

NEWSLETTER

October 2023

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BOARD NOMINATION RIGHTS TO UNITHOLDERS OF REAL ESTATE INVESTMENT TRUSTS (“REITS”)¹

The Securities Exchange Board of India (“SEBI”) has issued a circular dated September 11, 2023 on board nomination rights to unitholders of REITs. As per the SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, unitholders who hold 10% (ten percent) or more of the total number of outstanding REIT units are eligible to nominate one director to the board of directors of the manager or investment manager, either individually or collectively.

Accordingly, the SEBI has released a framework for unitholders of REITs allowing them to exercise their board nomination rights.

According to the framework, the manager of a REIT must assess whether the eligible unitholders who have used their board nomination right continue to possess the necessary number of REIT units and submit a report on the matter. Each month's review must be completed within 10 (ten) days of the end of the month.

Further, the report must be submitted by the manager/investment manager to the trustee of the REIT concerned.

The circular came into effect immediately i.e. September 11, 2023.

REGULATORY REPORTING BY AIFs²

SEBI has issued a circular dated September 14, 2023 on regulatory reporting by the Alternative Investment Funds (“AIF”). The circular mandates the AIFs to submit quarterly

reports to SEBI regarding the activities carried on by the AIFs in a specified format. AIF Industry Association- IVCA and Equalifi (“Association(s)”) have been directed to host the revised reporting format on their website within 2 (two) working days of the issuance of the circular. Furthermore, the Associations must assist the AIFs in understanding any reporting requirements or issues. The quarterly report has to be submitted by the AIFs online, through the SEBI's intermediary portal, within 15 (fifteen) days from the end of each quarter. Additionally, the circular also propels periodic review to align the AIFs with the evolving industry landscape. Any revisions regarding this will be made available on the association websites at least one month prior to the end of the quarter.

ENHANCEMENT OF SEBI'S COMPLAINT REDRESSAL SYSTEM (“SCORES”) PLATFORM³

SEBI has issued a circular dated September 20, 2023 on the SCORES platform. The circular has introduced significant amendments in the SCORES platform that was introduced in the year 2011 for providing a facilitative platform to aggrieved investors, whose grievances against (a) listed company, (b) registered intermediary or (c) market infrastructure institution (“Entities”) remain unresolved.

The important aspects of this circular are as follows:

- (a) All Entities who are in receipt of complaints of the investors through SCORES, shall resolve the complaint within 21 (twenty-one) days of receipt of such complaint. The entities must also upload an Action Taken Report (“ATR”) report on SCORES within the mentioned timeline.

¹ SEBI/HO/DDHS-PoD-2/P/CIR/2023/154

² SEBI/HO/AFD/SEC-1/P/CIR/2023/0155

³ SEBI/HO/OIAE/IGRD/CIR/P/2023/156

- (b) Complaints against the Entity shall be simultaneously forwarded through SCORES to the relevant designated body as mentioned under schedule II of this circular. The designated body shall ensure that the Entity uploads the ATR within the stipulated timeline.
- (c) The complainant can choose to review the resolution provided by the Entity within 15 (fifteen) days from the date of ATR if the complainant is dissatisfied with the resolution provided. The concerned designated body as mentioned in Schedule II shall take cognizance of first review and must submit the revised ATR on SCORES within 10 (ten) days of the review sought. The designated body has the right to take cognizance of the complaint if the Entity does not upload the ATR within the stipulated timeline.
- (d) The complainant has a right to seek second review if he is not satisfied with the ATR provided by the designated body. The complainant must exercise his right of review within 15 (fifteen) days. SEBI shall take cognizance of second review. SEBI has the right to take cognizance of the complaint if the concerned designated body fails to upload the ATR within the stipulated timeline.
- (e) Companies intending to get their securities listed and designated bodies as mentioned in schedule II of this circular must obtain SCORES authentication.
- (f) Designated stock exchanges have been given the responsibility of ensuring that the listed company complies with the merit of this circular.

The circular shall come into force from December 04, 2023.

EXTENSION OF TIMELINES FOR NOMINATION IN ELIGIBLE DEMAT ACCOUNTS, AND FOR SUBMISSION OF PAN, NOMINATION AND KYC DETAILS BY PHYSICAL SECURITY HOLDERS, ALONG WITH VOLUNTARY NOMINATION FOR TRADING ACCOUNTS⁴

SEBI vide circular dated September 26, 2023 has extended the timeline for submission of choice of nomination for demat accounts to December 31, 2023, while making the said submission voluntary for trading accounts. Additionally, for holders of physical securities, the last date for submission of their PAN, nomination, contact details, bank account details and specimen signature for folio numbers has been extended to December 31, 2023.

The circular came into force with immediate effect, i.e., September 26, 2023.

⁴ SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/158

⁵ SEBI/HO/CFD/PoD-1/P/CIR/2023/157

MASTER CIRCULAR FOR MERCHANT BANKERS⁵

SEBI has released a master circular dated September 26, 2023 for merchant bankers registered with SEBI. The master circular compiles the previously issued circulars covering matters related to their registration, and their general obligations and responsibilities. It additionally provides guidelines on the processing of investor complaints, prevention of circulation of unauthenticated news, outsourcing of activities, and conflict of interest.

This master circular provides the online registration mechanism for merchant bankers and the procedure for obtaining prior approval for change in control of merchant bankers. It also states the considerations for their registration, the type of activities to be undertaken by them and clarifications on transfer of business from one legal entity that is a SEBI registered intermediary.

The master circular rescinds the SEBI circulars as mentioned in its appendix, to the extent they relate to merchant bankers.



The significant developments in Indian antitrust law for the month of September are outlined as follows:

COMPETITION ACT COMPLAINT AGAINST HERO MOTO CORP LIMITED AND OTHERS

Shri Balaji Enterprises, acting as the Informant, initiated a formal complaint under Section 19(1)(a) of the Competition Act, 2002 (**Act**), alleging transgressions of Sections 3 and 4 of the Act by a consortium of entities, collectively identified as 'OPs.' This consortium included Hero Moto Corp Limited (Head Office) (**OP-1**), Hero Moto Corp. Limited (Zonal Office) (**OP-2**), Hero Moto Corp. Limited (Regional Office) (**OP-3**), M/s Venkateshwara Associates (Hero Spare Parts Stockist) (**OP-4**), Maruthi Agencies (**OP-5**), Manish Enterprises (**OP-6**), Shyam Auto Mobiles (**OP-7**), and Hero Moto Corp. Limited (**OP-8**).

The crux of the complaint centered on the trade discount policies of Hero Moto Corp Limited and its regional and zonal offices, as well as their support for other entities. Specific issues brought to light encompassed unfair trade practices, the imposition of advance payment requirements, constraints on stock purchases, penalties, and the unequal treatment of stakeholders.

The Informant alleged that OP-1's trade discount policy for the fiscal year 2019-20 unjustly burdened them as Hero Global Parts Distributors (HGPDs). This policy imposed onerous conditions regarding payment, stock procurement, and incentives while favoring OPs 5 to 7. Furthermore, the Informant contended that the support provided by OPs 1 to 4 to OPs 5 to 7 resulted in stifling competition and causing financial losses. The proliferation of counterfeit goods in the market added to the detriment of the Informant's business. The imposition of challenging monthly targets and threats of distribution ship cancellation further exacerbated their predicament.

Despite earnest efforts to resolve these issues through communication, the Informant found that OPs failed to adequately address their concerns. The core of the Informant's allegations revolved around allegations of discriminatory practices, market suppression, and the perceived lack of support from OPs 1 to 4.

However, upon thorough examination, the Competition Commission of India (CCI) determined that there were no established violations of Section 3 or 4 of the Act. The CCI took note that the Informant's assertions regarding the dominance of OPs 5 to 7, arising from the actions of other OPs, did not warrant consideration. Consequently, the Commission concluded that no competition-related concerns could be substantiated based on the allegations and conduct elucidated by the Informant.

SOBHAGAYA MEDIA'S ALLEGATIONS AGAINST DEN NETWORKS LTD. NOT UPHELD

In a legal proceeding initiated against DEN Networks Ltd. (DEN), Sobhagaya Media Pvt. Ltd. (referred to as the "Informant") lodged allegations of breaches pertaining to Sections 3 and 4 of the Competition Act, 2002 (the "Act"). The Informant, a cable television provider, contended that DEN was imposing exorbitant carriage charges for the carriage of the Informant's channel, "APN," on its network, while simultaneously acting as an intermediary for multiple broadcasters.

As per the Informant's assertions, DEN was imposing higher carriage fees on them in comparison to other media entities, including News Nation Network Private Limited, Information TV Private Limited, Zee Media Corporation Limited, ABP News, among others. DEN was accused of contravening Sections 3(4) and 4 of the Act. Additionally, the Informant asserted that DEN had purportedly disregarded a TRAI notification that supposedly imposed constraints on the

carriage costs it could lawfully collect, leading to a demand for a refund of the excess payments made.

The Competition Commission of India (CCI) scrutinized the case, considering the unique attributes of cable TV services. The CCI emphasized that cable TV, DTH (Direct-to-Home), IPTV (Internet Protocol Television), and other platforms were not interchangeable due to disparities in technology, outreach, and service offerings. The relevant market was identified as the cable TV services market in the State of Uttar Pradesh.

In the evaluation of DEN's market dominance, the CCI took note of the multitude of companies operating in the industry, which implied low barriers to entry. Consequently, the CCI arrived at the conclusion that DEN did not possess a dominant position. Regarding the alleged excessive carriage fees, the CCI underscored the Informant's deficiency in providing supporting evidence.

In light of these considerations, the CCI ultimately determined that DEN had not violated either Section 3(4) or Section 4 of the Act. Consequently, the matter was dismissed in accordance with Section 26(2) of the Act. The Informant's plea for relief under Section 33 of the Act was thus regarded as unwarranted.

NCLAT TO COMMENCE HEARING GOOGLE'S PLEA AGAINST CCI'S RS 936.44-CRORE PENALTY

The National Company Law Appellate Tribunal (NCLAT) is scheduled to commence hearings on November 28th in Google's appeal against the Competition Commission of India (CCI) imposing a penalty of Rs 936.44 crores on the tech giant. The penalty was imposed due to allegations of Google abusing its dominant position concerning Play Store policies.

Earlier this year, on April 17th, one of the NCLAT's judicial members, Justice Rakesh Kumar, recused himself from hearing the plea. The matter was recently listed before an NCLAT bench chaired by Justice Ashok Bhushan and Alok Srivastava. The bench directed all parties involved, including contesting start-ups and the CCI, to submit their responses within four weeks. Google was also given a two-week window to file rejoinders, if necessary.

The NCLAT has set the date for the hearing on November 28th. This legal battle emerged following the CCI's decision on October 25, 2022, to impose a substantial penalty on Google, along with directives to cease unfair business practices and address anti-competitive concerns within a specific timeframe. Google has challenged these actions before the NCLAT, the appellate tribunal responsible for reviewing decisions made by the CCI.

Earlier this year, on January 11th, the NCLAT bench, comprising Justice Kumar and Srivastava, had declined to grant interim relief to Google, which had sought a stay on the imposed penalty.

CCI APPROVES CARLSBERG BREWERIES' ACQUISITION DEAL

The CCI has granted clearance for Carlsberg Breweries' proposed acquisition of an additional 33.33 percent stake in Carlsberg South Asia Pte Ltd. This approval was granted through the green channel route, signifying the absence of antitrust concerns.

The envisaged transaction involves Carlsberg Breweries A/S (**CBAS**) acquiring an additional 33.33 percent equity share capital (on a fully diluted basis) in Carlsberg South Asia Pte Ltd (**CSAPL**).

CBAS operates in the manufacturing, marketing, and distribution of alcoholic beverages across various brands globally. The company's presence in India is established through Carlsberg India Pvt Ltd (**CIPL**), with no other direct or indirect business presence in the country.

CSAPL functions as the holding company of South Asian Breweries Pte Ltd, Singapore, which, in turn, acts as the holding company for CIPL.

The CCI noted, "There are no horizontal overlaps, vertical/complementary links between the activities of the parties and their respective groups/affiliates." Consequently, the proposed transaction was filed under the green channel route, a regulatory mechanism whereby transactions deemed not to pose appreciable adverse effects on competition are approved upon intimation to the fair-trade regulator.

DISPUTE RESOLUTION



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ACCRUAL OF CAUSE OF ACTION AT A PLACE IS NOT A CONSIDERATION FOR DETERMINING JURISDICTION FOR THE PURPOSE OF SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT 1996

The Hon'ble High Court of Delhi in *GR Builders v. M/s Metro Speciality Hospitals Pvt. Ltd.*⁶ has held that accrual of cause of action at a place is not a consideration for determining jurisdiction for the purpose of section 11 of the Arbitration and Conciliation Act 1996 ("Act"). In the said case, an Application under Section 11 of the Act was filed before the Hon'ble Delhi High Court for the appointment of an independent and impartial arbitrator as well as a declaration that the Respondent's nomination of the arbitrator is contrary to the procedure stipulated in the Letter of Intent ("LoI") executed between the parties. The Respondent had issued a LoI to the Petitioner to carry out 'Civil and Structure Work' for its proposed 'Metro Cancer Building at Sector 16A, Faridabad'. The Petitioner alleges that it had completed the work on time, however, the Respondent did not clear its outstanding payments. The Petitioner issued a notice to the Respondent which the Respondent duly responded to, whereby it appointed Mr. Justice S.N. Agarwal (Retd.) as its sole arbitrator. Petitioner responded to the Respondent's reply and conveyed its objection regarding the appointment of the arbitrator and filed the Application under Section 11 of the Act.

The Respondent raised an objection that the Hon'ble High Court of Delhi did not have territorial jurisdiction to entertain the said Application as the courts of Punjab and Haryana was the appropriate court in terms of the LoI. The Petitioner countered the said objection by stating that since the LoI was signed in Delhi and a preliminary hearing of the arbitrator had taken place in Delhi, the courts of Delhi had jurisdiction to entertain the said Application. The Hon'ble High Court of Delhi rejected the Petitioner's contention and observed that

the accrual of cause of action at a place for pursuing a substantive legal action is not a consideration for determining jurisdiction for the purposes of Section 11 of the Act. It further observed that the location of the arbitration seat will be a relevant consideration. In the said case, as per clause 31.16, the place of arbitration is Faridabad (Haryana), which would be chosen as the seat, since the seat has not been separately named and there is no other contrary indicia to show that the place of arbitration was not intended to be the seat of arbitration and accordingly dismissed the said the Application for want of territorial jurisdiction.

LIQUIDATED DAMAGES PROVIDED IN THE AGREEMENT CANNOT BE AWARDED TO A PARTY IN ABSENCE OF THE PROOF OF ACTUAL LOSS

The Hon'ble High Court of Delhi in *Vivek Khanna v. OYO Apartments Investments LLP*⁷ has held that liquidated damages provided in the agreement cannot be awarded to a party in absence of the proof of actual loss. In the said case, the parties entered into a Lease Agreement dated 18.02.2019 ("Agreement"). As per the said Agreement, the Petitioner had leased out the premises to the Respondent for a period of 5 years, with a lock-in period of 3 years. In terms of Clause 14 of the Agreement, disputes had to be resolved through arbitration and Delhi was the designated seat of arbitration. A dispute arose between the parties and the Respondent approached the court for the appointment of arbitrator. The Court appointed the arbitrator which adjudicated the disputes between the parties and passed the arbitral award on 31.03.2023. The arbitral award observed that while the termination was illegal, it did not allow the majority of the claims preferred by the Petitioner as no proof of actual loss was furnished. Also, the tribunal partly allowed the counterclaims preferred by the Respondent. Aggrieved by the arbitral award, the Petitioner filed an Application under Section 34 of the Arbitration & Conciliation Act 1996

⁶ ARB P. 628 of 2023

⁷ OMP (Comm) No. 266 of 2023

("Act") on the ground that the finding of the tribunal is inconsistent in as much as the tribunal held the termination to be illegal but disallowed the consequent damages. The Hon'ble High Court of Delhi while dismissing the Application observed that the sum agreed by the parties as liquidated damages would not dispense with the requirement of proof by the party claiming liquidated damages that it suffered a loss. It further observed that a sum ascertained as liquidated damages in the contract is not in the nature of penalty but is a pre-estimate of loss estimated by the parties likely to be suffered by a party in the event of a breach of contract by the other party. It held that Liquidated damages are not payable merely as a penalty for breach of contract if no loss is suffered. The Court also observed it is the quantification of loss that would not require any substantiation if the loss is suffered by a party and a pre-estimated sum is agreed by the parties as liquidated damages for such loss.

WHEN CLAIMANT FAILS TO SUBSTANTIATE ITS COMPLETE CLAIM, NO ERROR IS COMMITTED BY RP IN ADMITTING THE LESSOR VALUE CLAIM AS PER THE BALANCE SHEET OF THE CORPORATE DEBTOR

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi in the case of *Engineering Mazdoor Parishad Devas Through Its General Secretary v. Teena Saraswat Pandey*⁸ held that it is the Claimant's obligation to substantiate its claim and in case, the Claimant fails to do so, the Resolution Professional ("**RP**") can't be faulted for admitting the Claimant's claim basis the balance sheet of the Corporate Debtor.

In the present case, Engineering Mazdoor Parishad Devas ("**Engineering Mazdoor**" / "**Appellant**") represented the workmen of the Corporate Debtor. Engineering Mazdoor filed a claim of Rs. 26 Crores before the RP. However, the RP admitted the claim up to Rs. 96,83,497/- only i.e. the amount reflected in the balance sheet of the Corporate Debtor. Subsequently, the Committee of Creditors ("**CoC**") approved the resolution plan whereby it was proposed that the workmen dues of Rs. 96,83,497/- will be paid to the workmen. Aggrieved by the aforesaid, Engineering Mazdoor filed an IA before the Hon'ble National Company Law Tribunal ("**NCLT**") inter alia seeking a direction to Resolution Professional to consider and settle the workmen's claim of Rs. 26 Crores. On 10.07.2023, the Hon'ble NCLT dismissed Engineering Mazdoor's application and approved the said resolution plan. Hon'ble NCLT noted that the workmen's claim was unsubstantiated with any document whereas the RP relied on the balance reflected in the Balance Sheet to approve the claim. Aggrieved the aforementioned order dated 10.07.2023, Engineering Mazdoor filed an appeal before the Hon'ble NCLAT.

After hearing the arguments from both sides, the Hon'ble NCLAT dismissed the Appeal while noting that it does not find any reason to interfere with the order dated 10.07.2023 passed by the Hon'ble NCLT. The Hon'ble NCLAT further noted that it is the Claimant's obligation to substantiate its claim and in case the Claimant fails to do so, RP can't be faulted for admitting the Claimant's claim basis the balance sheet of the Corporate Debtor especially since the Appellant's claim was not substantiated by any document.

CIRP CANNOT BE INITIATED FOR DEFAULTS DURING THE EXCLUDED TIMELINE UNDER SECTION 10A OF IBC

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi in the case of *Vikram Kumar, Proprietor, Sourya Containers Leasing Company v. Aranca (Mumbai) Private Limited*⁹ reiterated that since the invocation of bank guarantee for default was within the excluded period specified in Section 10-A of the Insolvency and Bankruptcy Code ("**Code**"), Corporate Insolvency Resolution Process ("**CIRP**") cannot be initiated against it.

In the present case, the Corporate Guarantor issued an irrevocable Deed of Guarantee in favour of the Financial Creditor for a loan obtained by Meher Miracles Pvt. Ltd. ("**Debtor**"). Subsequently, on 25.08.2020, the Financial Creditor invoked the Corporate Guarantee after the Debtor failed to make the payment. The Corporate Guarantor also failed to make the payment following the invocation of the Guarantee. Therefore, the Financial Creditor filed an application under Section 7 of the Code to initiate the CIRP against the Corporate Guarantor before the Hon'ble National Company Law Tribunal, Mumbai ("**NCLT**"). During the course of arguments, Counsel for the Financial Creditor argued that the Guarantee was invoked vide letter dated 11.06.2019. The Counsel for the Corporate Guarantor argued that the aforementioned letter dated 11.06.2019 was addressed to Mr. Hemendra Aran and Mrs. Gitanjali Sinha in their personal capacity and the same cannot be treated as an invocation of the corporate guarantee against the Corporate Guarantee. Further, counsel for the Corporate Guarantor provided evidence of the calculations of the Claim, including interest accrued until 24.08.2020. On 09.03.2023, NCLT dismissed the Section 7 application citing non-maintainability of the same. The Hon'ble NCLT held that since the Financial Creditor invoked the Corporate Guarantee on 25.08.2020, it falls squarely within the period specified under Section 10-A of the Code, therefore, making it ineligible for initiating CIRP. Aggrieved by the Order dated 09.03.2023, the Financial Creditor filed the present Appeal.

On 14.09.2023, the NCLAT dismissed the appeal and held that the default falls within the excluded period specified in Section 10-A of the Code, as the Notice for invoking the Bank Guarantee was issued on 25.08.2020. The Hon'ble NCLAT

⁸ Comp. App. (AT) (Ins.) No. 1200 of 2023

⁹ Company Appeal (AT) (Insolvency) No. 836 of 2023

noted that debt became due on invocation of Corporate Guarantee. The Hon'ble NLCAT reiterated Section 10-A of the Code and held that CIRP cannot be initiated for defaults

that occurred within a 12-month period starting from 25.03.2020.

EMPLOYMENT LAW

EMPLOYEES' STATE INSURANCE CORPORATION EXTENDS THE BENEFITS UNDER THE ATAL BEEMIT VYAKTI KALYAN YOJANA

Employees' State Insurance Corporation ("ESIC"), vide notification dated September 1, 2023, has extended the benefits under the 'Atal Beemit Vyakti Kalyan Yojana' for a period from July 1, 2022, to June 30, 2024. The benefits in relation to the date of relief, eligibility conditions for the scheme and filing a claim for relief have also been relaxed through the aforementioned notification.

The primary objective of the said scheme was to provide financial support to individuals who were facing unemployment during the COVID-19 pandemic. Under the said scheme, unemployment benefit is paid to the workers covered under the various ESIC schemes. Unemployment benefit is paid in the form of cash compensation for up to 90 (Ninety) days, once in a lifetime, to be claimed after 90 (Ninety) days in one or more spells for being rendered unemployed.

APPEAL FROM THE WORKER'S COMPENSATION COMMISSION CAN BE ENTERTAINED ONLY IF THERE IS A SUBSTANTIAL QUESTION OF LAW

The Supreme Court of India, in the case of *Fulmati Dhramdev Yadav v. New India Assurance Co.*, vide order dated September 4, 2023, noted *inter alia* that the scope of an appeal under the Workmen's Compensation Act, 1923 is limited to substantial questions of law only. In the said case, an employee had died due to an accident while on duty. The commissioner appointed as per the Workmen's Compensation Act 1923 in Bhuj (Kutch) ("Commissioner") had directed the insurer (respondent) to pay as compensation INR 3,94,120 (Rupees Three Lakhs Ninety-Four Thousand One Hundred Twenty). However, this order by the Commissioner was set aside by the High Court of Gujarat on the grounds that the deceased was neither

working with the employer nor had he received injuries and died on the date of the occurrence of the incident. The employee's mother and wife filed an appeal in the Supreme Court of India.

While allowing the appeal, the Supreme Court of India noted that there are circumstances that show that the deceased person was on the roll of the employer. Further, it also noted that beneficial construction must be given to legislations with the intention of social welfare and that any appeal under the Workmen's Compensation Act, 1923 should be limited to substantial questions of law only. Thus, the order of the High Court of Gujarat was set aside, and compensation was awarded to the appellants.

COMPENSATION TO THE LEGAL HEIR OF THE DECEASED EMPLOYEE IS TO BE AWARDED WITH INTEREST

The High Court of Jharkhand, vide order dated September 5, 2023, in the case of *Jugal Kishor Ray v. Ashok Prasad Yadav*, held that compensation with interest is to be mandatorily paid to the legal heir of a deceased employee.

The trial court had passed an order awarding the amount of compensation to the appellant (legal heir of the deceased employee) without any interest which is mandatory as per Section 4(A) of the Workmen's Compensation Act, 1923. The High Court, in the order, modified the trial court's conclusion and ordered a payment of simple interest at 12% (Twelve Percent) per annum from the date of death of the deceased, i.e., on January 28, 2009, till the date of actual payment on the original award amount.

WORKING FOR A LONG PERIOD ON A CONTRACTUAL BASIS DOES NOT CREATE A RIGHT FOR REGULARIZATION

The Supreme Court of India, vide order dated September 12, 2023, in the case of *Ganesh Digamber Jambhrunkar v. The State of Maharashtra & Ors.*, held that no vested legal right

is acquired for regularisation in service by working for a long period of time on a contractual basis. The High Court of Bombay had earlier rejected the appellant's claim mainly on the ground that they have no right to seek regularisation of their service. The Apex Court, in the present case, passed an order rejecting the appellant's claim and stated that continuous working for a long period does not create any legal right to seek regularization of their service.

GOVERNMENT OF WEST BENGAL ISSUES GUIDELINES FOR BONUS DUES TO WORKERS FOR DURGA PUJA

The Labour Department of the Government of West Bengal, vide notification dated September 15, 2023, issued guidelines under the Payment of Bonus Act, 1965 for bonus dues to workers for Durga Puja, 2023. The aforementioned notification states:

- (i) The rate of bonus payable shall not be less than the bonus paid last year. Employers may also consider payment of an amount of ex-gratia in lieu of bonus as is admissible at the maximum stage, to workmen and employees who have crossed the eligibility limit.
- (ii) All employees that have worked for at least 30 (Thirty) days in the previous year should be paid bonus and employers that have defaulted in the payment of bonus in the previous years, may make these payments in the present year along with the bonus for this year.
- (iii) Trade unions and employers' organisations are requested to cooperate in the peaceful and effective settlement of disputes concerning the payment of bonuses to avoid disruption of work.
- (iv) All payments of bonuses should be completed by October 6, 2023, and employers are expected to pay bonuses to persons who are employed in the unorganized sector and not covered under the Payment of Bonus Act, 1965.

REMOVAL OF JOB ADS VIOLATING THE MINIMUM WAGES ACT, 1948 FROM THE 'ROZGAR BAZAAR' PORTAL

The High Court of Delhi, vide order dated September 18, 2023, in the case of *Md Imran Ahmad v. Government of National Capital Territory of Delhi* issued a directive to the Delhi Government, instructing not to publish any job advertisements on its "Rozgar Bazaar portal" that do not comply with the Minimum Wages Act, 1948.

A Public Interest Litigation was filed by the petitioners arguing that a software was developed to enable anyone to post advertisements about jobs irrespective of the job categories and specifications. The petitioners also added that some employers registered on the portal were advertising job vacancies at minimum wage rate less than the prescribed rates of minimum wages as notified by the Labour Department of the Government of Delhi. Take note of the same, the High Court of Delhi, thus directed the Delhi

Government to not post any advertisements that were non-compliant with the Minimum Wages Act, 1948.

COVERAGE UNDER ESIC IS EXTENDED FOR THE CASUAL/CONTRACTUAL WORKERS UNDER MUNICIPAL CORPORATIONS OR BODIES IN TAMIL NADU AND ODISHA

ESIC, vide notification dated September 18, 2023, extended the coverage under Section 1(5) of the Employees' State Insurance Act, 1948 ("ESI Act") to casual or contractual workers of municipal corporations or municipal bodies in the states of Tamil Nadu and Odisha. The scheme has been extended for the workers of the following class of establishments:

- (i) Municipal bodies like municipal corporations and municipal councils; and
- (ii) Urban local bodies constituted by the state government wherein ten or more persons on a casual or contractual basis or both are employed for wages on any day of the preceding 12 (Twelve) months.

SALIENT FEATURES AND GUIDELINES OF PM VISHWAKARMA SCHEME RELEASED BY MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES

Ministry of Micro, Small & Medium Enterprises, vide press release dated September 20, 2023, published the salient features and guidelines of PM Vishwakarma Scheme of PM Vishwakarma ("Scheme"), a central sector scheme launched by the Prime Minister on September 17, 2023, to provide end-to-end support to artisans and craftspeople who work with their hands and tools.

The Scheme covers artisans and crafts people engaged in 18 (Eighteen) trades, viz. carpenter, boat maker, armourer, blacksmith (lohar), hammer and tool kit maker, locksmith, goldsmith (sonar), potter (kumhaar), sculptor (moortikar, stone carver), stone breaker, cobbler (charmkar) etc.

The Scheme provides various benefits to artisans and crafts persons such as recognition through the PM Vishwakarma certificate and ID card, skill upgradation, toolkit incentives and credit support. Moreover, incentives for digital transactions and marketing support have also been provided. The enrolment of beneficiaries shall be done through common service centres with AADHAAR-based biometric authentication on the PM Vishwakarma portal and will be followed by a three-step verification which will include:

- (i) Verification at Gram Panchayat/ urban local body level;
- (ii) Vetting and recommendation by the District Implementation Committee; and
- (iii) Approval by the Screening Committee.

THE PUNJAB GOVERNMENT EXEMPTS ALL FACTORIES FROM CERTAIN PROVISIONS OF THE FACTORIES ACT, 1948

The Department of Labour, Punjab Government, vide notification dated September 20, 2023, has exempted all the factories from the application of multiple provisions under the Factories Act, 1948. The aforesaid notification exempts the application of Section 51 (*weekly hours*), Section 52 (*weekly holidays*), Section 54 (*daily hours*) and Section 56 (*spread over*) of the aforesaid act, subject to certain conditions described herein:

- (i) The total number of hours in a day shall not exceed 12 (Twelve), and the spread over inclusive of intervals shall not exceed 13 (Thirteen) hours in a day.
- (ii) The total number of hours in a week shall not exceed 60 (Sixty).
- (iii) No worker shall work overtime at a stretch for more than 7 (Seven) days, and total overtime hours shall not exceed 115 (One Hundred Fifteen).
- (iv) Minimum wages for overtime shall be paid to workers as per Section 59 of the Factories Act, 1948 along with

the wages under the Minimum Wages Act, 1948 and the Punjab Minimum Wages Rules, 1950.

ESIC TO IDENTIFY UNREGISTERED ESTABLISHMENTS

ESIC, vide notification dated September 21, 2023, directed all the ROs/SROs/regional directors to identify the coverable but not covered units under ESIC. In order to identify the uncovered factories, units etc., the regional directors/ SROs in charge are advised to liaise with the Employees' Provident Fund Organisation and other departments of the State and Central Government or their local officers like the Central Board of Secondary Education, universities etc., and obtain data available with them regarding factories/establishment registered with them.

ROs/SROs will then have to scrutinize the list of units obtained from the various agencies mentioned above. The covered units from the list will be segregated and the uncovered units which are coverable will be covered under the provisions of the ESI Act by issuing a letter to the employers to get their establishments, units or factories covered.

ENERGY

THE MINISTRY OF POWER NOTIFIED THE ELECTRICITY (AMENDMENT) RULES, 2023 ON SEPTEMBER 1, 2023, TO AMEND THE ELECTRICITY RULES, 2005 (“AMENDMENT RULES”)

The Amendment Rules aim to deal with the issue involving captive power generating plants in India. Rule 3 of the Electricity Rules 2005 has been amended and has undergone several modifications. The definition of captive consumers has been broadened: (i) In Sub-Rule (1), in Clause (a), in Sub-Clause (i), for the words ‘captive user’, the words ‘captive users; and’ has been substituted, (ii) Section 3(b) has been amended to include ‘Provided further that the consumption by a subsidiary company as defined in Clause (87) of Section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in Clause (46) of Section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also be admissible as captive consumption by the captive user.’, (iii) The captive status of such generating plants, where captive generating plant and its captive users are located in more than one state, shall be verified by the Central Electricity Authority as per the procedure issued by the Authority with the approval of the Central Government.

THE MINISTRY OF POWER ISSUED NATIONAL FRAMEWORK FOR PROMOTING ENERGY STORAGE SYSTEMS (FRAMEWORK) IN INDIA ON SEPTEMBER 01, 2023

The Ministry of Power has published the National Framework for promoting Energy Storage Systems, which is a comprehensive document outlining the steps taken by the Government of India for mainstreaming of energy storage as a critical component of power system and the way forward for Energy Storage in India. Energy storage systems to be developed and supported through a slew of policy & regulatory measures, financial and performance-based

incentives. The framework will serve as a one stop destination for concerned stakeholders to get a holistic view of Government of India's approach towards energy storage as a crucial ingredient for India's energy transition.

THE MINISTRY OF POWER (“MOP”) ISSUED DIRECTIONS VIDE NOTIFICATION TO ALL GENERATING COMPANIES (“GENCOS”) INCLUDING INDEPENDENT POWER PRODUCERS (“IPP”) FOR TIMELY IMPORT OF COAL FOR BLENDING PURPOSES AND MAXIMIZING PRODUCTION IN CAPTIVE COAL MINES ON SEPTEMBER 01, 2023

The MoP issued the said notification in view of the rise in demand to 200 GW practically every day in the month of August 2023, and reached the highest ever peak demand of 236.6 GW, which is almost 21% more than the peak demand in the month of August 2022. Since the energy demand does not match the coal requirements, the necessity to continue using imported coal for blending has emerged. As a result, blending should be reduced to 4% for the remainder of FY 2023-24. The notification states that the central, state and the IPPs are required to take appropriate measures to import coal for blending at the rate of 4% via competitive bidding process until March 31, 2024. The deficit in the domestic coal supply will be shared on a pro rata basis by all the GENCOs. Further, it states that it shall be assured that each respective Pit Head Stations get 100% of their domestic coal need when determining share of domestic coal to be supplied to GENCOs from CIL/SCCL. In case domestic coal is readily available, GENCOs should avoid utilizing imported coal at their Pit-Head stations.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (“MNRE”) VIDE AN OFFICE MEMORANDUM DATED SEPTEMBER 11, 2023, EXTENDED THE WAIVER OF DOMESTIC CONTENT REQUIREMENT (DCM) FOR SOLAR CELLS UNDER PM KUSUM SCHEME

The MNRE vide its Office Memorandum No. 32/645/2017-SPV Division dated 11.09.2023 extended the existing waiver/relaxation for requirement of indigenous solar cells under Component C (FLS) of the PM Kusum Scheme till 31.03.2024. This extension comes in continuation to the earlier Office Memorandum dated 01.08.2022 regarding issuance of extension of PM Kusum Scheme, where condition of DCR for solar cells was waived off for projects awarded on or before 20.06.2023. The Ministry, keeping in mind various representations made to them and difficulties faced by stakeholders and SIAs owing to then bidding process, approved the extension of waiver of domestic content requirements for solar cells under Component C (FLS) of the PM Kusum Scheme.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (“MNRE”), GOVERNMENT OF INDIA, RELEASED A PRESS RELEASE DATED SEPTEMBER 11, 2023 ANNOUNCED THAT THE GOVERNMENT OF THE REPUBLIC OF INDIA SIGNED A MEMORANDUM OF UNDERSTANDING (“MOU”) WITH THE GOVERNMENT OF KINGDOM OF SAUDI ARABIA

To advance co-operation between nations for developments in the field of energy, Government of the Republic of India signed a Memorandum of Understanding (“MoU”) with the Government of Kingdom of Saudi Arabia on September 10, 2023. The MoU was signed by Mr. R. K. Singh, Union Minister for New & Renewable Energy and Power, Government of India, and His Royal Highness Abdulaziz bin Salman Al-Saud, Minister of Energy for the Kingdom of Saudi Arabia.

This MoU is geared towards deepening the energy collaboration between India and Saudi Arabia, especially in the energy sector. Through this MoU, both countries confirm their resolve to combat climate change by transitioning to clean energy and transforming the global energy system. The MoU specifies areas of cooperation between India and Saudi Arabia, which are: (i.) Renewable Energy, Energy Efficiency, Hydrogen, Electricity and Grid Interconnection between the

two countries, Petroleum, Natural Gas, Strategic Petroleum Reserves and Energy Security, (ii.) Encouraging bilateral investment in the field of Renewable Energy, Electricity, Hydrogen and Storage; and Oil & Gas, (iii.) Circular Economy and its technologies to reduce the effects of climate change, such as: carbon capture, utilization, and storage, (iv.) Promoting digital transformation, innovation and cybersecurity and artificial intelligence in the field of Energy, (v.) Working on developing qualitative partnerships between the two countries to localize materials, products and services related to all sectors of energy, supply chains and its technologies, (vi.) Strengthening the cooperation with companies specialized in the field of energy, and (vii.) any other fields related to the energy field that the two countries agree upon.

THE MINISTRY OF PETROLEUM AND NATURAL GAS VIDE PRESS RELEASE DATED SEPTEMBER 23, 2023 ANNOUNCED THE FLAGGING OFF OF 1ST GREEN HYDROGEN FUEL CELL BUS

The Union Minister of Petroleum & Natural Gas and Housing and Urban Affairs, Mr. Hardeep Puri flagged off 1st Green Hydrogen Fuel Cell Bus at Kartavya Path, New Delhi on September 25, 2023. This serves as a significant push towards green mobility. Green Hydrogen produced using renewable energy has the potential to directly replace fossil fuel derived feedstocks in petroleum refining, fertilizer production etc. The press release stated the advantages of power of fuel cells as it is emerging as a key factor in the e-mobility paradigm. Indian Oil initiated a scientifically designed program to undertake operational trials of 15 Fuel Cell buses powered by Green hydrogen on the identified routes in Delhi, Haryana and U.P. Under this program, first set of 2 fuel cell buses were launched on 25.09.2023 (Monday) from India Gate. This project is the first ever initiative in India to dispense green hydrogen at 350 bar to operate fuel cell buses.

INFRASTRUCTURE

AWARD FOR WORK IN RESPECT OF CONSULTANCY SERVICES TO CONSULTANTS

NHAI vide circular bearing number 10.1.36/2023 dated September 26, 2023 (“Circular”), issued directions in relation to awarding of work in respect of consultancy services to consultants.

Key stipulations as provided in the Circular are detailed hereinbelow:

- All the technical divisions of NHAI must adhere to the timelines for the evaluation of bids in relation to consultancy assignments, (i.e., assignments in relation to services of supervision consultants/independent engineers/authority’s engineer/ detailed project report consultants) and

the said evaluations must be completed before the expiry of the original bid validity period of 120 (one hundred and twenty) days.

- The letter of award must be issued to the H1 consultancy firm before the expiry of the original bid validity period and interaction of the key personnel of the respective consultancy services with the evaluation committee of NHAI must only be taken up post the issuance of the letter of award.
- Approval of the chairman of NHAI must be obtained in cases of extension of the bid validity period for consultancy assignments before consent of the bidders is obtained in this regard.



OPERATION OF PRE-SANCTIONED CREDIT LINES AT BANKS THROUGH UPI

The RBI, in its notification dated September 04, 2023, expanded the scope of UPI to include credit lines as a funding account. The proposal for the same was first stipulated by the RBI in its “Statement on Developmental and Regulatory Policies” dated April 06, 2023, where it expressed its intention of enabling transfer from pre-sanctioned credit lines at banks through UPI, in addition to deposit accounts.

The development aims to further expand the scope of UPI, by including pre-sanctioned credit lines issued by scheduled commercial banks, to the existing modes of savings accounts, overdraft accounts, prepaid wallets and credit cards of the customers. To implement these UPI-enabled credit lines, commercial banks are required to adopt board-approved policies, stipulating the terms and conditions of use of such credit lines, including but not limited to credit limit, period of credit, rate of interest, and the like.

DSK View: *India has become a UPI-reliant economy, with 75% of digital retail payments made using UPI. Integrating UPI with credit lines of commercial banks will most likely boost the creation of a more imbibing business atmosphere for NBFCs in India. Expansion of credit functions and linking thereof with UPI will create robust circulation in the Indian economy, aggravating the push towards digitalisation.’*

Source

RBI GOVERNOR LAUNCHES KEY DIGITAL PAYMENT INITIATIVES AT GLOBAL FINTECH FEST 2023

The RBI Governor on September 06, 2023, announced a collection of product offerings developed by the National Payments Corporation of India (NPCI) at Global Fintech Fest 2023. These new products, designed to create an inclusive,

resilient, and sustainable digital payments ecosystem, include:

- i. **Credit Line on UPI:** This initiative facilitates pre-approved credit lines from commercial banks through UPI, streamlining the credit acquisition process and promoting a more efficient digital banking system. Key features include connecting pre-approved credit lines, developing digital credit products by banks, introducing interest-free credit periods, specifying charges, offering multiple channels for credit approval requests, and enabling UPI apps to discover and connect with credit/lending systems (as offered by commercial banks), ensuring seamless interoperability.
- ii. **UPI LITE X and Tap & Pay:** This allows users to conduct transactions even without an internet connection, enhancing accessibility in areas with limited connectivity. UPI LITE X is compatible with devices supporting Near Field Communication (NFC) and offers quicker transaction processing. Additionally, UPI Tap & Pay was also introduced, enabling users to make payments by tapping NFC-enabled QR codes, providing an alternative to the conventional scan-and-pay method, thus promoting the adoption of QR code and NFC technology.
- iii. **Conversational Payments:** There was also emphasis on the rise of AI-enabled transactions to deepen the utilization of digital payments and it included:
 - a. **Hello! UPI:** This feature empowers users to execute voice-enabled UPI payments in Hindi and English through UPI Apps, telecom calls, and Internet of things (IoT) devices. It aims to enhance the user experience for comparatively lesser technology-savvy population of India, such as senior citizens and digitally inexperienced

individuals. Soon to be integrated with functionality of other regional languages, it aspires to abridge the gap between technology and digitally inexperienced individuals by making it more adaptable and understandable for them. Users can issue voice commands to initiate fund transfers and complete transactions.

- b. **BillPay Connect:** Bharat BillPay introduces a centralized number for bill payments, enabling customers to settle bills via messaging apps or by simply making a missed call. Voice Assisted Bill Payments through smart home devices and instant voice confirmations at physical collection centres enhance security and convenience for both customers and collection centres.

The above-mentioned products are being released in phases for use by limited customers but soon these products will be accessible to all the customers.

DSK View: *In an effort to make micro-level banking and transactions a household affair, NPCI has been taking monumental steps to simplify participation, boost inclusion and promote contribution of every citizen in the economy. Making strides towards what appears to be a more resilient digital payments ecosystem, these schemes introduced by NPCI simplify credit acquisition, foster efficiency in digital banking while addressing connectivity challenges, offer offline transaction capabilities and promote QR code and NFC technology adoption. The emphasis on AI-enabled Conversational Payments aims to enhance user experiences and convenience while expanding digital payment utilization.*

Source

NPCI REINFORCES ITS COMMITMENT TO REVOLUTIONIZE INDIA'S DIGITAL AND FINANCIAL LANDSCAPE AT THE GLOBAL FINTECH FEST 2023

NPCI at the Global Fintech Fest 2023 introduced a wide range of groundbreaking innovations aimed at reshaping the intersections of technology, finance, and mobility. These innovations align with NPCI's steadfast commitment to advancing financial inclusivity and propelling India's economic potential. During the three-day event, NPCI unveiled several key initiatives, enlisted as follows:

- i. **UPI-ATM -Interoperable UPI QR Based Cash Withdrawal:** This initiative enables UPI-based cash withdrawals at ATMs, eliminating the need for physical cards and simplifying transactions for bank account holders.
- ii. **UPI AutoPay on QR:** This innovative solution presents merchants with a streamlined avenue to

engage their customers effectively by enabling the customers to seamlessly scan a QR code, validate their AutoPay details, and expeditiously activate services with a high degree of convenience. This enhances the overall user experience and fostering a more robust and enduring connection between merchants and their clientele.

- iii. **Aadhaar-based onboarding on UPI 123 Pay:** NPCI extended financial inclusivity by enabling feature phone users to establish UPI IDs using their Aadhaar card numbers, providing access to digital payments without the need for smartphones.
- iv. **Conversational Payment with IoT Devices:** In collaboration with Amazon Alexa, NPCI showcased voice-enabled peer-to-peer money transfers through smart speakers, enhancing user convenience and accessibility. The feature also allowed customers to access their bank balance information in real-time on the Echo Show smart speaker.
- v. **RuPay Prepaid Cards:** NPCI launched a variety of RuPay Prepaid Cards in partnership with banks and fintech companies, offering diverse financial solutions. These cards include the SBI Nation First Transit Card, which facilitates cashless travel in public transportation; Prezzy, a prepaid gift card introduced by Euronet, simplifying gifting on the RuPay platform; Pepper Money & PineLabs' personalized prepaid card, offering consistent rewards and local benefits; and FamX Prepaid Cards, uniquely customized targeting Generation Z, providing diverse financial solutions and enhancing customer satisfaction through tailored rewards.
- vi. **OTG Ring Launch – LivQuik:** A contactless payment wearable ring designed to enhance the convenience of contactless payments, including support for National Common Mobility Card (NCCM) customers and used for open-loop transit programs.
- vii. **National Electronic Toll Collection (NETC) easy QR recharge on FASTag:** NPCI and Indian Highways Management Company Limited (IHMCL) introduced an easy recharge QR on FASTag, simplifying and securing the recharge process for customers using UPI apps.
- viii. **White Paper – “Evolution and Innovation in the Tolling Industry”:** NPCI collaborated with IHMCL to release a comprehensive white paper chronicling the transformation of the FASTag program and National Electronic Toll Collection (NETC) system.

- ix. **EV Charging Payments through NETC FASTag Platform:** IHMCL and NPCI joined forces to facilitate electric vehicle (EV) charging payments on the NETC FASTag platform, offering a seamless and secure experience for EV owners.
- x. **Aadhaar Enabled Payment System (AePS):**
 - a. **Facial Identity-Based Authentication:** Users can now authenticate AePS transactions using facial recognition, eliminating the need for external devices such as fingerprint or iris biometric devices. This feature is currently available on Android devices running OS version 7 and above, making it accessible to a wider audience.
 - b. **Dual Authentication-Based Transactions:** AePS now supports dual authentication, allowing multiple signatories to perform banking transactions. This feature is particularly beneficial for Self-Help Groups (SHGs), Joint Liability Groups (JLGs), and other joint operation accounts, enabling easy and assisted interoperable banking transactions.
- xi. **IMPS (Immediate Payment Service):**
 - a. **Simplified Fund Transfer:** Users can now initiate IMPS transactions by entering only the beneficiary's mobile number and bank name, accompanied by real-time beneficiary name validation. This streamlined process can be extended to retail and corporate users for bulk transaction use cases, allowing direct transfers of up to INR 5,00,000 (Indian Rupees Five Lakh only) without adding a beneficiary.
 - b. **Credit Card Bill Payment through IMPS using Virtual Number:** NPCI has introduced IMPS Virtual Number for secure and instant credit card bill payments. Customers can use a 16-digit virtual number, created from their mobile number and the last 4 digits of their credit card, to make payments. This feature is especially beneficial for payment apps that don't store sensitive card data, allowing customers to store the virtual number for future IMPS credit card bill payments.
- xii. **NPCI International Payments Limited (NIPL):** NPCI partnered with Paymentwall to enable UPI payments for e-commerce purchases in the USA and UK, expanding the acceptance of UPI payment methods globally.
- xiii. **NPCI Bharat BillPay Limited (NBBL):** NBBL introduced NCMC Recharge as a new billing category, simplifying recurring payments for public transport services.
- xiv. **Other launches:**
 - a. **Co-Creation Framework:** NPCI introduced this framework to promote collaboration within the digital payments' ecosystem, fostering innovation and co-created solutions.
 - b. **Merchant Value Program (MVP):** MVP focuses on enhancing the merchant-customer experience, offering long-term engagement programs for top merchants in India.
 - c. **NPCI Partner Program (NPP):** NPP aims to collaborate with tech partners to provide various services to regulated entities, expanding the retail payments ecosystem and promoting transparency and inclusivity.

DSK View: These initiatives collectively emphasise NPCI's commitment to driving innovation, financial inclusivity, and seamless user experiences across India's digital and financial landscape. And thereby paves way to provide nationwide secure payment solutions at a low cost, aligning with India's vision of becoming a fully digital society.

Source

RBI RELEASES LIST OF NBFCs IN THE UPPER LAYER UNDER SCALE BASED REGULATION FOR NBFCs

The RBI, in its notification dated September 14, 2023, announced the list of following NBFCs in the Upper Layer under Scale Based Regulation for NBFCs for the year 2023-24.

Category of the NBFC	Name of the NBFC
Deposit taking Housing Finance Companies (HFC)	LIC Housing Finance Limited
	PNB Housing Finance Limited
Deposit taking NBFC-Investment and Credit Companies (ICC)	Bajaj Finance Limited
	Mahindra & Mahindra Financial Services Limited
	Shriram Finance Limited (formerly Shriram Transport Finance Company Limited)
Core Investment Company (CIC)	Tata Sons Private Limited
Non-deposit taking NBFC-ICC	Tata Capital Financial Services Limited
	Muthoot Finance Limited

	Cholamandalam Investment and Finance Company Limited
	L & T Finance Limited
	HDB Financial Services Limited
	Aditya Birla Finance Limited
Non-deposit taking HFC	Piramal Capital & Housing Finance Limited
	Indiabulls Housing Finance Limited
	Bajaj Housing Finance Ltd.

On October 22, 2021, the RBI had introduced the Scale Based Regulation (SBR), a revised regulatory framework for NBFCs classified NBFCs into four tiers: Base Layer (NBFC-BL), Middle Layer (NBFC-ML), Upper Layer (NBFC-UL), and Top Layer (NBFC-TL) which is determined on the basis of their asset size and scoring criteria. According to the framework, the NBFCs now must adhere to heightened regulatory requirements for a minimum period of 5 (Five) years, even if it doesn't meet the parametric criteria in subsequent years.

Source

RESPONSIBLE LENDING CONDUCT – RELEASE OF MOVABLE/IMMOVABLE PROPERTY DOCUMENTS ON REPAYMENT/SETTLEMENT OF PERSONAL LOANS

The RBI *vide* notification dated September 13, 2023, provided instructions regarding the release of property documents, both movable and immovable, by Regulated Entities (“REs”) upon full repayment of secured loans and accounts’ closure. Based on complaints and grievances received from customers regarding the delay by REs in releasing the property documents, the RBI has issued instructions and prescribed timelines which must be strictly adhered by the Res. These instructions aim to eliminate past inconsistencies in the way REs handled document release. Summarized below are the main highlights of the notification:

- i. **Release of Property Documents:** REs must release original movable/immovable property documents within 30 (Thirty) days of full repayment or settlement of a loan account.
- ii. **Borrower's Choice:** Borrowers have the option to collect these documents from the RE’s branch where

the loan was serviced or from another branch of the RE.

- iii. **Stipulation in Loan Sanction Letters:** The timeline and place for returning the property documents must be specified in the loan sanction letters issued by the REs.
- iv. **Procedure for Legal Heirs:** REs must establish clear procedures for the return of property documents to legal heirs in the event of a borrower's demise. These procedures should be made available on the REs website.
- v. **Compensation for Delays:** If there is a delay by an RE in releasing the documents and/or filing of charge satisfaction forms with relevant regulatory body(ies) beyond 30 (Thirty) days after full repayment of a loan, the RE must communicate the reasons for the delay to the borrower. If the delay is attributable to the RE, it must compensate the borrower at a rate of INR 5,000 (Rupees Five Thousand only) per day of delay.
- vi. **Loss or Damage to Documents:** In cases of loss or damage to the original property documents, the REs will be responsible for assisting the borrower in obtaining duplicate or certified copies and bearing all costs in this regard. The compensation mentioned in point (v) above will be applicable in such cases as well, with an additional 30 (Thirty) day grace period for completing the process.
- vii. **Additional Legal Rights:** The compensation provided under these directives will not affect a borrower's rights to seek additional compensation under other applicable laws.
- viii. **Applicability:** These directives are applicable to all cases where the release of property documents is due on or after December 01, 2023.

DSK View: *Responsible lending conduct extends beyond the approval of loans; it includes the responsible release of documents in relation to charged properties upon repayment of loans. This practice not only complies with regulatory standards but also enhances the credibility and trustworthiness of financial institutions. By prioritizing the borrowers’ rights and adhering to clear procedures, lenders can foster a positive lending environment that benefits all stakeholders.*

Source



AMENDMENT IN THE IMPORT POLICY OF FOOTWEAR

The Ministry of Commerce and Industry, in consultation with the Bureau of Indian Standards ('BIS') has issued the Footwear Made from all Rubber and all Polymeric Material and its Components (Quality Control) Amendment Order, 2023 vide Order S.O. 3893(E) dated 1 September 2023 (available [here](#)).

As per the text of the above-mentioned Order, an importer of footwear soles shall furnish a self-declaration before the import consignments of footwear soles are given import clearance, declaring the following:

- i. That the imports of footwear soles are meant for production or assembly of footwear for exports and not for sale in the domestic market of India.
- ii. That the importer/ company will maintain its internal records for any future verification or audit by concerned authorities and provide the Invoice Number and other relevant details of the import consignment along with the self-declaration.

The self-declaration must be certified by the Council for Leather Exports stating that the importer is a manufacturer exporter registered with the Council and quoting the following details:

- i. Currently valid Registration-cum-Membership Certificate number and date of issue.
- ii. Udyam Registration Certificate Number and date.
- iii. Bill of Entry for home consumption number and date which is filed in the Indian Customs Electronic Data Interchange system for import clearance.

The importers must upload the above documents along with other relevant documents in the Indian Customs Electronic

Data Interchange portal, for smooth customs clearance of the footwear soles.

The above-mentioned requirements are not applicable to moulded solid rubber soles and heels, rubber microcellular sheets for soles and heels, solid PVC soles and heels and polyurethane soles (semi-rigid).

DSK View: *This move could curtail inbound shipments of footwear soles, especially from countries like China as imports will be allowed for the purposes of re-exports only.*

The above-mentioned amendment aligns with India's commitment to bolster domestic manufacturing under the 'Make in India' program and is in line with India's production-linked incentive ('PLI') scheme for Footwear and Leather goods.

This move presents a significant opportunity for local manufacturing as the government emphasizes on indigenous production. Companies manufacturing in India are likely to witness increased demand from consumers seeking alternatives to imported products. By promoting domestic manufacturing, the government's vision of 'Make in India' will receive a significant boost, likely leading to job creation and further development within the footwear industry.

It would auger well for businesses to closely monitor updates from the Indian government regarding these import restrictions and their implementation.

AMENDMENT IN THE EXPORT POLICY OF FOOD SUPPLEMENTS CONTAINING BOTANICALS

The earlier export policy condition for Food Supplements stated that exports of Food Supplements containing botanicals to the European Union ('EU') and United Kingdom ('UK') originating in or consigned from India and intended for

human or animal consumption, will be allowed subject to issuance of the official certificates by Export Inspection Council ('EIC')/ Export Inspection Agencies ('EIAs').

The official certificates were to be issued on the basis of satisfactory analytical test reports from EIC/EIC approved laboratories for the requisite requirements as laid down by the EU.

The Directorate General of Foreign Trade ('DGFT') has now amended the Export Policy for Food Supplements containing botanicals vide Notification No. 31/2023 dated 11 September 2023 (available [here](#)) to include an additional certification channel.

As per the text of the notification, the exports of Food Supplements containing botanicals to EU and UK originating

in or consigned from India and intended for human or animal consumption, may either opt for the older certification from EICs or EIAs, or apply for the issuance of the official Certificate by the designated Export Promotion Council ('EPC'), SHEFEXIL. The said certificate may be issued on the basis of the satisfactory test reports as received from National Accreditation Board of Testing and Calibration Laboratories ('NABL') accredited laboratories for Food Supplements containing Botanicals, in accordance with the requirements laid down by EU.

DSK View: *The Government has relaxed the existing certification process for export of Food Supplements containing botanicals under ITC HS code 1302 and 2106 by including an additional certifying agency. This move is intended to reduce the compliance burden on such exporters, which is likely to boost exports in this segment.*

MEDIA & ENTERTAINMENT



TDSAT SENDS NOTICE TO DISNEY STAR FOR FREE CRICKET STREAMING ON MOBILE DEVICES

The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has taken action against Disney Star based on a complaint lodged by the All India Digital Cable Federation (AIDCF). The complaint revolves around Disney Star's practice of offering free streaming of cricket matches, including recent events like the Asia Cup and the upcoming cricket World Cup, exclusively on the Hotstar platform for mobile devices. The core argument made by the AIDCF is that Disney Star's actions are unjust to the cable industry. They claim that while Disney Star has entered into contracts with cable providers for the distribution and transmission of these live sporting events, they are also providing the same content for free to viewers on their Hotstar platform. This dual approach, as per AIDCF, breaches the non-discriminatory principles inherent in the regulatory framework governing the transmission of TV signals through telegraph systems, whether wire or wireless. The case raises questions about the fairness of competition and the potential impact on revenue for cable providers in an evolving media landscape where consumers increasingly prefer digital streaming services. The TDSAT's decision on this matter could have significant implications for how content distribution is handled in the Indian broadcasting industry.

DELHI HIGH COURT ISSUES NOTICE TO 'PEOPLE OF INDIA' PORTAL IN A COPYRIGHT INFRINGEMENT SUIT BY 'HUMANS OF BOMBAY'

In a copyright infringement case, Humans of Bombay Stories (P) Ltd. filed a lawsuit against POI Social Media (P) Ltd. seeking an injunction to prevent the infringement of its copyrighted content, which included various materials, literary works, films, and creative expressions published on its website, Instagram handle, and YouTube channel. Justice Prathiba M. Singh found that there was *prima facie* evidence

of substantial imitation, including some instances where photographs or images were either identical or highly similar. As a result, the court issued notice to the defendants. The plaintiff operated a storytelling platform where they showcased stories from various individuals, which were converted into audio-video content and shared on different platforms. The plaintiff alleged that the defendants had launched an identical service called 'People of India,' replicating their content and using many images and videos from the plaintiff's platforms without authorization. The court noted instances where the defendants had replicated the plaintiff's business model and stories, even approaching the same individuals featured on the plaintiff's websites. Due to the clear evidence of substantial imitation, the court issued a notice to the defendants, and the case will be further heard on October 11, 2023.

DELHI HIGH COURT PASSES OMNIBUS ORDER TO PREVENT USE OF IMAGE, VOICE, DIALOGUE OF ANIL KAPOOR ON PLEA ALLEGING AI MISUSE

The Delhi High Court has issued an interim order preventing the unauthorized commercial use of Bollywood actor Anil Kapoor's name, voice, image, likeness, and catchphrase "Jhakaas!" The order applies to various social media and e-commerce platforms and other entities. It prohibits the sale of merchandise, creation of AI-generated videos, and any use of the actor's persona for commercial gain without authorization, thereby protecting his publicity and personality rights. Anil Kapoor sought the court's intervention to prevent entities from exploiting his unique attributes, including unauthorized merchandise sales, using his image as a motivational speaker, derogatory image morphing, and selling pictures with forged autographs. The court emphasized the importance of protecting individual personality rights and noted that while free speech, criticism, and parody are protected forms of expression, they become illegal when they tarnish or jeopardize an individual's personality rights. This order follows a similar one from the

Delhi High Court last year, which protected the personality rights of actor Amitabh Bachchan, aiming to safeguard the personal brand elements of public figures and maintain control over their image and endorsement rights.

CBFC ORDERS CHANGES IN THALAPATHY VIJAY'S "NAA READY" SONG AFTER COMPLAINTS

On October 19, Thalapathy Vijay will release the highly awaited movie "Leo", which is sure to please his fans. While the first track from "Leo", "Naa Ready", proved popular right away, it also drew criticism for sequences in which Thalapathy Vijay was shown smoking. Several complaints followed, including one from Anaithu Makkal Arasiyal Katchi (AMAK) submitted by Rajeshwari Priya and others. These accusations claimed that the song's lyrics encouraged the use of drugs and alcohol. A complaint was also made against the film's production crew by activist RTI Selvam for glorifying drug use and disorderly conduct in "Naa Ready". The CBFC ordered the film's creators to change the music as a result. They specifically requested that the smoking scenes and the song's references to drinking be taken out.

RCB VS RAJNIKANTH-STARRER 'JAILER', PRODUCERS AGREE TO MODIFY SCENES FEATURING THE ANTAGONIST WEARING RCB JERSEY

In response to the usage of an RCB jersey worn by a contract killer who makes offensive and misogynistic remarks in the film "Jailer", Royal Challengers Sports Pvt. Ltd. filed a lawsuit in the Delhi High Court against Sun TV Network and Mr. Kalanithi Maran, the film's producer. The plaintiff argues that the use of the jersey in the film without its consent and in a derogatory manner will certainly damage the reputation of the RCB brand and the rights of the sponsors, whose names are also displayed on the jersey. Following that, the defendants spoke with the plaintiff and settled their differences. Prior to the clips' distribution on television, satellite, or any other OTT platform, the defendants agreed to edit them.

HADDI FILM: BOMBAY HIGH COURT REFUSES INTERIM RELIEF TO NAWAZUDDIN SIDDIQUI IN HIS PLEA AGAINST ZEE FOR PAYMENT

The Bombay High Court refused to grant any interim relief to actor Nawazuddin Siddiqui in his suit against Zee Studios seeking payment of his fees for the lead role in the film 'Haddi'. The movie was originally supposed to be co-produced under the AEPL banner and it was titled "Gunshe". However, the petitioners alleged that the respondents clandestinely siphoned this property into another company they formed called Anandita Studios Private Limited and "Gunshe" is now being released as "Haddi" on the OTT platform 'Zee 5'.

BOMBAY HIGH COURT DIRECTS VIDEO SHARING PLATFORM "TRILLER" TO PAY USD 300,000 TO ZEE ENTERTAINMENT FOR USE OF COPYRIGHTED MUSIC

Bombay High Court directs video sharing platform Triller to pay USD 300,000 to Zee Entertainment for use of copyrighted music. The court additionally determined that Zed Entertainment is not attempting to avoid mediation because at least two or three attempts to resolve the dispute have fallen through. As a result, the court ruled in Zed Entertainment's favour and ordered Triller to pay Zed Entertainment's costs of Rs. 2.5 Lakhs. Without first drafting the decree, the court gave Zed Entertainment permission to move through with execution. In addition, the court ordered Triller to pay interest at the rate of 18% from the moment the lawsuit was filed until the money was paid.

DELHI HIGH COURT RULES BHOJPURI SINGER KHESARI LAL YADAV CAN ONLY SELL SONGS TO GLOBAL MUSIC JUNCTION TILL SEPTEMBER 30, 2025

Khesari Lal Yadav (aka Shatrughan Kumar), a Bhojpuri singer and actor, is prohibited by the Delhi High Court from working with any organisation other than Global Music Junction Private Limited to monetize any of his new songs until September 30, 2025. However, a division bench stated that Yadav might continue to perform on stages, on national TV shows, on social media, and in the Bhojpuri film industry. He cannot, however, sell his new songs to anyone other than Global Music Junction, unless the music production firm declines to take delivery of the new songs, according to the September 5 ruling of the Court.

NO COPYRIGHT IN RELIGIOUS SCRIPTURES BUT DRAMATIC OR ADAPTIVE WORKS BASED ON THEM CAN BE COPYRIGHTED

The Delhi High Court has ruled that while no one can claim copyright in scriptures like the Bhagavad Gita or Bhagavatam themselves, any adaptations, explanations, or dramatic works created based on these texts would be entitled to copyright protection. Justice Prathiba M Singh emphasized that copyright law applies to the manner in which these scriptures are interpreted and presented by different individuals, including spiritual teachers and Gurus. The court's observation came in response to a copyright infringement suit filed by the Bhaktivedanta Book Trust, which was established by Srila Prabhupada, the founder of the International Society for Krishna Consciousness (ISKCON). The trust claimed that Prabhupada's writings and lectures, which simplified religious books and scriptures, were protected by copyright. In the case, the court noted that the defendants had engaged in large-scale infringement and piracy of the plaintiff's copyrighted works. These defendants were reproducing the works of Srila Prabhupada, including translations, summaries, introductions, prefaces, and covers, without authorization. Justice Singh issued an

interim injunction order against the defendants, restraining them from infringing the copyrighted works of the plaintiff. Additionally, the court ordered Google and Meta to take down related applications and pages and directed authorities to issue blocking orders against the infringing websites. This ruling clarifies that while the original scriptures themselves are not subject to copyright, derivative works based on them, including explanations, adaptations, and dramatic presentations, can be protected by copyright law.

'GAME OF THRONES' CREATOR AND OTHER AUTHORS SUE CHATGPT-MAKER OPENAI FOR COPYRIGHT INFRINGEMENT

Seventeen authors, including John Grisham, Jodi Picoult, and George R.R. Martin, have filed a lawsuit against OpenAI, alleging "systematic theft on a mass scale" of their copyrighted works by the ChatGPT program. The lawsuit was

organized by the Authors Guild and includes authors such as David Baldacci, Sylvia Day, Jonathan Franzen, and Elin Hilderbrand, among others. The authors claim that ChatGPT's actions constitute "flagrant and harmful infringements" of their registered copyrights and that the program relies on "systematic theft on a mass scale" for its operation. The lawsuit provides specific examples of ChatGPT's alleged infringement, including generating an unauthorized outline for a prequel to George R.R. Martin's "A Game of Thrones" and using characters from Martin's existing books in the "A Song of Ice and Fire" series. OpenAI had previously requested the dismissal of two similar lawsuits, involving comedian Sarah Silverman and author Paul Tremblay, arguing that the claims misconceive the scope of copyright and fail to consider limitations and exceptions, including fair use, in the context of artificial intelligence and large language models.



AMENDMENT TO THE LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2023

The MCA, *vide* notification dated September 1, 2023 (accessible [here](#)), has notified the Limited Liability Partnership (Second Amendment) Rules, 2023 ("**Amendment Rules**") which has substituted the existing Form-3 (*Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein*) and Form-4 (*Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner*) with new forms.

In the new Form-3, in respect of the details of the partner(s) contributing money or property or other benefit or performing services and the details of their profit-sharing ratio including change in the aforesaid details upon change in the LLP agreement, new tables have been inserted which requires the applicant to provide the following additional details in respect of such partners:

- a. Name and type of body corporate (in case of a corporate partner); and
- b. LLPIN/CIN/FCRN/FLLPIN and other identification number, as applicable (in case of a corporate partner).

Form 4 has also been amended to align the same with the new Form 3.

OPERATION OF PRE-SANCTIONED CREDIT LINES AT BANKS THROUGH UNIFIED PAYMENTS INTERFACE (UPI)

The Reserve Bank of India (“RBI”), vide its Statement on Developmental and Regulatory Policies released on April 06, 2023, had discussed expanding the scope of UPI by enabling transfer to / from pre-sanctioned credit lines at banks, in addition to the existing scope of linking savings account, overdraft account, prepaid wallets and credit cards to UPI. In furtherance thereto, the RBI vide notification bearing reference number RBI/2023-24/58 CO.DPSS.POLC.No.S-567/02-23-001/2023-2024 dated September 04, 2023 (“UPI Notification”) released guidelines on the operation of pre-sanctioned credit lines at banks through unified payments interface (“UPI”). The UPI Notification has come into effect from September 04, 2023.

The UPI Notification applies to scheduled commercial banks (excluding payment banks, small finance banks, and regional rural banks) who can, with the prior consent of the customer, enable payments via a pre-sanctioned credit line issued for transactions using the UPI system. Banks may, in accordance with their Board approved policy, specify the terms and conditions of use of such credit lines, which may inter alia include the credit limit, period of credit, rate of interest, etc.

DSK View: *The UPI Notification has extended the scope of UPI to funding, apart from the existing linkage to bank accounts/prepaid wallets and credit cards. This will encourage the growth of unique financial products and provide easy access to credit, furthering the digital lending ecosystem in India.*

SHARING OF INFORMATION BY CREDIT RATING AGENCIES TO DEBENTURE TRUSTEES

The Securities and Exchange Board of India (“SEBI”), has, vide notification, bearing reference number

SEBI/HO/DDHS/DDHS-POD2/P/CIR/2023/151 dated September 04, 2023 (“Notification – Information Sharing”) has issued a clarification mechanism for sharing of information by credit rating agencies (“CRAs”) to debenture trustees (“DTs”). The Notification - Information Sharing, aims to structure the large quantum of information submitted on a daily basis by CRAs to DTs, in accordance with the SEBI (Credit Rating Agencies) Regulations, 1999 (“CRA Regulations”) while providing easier accessibility and analysis to such information. The Notification – Information Sharing, has come into effect from October 01, 2023.

Some key provisions of the Notification – Information Sharing, are given below:

- CRAs shall report their compliance with the Notification – Information Sharing (as ratified by their respective board of directors) to SEBI within one quarter from the date of applicability of the Notification – Information Sharing.
- The CRAs are required to use the excel template provided by SEBI under the Notification – Information Sharing, for their daily submissions of rating revisions to DTs.
- Submissions are to be sent by CRAs to DTs on the same day as the day of rating revisions.
- The monitoring to be done as per the half-yearly internal audit for CRAs, as prescribed under regulation 22 of the CRA Regulations and circulars issued thereunder.

DSK View: *The Notification – Information Sharing reinforces the obligations of CRAs with respect to sharing large amounts of data with DTs, in a structured manner. This will not only help ensure compliance but also provide uniformity in the manner of reporting.*

CLARIFICATION REGARDING INVESTMENT OF MUTUAL FUND SCHEMES IN UNITS OF CORPORATE DEBT MARKET DEVELOPMENT FUND

SEBI has, vide circular bearing reference number SEBI/HO/IMD/PoD2/P/CIR/2023/152 dated September 06, 2023 (“**Clarification**”), released a clarification regarding investment of mutual fund schemes in units of corporate debt market development fund (“**CDMDF**”). The Clarification has been addressed to asset management companies, trustee companies, board of trustees of mutual funds, the Association of Mutual Funds in India and Trustee Company of CDMDF. The Clarification explains that while calculating asset allocation limits of mutual fund schemes as per Part IV on Chapter 2 of Categorization and Rationalization of Mutual Fund Schemes, of the Master Circular for Mutual Funds dated May 19, 2023, investment in units of CDMDF shall be excluded from the base of net assets.

BOARD NOMINATION RIGHTS TO UNITHOLDERS OF INFRASTRUCTURE INVESTMENT TRUSTS (INVITS)

Regulation 4(2)(h) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) provides inter alia, unitholder(s) holding not less than 10% (ten percent) of the total outstanding units of an InvIT, either individually or collectively, the right to nominate one director on the board of directors of the investment manager.

In this regard, SEBI, vide circular bearing reference number SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 dated September 11, 2023 (“InvITs Circular”) notified the framework for exercising such Board nomination rights by eligible unitholders of infrastructure investment trusts (“InvITs”).

Some of the key highlights of the InvITs Circular are given below:

- The investment manager of the InvIT shall, within 10 (ten) days from the end of each calendar month, review whether the eligible unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of InvIT. The investment manager is also required to prepare a report and submit the same to the trustee of InvIT.
- The conditions for the nomination of a unitholder nominee director entail that the eligible unitholders shall have the right to nominate one person as a unitholder nominee director, subject to meeting specific unitholding thresholds.
- Entities exercising nomination rights in other capacities are barred from nominating unitholder nominee directors.
- The investment manager's board of directors is required to formulate a policy outlining qualification criteria, remuneration, and evaluation parameters for unitholder nominee directors, which must be made available on the website of the InvIT. Unitholder nominee directors must abstain from voting on transactions involving their interests or the interests of those who nominated them.
- The investment manager must email all unitholders within ten days after September 30, 2023, asking if any eligible unitholder(s) intends to nominate a unitholder nominee director.
- The investment manager of the InvIT is mandated to conduct a monthly review to ascertain whether eligible unitholders exercising the nomination right continue to maintain the requisite number of InvIT units and a report summarizing these findings must be submitted to the trustee of the InvIT. If, upon review, it is discovered that an eligible unitholder falls short of the mandated unit count, the investment manager is obligated to promptly notify the trustee of the InvIT, the affected unitholder, and the unitholder nominee director of the same. In such instances, the unitholder nominee director must promptly resign from the board of directors of the investment manager.
- Both the trust deed and investment management agreement should be amended to encompass the stipulated provisions granting board nomination privileges to eligible unitholder(s), as specified within a six-month timeframe from the issuance date of the InvITs Circular.
- The InvITs Circular also stipulates compliance of eligibility requirements for candidates proposed to be considered for appointment as unitholder nominee directors.

DSK View: *The InvITs Circular introduces a structured framework for unitholders to nominate directors, listing down their rights and various procedures for nomination, replacement, withdrawal, etc. Unitholders' rights and responsibilities are clearly defined, and the investment manager's role in overseeing the process is also clearly specified.*

MASTER DIRECTION - CLASSIFICATION, VALUATION AND OPERATION OF INVESTMENT PORTFOLIO OF COMMERCIAL BANKS (DIRECTIONS), 2023

The RBI released the Revised Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2023 vide notification bearing number RBI/DOR/2021-22/81

DOR.MRG.42/21.04.141/2021-22 dated September 12, 2023 (“**Revised Master Directions**”). The Revised Master Directions aim to amend and update the previously issued Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021.

Some of the key provisions introduced in the Revised Master Directions are listed below:

- Banks will have the flexibility to shift investments to/from the held to maturity (“**HTM**”) category with the board of directors' approval once a year, typically at the beginning of the accounting year. Transfers during the remaining part of the year require explicit permission of RBI.
- Investments in unquoted units/shares/bonds of specific funds held in HTM for three years shall be shifted at the start of the next accounting year. Transfers from available for sale (“**AFS**”) / held for trading (“**HFT**”) categories to HTM are subject to conditions, with securities revalued and depreciation adjusted as needed the reverse is not permitted unless there are exceptional circumstances. In transfers, market values and excess of book value over market value should be disclosed in the financial statements. A regulatory limit of 5% (five percent) does not apply to specific types of securities transactions explicitly permitted by RBI.
- The Revised Master Directions also provide the manner of valuation of the HTM, HFT and AFS categories of investments.
- The Revised Master Directions stipulate that the market value for the purpose of periodical valuation of investments included in the AFS and HFT categories will be divided in three parts, namely, quoted securities, unquoted statutory liquidity ratio (“**SLR**”) securities, unquoted non-SLR securities.
- Banks should conduct transactions in government securities through subsidiary general ledger or constituent subsidiary general ledger accounts as well as follow RBI guidelines for short sale and 'when issued' transactions and adhere to the settlement instructions thereto. They can also undertake retailing of government securities based on market rates.
- For non-SLR Securities, banks should invest in listed securities and, to a limited extent, unlisted securities. They must follow specific investment limits, consider credit ratings, and ensure due diligence. Compliance with SEBI requirements and reporting of privately placed debt are essential. Boards of banks should

oversee non-SLR investments and monitor their compliance with prudential limits.

The Revised Master Directions are applicable from April 1, 2024, to all commercial banks (excluding regional rural banks).

DSK View: *The Revised Master Directions have been notified by the RBI, in light of the significant developments in global standards on classification, measurement and valuation of investments, the linkages with capital adequacy framework and development in the domestic financial markets. The Revised Master Directions updates the regulatory guidelines with global standards and best practices while introducing a symmetric treatment of fair value gains and losses, removal of ceilings on certain types of securities and more detailed disclosures on the investment portfolio of banks.*

RESPONSIBLE LENDING CONDUCT – RELEASE OF MOVABLE / IMMOVABLE PROPERTY DOCUMENTS ON REPAYMENT/ SETTLEMENT OF PERSONAL LOANS

The RBI released a notification for the ‘Responsible Lending Conduct – Release of Movable / Immovable Property Documents on Repayment/ Settlement of Personal Loans’ on September 13, 2023, vide notification bearing reference number RBI/2023-24/60 DoR.MCS.REC.38/01.01.001/2023-24 (“**Lending Conduct Guidelines**”). The Lending Conduct Guidelines are applicable to all Commercial Banks (including Small Finance Banks and Regional Rural Banks, excluding Payments Banks), Local Area Banks, Primary (Urban) Co-operative Banks, State Co-operative Banks, District Central Co-operative Banks, NBFCs (including HFCs) and Asset Reconstruction Companies and will come into effect from December 01, 2023.

Some of the key provisions of the Lending Conduct Guidelines are given below:

- Regulated Entities (“**RES**”) must release all original documents in relation to movable or immovable property and remove charges registered thereto with any registry within a period of 30 (thirty) days after full repayment or settlement of the loan.
- Borrowers must, as per their preference, be given the option of collecting the originals of the property documents, either from the banking outlet or branch where the loan account was serviced or any other office of the RE where the documents are available.
- The timeline and place of return of original movable or immovable property documents must be mentioned in the loan sanction letters issued on or after the effective date of the Lending Conduct Guidelines.

- REs shall have a well laid out procedure for return of original movable or immovable property documents to the legal heirs in case of the demise of the sole borrower or joint borrowers. Such procedure must be clearly displayed on the website of the REs along with other similar policies and procedures for customer information.
- The RE must communicate to the borrower, the reasons for any delay in releasing of original movable / immovable property documents or regarding failure to file charge satisfaction form with relevant registry beyond 30 (thirty) days after full repayment or settlement of loan. If the delay is attributable to the RE, it shall compensate the borrower at the rate of INR 5000 (Rupees Five Thousand) for each day of delay.

The RE shall, in addition to paying the compensation, help the borrower in obtaining duplicate or certified copies of the movable or immovable property documents and shall bear the associated costs thereto in case of loss or damage to the original documents. However, in such cases, an additional time of 30 (thirty) days will be available to the REs to complete this procedure and the delayed period penalty will be calculated thereafter.

DSK View: The Lending Conduct Guidelines have been issued by the RBI, pursuant to receipt of customer grievances and disputes related to release of all movable / immovable property documents, which was being delayed by REs even after receiving full repayment and closure of loan account. The Lending Conduct Guidelines aims to promote responsible lending conduct among REs, while outlining key provisions for property document release post-repayment, borrower's choice of collection location, etc.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (FOURTH AMENDMENT) REGULATIONS, 2023

SEBI vide notification bearing number SEBI/LAD-NRO/GN/2023/151 dated September 19, 2023 notified the SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2023 (“**Fourth Amendment**”).

The Fourth Amendment introduces Regulation 62A, which stipulates as follows:

- Any listed entity, whose non-convertible debt securities (“**Securities**”) are listed, shall be required to list on the particular stock exchange, all securities, proposed to be issued on or after January 01, 2024.
- A listed entity, whose subsequent issue of unlisted Securities made on or before December 31, 2023 is

outstanding on the said date, may list such Securities, on the stock exchange.

- A listed entity which proposes to list its Securities on a particular stock exchange on or after January 01, 2024, shall list all outstanding unlisted Securities previously issued on or after January 01, 2024, on the requisite stock exchange within 3 (three) months from the date of the listing of the Securities so proposed to be listed.
- The Securities issued by the listed entity are required to be unencumbered and locked in and held till maturity by the investors.
- Listed entities are not required to list the following:
 - a) bonds issued under section 54EC of the Income Tax Act, 1961;
 - b) Securities issued under an agreement entered into between the listed entity of such securities and multilateral institutions; and
 - c) Securities issued pursuant to an order of any court or tribunal or regulatory requirement as stipulated by a financial sector regulator such as SEBI, RBI, Insurance Regulatory and Development Authority of India or the Pension Fund and Regulatory Development Authority.
- A listed entity must disclose to the stock exchanges on which its Securities are listed, all the key terms of the Securities, including embedded options, security offered, interest rates, charges, commissions, period of maturity, etc.

DSK View: The Fourth Amendment seems to be aimed at strengthening the regulatory framework for debt securities. SEBI has introduced specific requirements regarding listing of debt securities by listed entities. This may not only ensure transparency but will also encourage good corporate governance amongst issuers of debt securities. Further, the Fourth Amendment may also increase investment and participation from the retail segment.

MASTER DIRECTION - RESERVE BANK OF INDIA (PRUDENTIAL REGULATIONS ON BASEL III CAPITAL FRAMEWORK, EXPOSURE NORMS, SIGNIFICANT INVESTMENTS, CLASSIFICATION, VALUATION AND OPERATION OF INVESTMENT PORTFOLIO NORMS AND RESOURCE RAISING NORMS FOR ALL INDIA FINANCIAL INSTITUTIONS) DIRECTIONS, 2023

RBI vide notification bearing number RBI/DoR/2023-24/105 DoR.FIN.REC.40/01.02.000/2023-24 dated September 21, 2023 (“**Basel III Master Directions**”) issued the Master Direction - Reserve Bank of India (Prudential Regulations on

Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023. The Basel III Master Directions shall be applicable from April 01, 2024.

The Basel III Master Directions shall apply to All India Financial Institutions (“AIFIs”) regulated by RBI, such as the Export-Import Bank of India, the National Bank for Agriculture and Rural Development, the National Bank for Financing Infrastructure and Development, the National Housing Bank and the Small Industries Development Bank of India.

Some of the key directions provided in the Basel III Master Directions are provided hereinbelow:

- Part A of the Basel III Master Directions prescribes the minimum capital requirements required to be maintained by the AIFIs. The Basel III Master Directions provide for a risk sensitive calculation of the minimum capital requirement, i.e., it provides for the inclusion of operational risk on top on credit and market risk.
- Part B lays down the supervisory review and evaluation process which envisages the creation of suitable risk management systems in AIFIs as well as a review of the same by the appropriate supervisory authority.
- Part C contains provisions in relation to market discipline.
- Part D introduces a leverage ratio framework as a supplementary method to the risk-based capital requirements provided in the Basel III Master Directions.

DISPLAY OF INFORMATION OF SECURED ASSETS POSSESSED UNDER THE SARFAESI ACT, 2002

RBI vide notification bearing number RBI/2023-24/63 DoR.FIN.REC.41/20.16.003/2023-24 dated September 25, 2023 (“SARFAESI Circular”) has issued a circular which mandates regulated entities which are secured creditors as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) to display information of borrowers whose secured assets have been taken into possession by the REs in accordance with the SARFAESI Act. Such information needs to be displayed on the website of the REs in the format as provided in the annexure of the SARFAESI Circular.

The SARFAESI Circular is applicable to All India Financial Institutions (Exim Bank, NABARD, NHB, SIDBI and NaBFID), all Commercial Banks (including Small Finance Banks and Regional Rural Banks, excluding Payments Banks), Local Area Banks, Primary (Urban) Co-operative Banks, State Co-operative Banks, District Central Co-operative Banks, NBFCs (including HFCs) and Asset Reconstruction Companies.

The first list is required to be uploaded on the website of the relevant RE, within 6 (six) months from the date of the SARFAESI Circular and needs to be updated on a monthly basis.

DSK View: *The SARFAESI Circular is a step towards ensuring greater transparency and will help to identify and verify the details of the security possessed and the title holder. Details of such security will also help potential purchasers, looking to purchase assets in lender-led auctions.*



UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY IMPLEMENTS GUIDELINES FOR TRANSPARENT AND ACCOUNTABLE CORRESPONDENCE WITH PROMOTERS

The Uttar Pradesh Real Estate Regulatory Authority (“UPRERA”) has issued comprehensive guidelines (“Guidelines”) vide Order No. 12197/UP RERA/ 2023-24 (“Order”) concerning correspondence between promoters and other concerned parties. These guidelines were issued in response to reports of non-functional mobile numbers provided by certain promoters during the project registration process, discrepancies in the procedures employed by different promoters in their dealings with UPRERA, and instances of correspondence lacking the requisite official foundation.

The Guidelines provide for the following:

1. **Functional Mobile Numbers:** The promoters are obligated to ensure that the mobile numbers provided by them, or their representatives are fully operational and responsive to inquiries. For larger projects with designated helpline numbers, it is imperative that these helpline numbers remain functional, and prompt responses are extended to consumers.

2. **Authorized Correspondent Details:** The promoters are required to furnish specific details of the authorized individual responsible for correspondence with UPRERA, on their dashboard within the portal maintained by UPRERA. These details comprise of such an authorized individual's name, designation, mobile number, email ID, residential address, and office address. It is emphasized that correspondence submitted by any representative or any individual other than the authorized person shall be deemed invalid. Additionally, promoters are responsible for promptly updating any changes in information such as names, mobile numbers, email IDs, etc., as applicable.

3. **Clear Sender Information:** When preparing correspondences, it is imperative that the details regarding the sender's name, the designation, and the mobile number are clearly indicated. The authorization of the concerned individual for correspondence and any other pertinent tasks should be substantiated by a resolution passed by the company's board. This resolution, authorizing the designated person for correspondence, must also be made accessible to the office of UPRERA in Uttar Pradesh.

4. **Online Submission Form:** An online form will be made available on the promoter's dashboard within the portal maintained by UPRERA to facilitate the submission of the aforementioned information in accordance with the regulations as applicable in Uttar Pradesh. The promoters are mandated to diligently complete this form with the specified details.

These guidelines have been issued to enhance the effectiveness and transparency of communications between promoters and UPRERA, ensuring adherence to regulatory standards and accountability.

ODISHA REAL ESTATE REGULATORY AUTHORITY EXTENDS THE VALIDITY PERIOD OF REGISTRATION OF THE PROJECT

The Odisha Real Estate Regulatory Authority (“ORERA”), vide an Order bearing no. 5043/ORERA (“Order”), has extended the validity of period of registration in accordance with the provisions outlined in Section 7(3) of the Real Estate (Regulation and Development) Act, 2016 (“Act”). This decision builds upon a previous order bearing no. 3332 issued by ORERA, which permitted developers to request extensions beyond the initial one-year registration period for compelling reasons, though it did not specify any charges associated with the same.

The Order herein provides clear guidelines regarding the fee structure for such extensions. Any promoter seeking an extension under Section 7(3) of the Act will now be obligated

to pay twice the fees that they initially submitted during their initial registration application. This measure is implemented with the aim of simplifying and standardizing the fee process for project registration extensions under ORERA.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY EXTENDS TIMELINE FOR REAL ESTATE AGENTS TO OBTAIN CERTIFICATE OF COMPETENCY

The Maharashtra Real Estate Regulatory Authority (“**MahaRERA**”) has passed an Order bearing no. 41A/2023/MahaRERA dated September 20, 2023 (“**Order**”) extending the timeline for obtaining the ‘MahaRERA Real Estate Agent Certificate of Competency’.

MahaRERA had issued directions that only Real Estate Agents having a valid MahaRERA Real Estate Agent Certificate of Competency from November 01, 2023 shall be eligible for applying for registration/renewal of registration as MahaRERA Real Estate Agent. Further, the authority has mandated that existing real estate agents must obtain MahaRERA Real Estate Agent Certificate of Competency before January 01, 2024 and the same shall be uploaded on their respective webpages. These mandates shall apply to individual real estate agents, authorized signatories in case of a firm/ companies/organization and to each employee/staff/officer working in any organization of real estate agents.

TELANGANA REAL ESTATE REGULATORY AUTHORITY IMPLEMENTS STRINGENT FINANCIAL OVERSIGHT MEASURES FOR REAL ESTATE PROJECTS

The Telangana Real Estate Regulatory Authority (“**TRERA**”), exercising its powers under Section 37 of the Real Estate (Regulation and Development) Act, 2016 (“**Act**”), has issued specific directives *vide* Order dated September 04, 2023, bearing No. 989/TSRERA/2023 (“**Order**”), for lenders, promoters, and bankers. These directives are outlined as follows:

1. The promoters of a project are mandated to deposit the entire sum borrowed for the project into a designated account exclusively assigned for that project. These deposited funds shall be exclusively utilized and withdrawn solely for the purpose of the development of the said project.
2. In instances where a promoter secures loans for a project that is registered phase-wise, the promoter is obligated to bifurcate and apportion the borrowed amount towards the various project phases. A comprehensive report of this allocation is to be submitted during quarterly updates, accompanied by the corresponding bank statements and a certificate of authenticity provided by a Chartered Accountant.

3. The appointed chartered accountant has to report whether the borrowed funds, earmarked for a specific purpose, have indeed been deposited into the designated account as required.
4. In cases where a portion of the borrowed funds remains unutilized within the project, the promoter is compelled to transfer the unutilized amount into a specially designated RERA account within a span of three months from the date of notification.
5. The promoters are further obligated to conduct an audit of their project's accounts, and chartered accountant must certify the accuracy and legitimacy of these financial records.
6. The regulatory authority reserves the right to solicit any pertinent information or documents from promoters, issuing a formal notice as and when necessary.

These directives are designed to ensure transparency, accountability, and the proper utilization of funds within the real estate development projects under the purview of TRERA.

KERALA REAL ESTATE REGULATORY AUTHORITY ISSUED MODEL FORM OF AFFIDAVIT FOR CANCELLATION/DEREGISTRATION OF PROJECTS

The Kerala Real Estate Regulatory Authority (“**KRERA**”) issued a model form of affidavit for the cancellation or deregistration of a registered real estate project in exercise of its power conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016 (“**Act**”). The primary objective of this measure is to establish a consistent and standardized procedure for the aforementioned application process, and to mitigate any potential ambiguities that may arise during the submission and evaluation of such requests. The promoter seeking the cancellation or deregistration of a registered real estate project is mandatorily obliged to strictly adhere to the prescribed contents delineated within the model affidavit form when making their application.

CHHATTISGARH REAL ESTATE REGULATORY AUTHORITY ISSUED COMPREHENSIVE GUIDELINES FOR SUBMISSION OF ANNUAL AUDIT REPORTS

The Chhattisgarh Real Estate Authority (“**Chhattisgarh RERA**”) *vide* Order No. 92/RERA/2023/1231 (“**Order**”) dated September 25, 2023, has released comprehensive guidelines regarding the submission of annual audit reports for all real estate projects registered under the Real Estate (Regulation and Development) Act, 2016 (“**Act**”).

As per Section 4(2) of the Act, and in alignment with the aforementioned Circular, it is obligatory for every registered

real estate project to procure an audit of the project's financial accounts for the fiscal year 2022-2023. Subsequently, the audit report must be submitted to the Authority *vide* the designated web portal, with a strict deadline of September 30, 2023 ("**Earlier Deadline**").

The Confederation of Real Estate Developers Associations of India ("**CREDAI**"), Chhattisgarh submitted an application to the Authority, asserting that they can only prepare the requisite audit report once the accounts of their firm have been finalized as mandated under the Act and as chartered accountants have been occupied, it is challenging to meet the Earlier Deadline.

Exercising the powers conferred by Section 37 of the Act, the authority issued the following directives:

1. The deadline for the submission of annual audit reports for the fiscal year 2022-2023 has been extended by a period of additional two months, now slated for November 30, 2023.
2. In the event, an audit report is submitted after the aforementioned extended deadline, a late fee of Rs 500/- will be imposed for each day of delay.

CHHATTISGARH REAL ESTATE REGULATORY AUTHORITY ENHANCED DISCLOSURE REQUIREMENTS FOR DEVELOPMENT ACTIVITIES EXPENSES

The Chhattisgarh Real Estate Regulatory Authority ("**Chhattisgarh RERA**"), *vide* Order No. 91/RERA/2023/1201 ("**Order**") dated September 15, 2023, imposed enhanced disclosure requirements concerning the expenses related to development activities and facilities. These provisions apply to approved project layouts and promotional materials used to advertise real estate projects subject to registration under the Real Estate (Regulation and Development) Act, 2016 ("**Act**"), for both ongoing and new real estate endeavors.

As per the directive, detailed financial plans, categorized by project components, must be submitted in a prescribed format. These financial plans are to be updated quarterly and concurrently published on the official web portal maintained by Chhattisgarh RERA. The compliance deadline for this mandate was initially set for September 15, 2023. However, the Authority, exercising its authority under Section 37 of the Act, has now extended the compliance deadline to November 15, 2023. It is crucial to underscore that the obligation to furnish the aforementioned financial information applies to all new project registration applications and applications requesting an extension of existing project registrations.



UPI TO FACILITATE OPERATION OF PRE-SANCTIONED CREDIT LINES AT BANKS

The Reserve Bank of India (“**RBI**”) vide its directive dated September 4, 2023 ([accessible here](#)) has expanded the scope of the Unified Payments Interface System (“**UPI**”) to include credit payments. Payments can now be made through a pre-sanctioned credit line issued by a scheduled commercial bank to individuals, subject to prior consent of the individual customer, using UPI. Allowing individuals to use their pre-approved credit for UPI transactions, further democratizes access to credit by making it more affordable and convenient.

DEPARTMENT OF CONSUMER AFFAIRS PUBLISHES DRAFT GUIDELINES FOR REGULATION OF DARK PATTERNS

The Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India on September 06, 2023, released the draft Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“**Draft Consumer Guidelines**”) ([accessible here](#)). The Draft Consumer Guidelines are currently in consultation phase and public comments have been sought by October 05, 2023.

The Draft Consumer Guidelines impose explicit prohibition on usage of dark patterns and are applicable to: (i) all online platforms which systematically offer goods or services in India; (ii) advertisers; and (iii) sellers. The Draft Consumer Guidelines define ‘Dark Patterns’ as “*such practices or deceptive design patterns using UI/UX interactions on any platform, to mislead or trick users to do something they originally did not intend or want to do, by impairing the consumer autonomy and decision making or choice, amounting to misleading advertisement or unfair trade practice or violation of consumer rights*”.

The Draft Consumer Guidelines specify multiple Dark Patterns such as False Urgency, Basket Sneaking, and

Confirm Shaming that are prohibited. It is to be noted that the Draft Consumer Guidelines purport to penalise contravention to the provisions thereof in terms of the Consumer Protection Act, 2019.

DELHI HIGH COURT RECOGNISES POTENTIAL PRIVACY INFRINGEMENT OF CHILDREN, DISMISSES APPEAL AGAINST STAY OF CIRCULAR MANDATING ADHAAR CARD FOR EWS/DG AND CWSN CATEGORY ADMISSIONS

A division bench of the Delhi High Court (“**Court**”), vide its order dated September 13, 2023 in *Government of NCT of Delhi v. Sashank Yadav*, has ruled that Aadhaar card cannot be mandated for the admission of students under the EWS/DG/CWSN category to private unaided recognised schools. The Delhi Government had issued two circulars dated July 12, 2022 and February 2, 2003 mandating the submission of Aadhaar card for admission to private unaided recognised schools in Delhi under the EWS, DG, CWSN categories. A single judge bench of the Delhi High Court in an interim order stayed the operation of two circulars after a petition was filed challenging the requirement of Aadhaar for EWS admissions. Dismissing an appeal filed by the Delhi government against the interim order of the single-judge bench, the Court held that the requirement of Aadhaar is prima facie in conflict with the constitutional provisions pertaining to privacy under Article 21.

TRAI RELEASES CONSULTATION PAPER ON DIGITAL INCLUSION IN THE ERA OF EMERGING TECHNOLOGIES

The Telecom Regulatory Authority of India (“**TRAI**”) vide its consultation paper dated September 14, 2023 ([accessible here](#)) has invited comments on digital inclusion in the era of emerging technologies, with the objective of examining and addressing the challenges and opportunities presented by the rapid advancement of emerging technologies. The consultation paper seeks to deliberate on the definition of digital inclusion and the additional measures that may be

taken to improve digital connectivity. The focus is on ensuring inclusivity for all sections of society and industries, particularly micro, small and medium enterprises (MSMEs). TRAI stresses the need for a robust policy framework and collaborative efforts between stakeholders to facilitate participation of individuals in digital economic activities.

Comments on the issues are invited by October 16, 2023, and counter comments by October 31, 2023.

TRAI RECOMMENDS CHANGES TO FM RADIO BROADCASTING REGULATIONS

TRAI vide its recommendations dated September 5, 2023 (accessible [here](#)), has published its recommendations on concerns pertaining to FM radio broadcasting. These recommendations are made pursuant to multiple references sought by the Ministry of Information and Broadcasting (“MIB”) from TRAI in relation to key FM radio broadcasting issues, namely, calculating annual license fees, extending license terms, allowing news to be broadcast privately on FM radio, guaranteeing the availability of FM radio receivers in mobile phones, and establishing compliance monitoring procedures.

TRAI has, inter alia, recommended for (i) [de-linking annual license fee from entry fee](#); (ii) [allowing private FM Radio operating to broadcast news](#); (iii) [availability of FM radio receivers in mobile handsets](#); (iv) [compliance oversight](#); and (v) setting up of an [online grievance redressal portal](#).

TRAI INVITES COMMENTS ON NATIONAL BROADCASTING POLICY

TRAI vide its pre-consultation paper dated September 21, 2023 (accessible [here](#)), has invited comments on issues required to be considered while formulating the National Broadcasting Policy. The National Broadcasting Policy is aimed at facilitating a planned development and growth of the broadcasting sector, and may provide a common approach for licenses, oversight, and compliances.

The comments have been invited in furtherance of TRAI's inputs being sought by MIB in relation to the formulating the National Broadcasting Policy. Comments on the issues are invited by October 10, 2023.

MEITY RELEASES DRAFT NATIONAL STRATEGY FOR ROBOTICS

The Ministry of Electronics and Information Technology (“MeitY”) has released the Draft National Strategy for Robotics (“**Draft Strategy**”) (accessible [here](#)). The Draft Strategy aims to position India as a global leader in robotics by creating a conducive environment for the growth and development of the robotics sector in India. The Draft Strategy refers to the National Robotics Mission, a two-tier institutional framework to facilitate the implementation of the Draft Strategy.

MeitY is currently seeking public comments on the Draft Strategy by October 31, 2023 and the same may be submitted [here](#).

WHITE COLLAR CRIME

DEPOSIT OF A MINIMUM OF 20% AMOUNT UNDER THE NI ACT IS NOT MANDATORY

The Supreme Court in the case of **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. and Others** (Criminal Appeal No(s). 2741 of 2023) held that a purposive interpretation should be made of Section 148 of the Negotiable Instruments Act, 1881 (“NI Act”) but in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right the appellant, exception can be made for the reasons specifically recorded. The Appellants in this case who were accused in a criminal complaint filed under section 138 of the NI Act were directed by the Magistrate to pay the cheque amount of Rs. 2,52,36,985/- with interest thereon @ 9% per annum. The decision of the Magistrate was later upheld by both the Sessions Court and the High Court. The High Court relied on the judgement in the case of **Surinder Singh Deswal Alias Colonel S.S. Deswal v. Virender Gandhi** and proceeded on the premise that the Supreme Court in the case of **Surinder Singh Deswal** has interpreted the word “may” appearing in Section 148 as “shall”, the relief of suspension of sentence under Section 389 of the CrPC can be granted only by directing the accused to deposit minimum of 20% of the compensation/fine amount. The Court then observed that a purposive interpretation should be made of section 148 of the NI Act but in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded. Respondent No. 1 contended that the Appellants did not make a plea before the Sessions Court or before the High Court for such an exception to be made in these cases. The Supreme Court, disagreeing with their submissions, held that an application under Section 389 of the CrPC for suspension of sentence applies for grant of relief without any condition. At that juncture, the court would have to consider whether the case falls into exception or not. In view of the above, the Supreme

Court set aside the impugned orders of the High Court and restored the revision petitions filed by the Appellants before the High Court.

DSK View: In this case, the Supreme Court has taken a view that that the provision for deposit of a minimum 20% of the fine/compensation amount by the accused is not an absolute rule under Section 148 of the NI Act.

IF NO PREJUDICE HAS BEEN CAUSED TO THE ACCUSED, THEN THE FAILURE TO PUT INCRIMINATING CIRCUMSTANCES TO THEM WOULD NOT VITIATE THE TRIAL

The Supreme Court in case of **Sunil & Ors. v. State of NCT of Delhi** (Criminal Appeal No. 688 of 2011) held that even though the incriminating circumstances must be put to the accused in evidence before him, if there has been a failure to do so, the same would not *ipso facto* vitiate the trial, unless it is shown that prejudice has been caused to the accused. The facts of the present matter are that the Appellants were roped in through of Section 34 of the IPC as persons who aided and instigated Babu Ram (non-appellant) to fire gunshots which killed two persons and caused grievous injury to 26 others. One of the contentions raised by the Appellant was that the trial of the Appellants suffered from a fundamental defect as the incriminating circumstances about the Appellant’s instigating Babu Ram was never put to them while recording their statements under Section 313 CrPC, and hence incriminating circumstances appearing in the evidence qua exhortation/ instigation of the main accused by the Appellants would have to be eschewed from consideration. The Supreme Court in the case observed that although the incriminating circumstance pertaining to Appellants exhorting the main accused Babu Ram was not specifically put to the Appellants they were aware of the prosecution against them and certain questions reflect how they were apprised of the First Information Report which delineated their role as the ones who exhorted the main accused Babu Ram to fire gunshots and indicated that the appellants were being proceeded against as they had

participated in the crime by sharing common intention with the main accused. The Court further observed that despite the fact that Appellants were represented by their counsel throughout and such a plea was not raised before the trial court and the High Court, it could be assumed that no prejudice had been caused to the Appellant and therefore, held that in the present case conviction of the Appellants was not vitiated for alleged non-compliance of the provisions of Section 313 CrPC.

STATEMENT MADE TO NCB OFFICER IS NOT ADMISSIBLE AS EVIDENCE UNDER NDPS ACT, 1985 READ WITH EVIDENCE ACT

The Supreme Court in the case of *Balwinder Singh (Binda) v. The Narcotics Control Bureau; Satnam Singh v. The Narcotics Control Bureau* (Criminal Appeal Nos. 1136 & 1933 of 2014) held that a statement made by an accused and recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act. The Appellants in this case were convicted for the possession of heroin under Section 21(c) read with Section 8 of the NDPS Act. One Satnam Singh (Appellant in Criminal Appeal No. 1933 of 2014) was found with the possession of the contraband when the National Control Bureau (“NCB”) intercepted the vehicle, who further disclosed that the contraband was brought from Amritsar with assistance of Balwinder Singh (Appellant in Criminal Appeal No. 1136 of 2014). Satnam Singh was arrested, and his statement was recorded after issuing him a notice under Section 67 of the NDPS Act. Subsequently, the Balwinder Singh was also arrested, and a notice was served on him under section 67 of the NDPS Act. The trial court convicted both Balwinder Singh and Satnam Singh. The High Court analysed the entire evidence afresh and relying on the judgement in the case of *Kanhaiyalal v. Union of India*¹⁰ wherein, it was held that an order of conviction can be passed solely on the basis of the confession made by the accused under Section 67 of the NDPS Act and that such a confession before the officer of the NCB was admissible in evidence, as the NCB officer is not considered as a “police officer” within the meaning of Section 25 of the Indian Evidence Act, 1872, convicted both the appellants under the NDPS Act.

The Supreme Court observed that after the decision of the High Court in 2013, the law has developed. In 2020, three judges bench of this court in *Tofan Singh v. State of Tamil Nadu*¹¹ re-examined the ratio in *Kanhaiyalal* and observed that “the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken into account in order to convict an

accused under the NDPS Act.” In view of the above, the Supreme Court observed that statement made by an accused and recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

The Supreme Court observed that there was no independent incriminating evidence that was brought by the prosecution for convicting Balwinder Singh apart from the confessional statements of Satnam Singh. On that ground, Balwinder Singh was acquitted of the charge of conscious possession of commercial quantity of contraband under the NDPS Act. In Satnam Singh’s case however, the Court observed that the conviction did not arise solely out of his confessional statement made to the NCB and that he failed to make a case for acquittal. Therefore, the order of conviction against Satnam Singh was maintained.

THE PROCEDURE PRESCRIBED UNDER THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018 IS NOT AFFECTED BY THE PROVISIONS OF THE CRPC

The Bombay High Court in the case of *Mehul Choksi v. State of Maharashtra & Enforcement Directorate, Mumbai* [Criminal Application No. 1505 of 2019] held that when a special act such as the Fugitive Economic Offenders Act 2018 (“FEO Act”) provides for a procedure to be followed and is not affected by the provisions of the CrPC. In the present case, on July 10, 2018 the Enforcement Directorate (“ED”) filed an application before the Special CBI Court, under Section 4 read with Section 12 of the FEO Act for the Applicant to be declared as a fugitive economic offender and confiscation of his properties. The Applicant therefore filed an application for dismissing the said application on the ground that the application under section 4 of the FEO Act was not accompanied by an affidavit as contemplated under section 297 of CrPC, which was rejected. Aggrieved by the same the Applicant, approached the Bombay High Court and contended that the application was not maintainable since it was not supported by a proper affidavit as required under Section 297 of the CrPC. To support that, it was also contended that unless there was an inconsistency between the FEO Act and CrPC, particularly Section 297 of the CrPC, it could not be said that the provisions of CrPC were not applicable. The Respondents contended that when there is a special procedure prescribed under the Special Act, the procedure under CrPC cannot be considered. The Respondents further submitted that that they have duly complied with Rule 3 of the FEO Rules. The Court observed that Section 4 of the FEO Act and Rule 3 of the FEO Rules are made to further the objective of the Act and they cannot be bypassed by taking recourse to the other provisions of CrPC. The Court after giving due consideration to the arguments advanced by the parties, observed that the Respondents were in compliance with the procedure under the section 4

¹⁰ 2008 (4) SCC 668

¹¹ (2013) 16 SCC 31

of FEO Act and the Rule 3 of the FEO Rules and accordingly rejected the criminal application.

DSK View: *The Bombay High Court in this case has upheld the principle of generalia specialibus non derogant, i.e., general laws do not prevail over special laws.*



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