"), the renowned Bollywood actor, has recently secured legal protection for his personality rights, including his name, nickname ('Bhidu'), voice, image, and other distinctive attributes, pursuant to a significant ruling made by the Delhi High Court ("**Court**"). The Court issued an order on May 15, 2024, acknowledging and upholding JS' personality rights, granting him legal safeguards against unauthorized usage of his attributes.

The protection granted by the Court extends to preventing entities from exploiting his name, nickname, image, voice, likeness, and other unique characteristics without his explicit consent for commercial gain. The Court's decision came in response to a lawsuit filed by JS, where he sought protection against various forms of unauthorized usage of his personality traits, such as offensive and defamatory content, memes, pornographic material, and unauthorized merchandise, among other infringements.

The Court's ruling restrained several entities, including e-commerce stores, AI chatbots, and social media accounts, from exploiting JS' name, nickname, image, voice, and likeness without his consent. Justice Sanjeev Narula, presiding over the single-judge bench, recognized JS' celebrity status based on his extensive filmography, television appearances, web series, and commercial endorsements. The Court emphasized that these attributes, which JS exclusively controls, constituted his "personality rights" and "publicity rights".

Notably, the Court acknowledged Shroff's significant contributions to over 220 films, multiple television shows and web series, as well as his diverse commercial endorsements, including his registered trademark for his nickname 'Bhidu'.

The ruling also addressed specific instances of misuse, such as the creation of offensive content, unauthorized merchandise, and the unauthorized deployment of his personality traits by an AI platform. The Court directed the Department of Telecommunications (DoT) and the Ministry of Electronics and Information Technology (MeitY) to issue necessary directives to block URLs and links containing infringing material. The next hearing of this case is on October 15, 2024.

BEYONCÉ'S "BREAK MY SOUL" COPYRIGHT DISPUTE WITH DA SHOWSTOPPAZ

A copyright infringement lawsuit has been filed by Da Showstoppaz, a New Orleans-based music group, against Beyoncé, Big Freedia, Jay-Z, Sony Music, and other entities regarding the use of their 2002 song "Release a Wiggle" in Beyoncé's 2022 hit song "Break My Soul". The lawsuit, filed in a Louisiana federal court alleges that Big Freedia's 2014 track "Explode" infringed upon Da Showstoppaz's copyrighted work, and that Beyoncé's "Break My Soul" subsequently utilized those infringing elements without permission or compensation.

Da Showstoppaz, consisting of Tessa Avie, Keva Bourgeois, Henri Braggs, and Brian Clark, claim that Big Freedia's "Explode" illegally borrowed several key lyrics from their song "Release a Wiggle". They argued that the use of similar phrases in "Explode" constitutes copyright infringement, and that Beyoncé's "Break My Soul" subsequently utilized those infringing elements without permission or compensation. The lawsuit focuses on the phrase "release a wiggle" and related variants, which Da Showstoppaz claim as unique phrases they coined in their song.

The lawsuit further alleges that Beyoncé and the others have financially benefited from the song without acknowledging or compensating Da Showstoppaz. Da Showstoppaz are seeking credit on "Break My Soul" and "Explode", as well as compensation and royalties for future licenses on the tracks. They also seek damages for the alleged infringement.

The case is yet ongoing so it remains to be seen as to ultimately what the court will hold.

SCARLETT JOHANSSON V. OPENAI

Scarlett Johansson, a prominent Hollywood actress, is embroiled in a battle with OpenAI, a leading artificial intelligence (AI) company, concerning the use of her voice in their AI chatbot, ChatGPT 4.0. The conflict arose when OpenAI introduced a voice named "Sky" that Johansson contended bore a striking resemblance to her own voice, despite her prior refusal to lend/license her voice to the project.

Initially, OpenAI had approached Johansson to provide her voice for their AI system, but she declined the offer. Subsequently, the company proceeded to allegedly create a voice that closely mimicked Johansson's. In response to this, Johansson took legal action against OpenAI, demanding clarification on the methods used to develop the "Sky" voice. Her legal representatives sent two letters to OpenAI, prompting the company to discontinue the "Sky" voice and introduce a new voice named "Juniper".

This dispute raises significant concerns regarding the use of AI to replicate copyrighted works and personal attributes. Johansson's case is seen as a pivotal test of the right of publicity, which safeguards an individual's name, image, likeness, and other distinctive characteristics from unauthorized exploitation. The incident has sparked broader discussions on the necessity for ethical guidelines and legal safeguards to protect individual rights in the evolving landscape of AI. Organizations like the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) have been advocating for the establishment of a federal right of publicity law to safeguard voice and likeness rights.

RBI & FEMA

DRAFT GUIDELINES ON 'PRUDENTIAL FRAMEWORK FOR INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PERTAINING TO ADVANCES - PROJECTS UNDER IMPLEMENTATION'

- The Reserve Bank of India (**"RBI"**) *vide* press release number 2024-2025/244 dated May 03, 2024, released draft guidelines on Prudential Framework for Income Recognition, Asset Classification and Provisioning pertaining to Advances - Projects Under Implementation ("**Revised Draft Guidelines**").

- The Revised Draft Guidelines are applicable to the financing of project loans and aim to strengthen the extant regulatory framework governing project finance while harmonizing instructions across all regulated entities ("**REs**").

- The Revised Draft Guidelines also seek to provide an enabling framework for REs in relation to financing of project loans and attempt to resolve underlying risks.

Key Features

- General provision of 5% to be maintained on all existing and fresh exposures by REs at the construction stage. Previously this provisioning requirement was limited to 0.4%.
- Provisioning can be reduced to 2.5% and 1% at the operational phase.
- REs seeking to have project finance exposures are required to formulate a board approved policy for resolution of stress in the projects on occurrence of a credit event.
- All mandatory pre-requisites must be in place before financial closure for any project. The indicative list should provide environmental, regulatory and legal clearances relevant to the project.
- In the case of infrastructure projects under PPP model, REs enders can consider land availability to the extent of 50% or more to be sufficient for achieving financial closure.
- It must be ensured that financial closure has been achieved and date of commencement of commercial operations ("**DCCO**") is clearly spelt out and documented prior to disbursement of funds.
- In consortium arrangements of project finance, where the aggregate exposure of the participant REs to the project is upto ₹1,500 crores, no individual RE shall have an exposure less than 10% of the aggregate exposure.
- If aggregate exposure of RE is more than ₹1,500 crores, the individual exposure floor shall be 5% or ₹150 crores, whichever is higher. *Currently, banks only need to maintain about 0.40% provisions on such exposures.*
- In general, no moratorium provisions shall be permitted on repayments beyond the DCCO period in the financing agreement.
- repayment structure should be realistically designed to accommodate the reduced initial cash flows.
- If a moratorium on repayments beyond DCCO is granted, the same shall not exceed six months from the commencement of commercial operations.
- original or revised repayment tenor, including the moratorium period, if any, should not exceed 85% of the economic life of the project.
- Any project being financed, requires a positive net present value.
- Reduction in NPV during construction phase, attributable to factors such as modifications in anticipated cash flows, project duration, or other pertinent variables, which could result in credit

impairment shall be considered a credit event, requiring lenders to have the NPV reevaluated independently on an annual basis.

- REs are required to continuously capture and maintain project-specific data in an easily accessible electronic format.
- REs are required to provide timely updates on any modifications made to the parameters of a project finance loan, no later than 15 days after the change occurred.

DSK View: *One of the key changes suggested by the RBI in the Revised Draft Guidelines include the short moratorium period and higher provisioning norms. While higher provisioning norms and other prudential provisions have been suggested to help REs mitigate various risks associated with project financing, these seem to be key pain points for most lenders. The moratorium period suggested by the RBI seems short, especially for infrastructure projects which have a longer gestation period and therefore a bifurcation of a moratorium for infrastructure and non-infrastructure projects would help. While the incremental provisioning norms will only mean increased costs for lenders and a possible impact on their profits.*

CONSULTATION PAPER ON MEASURES TOWARDS EASE OF DOING BUSINESS FOR NON-CONVERTIBLE SECURITIES

Securities and Exchange Board of India's ("**SEBI**") Department of Debt and Hybrid Securities released a consultation paper on measures towards ease of doing business for non-convertible securities ("**NCS**") on May 09, 2024 ("**Consultation Paper**").

The Consultation Paper has been released to address certain inconsistencies in the provisions of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and also try and reduce compliance requirements.

Some key highlights of the Consultation Paper are given below:

(a) Deletion of disclosure requirements pertaining to the personal addresses and Permanent Account Numbers of issuer's promoters;
(b) Disclosure of time period for key operational and financial parameters;
(c) Disclosure of details regarding branches or units of the issuer via QR code and web link;
(d) Alignment of the disclosure requirement pertaining to project cost and means of financing in the offer document with that pertaining to equity;
(e) Relaxation in providing certain business and commercial details on purchase or acquisition of immoveable property;
(f) Providing flexibility for attestation; and
(g) Modifying the timeline for entities that have listed commercial paper, for submission of status regarding payment obligations to stock exchanges.

DSK View: *The consultation paper has been published amidst the working group's recommendations to prevent misuse of individual's personal details such as PAN, Aadhaar details, etc. Since a lot of this information is already available with stock exchanges during the KYC process, the Ease of Doing Business working group seems to have taken note of the same and recommended changes under the Consultation Paper. However certain aspects such as removal of personal addresses of individuals continues to be retained, although these details would also be available with the stock exchange. Overall, the Consultation Paper is aimed at protecting sensitive personal information from the general public and enhancing data privacy and streamlining regulations related to NCS, while creating an environment that is conducive to doing business.*

MASTER CIRCULAR – LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS FOR NON-CONVERTIBLE SECURITIES, SECURITIZED DEBT INSTRUMENTS AND/OR COMMERCIAL PAPER

SEBI *vide* circular number SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/48 dated May 21, 2024, ("**LODR Master Circular**") consolidated all circulars/directions issued to the issuers of listed non-convertible securities, securitized debt instruments and commercial paper ("**Securities**") till May 20, 2024, on matters relating to listing obligations and disclosure requirements of Securities.

The LODR Master Circular *inter alia* provides directions for:

(a) formats for filing financial information;
(b) format of statement indicating utilisation and statement indicating deviation/variation in the use of proceeds of issue of listed NCS;
(c) disclosures by listed entities of defaults on payment of interest/repayment of principal amount on loans from banks/financial institutions and unlisted debt securities.

MASTER CIRCULAR – ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES, SECURITISED DEBT INSTRUMENTS, SECURITY RECEIPTS, MUNICIPAL DEBT SECURITIES AND COMMERCIAL PAPER

SEBI *vide* circular number SEBI/HO/DDHS/PoD1/P/CIR/2024/54 dated May 22, 2024, ("**Master Circular**") consolidated all circulars/directions issued to the issuers of listed non-convertible securities, securitized debt instruments, security receipts, municipal debt securities and commercial paper ("**Securities**") till May

21, 2024, on matters relating to issuing, listing, procedural and operational requirements of Securities.

The Master Circular *inter alia* provides directions for:

(a) application process in case of public issues of securities and timelines for listing;
(b) additional disclosures by non-banking finance company or housing finance company or public financial institution;
(c) denomination of issuance and trading of non-convertible securities;
(d) standardization of timelines for listing of securities issued on a private placement basis;
(e) specifications related to ISIN for debt securities;
(f) green debt securities;
(g) listing of commercial paper.

RERA

MAHARSHTRA REAL ESTATE REGULATORY AUTHORITY ISSUES MINIMUM SPECIFICATIONS FOR RETIREMENT HOMES AND SENIOR CITIZEN HOUSING PROJECTS

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") has issued detailed regulations in regard to retired and senior housing projects *vide* order bearing no. 55/2024 (No. MahaRERA /Secy / File No.27 / 249/ 2024) dated May 08, 2024 ("**Order**"). These regulations have been implemented keeping in mind the necessary requirements for retirement homes and senior citizen housing projects like green building principles, building design, safety and security, staircase, corridors, lifts and ramps, kitchens, bathrooms and lightning and ventilation.

The Order mandates that senior citizen housing projects with multiple floors must have lifts for users with mobility aids, accessible staircases with extended handrails, NBC-compliant kitchens with gas leak detection systems, and alarm systems with switches in key areas. Visitor entry passes are also required.

MahaRERA mandates that promoters must meet these minimum physical specifications in their projects before advertising them.

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY HAS MANDATED THAT PARKING INFORMATION MUST BE INCLUDED IN THE SALE DEED AND ALLOTMENT LETTER

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") has implemented new regulations regarding parking areas in real estate projects vide Order bearing no. (*54/2024/MahaRERA/Secy/File No. 27/207/2024*), dated April 29th 2024. MahaRERA has mandated that all allotment letters and sale agreements from promoters include approved parking layout plans. These documents must detail the number, type, size, and location of parking spaces booked or allotted to an allottee. For open parking areas, the plans should specify the length and breadth, while for garages, covered spaces, podiums, stilts, and mechanized parking, they must include length, breadth, and vertical clearance.

MAHARSHTRA REAL ESTATE REGULATORY AUTHORITY HAS PROPOSED THAT BUILDERS MUST GIVE DETAILS OF FACILITIES AND AMENITIES PROVIDED IN THEIR REAL ESTATE PROJECTS

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") vide its Circular bearing No. MahaRERA/Secy/File No. 27/215/2024, dated April 29th 2024, has made it compulsory for promoters to provide comprehensive details of the facilities and amenities that will be provided in the common areas as well as within the building and overall layout of their real estate projects.

The agreement for sale should mention the facilities or amenities provided in the building, common area and in the layout. It should also mention the size and area of the facilities and amenities as well as the time by which they will be ready for use of the allottees. The agreement for sale should also have annexed copies of the approved plan in respect of the facilities and amenities provided.

ASSAM REAL ESTATE APPELLATE TRIBUNAL HOLDS THAT REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 DOES NOT HAVE RETROACTIVE APPLICATION ON ALREADY COMPLETED REAL ESTATE PROJECTS

The Assam Real Estate Appellate Tribunal ("**Assam REAT**"), in the case titled '*Sri Shantanu Baruah vs. M/s Dona Builders Pvt. Ltd. & Anr*' bearing citation REAT/ASSAM/APPEAL No. 04 of 2024, observed that any real estate project completed before the enactment of Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**") does not fall within the framework of the RERA Act and does not have retroactive application on the projects completed before its implementation.

In the said matter registered development agreement and general power of attorney, allowing the builder to develop the project, was executed on November 23, 2005, by an authorized co-owner. The project received a no-objection certificate from the municipal corporation. The appellant claimed that the agreement allocated 25% of the built-up area to the landowners but alleged that the actual area provided was less. The authorized co-owner passed away in September 2014, but the builder continued development without obtaining a new Power of Attorney from the co-owners and without addressing the issue of the built-up area. Additionally, the builder advertised commercial units for sale. The appellant alleged violations of RERA Act, the sanction plan, and allotment commitments.

The Assam REAT observed that the project was granted an Occupancy Certificate on May 7, 2014, indicating its completion before the enactment of RERA Act. Therefore, the project did not fall within the scope of RERA Act.

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL HAS STATED THAT CARPET AREA MENTIONED IN SALE AGREEMENT WILL SUPERSEDE ALL OTHER DOCUMENTS

The Maharashtra Real Estate Appellate Tribunal ("**Maharashtra REAT**"), in the case titled '*Kamal Kishore Uniyal vs. Accord Builders'* [*Appeal No. AT006000000011117 of 2019*], observed that challan and draft agreement and other such documents that predate the agreement for sale will be superseded by the sale agreement.

In the said matter the appellant had purchased a flat in the project by an agreement for sale which was executed and registered on August 10th 2019. The appellant allegedly faced various issues in relation to the flat ranging from delay in delivery of the flat to demand of extra payment by the builder beyond the agreement terms without giving proper receipts. It was further alleged by the homebuyer that the carpet area of the apartment is less by approximately 225 square feet than what was promised at the time of booking and thus demanded compensation for the alleged deficit in carpet area.

The Maharashtra REAT rejected the demand for compensation by the homebuyer for alleged deficit in the carpet area on the ground of two documents that are a challan depicting the carpet area of 77.2 sq. mtrs., dated 18th July 2019 and a draft sale agreement which indicated the carpet area of 71.21 sq. mtrs., dated 19th July 2019. The Tribunal denied the Homebuyer's claim citing that the executed sale agreement had clearly mentioned the carpet area as 50.29 sq. mtrs.

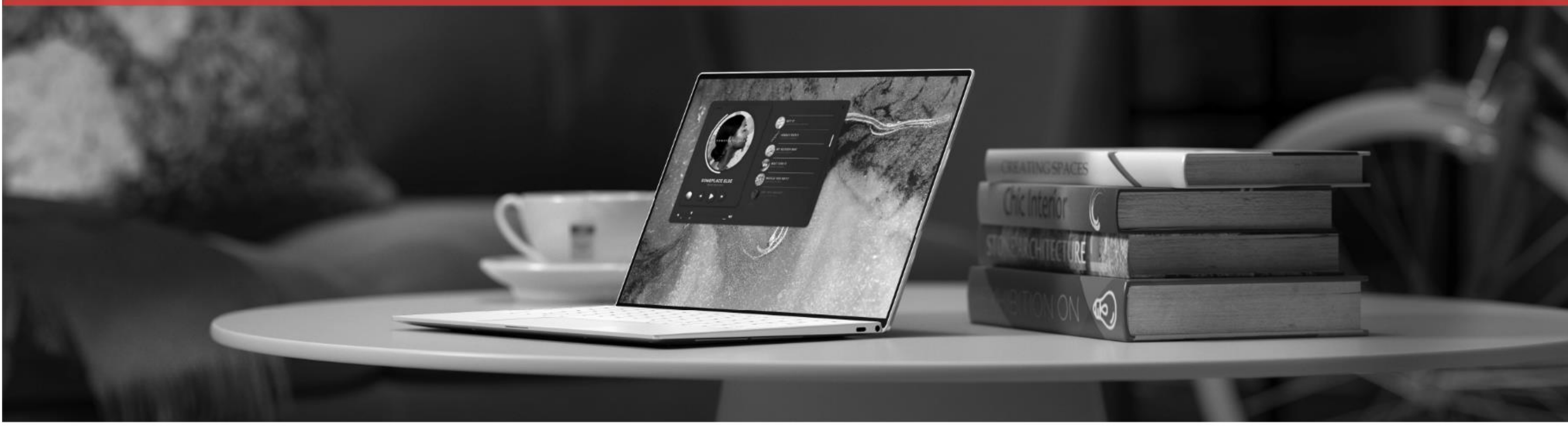
HARYANA REAL ESTATE REGULATORY AUTHORITY DECLARES THAT PROVISIONS OF THE LIMITATION ACT, 1963, DO NOT APPLY TO REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Haryana Real Estate Regulatory Authority ("**HRERA**"), in case titled as '*Babu Lal Gupta & another vs. New Look Builders and Developers Pvt. Ltd'* bearing complaint No. 5768 of 2022, passed an order stating that the provisions of The Limitation Act, 1963 does not apply on the Real Estate (Regulation and Development) Act,2016 ("**RERA Act**"). It was held that Article 54 of the Limitation Act which provides limitation period for filing a suit for specific performance of a contract is subservient to the RERA Act by virtue of the non-obstante clause of Section 89 of the RERA Act.

The builder had advertised his upcoming real estate project in 2011 and the homebuyer on the basis of that advertisement paid a certain amount to book a flat in the project. An allotment letter was issued by the builder to the homebuyer as well as a Flat Buyers Agreement ("**FBA**") was signed between both the parties. The homebuyer was assured possession of his flat on 31st December 2015 as per the FBA. The homebuyer did not get the possession of the flat on the assured date even after full payment of the consideration. The homebuyer received and rejected the offer of possession from the builder as the builder failed to obtain the Occupancy Certificate. Aggrieved by all this the homebuyer filed the complaint. The builder contended that the period of 3 years 6 months stipulated in The Limitation Act has elapsed as the homebuyer had filed the complaint after 6 years 6 months as such the complaint should be dismissed.

The HRERA has further stated that no developer is discharged of its obligation on the ground that the complaint was filed after the expiry of a certain period mentioned in some other statute.

TECHNOLOGY LAW



GAMING

SEBI ISSUES GUIDELINES TO PREVENT SHARING OF REAL-TIME STOCK EXCHANGE DATA WITH ONLINE GAMING PLATFORMS

On May 24, 2024, the Securities and Exchange Board of India ("**SEBI**") issued a circular on "Norms for sharing of real time price data to third parties" ("**Circular**") (accessible *here*), pursuant to the National Stock Exchange circular dated April 20, 2023 (accessible *here*) against the use of real time share prices (price data) of listed companies by online gaming platforms, apps, websites, etc. providing virtual trading services or fantasy games. The Circular is applicable from June 24, 2024.

The Circular has been issued to curb the dissemination of share prices to platforms offering virtual trading or fantasy games. The Circular mandates stock exchanges, clearing corporations, depositories (collectively "**MIIs**") and registered market intermediaries to ensure that real-time price data is not shared with third parties, except as specified. Further, MIIs and market intermediaries are required to enter into appropriate agreements with entities with whom they intend to share such real-time price data, with such agreements specifying the activities for which the data will be used. The board of the MIIs or market intermediaries are required to annually review such entities and their activities. Furthermore, sharing of real-time price data for education and awareness activities has been permitted, subject to there being a one-day lag on the price data of the listed entities.

Read more *here*.

TELECOMMUNICATION

TRAI DIRECTS TELECOM SERVICE PROVIDERS TO IMPLEMENT VOICE DLT SOLUTION FOR COMMERCIAL COMMUNICATIONS

On May 4, 2024, the Telecom Regulatory Authority of India ("**TRAI**") issued directions ("**Directive**") (*accessible here*) to all Access Providers ("**APs**") pertaining to the implementation and violation of the Telecom Commercial Communications Customer Preference Regulations, 2018 ("**TCCCPR**") (accessible *here*) regarding commercial communications by entities. Under TCCCPR, TRAI mandates all APs to ensure that all commercial communication using its network should only takes place using registered headers assigned to the senders, and that they must ensure that no commercial communication is made to any recipient, except as per the preferences or digitally registered consents registered in accordance with the TCCCPR, by adopting distributed ledger technology ("**DLT**") and smart contracts.

Under the Directive, TRAI noted that APs had not implemented the provisions of the TCCCPR for commercial communications conducted through voice calls. Specifically, TRAI highlighted the following issues: (a) the 140-level numbering series, designated for telemarketers, was being used independently and not through the DLT platform as required; (b) entities such as banks, credit card companies, insurance companies, and other financial institutions were using normal 10-digit mobile/landline numbers for promotional calls, leading to numerous customer complaints, and these numbers were also being used for service and transactional calls, which allowed fraudsters to deceive consumers; and (c) the non-implementation of DLT platform resulted in the failure to record consents and performance of real-time consent scrubbing, as mandated under the TCCCPR.

In relation to the above-mentioned non-compliance, TRAI under the Directive has instructed APs to: (a) implement the DLT for the 140-level numbering series, including migrating telemarketers from the existing platform and updating codes of practice, within 60 days from the date of issue of the Directive; and (b) submit the implementation plan for the DLT for the 160-level numbering series within 30 days from the date of issue of the Directive, and implement the same, including updating codes of practice, within 90 days from the date of issue the Directive.

DoT RELEASES ADDITIONAL INSTRUCTIONS FOR ISSUANCE OF CONNECTIONS TO BUSINESSES

On May 20, 2024, the Department of Telecommunications ("**DoT**") issued additional instructions to all unified access service/unified license licensees ("**Licensees**") in relation to KYC verification of 'business connections' ("**Additional Instructions**") (accessible *here*).

The Additional Instructions were issued in continuance of the instructions issued on August 31, 2023 wherein the DoT had discontinued the issuance of mobile connections under the bulk category and had replaced it with the new category '**Business Connections**', made available to companies, organizations, firms, LLPs, institutions, and others ("**Original Instructions**") (accessible *here*).

The Additional Instructions, *inter alia*, set out the following:

(a) Wherein the end users of a subscribing entity ("**Subscriber**") are not identifiable, such as when the SIMs may be obtained for use by multiple users for a same specified purpose, the requirement of end user know-your-customer (KYC) process has been made optional. Previously, under the Original Instructions, the business connections were required to provide a list of end users to the Licensees.

(b) Prior to issuing any business connection, the Subscriber shall provide an undertaking detailing the scenarios wherein an end user may not be involved. Additionally, the Licensees must satisfy themselves that such scenarios set out by the Subscriber in the undertaking is realistic.

(c) During the (first and consequent) physical verifications of the Subscriber, the Licensees must confirm that the Subscriber's proposed use cases are realistic.

(d) Licensees must monitor the bona fide use of the business connections and communicate (in writing) to the Subscriber their responsibility of bona fide use of the business connection provided. Any misuse by the Subscriber identified by the Licensees, DoT, or designated law enforcement agencies shall result in the immediate disconnection and applicable legal action.

(e) The validity of the business connection could be up to a maximum of one year. At the time of renewal, Licensees must review the Subscriber's past and proposed usage.

(f) Licensees to ensure that the Subscriber acquires mobile connections for their own use and not acquire them on behalf of third parties.

COMPETITION

NCLAT ADMITS APPEAL ON GOOGLE PLAY STORE BILLING ISSUE AFTER CCI's ORDER

On May 10, 2024, the National Company Law Appellate Tribunal ("**NCLAT**") admitted an appeal filed by People Interactive India Private Limited (Shaadi.com), Mebigo Labs Private Limited (Kuku FM) and the Indian Broadcasting and Digital Foundation (collectively, the "**Appellants**") against the Competition Commission of India's ("**CCI**") decision rejecting their interim relief in relation to Google's policy in relation in-app purchases and paid applications ("**Billing Policy**") (accessible *here*).

The interim relief was sought against Google in the background of CCI, *prima facie*, finding Google in dominant position (accessible *here*) and ordering an investigation in relation to the same. The interim relief sought by Appellants included, *inter alia*, (a) preventing Google from delisting or reducing the visibility of apps due to non-compliance with the Billing Policy; (b) preventing Google from disclosing payment-related data; (c) preventing Google levying fees on transactions processed within an app using third-party billing systems; and (d) ceasing Google's enforcement of any guidelines that dictate the user interface or flow.

The CCI rejected the interim relief, noting that: (a) various prayers of the Appellants, such as those related to the collection of data and UI/UX interface, were not issues under investigation, pursuant to which the interim relief was sought; (b) the prayers sought did not necessitate the CCI to use its powers of granting an interim relief under Section 21(6) as (i) it did not meet the CCI's satisfaction at a higher degree (than just the formation of a prima facie view) that the act in contravention of the stated provisions had been committed and continued to be committed or was about to be committed; (ii) it was necessary to issue an order of restraint; and (iii) there was every likelihood of the Appellants suffering irreparable and irretrievable damage, or that there was a definite apprehension of an adverse effect on competition in the market; and (c) restraining Google from collecting any fee for transactions would not be proportionate.

The NCLAT is scheduled to hear the appeal July. Additionally, the NCLAT has sought a reply from Google LLC on the matter. Read more *here*.

WHITE COLLAR CRIME

TWIN CONDITIONS OF BAIL DO NOT APPLY WHEN ACCUSED NOT ARRESTED PRIOR TO COMPLAINT

As reported here, the ***Supreme Court*** has been considering certain questions of seminal importance to the law on Prevention of Money Laundering Act, 2002 (**PMLA**), particularly the application of the stringent twin conditions on bail (set out in Section 45 of PMLA) when the accused has not been arrested by Directorate of Enforcement (**ED**) prior to cognizance taken by the Special Court of the PMLA offence. The ***Supreme Court*** has delivered its landmark judgement laying down several clarificatory dictums, including the following:

(1) Once the Special Court has taken cognizance of the PMLA offences based on ED's complaint filed under PMLA, ED cannot arrest a person arraigned as accused in the complaint; thereafter, it can only arrest persons not shown as accused in the complaint.

(2) In such cases, as a normal rule, the Special Court should issue a summons to the accused. If he does not appear after a summons, the Special Court can issue a warrant which should initially be a bailable warrant, and if it is ineffective, then non-bailable warrant.

(3) If the accused appears before the Special Court pursuant to the summons, he shall not be treated as being in custody; therefore, there is no question of granting him bail. This is crucial because many PMLA Special Courts throughout the country follow the practice of taking an accused into custody once they appear pursuant to the summons; after which they are compelled to apply for bail. The Supreme Court has held that such a practice is completely illegal. If ED wants custody of an accused who appears after service of summons, ED will have to seek such custody by applying to the Special Court.

When the accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the Code of Criminal Procedure, 1973 (**CrPC**). A bond furnished under Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on a given date (on his default, pay the amount mentioned in the bond). An order accepting such bond from the accused does not amount to grant of bail. The Supreme Court has distinguished a bond under Section 88 from the bond under Section 441 of the CrPC which is a bond furnished by an accused when released from bail.

Case - *Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office*

GROUNDS OF ARREST TO BE FURNISHED IN WRITING IN UAPA OFFENCES

In 2023, the Supreme Court in *Pankaj Bansal vs. UOI, 2023 SCC OnLine 1244* (reported here) held that it is a constitutional mandate under Article 22(1) of the Constitution and a statutory mandate under Section 19 of the PMLA (the provision which empowers ED to arrest) to inform the arrested person of the grounds of arrest. This mandate makes it mandatory to furnish the grounds of arrest to the accused in writing (merely reading out such grounds to accused will not suffice). The ***Supreme Court*** has now held that the provision regarding communication of grounds of arrest in Section 19 of PMLA is verbatim as that of Section 43B(1) of the Unlawful Activities (Prevention) Act,1967 (**UAPA**) and the mandate laid down in *Pankaj Bansal* applies *pari passu* to UAPA. Any persons arrested under UAPA has a fundamental and statutory right to be informed of the arrest grounds in writing without exception, so that he has effective means to consult his advocate, oppose his remand, and seek bail. Infringement of this right would vitiate the process of arrest and remand and mere filing of a chargesheet would not validate the illegality committed at the time of arrest or grant of remand. Applying this principle, the Supreme Court in this case quashed the arrest and remand order despite a chargesheet having been filed as the accused was not informed of the grounds of arrest prior to his remand by the remand judge.

Case - Prabir Purkayastha vs. State

ACQUITTAL IN THE SCHEDULED OFFENCE HALTS PMLA PROCEEDINGS

In this case, the ED had initiated PMLA proceedings and attached properties on the basis of certain scheduled offences. The accused was acquitted of these scheduled offences and, consequently, discharged from the PMLA offence and properties released from the PMLA attachment. However, the acquittal order was challenged leading the ED to contend that the acquittal will attain finality only after it is affirmed by the appellate court and, consequently, the properties attached under the PMLA cannot be released. Rejecting this argument, the ***Delhi High Court*** reiterated that the scheduled offence and proceeds of the crime are the foundation of the offence of money laundering. Once a person is discharged or acquitted of the predicate offence, it knocks down the entire foundation and the properties attached under the PMLA cannot be treated as proceeds of crime. Till the judgment of acquittal in the predicate offence is reversed in an appeal, all the effects of acquittal continue to operate. Mere filing of an appeal against such acquittal would not subject the accused to rigors of criminal proceedings or attachment under PMLA.

Case - Directorate of Enforcement vs. Akhilesh Singh & Ors.

SECTION 436A OF THE CRPC APPLIES TO PMLA CASES

The ***Supreme Court*** has reiterated that Section 436A of the CrPC, which entitles the court to grant bail to an accused who has completed one-half of the maximum sentence, applies to cases under the PMLA. However, it is not an absolute right of bail and the court may deny the relief in certain cases such as where the trial is delayed by the accused. In this case, the Supreme Court granted bail to the accused under Section 436A as he had completed half of the prescribed sentence with no possibility of a speedy trial, and the delay was not attributable to the accused as even the charges had not been framed.

Case - Ajay Ajit Peter Kerkar vs. Directorate of Enforcement & Anr.

PROCEEDINGS UNDER NI ACT IS NOT IMPACTED BY VIRTUE OF SECTION 96 OF IBC

An individual can file for insolvency upon non-payment of debts under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). Upon such an application, an interim moratorium is imposed during which all pending legal proceedings for any debt are stayed (Section 96, IBC). The question whether this interim moratorium would result in a stay of criminal proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") against the signatory/ MD for dishonour of cheque by their company has been answered in the negative by the ***High Court of Punjab and Haryana***. Following the Supreme Court's judgment in *Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd., (2023) 10 SCC 545* which held that Section 138 proceedings are not recovery proceedings but are penal in nature, the High Court held that the moratorium under Section 96 of IBC concerns proceedings in respect of a debt and does not apply to penal proceedings under Section 138 of the NI Act and signatories/ directors responsible for the dishonour of cheque cannot escape liability under Sections 138/141 of the NI Act.

Case - Jitender Singh Sodhi & Anr. vs. Deputy Commissioner of Income Tax & Anr.

COMPLAINANT'S CONSENT IS A PRE-REQUISITE FOR COMPOUNDING OF OFFENCES UNDER NI ACT

The ***Supreme Court*** has clarified that compounding of an offence necessarily requires consent of the complainant/ aggrieved. This also holds true for the offence of dishonor of cheque under Section 138 of the NI Act. Even when the accused has paid the entire cheque amount, he is not absolved from criminal liability and the complainant cannot be compelled to give consent for compounding. However, in such cases, the court can quash the proceedings if their continuance would defeat the ends of justice. The Supreme Court quashed the proceedings in this case when the complainant refused to give his consent for compounding after the accused had repaid the cheque amount with interest.

Case - Raj Reddy Kallem vs. State of Haryana & Anr.

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