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NEWSLETTER

October 2024

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MODIFICATION IN THE TIMELINE FOR SUBMISSION OF STATUS REGARDING PAYMENT OBLIGATIONS TO THE STOCK EXCHANGES BY ENTITIES THAT HAVE LISTED COMMERCIAL PAPER[1]

The Securities and Exchange Board of India ("**SEBI**") in the NCS Master Circular highlighted that as per paragraph 8.4 of Chapter XVII, issuers of listed Commercial Paper are required to submit a certificate confirming the fulfilment of their payment obligations within two days of payment becoming due, whereas Regulation 57 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 requires entities with listed non-convertible securities to report the status of their payment obligations (payment of interest or dividend or repayment or redemption of principal) within one working day of its payment becoming due.

In order to align the timeline of intimating stock exchanges regarding status of payment obligations for listed non-convertible securities and listed commercial paper, paragraph 8.4 of Chapter XVII of the NCS Master Circular, is hereby amended as under:

"8.4 A certificate confirming fulfilment of its payment obligations, within one working day of payment becoming due"

This circular came into effect on September 06, 2024.

ALLOWING SECURITIES FUNDED THROUGH CASH COLLATERAL AS MAINTENANCE MARGIN FOR MARGIN TRADING FACILITY[2]

SEBI issued a circular permitting securities funded through cash collateral to be recognized as maintenance margin for Margin Trading Facilities ("**MTF**"). This move is aimed at reducing the burden of additional collateral requirements and enhancing the ease of conducting business.

According to the circular, if a broker receives cash collateral from a client as margin for margin trading and subsequently utilizes this collateral to fulfill the client's settlement obligations with the clearing corporation, the cash collateral may be treated as maintenance margin.

However, this provision is applicable only to the extent of securities received from the clearing corporation against the cash collateral provided, with such securities being pledged as funded stocks in favor of the trading member.

Furthermore, if funded stocks are used as maintenance margin based on the client's cash collateral, these stocks must belong to Group 1 securities. The required margin for these securities will be calculated as the Value at Risk plus five times the Extreme Loss Margin, regardless of their availability in the Futures and Options segment.

SEBI also clarified that stocks or units of Equity Exchange-Traded Funds ("**ETFs**") used as collateral with stockbrokers must be clearly distinguished from stocks or units of Equity ETFs acquired through margin trading (referred to as "**funded stocks**") for the purposes of calculating the funding amount.

Additionally, trading members have been instructed to report their exposure under MTF by 6:00 PM on the T+1 day (the day following the trade date).

This circular will come into effect from October 01, 2024.

[1] SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/117

[2] SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/118

MODIFICATION IN GUIDELINES FOR BUSINESS CONTINUITY PLAN ("BCP") AND DISASTER RECOVERY ("DR") OF MARKET INFRASTRUCTURE INSTITUTIONS ("MIIS")[3]

In Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171, dated October 16, 2023, SEBI had outlined the Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) for Stock Exchanges and Clearing Corporations in Clause 9.1 of Chapter 2. Furthermore, in Clause 4.31 of Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/166, dated October 06, 2023, SEBI has detailed the Guidelines for BCP and DR for Depositories. Additionally, in the August 04, 2023 Master Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/136, SEBI has detailed the Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) for Commodity Derivatives Segment at Clause No. 16.4.

Key clauses from various SEBI Master Circulars (dated August 4, October 6, and October 16, 2023) have been revised as follows:

(i) Stock Exchanges: In addition to the Disaster Recovery Site ("**DRS**"), Stock Exchanges must maintain a Near Site ("**NS**") to ensure minimal data loss;
(ii) Clearing Corporations and Depositories: Similarly, they must have an NS to ensure zero data loss;
(iii) DRS Staff: Staff at DRS must have the same expertise as those at the Primary Data Centre ("**PDC**"), capable of operating independently at short notice;
(iv) Recovery Point Objective ("**RPO**"): MIIs must ensure near-zero data loss and have methods for data reconciliation after resuming operations from any site;
(v) Solution Architecture: Both PDC and DRS/NS must provide high availability, fault tolerance, and no single point of failure, ensuring near-zero or zero data loss, as well as data and transaction integrity;
(vi) Data Replication: (a) For Stock Exchanges- Synchronous replication between PDC and NS is required for near-zero data loss, while asynchronous replication can be used between PDC-DRS and NS-DRS and (b) for Clearing Corporations and Depositories- Synchronous replication between PDC and NS is required for zero data loss, with asynchronous replication allowed between PDC-DRS and NS-DRS.

It is recommended that MIIs work together to create a common definition of "near zero data loss" and submit it to SEBI after receiving clearance from the relevant Standing Committee on Technology ("**SCOT**"). MIIs must take the requisite actions to set up the mechanisms needed to carry out this Circular, including making any necessary changes to the applicable bylaws, rules, and regulations.

This circular will come into effect from November 12, 2024.

OPTIONAL MECHANISM FOR FEE COLLECTION BY SEBI REGISTERED INVESTMENT ADVISERS ("IAS") AND RESEARCH ANALYSTS ("RAS")[4]

The Centralised Fee Collection Mechanism for IA and RA ("**CeFCoM**") is being operationalised to enable registered IAs and RAs to collect fees from their clients, following public consultation and many stakeholder engagements. Clients using this system will pay fees to IAs and RAs via an authorised platform or portal run by an approved supervisory body. BSE Limited has collaborated with other parties to co-create the system. By September 23, 2024, at the latest, BSE Limited must outline the mechanism's operating structure. The mechanism must then come live on October 1st, 2024.

REPORTING BY FOREIGN VENTURE CAPITAL INVESTORS ("FVCIS")[5]

FVCIs are mandated by Regulation 13(1) of the SEBI (FVCI) Regulations, 2000 to submit quarterly reports to SEBI on their venture capital activity in the manner prescribed.

The report for the quarter ending September 30, 2024 and December 31, 2024 shall be submitted in excel file in the revised format by November 15, 2024 and January 15, 2025 respectively through email at fvci-report@sebi.gov.in

From quarter ending March 31, 2025 onwards, FVCIs shall submit quarterly report in the revised format on the SEBI intermediary portal (SI Portal). The report shall be submitted within 15 calendar days from the end of each quarter.

ENABLING T+2 TRADING OF BONUS SHARES WHERE T IS THE RECORD DATE[6]

In the process of streamlining the process of the Bonus issue of equity shares, and in consultation with the market participants, SEBI decided to reduce the time taken for credit of bonus shares and trading of such shares from the record date of the Bonus Issue under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

These provisions for the Issuer to take on record the deemed date of allotment on the next working date of record date (T+1 day) while intimating the record date (T day) to the Stock Exchange. The shares allotted pursuant to the bonus

[3] SEBI/HO/MRD/TPD/P/CIR/2024/119
[4] SEBI/HO/MIRSD/MIRSD-POD-1/P/CIR/2024/120
[5] SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/121
[6] CIR/CFD/PoD/2024/122

issue shall be made available for trading on the next working date of allotment (T+2 day).

The Exchange(s) and Depositories are advised to make amendments to the relevant bylaws, rules and regulations for the implementation of the above decision, as may be applicable. This update shall be applicable for all bonus issues announced on or after October 01, 2024. Any delay in compliance with the timelines as mentioned above will attract penalties as determined under point 4.1 of SEBI circular SEBI/HO/CFD/DIL2/CIR/P/2019/94 dated August 19, 2019.

MODIFICATION IN FRAMEWORK FOR VALUATION OF INVESTMENT PORTFOLIO OF AIFS[7]

SEBI modified provisions regarding the valuation of securities which are not covered in paragraph 22.1.1 of the Master Circular for Alternative Investment Funds ("**AIFs**") dated May 07, 2024. The Valuation of securities, other than the unlisted securities and the listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 ("**MF Regulations**"), shall be carried out as per the norms prescribed under MF Regulations.

Additionally, the valuation of securities which are not covered in paragraph 22.1.1 of the Master Circular shall be carried out as per valuation guidelines endorsed by any AIF industry association, which, in terms of membership, represents at least 33% of the number of SEBI registered AIFs. The eligible AIF industry association shall endorse appropriate valuation guidelines after taking into account the recommendations of the Alternative Investment Policy Advisory Committee of SEBI.

Clause 22.2.2 of the Master Circular also stands modified as follows:

"22.2.2 Change in valuation methodology/approach to comply with Clause 22.1 of Master circular for AIFs on 'Standardised approach to valuation of investment portfolio of AIFs', shall not be construed as 'Material Change'.

22.2.3 Change in methodology/approach within the valuation guidelines / valuation norms prescribed for AIFs, shall not be construed as a 'Material Change'. However, upon such change, the valuation of the investment carried out based on valuation methodologies / approaches, both old and new, shall be disclosed to the investors to ensure transparency."

Additionally, a new sub-clause is inserted providing the eligibility criteria for independent valuer for a partnership entity or Company as Clause 22.3.4. Firstly, such entity or company shall be a 'Registered Valuer Entity' registered with the Insolvency and Bankruptcy Board of India ("**IBBI**"); secondly, the deputed / authorised person(s) of such 'Registered Valuer Entity', who undertake(s) the valuation of the investment portfolio of AIFs, shall have a membership of ICAI or ICSI or ICMAI or a CFA Charter from the CFA Institute.

The specified timeline, as prescribed in Clause 22.4.1 of the master circular, for reporting valuation based on audited data of investee companies as of March 31 every year to performance benchmarking agencies, has been extended from "six months" to "seven months".

It has also been mandated that the trustee/sponsor of AIF shall ensure that the 'Compliance Test Report' prepared by the manager in terms of Chapter 15 of the master circular for AIFs includes compliance with the provisions of this circular.

This Circular envisages to harmonise the valuation norms across entities within SEBI's regulatory purview concerning thinly traded and non-traded securities in a time-bound manner to facilitate applicability of the same for the valuation of investment portfolios of AIFs on or after March 31, 2025.

MODIFICATION MASTER CIRCULAR FOR MUTUAL FUNDS[8]

SEBI modified the Master Circular for Mutual Funds in respect of the revised regulatory framework for CDS issued by the Reserve Bank of India ("**RBI**") on February 10, 2022. Accordingly, Clause 12.28 regarding Participation of Mutual Funds in Credit Default Swaps ("**CDS**") has been modified to provide that Mutual Fund Schemes can only purchase CDS to hedge their credit risk on debt securities they hold. However, CDS exposure cannot exceed the corresponding debt security exposure, and it won't contribute to the scheme's gross exposure. If the protected debt security is sold, the CDS position must be closed within 15 working days.

For risk calculations, the exposure of a protected debt security is considered as exposure to either the issuer of the debt security or the seller of the CDS, whichever has a higher credit rating (lowest long-term rating of instruments of the seller of CDS shall be considered for comparison). The exposure shall form part of overall single issuer limits for the reference entity or seller of CDS, in case of the same rating for the reference entity and seller of CDS, the exposure shall then be considered on the reference entity and not on the seller of CDS, whichever is applicable. CDS can only be purchased from sellers with investment-grade or higher-rated instruments, and schemes can buy CDS for both investment-grade and below investment-grade debt securities.

[7] SEBI/HO/AFD/PoD-1/P/CIR/2024/123

[8] SEBI/HO/IMD/PoD2/P/CIR/2024/125

Additionally, in terms of selling CDS, Mutual Fund Schemes can sell CDS only as part of synthetic debt security investments. Overnight and Liquid schemes cannot sell CDS. To sell CDS, the scheme must have sufficient cash, government securities (G-Sec) maturity within +/- 6 months of the maturity, or Treasury bills as collateral. The collateral value must exceed the notional amount of the CDS contract, including a buffer for price fluctuations. However, investment in aforesaid instruments as cover shall not be considered as part of Liquidity Ratio – Redemption at Risk (LR-RaR) and Liquidity Ratio - Conditional Redemption at Risk (LR-CRaR) eligible instruments and shall not be sold or used for any other purpose till CDS sell position is open.

The exposure of synthetic debt securities is considered in single issuer, group issuer, and sectoral limits. For gross exposure calculation, the notional amount plus the buffer is used. Schemes can only sell CDS against investment-grade securities, and the credit risk rating of the synthetic debt security is the same as the reference obligation. Liquidity and credit risk values for synthetic debt securities are adjusted for risk-o-meter and Potential Risk Class (PRC) matrix calculations. Debt Index funds and ETFs may also take exposure through synthetic debt securities.

Further, Mutual Fund Schemes must adhere to RBI directives and use standard Fixed Income Money Market and Derivatives Association of India ("**FIMMDA**") contracts for CDS transactions. These transactions should be conducted through a Central Counterparty or Request for Quote ("**RFQ**") platform, with a two-way Credit Support Annex ("**CSA**") in place. Schemes must disclose CDS seller credit ratings and transactions with associated companies. CDS contracts must mature before the scheme's winding up, and the overall CDS exposure cannot exceed 10% of AUM. AMFI will issue guidelines for CDS valuation and accounting, prioritising actual traded levels over corporate bond credit spreads.

This circular will come into immediate effect.

MODIFICATION OF MASTER CIRCULAR FOR STOCK EXCHANGES AND CLEARING CORPORATIONS FOR EASE OF DOING BUSINESS IN THE CONTEXT OF STANDARD OPERATING PROCEDURE AS A RESULT OF TECHNICAL GLITCH.[9]

SEBI modified the Standard Operating Procedure ("**SOP**") for handling technical glitches by Market Infrastructure Institutions ("**MIIs**") and the imposition of financial disincentives. While financial disincentives will still be imposed on MIIs, individual accountability for technical glitches will no longer be considered for these penalties. Accordingly, it has been decided to modify paragraph 9.3 of Chapter 2 of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and paragraph 4.70 of SEBI Master Circular for Depositories dated October 06, 2023. To ensure the smooth functioning of MIIs' systems and protect the integrity of the securities market, SEBI is introducing a pre-defined threshold for downtime. If a MII's system experience downtime beyond this threshold, the institution will be required to pay a financial disincentive. This measure aims to incentivise MIIs to prioritise system performance and efficiency, thereby reducing the likelihood of future disruptions.

While financial disincentives will continue to be imposed on MIIs, SEBI has removed individual accountability for technical glitches. To ensure transparency and fairness, SEBI will provide MIIs with an opportunity to submit a compliance report within 90 days of occurrence of disaster/ business disruption explaining the aforesaid disruption, including computation of "financial disincentives" before imposing any financial disincentives. Additionally, MIIs are now required to disclose details of financial disincentives paid on their websites and annual reports, listed MIIs are to do the same in respect of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Furthermore, MIIs are expected to conduct internal investigations to assess individual accountability for technical glitches, while SEBI would retain the right to initiate enforcement action.

This circular will come into immediate effect.

MASTER CIRCULAR ON SURVEILLANCE OF SECURITIES MARKET[10]

SEBI issued a Master Circular on Surveillance of the Securities Market consolidating various surveillance-related directives issued by SEBI's Integrated Surveillance Department ("**ISD**").

Trading Rules and Dematerialized Shareholding
The specific requirements for trading newly listed securities or those undergoing significant changes are outlined in this section. These securities will be traded in a Trade for Trade segment with price bands for the first ten trading days to ensure orderly price discovery. Additionally, stock exchanges must verify that companies have complied with disclosure requirements before trading starts.

Monitoring Unauthenticated News by Market Intermediaries
SEBI has observed that employees of brokerage houses and other intermediaries sometimes spread unverified news and rumours through various communication channels, disrupting the market and distorting prices. To address this, SEBI mandates stricter internal controls by intermediaries by,

[9] SEBI/HO/MRD/TPD-1/P/CIR/2024/124

[10] SEBI/HO/ISD/ISD-PoD-2/P/CIR/2024/126

- implementing a proper code of conduct to prevent rumour-mongering;
- restricting employee access to social media and communication platforms or closely monitoring their use;
- maintaining logs of any activity on such platforms as part of official records; and
- requiring employees to get approval from compliance officers before sharing any market-related news.

SEBI emphasises that both employees and compliance officers can face penalties for violating these regulations.

Disclosures by Companies
Companies can maintain disclosures in physical or electronic format following the prescribed format mentioned in Annexure 1 of the Master Circular. Companies must ensure they have a Code of Fair Disclosure and a Code of Conduct for handling Unpublished Price Sensitive Information ("**UPSI**"). These codes must be published on their website and communicated to stock exchanges. Companies can only deal with market intermediaries and other individuals who have formulated a code of conduct as SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**").

Reporting Violations to Stock Exchanges
Listed companies, intermediaries, and fiduciaries must promptly inform stock exchanges about any violations involving the Code of Conduct under PIT Regulations as per the reporting format provided in Annexure 2 of the Master Circular. Any penalties collected for such violations must be remitted to the Investor Protection and Education Fund ("**IPEF**") administered by SEBI.

Automation of Disclosures
SEBI is implementing a system for automated disclosures under Regulation 7(2) of the PIT Regulations. This system will cover disclosures for a broader range of entities, including members of the promoter group, designated persons, promoters, and directors. Disclosures will pertain to trading activities in company equity shares, derivative instruments, and debt securities by these entities. Depositories and stock exchanges will be responsible for disseminating these disclosures on their websites. Once the automated system is in place, the manual filing of disclosures will no longer be required for companies that have complied with these requirements.

SEBI Clarifies Trading Window Closure for Listed Companies

i. Offer for Sale (OFS) and Rights Entitlements (RE) Transactions
SEBI clarifies that trading window restrictions won't apply to Offer for Sale ("**OFS**") and Rights Entitlements ("**RE**") transactions carried out following SEBI's specified framework. These transactions are already exempt under existing regulations.

ii. Framework for Restricting Trading During Window Closure
SEBI outlines a framework for restricting trading by Depository Participants ("**DPs**") during the trading window closure period. This applies to situations when DPs might possess UPSI. The framework utilises a system to freeze DPs' PANs at the security level, effectively preventing on-market transactions, off-market transfers, and the creation of pledges in equity shares and derivatives of the listed company during the closure period.

USAGE OF UPI BY INDIVIDUAL INVESTORS FOR MAKING AN APPLICATION IN PUBLIC ISSUE OF SECURITIES THROUGH INTERMEDIARIES[11]

SEBI issued a circular requiring individual investors to use a Unified Payments Interface ("**UPI**") for making applications in public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities, and securitised debt instruments through intermediaries. This aims to streamline the application process and align it with the process used for public issues of equity shares and convertibles. This mandate applies for application amounts up to INR 5,00,000 (Rupees Five Lakh).

By requiring UPI for smaller applications, SEBI hopes to reduce the administrative burden on intermediaries and enhance the overall efficiency of the public issue process. This requirement for public issues opening will come into effect on or after November 1, 2024. UPI, with its widespread adoption and ease of use, is expected to provide a more convenient and secure option for individual investors. Individual investors who wish to apply for larger amounts or prefer alternative methods can continue to do so through SCSBs or the Stock Exchange Platform.

PARAMETERS FOR PERFORMANCE EVALUATION OF MARKET INFRASTRUCTURE INSTITUTIONS[12]

SEBI mandated independent external evaluations for MIIs, including stock exchanges, clearing corporations, and depositories. This initiative aims to ensure transparency, accountability, and effective oversight of these critical market entities. Under the new framework, MIIs will be evaluated on a range of criteria, including their resilience in technology and processes, commitment to investor education and protection, efficiency in discharging their regulatory role, compliance with regulatory norms, governance practices, adequacy of resources, and fair access and treatment to all stakeholders. An independent external

[11] SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/128

[12] SEBI/HO/MRD/POD-III/CIR/P/2024/127

agency, approved and appointed by SEBI, will conduct these evaluations. The agency will assess the MII's performance against a set of pre-defined standards and assign a rating. This rating will reflect the agency's judgment on the MII's overall performance about expected outcomes.

The evaluation process will be conducted every three years, with the first evaluation covering the financial year 2024-2025. Subsequent evaluations will be conducted for blocks of three financial years. In addition to evaluating the overall performance of MIIs, the framework also includes specific guidelines for assessing the performance of Key Management Personnel ("**KMPs**"), including the Managing Director. KMPs will be evaluated on their contributions to critical areas such as operations, regulatory compliance, risk management, and investor grievances. MIIs are required to take necessary steps to implement the framework, including amending relevant bylaws and rules. They must also inform market participants, including investors, about the new requirements and disseminate information on their websites.

REDUCTION IN THE TIMELINE FOR LISTING OF DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES TO T+3 WORKING DAYS FROM EXISTING T + 6 WORKING DAYS (AS AN OPTION TO ISSUERS FOR A PERIOD OF ONE YEAR AND ON A PERMANENT BASIS THEREAFTER SUCH THAT ALL LISTINGS OCCUR ON A T+3 BASIS)[13]

SEBI significantly reduced the listing timeline for public issues of debt securities and Non-Convertible Redeemable Preference Shares ("**NCRPS**"). Previously, the listing of debt securities and NCRPS was required to be completed within T+6 working days from the closure of the public issue. Under the new regulations, the listing timeline has been shortened to T+3 working days. This reduction is expected to facilitate faster access to funds for issuers and provide investors with earlier liquidity for their investments.

SEBI has introduced a voluntary phase for the implementation of this new timeline. From November 1, 2024, to October 31, 2025, issuers can choose to adopt the T+3 listing timeline. However, if an issuer opts for T+3 but fails to meet this deadline, the penalty for delayed refunds (15% annual interest) will only apply after the original T+6 deadline. After November 1, 2025, the T+3 listing timeline will become mandatory for all public issues of debt securities and NCRPS. Thus, the issuers will be required to list their securities within three working days of the issue closure.

To ensure compliance, stock exchanges will closely monitor the listing process and enforce the new timeline. Additionally, issuers must disclose the T+3 listing timeline in their offer documents to inform investors.

OPERATIONAL GUIDELINES FOR FOREIGN VENTURE CAPITAL INVESTORS (FVCIS) AND DESIGNATED DEPOSITORY PARTICIPANTS (DDPS)[14]

SEBI issued operational guidelines for Foreign Venture Capital Investors ("**FVCIs**") to facilitate a smooth transition to the amended SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("**FVCI Regulations**"). These guidelines provide clarity on the registration process, eligibility conditions, and renewal procedures for FVCIs through Designated Depository Participants ("**DDPs**").

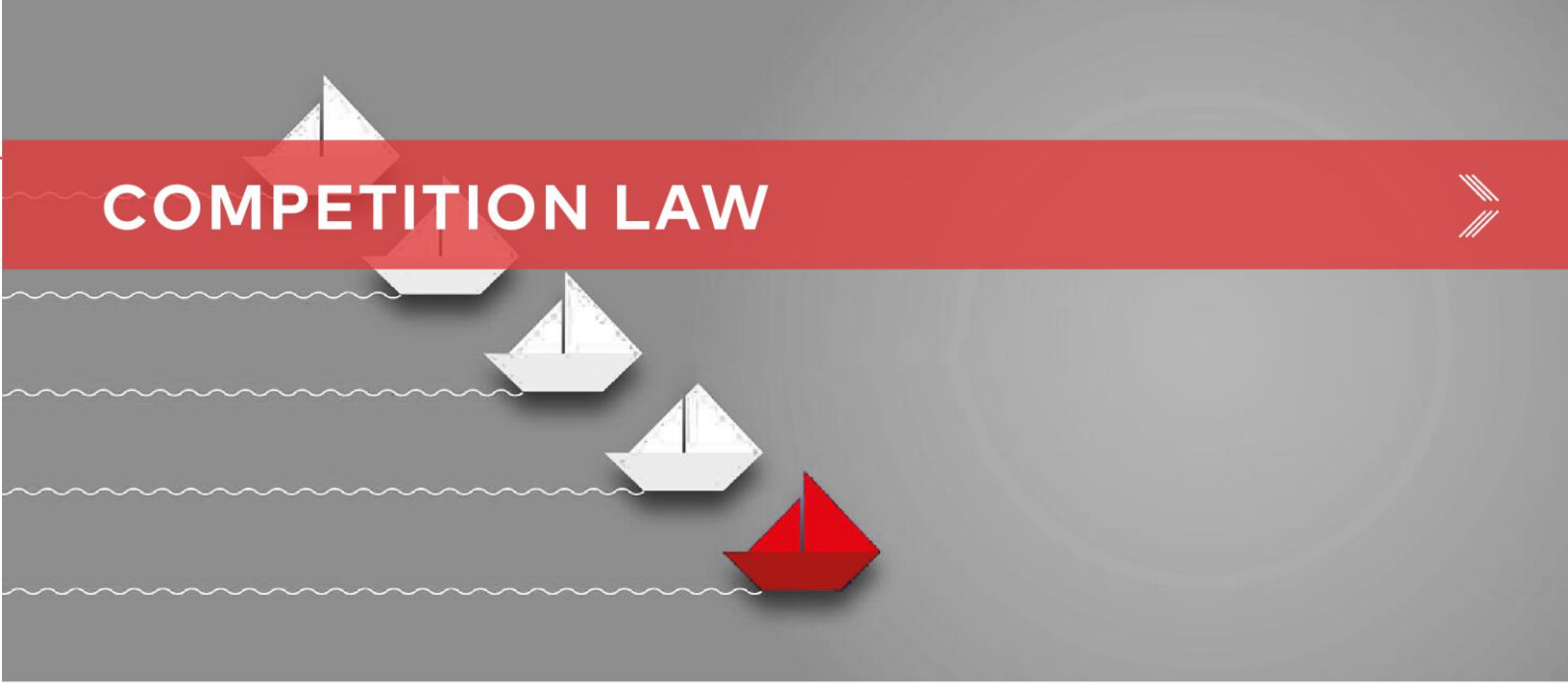
Existing FVCIs are required to engage a DDP by March 31, 2025, for registration continuance, failure to do so may lead to restrictions on new investments and liquidation of existing holdings. The DDPs are responsible for verifying the eligibility and conducting due diligence on FVCIs.

FVCIs must report material changes to their DDPs, including those that may affect their eligibility for registration or investments. The guidelines define two types of material changes: (i) critical changes requiring immediate notification; and (ii) other changes requiring notification within 30 days. The requirement for FVCIs to obtain a minimum USD 1,000,000 (One Million Dollars) commitment from investors has been removed, making it easier for smaller FVCIs to enter the Indian market.

FVCIs are required to provide comprehensive Know Your Customer ("**KYC**") documentation to intermediaries when conducting transactions in the Indian securities market to ensure compliance with regulatory requirements and prevent fraud and money laundering. For Ultimate Beneficial Owners ("**UBOs**"), FVCIs must provide details such as name, address, nationality, and their percentage ownership in the FVCI. Intermediaries can access this information only with the FVCI's consent through a secure authentication process. The guidelines will come into effect on January 1, 2025.

[13] SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129

[14] SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/130



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

CCI APPROVES THE COMBINATION INVOLVING COFORGE LIMITED AND CIGNITI TECHNOLOGIES LIMITED

The CCI via its order dated June 25, 2024, approved the combination involving acquisition of 50-54% shareholding by Coforge Limited of Cigniti Technologies Limited on a fully diluted basis ("**Proposed Combination**").

The Commission observed that parties as well as their group entities are engaged in the b provision of IT and IT-enabled services and thus the activities of the parties exhibit a horizontal overlap.

Moreover, the CCI noted that there is a potential complementary overlap between the activities of the groups in Application Development and Software Testing services in India.

However, given that the combined market share of the groups is minuscule and there are other big players like HCL and Infosys in the market, the CCI approved that the Proposed Combination.

CCI APPROVES THE COMBINATION INVOLVING SKH SHEET METALS COMPONENTS PRIVATE LIMITED AND MAGNA AUTOMOTIVE INDIA PRIVATE LIMITED

The CCI via its order dated May 28, 2024, approved the proposed transfer of components of Magna India ("**Target Business**") to SKH M Private Limited ("**Krishna Group**") ("**Proposed Combination**").

The Commission noted that both the groups i.e., Krishna Group and the Target Business, exhibit horizontal overlaps in the segment of passenger cars (sub-segment of passenger vehicles ("**PVs**")) and Utility Vehicles ("**UVs**"). The Commission observed that the combined market shares of both the groups in the overlapping segment of manufacture and supply of components for UVs fell in the range of 30-35%, and for other segments are minuscule and thus there is no likelihood of any distortion to competition.

Concerning the vertical overlaps, the Commission observed that the Krishna Group caters to the upstream segment which provides an input for the components supplied by the Target Business in the downstream segment. The market share of the former is in the range of 0-5% and that of the latter in the range of 0-25%.

Thus, the Commission concluded that given the market share of both groups, it was unlikely for them to cause foreclosure in the other party's segment and therefore the Proposed Combination is not likely to have AAEC in India and approved it.

MARKET STUDY OF DIAGNOSTIC MEDICAL IMAGING EQUIPMENT INDUSTRY IN INDIA

Through this study, the Competition Commission of India has made certain observations about the DMI equipment industry. The study revealed that there are many barriers to entry in the DMI sector like high costs due to import dependency, technical expertise to meet global Original Equipment Manufacturers ("**OEM**") quality standards and brand preference of OEMs for the sale of CT scan and MRI machines to large healthcare facilities. Overall, the market for DMI has an oligopolistic characteristic, with market power concentrated among a few OEMs.

The OEMs as the Commission held, must be encouraged in the following ways: to increase assembly operations in India for MRI and CT scanning equipment, to build partnerships in the DMI industry, to encourage collaboration between global OEMs and Indian suppliers which will help them to

transition to full-scale manufacturing of MRI and CT scan equipment in India.

It further laid focus on enhancing local capabilities and startup growth culture in India, putting self-regulatory measures towards increased transparency related to availability of spare parts etc., and lastly to foster OEMs to provide open market access for spare parts and ancillary components to Original Equipment Suppliers (**OES**) and independent dealers.

CCI ENFORCED THE COMPETITION (CRITERIA FOR EXEMPTION OF COMBINATIONS) RULES, 2024

The Ministry of Corporate Affairs (**MCA**) enforced the Competition (Criteria for Exemption of Combinations) Rules, 2024 (**Exemption Rules**), on September 10, 2024. The Exemption Rules will effectively replace the erstwhile Schedule I exemptions.

Some of the enforced key changes are mentioned as below:

i. The newly enforced Exemption Rules exempts: (a) demergers, and (b) issuance of shares to the demerged entity, as a consideration for the demerger.

ii. Acquisition of shares by registered stockbrokers and mutual funds are exempted, provided they do not acquire 25% and 10% respectively of the shares or voting rights.

iii. The affiliate entity has clarified to mean an entity having either: (a) 10% or more of shares or voting rights, or, ability to (b) appoint a director, or (c) access commercially sensitive information of another entity.

iv. Incremental acquisition of less than 10% of shares of the target is exempted, if there is no: (a) change in control, (b) representation in board, and (c) access to commercial sensitive information. However, if additional acquisition of shares is more than 10% but less than 25%, the exemption is available only if their businesses do not exhibit any overlap.

CCI ENFORCED THE CCI (GENERAL) REGULATIONS, 2024

The CCI enforced the CCI (General) Regulations,2024, setting aside the erstwhile Regulations, 2009.

Some of the changes are mentioned below:

i. Introduction of Interlocutory Application and Miscellaneous Application along with their requisite fees.

ii. Monetary agencies will be appointed for overseeing the implementation of the orders in Settlement and Commitment mechanism.

iii. The Director General shall now have 90 days instead of 60 days to submit the investigation report.

iv. The fees for filing of an Information has been increased to INR 50,000 for companies with turnover up to 2 crores and INR 1,25,000 for turnover between 2 crores to 50 crores.

DEBT ARSING OUT OF SALE AGREEMENT DO NOT CONSTITUTE AS A FINANCIAL DEBT UNDER SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE 2016

The Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi ("**NCLAT**") in the matter titled as ***Sandeep Mittal vs. M/s ASREC (India) Ltd & Ors.*** has held that "no financial debt exists" under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), where the transaction in question arises from a Sale Agreement rather than from a Loan Agreement against the Corporate Debtor.

In the present case, an appeal was preferred by Sandeep Mittal and Ravi Mittal ("**Appellants**") members of the suspended board of directors of M/s Shree Industries Limited ("**Corporate Debtor**"), aggrieved by the Impugned Order, passed by the Hon'ble National Company Law Tribunal (**"NCLT"**). As per facts of the case, Gujarat State Financial Corporation (**"GSFC"**), Gujarat Industrial Investment Corporation (**"GIIC"**), Bank of Baroda, and Dena Bank assisted M/s Ganpati Pulp and Paper Ltd. (**"GPPL"**) with term loans amounting to Rs. 30 Lakhs, Rs. 60 Lakhs, Rs. 16.50 Lakhs, and Rs. 16.50 Lakhs, respectively.

Subsequently, GPPL created a charge over its immovable assets ("**Assets**") but later defaulted in making due payments on instalments which consequently led to GSFC taking possession of Assets and issuing a sale notice under Section 29 of the State Financial Corporation Act, 1951. In consonance with the sale notice, the Corporate Debtor offered a sum of Rs. 3.88 Crores and pursuant to the same parties entered into an agreement which had explicitly laid down the payment terms including the upfront consideration of Rs. 50 Lakhs and payment of balance consideration of Rs. 3.38 crores in 20 quarterly instalments. Unfortunately, Corporate Debtor was declared as a sick industrial company by the Hon'ble Gujarat High Court while adjudicating a Special Civil Application filed by GSFC. Later, the Hon'ble Gujarat High Court directed to transfer the winding-up proceedings before the Hon'ble NCLT, Ahmedabad, During the pendency of the winding-up proceeding Bank of Baroda assigned its debt to ASREC (India) Ltd. (**"Respondent No. 1"**), wherein the parties entered into a one-time settlement ("**OTS**") against the default amount. On 15.03.2016, the Corporate Debtor defaulted on the OTS proposal to Respondent No. 1 for Rs. 5.50 crores which consequently led to the filing of an Application under Section 7 of the Code before the Hon'ble NCLT, New Delhi.

The Hon'ble NCLT while adjudicating the matter initiated the Corporate Insolvency Resolution Process against the Corporate Debtor, while terming the debt arising out of the Sale Agreement as Financial Debt. However, the said Impugned Order was challenged before the Hon'ble NCLAT, wherein the Hon'ble NCLAT while placing reliance on ***Pioneer Urban and Infrastructure Ltd. vs. Union of India,***[15] held that "financial debt" is a debt disbursed against consideration for the time value of money where the term "disbursed" refers to money paid out with the expectation of repayment over time. Further, the Hon'ble NCLAT while taking into consideration the judgment passed by the Hon'ble Supreme Court in ***Global Credit Capital Limited and Anr. vs. Sach Marketing Pvt. Ltd.***[16]**,** reiterated that debt is only considered 'financial' if it is set out in clauses of Section 5(8) of the Act.

Since, the intention was to purchase Assets of GPPL for Rs. 3.88 Crores with conditions of default and instalments reflected the nature of a sale and the irrevocable, unconditional guarantee provided by the Corporate Debtor was for the payment of the balance purchase price. Therefore, the true nature of the transaction was for the sale of Assets and not for the loan. Hence, the present Appeal was allowed and the Impugned Order passed by Hon'ble NCLT was set aside.

[15] [(2019) 8 SCC 416].

[16] [(2024) SCC OnLine SC 649].

FUND RAISED THROUGH THE SUBSIDIARY'S COMPULSORY CONVERTIBLE PREFERENCE SHARES UTILIZED BY THE CORPORATE DEBTOR FALLS UNDER THE DEFINITION OF FINANCIAL DEBT

The Hon'ble National Company Law Tribunal, Mumbai ("**NCLT**") in the matter titled ***IIRF India Realty XII Limited & Anr. vs. Mr. Srigopal Choudhary, RP of Shree Ram Urban Infrastructure Ltd. & Ors.*** in **I.A No. 614 of 2023** in CP(IB) No. 494 of 2019 held that any disbursement of debt against the consideration amount for the time value of money in the form of IRR can be said to be a financial debt.

In the present case, IIRF India Realty XII Limited ("**IIRF**") and Vistra ITCL (India) Limited ("**Vistra**") hereinafter collectively referred to as ("**Applicants**") had invested a sum of Rs. 299,99,99,777/- for the construction of Shree Ram Urban Infrastructure Limited ("**Corporate Debtor**") project namely Palais Royale. The investment was made by subscription of 550 equity shares and 5,09,318 preference shares of SRM Sites Pvt. Ltd. ("**SRM Sites**"), i.e., 100% subsidiary of the Corporate Debtor. The investment was followed by 4 (four) separate and identical Share Subscription Agreements ("**SSHA**") and Transfer Options Agreements ("**TOA**"). SSHA and TOA clearly enumerated the solicitation of investment to the Corporate Debtor from the Applicants and clauses pertaining to the obligation of the Corporate Debtor to buy back the shares if in case SRM Sites defaults to adhere to the buyback clause. Further, the said shares of the Applicants were liable to be purchased at a price with 27% IRR on its investment by the Corporate Debtor. Owing to defaults by SRM Sites, the Applicants invoked the put option against the investment by calling upon the Corporate Debtor to fulfil the buyback obligations.

Vide Order dated 06.11.2019 passed by the Hon'ble NCLT in CP(IB) No. 494 of 2019, the corporate insolvency resolution process ("**CIRP**") was initiated against the Corporate Debtor. The Applicants filed claims before the Resolution Professional ("**RP**") to the tune of Rs. 1486,12,03,644/- as a financial creditor. After initially provisionally admitting the claims, the RP summarily rejected the same, resulting in filing the captioned IA No. 614 of 2023.

The Hon'ble NCLT held that since the investment though routed through SRM Sites, was used for the Corporate Debtor's project, and the Corporate Debtor had guaranteed repayment with an IRR (Internal Rate of Return), thus constituting a financial debt. Reliance was also placed on the judgment passed by the Hon'ble NCLAT in ***Sanjay D. Kakade vs. HDFC Ventures Trustee Company Ltd. & Ors.***[17] Accordingly, Hon'ble NCLT held that the investment made by the Applicants was secured by the guarantee of Corporate Debtor under Put Option in the TOA and the Corporate Debtor was thus legally obligated to buy back shares if SRM Sites defaulted in adhering to the buyback clause. Accordingly, the investment fulfilled the requirement of "commercial borrowing" against the "time value of money" under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. Moreover, the Hon'ble NCLT also categorically stated that a bar under FEMA cannot be a ground to characterize a transaction as not being in the nature of a debt if it otherwise qualifies to be so under the definition(s) of Financial Debt contained in the Code.

Accordingly, the Hon'ble NCLT vide its Order dated 04.09.2024 was pleased to allow the Application and directed the RP to admit the claims of Applicants as financial debt in the CIRP of the Corporate Debtor.

PARTY IGNORES SECTION 21 NOTICE; SHOULD SEEK COURT INTERVENTION, ARBITRATOR CAN'T UNILATERALLY SUMMON PARTIES: DELHI HIGH COURT

The Hon'ble Delhi High Court, in the matter titled ***Meenakshi Agrawal vs. M/S Rototech*** [18] held that when a party seeking arbitration faces non-cooperation from the other side, whether through non-response or refusal to participate in the arbitration process, the proper recourse is to approach the Court under Section 11(5) or Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Court further emphasized that a party cannot unilaterally confer jurisdiction on an arbitrator, even if both sides have agreed upon the arbitrator's appointment. Additionally, an arbitrator cannot proceed or summon the non-cooperative party to arbitration without Court's intervention or consent.

In the present case, Meenakshi Agrawal ("**Petitioner**") had leased premises located in New Delhi to M/s Rototech ("**Respondent**") under a Lease Deed dated 01.08.2019. Clause 11 of the Lease Deed contained an arbitration clause specifying that any disputes would be referred to arbitration, with a mutually agreed arbitrator, Mr. Atul Kumar.

Disputes arose regarding the lease, prompting the Petitioner to issue a notice under Section 21 of the Arbitration Act, requesting arbitration in line with the lease terms, with Mr. Atul Kumar as the arbitrator. However, the Respondent did not reply. Instead of seeking the Court's assistance under Section 11(5) of the Act to appoint the agreed arbitrator, the Petitioner allowed Mr. Atul Kumar to independently issue a notice to the Respondent. When the Respondent failed to attend, Mr. Kumar proceeded with the arbitration *ex-parte*.

The Delhi High Court ruled that the Petitioner had erred by not approaching the Court to seek the formal appointment of the arbitrator under Section 11(5) of the Arbitration Act when the Respondent did not respond. The arbitrator also

[17] CA(AT)(INS) No. 481 of 2023

[18] *2024 SCC OnLine Del 6213*

acted improperly by issuing a notice without Court's sanction. Consequently, the Court terminated the arbitrator's mandate under Section 14(1)(a) of the Arbitration Act. However, since both parties agreed, Mr. Atul Kumar was reappointed as the arbitrator, with the arbitration proceedings ordered to start afresh.

MERE VIOLATION OF LAW DOES NOT INVALIDATE ARBITRAL AWARD, FUNDAMENTAL POLICY OF LAW MUST BE BREACHED: SUPREME COURT

The Hon'ble Supreme Court of India in the case titled ***OPG Power Generation (P) Ltd. vs. Enexio Power Cooling Solutions India (P) Ltd***.,[19] clarified the limited scope for judicial interference with arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Bench comprising Chief Justice of India DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra held that a mere violation of law is insufficient grounds to invalidate an arbitral award. For such interference, the award must contravene the fundamental policy of Indian law.

The Court underscored that the expression "*contravention of the fundamental policy of Indian law*," as used in Section 34 of the Arbitration Act, implies a narrower application than the broader phrase "*contravention of the policy of Indian law*." The inclusion of the word "*fundamental*" restricts the grounds on which an arbitral award can be challenged. To invoke this provision, it must be shown that the award violates fundamental principles central to the administration of justice and enforcement of laws in India.

In the present case, OPG Power Generation Pvt. Ltd. ("**Appellant**") and Enexio Power Cooling Solutions ("**Respondent**") entered into a contractual arrangement following two purchase orders issued by Gita Power and Infrastructure Pvt. Ltd. (the holding company of the Appellant/"**Gita Power**") for the design, supply, erection, and commissioning of an air-cooled condenser unit ("**ACC Unit**") for a 160 MW Coal-Based Thermal Power Plant in Gummidipoondi, Tamil Nadu. The project, awarded to the Respondent, was initially scheduled for completion by 31.03.2014, but delays occurred, resulting in the ACC Unit being commissioned only in May 2015. This dispute occurred due to difference in payment amounts which led to arbitration under the International Chamber of Commerce ("**ICC**"), where Respondent sought the unpaid balance. The Appellant and Gita Power defended the claims, asserting that the deductions were justified, while the Respondent challenged the validity of the debit notes, arguing that they were either unjustified or barred by limitation. The arbitration tribunal, in its award, rejected most of the Appellant and Gita Power's counterclaims and held them jointly and severally liable to pay the outstanding amount. Subsequently, the Appellant and Gita Power challenged the award under Section 34 of the Arbitration Act, citing issues of law of limitation, inconsistency in findings, and misinterpretation of evidence related to customs duty and liquidated damages.

The Hon'ble Supreme Court explained that for an arbitral award to be deemed contrary to the public policy of India, it must involve a violation of fundamental principles integral to justice and public interest. Mere infractions of municipal laws are insufficient. For instance, violations that shock the conscience of the Court or breach fundamental tenets of justice would fall within the ambit of public policy.

The concept of "*patent illegality*" under Section 34(2A) is a distinct ground for setting aside domestic arbitral awards but is inapplicable to international commercial arbitrations. Patent illegality refers to errors that are apparent on the face of the award, such as a violation of substantive Indian law or the contractual terms. However, mere errors in law or reappreciation of evidence do not constitute grounds for setting aside an arbitral award. The illegality must go to the root of the matter.

The Court reaffirmed that arbitrators are the "*masters of evidence*," and their view on the facts must be respected, provided it is plausible. It is only when an award is perverse—meaning it is so irrational that it defies logic or the facts—that courts may intervene.

[19] 2024 SCC OnLine SC 2600

EMPLOYMENT LAW

GOVERNMENT OF GUJARAT HAS RELEASED A CIRCULAR ON THE PROCEDURE FOR FIXATION AND REVISION OF MINIMUM WAGES IN GUJARAT

The Labour, Skill development and Employment Department, Government of Gujarat, vide circular dated September 04, 2024, outlined the procedure for establishing and updating minimum wage rates in the state.

The process for establishing and updating minimum wages in Gujarat as per the circular is as below:

- The Government of Gujarat regularly sets and revises minimum wage rates in accordance with the Minimum Wages Act, 1948, and the Gujarat Minimum Wages Rules, 1961.
- The Minimum Wages Act, 1948 requires the declaration of minimum wages at defined intervals, and an advisory board is formed to include representatives from employers, employees, and an independent member who serves as the chairman of the advisory board.
- The process for determining and adjusting minimum wages includes the publication of a draft notification to gather public feedback and suggestions. These inputs are then considered by the minimum wages advisory board before the government makes a final decision and announces the updated rates.

GOVERNMENT OF TRIPURA ISSUED A NOTIFICATION UNDER TRIPURA FACTORIES RULES, 2007 STREAMLINING PROCESS FOR COMPLIANCE WITH FACTORIES ACT, 1948

The Labour Department (Factories and Boilers Organisation), Government of Tripura, vide a notification dated September 09, 2024, issued a notification outlining the submission process of a detailed list of necessary documents, step-by-step procedures, costs, and timeframes for each stage under Factories Act, 1948 and the rules made thereunder. This information is searchable based on risk category, company size, business location, and whether the investor is foreign or domestic, for obtaining various services.

To facilitate streamlined statutory clearances and promote industrial growth in Tripura, the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, has emphasized that comprehensive information should be available online. This covers all aspects required for accessing services under the Factories Act, 1948, and associated rules. It includes guidelines for submitting online applications for plan approvals, permissions to construct/expand/operate a factory, approval of revised factory plans, and procedures for factory registration, licensing, and renewal.

ACCEPTANCE OF RESIGNATION TO BE OFFICIALLY COMMUNICATED TO THE EMPLOYEE FOR THE RESIGNATION TO BE DEEMED TO BE ACCEPTED

The Supreme Court of India vide its judgment dated September 13, 2024, in the case of *S.D. Manohara vs. Konkan Railway Corporation Ltd. & Ors.*, upheld that an internal communication about accepting the employee's resignation letter could not be considered as an acceptance of the resignation letter.

In the present case, the appellant had served the Konkan Railways since 1990 and submitted his resignation on December 5, 2013, with the resignation intended to take effect after one month. Though the resignation was internally accepted on April 7, 2014, no formal communication was provided to the appellant. On May 26, 2014, the appellant withdrew his resignation, but the employer still relieved him from service effective July 1, 2014. The appellant contested the decision, claiming that since he was not officially notified of the acceptance, his resignation had not been finalized. The appellant further

argued that his continued interaction with the employer and reporting for duty signified that his resignation was not accepted.

The Supreme Court reinstated the employee, holding that the resignation letter had not attained finality as the appellant had withdrawn it before official communication of acceptance. The internal communication of acceptance was deemed insufficient. Additionally, the Supreme Court emphasized that the employee continued to engage with the employer and reported for duty during the period in question. The appellant's consistent communication and reporting to duty demonstrated that his resignation was not fully processed. The resignation was thus not considered accepted until the appellant was officially notified.

GOVERNMENT OF GOA ISSUED NOTIFICATION OF THE GOA CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) (AMENDMENT) RULES, 2024

The Department of Labour, Government of Goa vide a notification dated September 16, 2024 issued the Goa Child and Adolescent Labour (Prohibition and Regulation) (Amendment) Rules, 2024, aimed at further amending the Goa Child Labour (Prohibition and Regulation) Rules, 1994. These amendments will come into effect on September 26, 2024.

Key Highlights of the Notification:

- Terminology Update: The term "Child Labour" has been replaced with "Child and Adolescent Labour" to broaden the scope of the regulations.
- Awareness Campaigns: A new Rule 2A mandates the government to promote awareness about the prohibition of child and adolescent employment in violation of the child labour laws. This will be achieved through public campaigns, accessible reporting mechanisms, displays in public spaces, inclusion in educational curricula, and training for relevant stakeholders.
- Family Assistance Guidelines: Rule 2B allows children to assist their families under specific conditions. This assistance must be non-hazardous, unpaid, limited to 3 (Three) hours a day, outside school hours, and must not impede their right to education or overall development, with particular provisions addressing family relationships.
- Conditions for Child Artists: Under Rule 2C, a child may work as an artist for up to 5 (Five) hours a day, provided they have parental consent, approval from the district magistrate, and adhere to safety, education, and health regulations.
- Work Hour Limit for Adolescents: Rule 4 has been revised to state that no adolescent shall be employed or allowed to work in any establishment covered by Part III of the the Child Labour (Prohibition and Regulation) Act of 1986 for more than 5 (Five) hours on any given day.
- Child and Adolescent Labour Rehabilitation Fund: A new Rule 24A has been added, which addresses the payment of amounts to children or adolescents from the Child and Adolescent Labour Rehabilitation Fund.

These amendments reflect the government's commitment to protecting the rights and well-being of children and adolescents in Goa, ensuring their right to education and safe working conditions.

THE MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA THROUGH A NOTIFICATION HAS INVITED PLATFORM AGGREGATORS TO REGISTER THEMSELVES AND PLATFORM WORKERS ON E-SHRAM PORTAL

The Ministry of Labour & Employment, vide a notification dated September 16, 2024, has called upon platform aggregators to register both themselves and their platform workers on the e-Shram portal.

The Central Government's initiative aims to provide social security benefits to gig and platform workers by encouraging their registration on the e-Shram portal. This step is crucial for workers to avail of social welfare schemes and for creating a detailed registry of beneficiaries. An advisory has been issued by the Ministry, detailing standard operating procedures (SOPs) for aggregators. These aggregators are responsible for registering workers, maintaining their information, and ensuring they receive a universal account number (UAN) to access benefits.

Additionally, the government has initiated application programming interface (API) integration trials with select aggregators to improve the registration process. Aggregators have also been advised to consistently update worker details, such as employment status and payment information, and to report when workers leave, ensuring the records remain up to date. A toll-free helpline (14434) has been established to support the registration process, offering technical assistance and guidance.

CONTRACT LABOURERS ARE ENTITLED TO AN OPPORTUNITY OF BEING HEARD BEFORE FINALIZING THE CONTRACT

The Karnataka High Court vide judgment dated September 17, 2024 in the case of *Hindustan Aeronautics Limited ("**HAL**") vs. Hindustan Aeronautics Contract Workers Association ("**HACWA**")*, has held that contract labourers are

entitled to an opportunity of being heard before finalizing the contract.

In the present case, HAL had engaged contract labour for non-core activities under a "Revised Comprehensive Contract" due to a temporary increase in work. The HACWA challenged the legality of the contract, arguing that it violated the Contract Labour (Regulation & Abolition) Act, 1970, and various constitutional provisions. HAL argued that their actions complied with the 1970 Act and that there was no legal requirement for consultation with contract labourers. HAL contended that contract labourers were hired through contractors and not directly employed by HAL citing prior judgments that there was no master-servant relationship between HAL and the workers. HACWA argued that the contract was unconstitutional and failed to protect workers' rights under the Employees State Insurance Act and Employees Provident Fund Act. HACWA emphasized that any changes to the contract would affect the workers' employment and should be discussed with them as a matter of natural justice.

The Division Bench of the Karnataka High Court ruled that while the Contract Labour (Regulation & Abolition) Act, 1970, did not require consultation with contract labourers, it was reasonable to allow their representatives or union to express their views before finalizing any significant changes to the contract. The Karnataka High Court directed HAL to notify the contract workers' representative and allow them to present their objections before concluding the revised contract. The Karnataka High Court instructed HAL to revise the contract in accordance with the law and to consider the objections from contract workers. The appeal was disposed of with these modifications, ensuring that contract labourers or their union would be heard before finalizing any major contract changes.

GOVERNMENT OF PUDUCHERRY REVISES MINIMUM WAGE RATES (SEPTEMBER 2024)

The Labour Department of the Government of Puducherry vide a notification dated September 20, 2024, has announced revised minimum wage rates for various categories of employees across multiple sectors. The wage revisions ensure fair pay for workers in different industries, including shops, establishments, and other enterprises within the Union Territory.

This revision focuses on protecting workers' rights and promoting balanced growth across sectors. Employers must adhere to these new wage structures to ensure proper remuneration. The dearness allowance will be adjusted based on the Puducherry City Consumer Price Index ("**CPI**") to account for inflation and cost-of-living increases.

The revised wages apply to various sectors, *viz.* shops & establishments, automobile workshop, bakeries and biscuit manufacturing, bricks and tile manufactory, carpentry, chemical industry, electronic industry, food processing industry, general engineering, hotels and restaurants, leather goods manufactory, petroleum gas cylinder, oil mills, paper and related manufactory, plastic industry, rice, flour, dhall mills, security guard, tailoring industry, taxi autorickshaw. The dearness allowance under the revised minimum wages are linked to the Puducherry CPI, ensuring wages are inflation-adjusted. The notification mandates equal wages for male and female workers without discrimination. Monthly wages are determined by multiplying the daily wage rate by 26 (Twenty Six). The notification provides that if the current wages are higher than the revised minimum rates, the higher wage will continue. Employers must ensure compliance with these updated rates to promote fair wages across industries.

THE LABOUR DEPARTMENT OF THE GOVERNMENT OF DELHI ISSUED AN ADVISORY ON PAYMENT OF BONUS TO OUTSOURCED EMPLOYEES EMPLOYED THROUGH CONTRACTORS IN NATIONAL CAPITAL TERRITORY OF DELHI

The Labour Department of the Government of Delhi vide a notification dated September 23, 2024 issued an advisory concerning the payment of bonuses for employees contracted through various outsourcing arrangements.

The Payment of Bonus Act, 1965 stipulates that contractors employing 20 (Twenty) or more workers are required to pay a minimum bonus of 8.33% (Eight point Three Three Percent). This payment must be made within eight months following the end of the accounting year, typically before the festival of Deepawali. Contractors bear the statutory responsibility for ensuring the timely payment of these bonuses. Failure to comply with these regulations may result in prosecution and recovery of owed amounts. Principal employers are urged to ensure that their contractors adhere to all labour laws, including the obligations related to bonus payments. Authorities emphasize the importance of timely disbursement of bonuses to outsourced workers ahead of Deepawali to support the welfare of these employees and uphold their rights.

This advisory aims to reinforce compliance among contractors and ensure that outsourced employees receive their entitled bonuses on time, fostering a fair and equitable work environment.

GOVERNMENT OF DELHI ISSUED THE REVISED DELHI MINIMUM WAGES NOTIFICATION (APRIL 2024)

The Office of the Commissioner (Labour), Government of NCT of Delhi (Labour Department), issued a notification dated September 26, 2024 regarding the updated minimum wage rates applicable to scheduled employment, effective from April 01, 2024.

The revised minimum wage rates for workers have been categorized based on skill levels. For unskilled workers, the new minimum wage is set at INR 692 (Rupees Six Hundred Ninety Two) per day. Semi-skilled workers will receive INR 763 (Rupees Seven Hundred Sixty Three) per day, while skilled workers will earn INR 839 (Rupees Eight Hundred Thirty Nine) per day.

In addition to these rates for manual labourers, the notification also outlines minimum wage rates for clerical and supervisory positions. For non-matriculate staff, the minimum wage is fixed at INR 763 (Rupees Seven Hundred Sixty Three) per day. Matriculate employees who are not graduates will earn INR 839 (Rupees Eight Hundred Thirty Nine) per day, and those who hold a graduate degree or higher will receive INR 913 (Rupees Nine Hundred Thirteen) per day.

This revision aims to ensure fair compensation across various employment sectors in Delhi, promoting economic stability and improving the living standards of workers. Employers in the region are required to comply with these new wage rates to uphold labour rights and foster equitable workplace practices.

GOVERNMENT OF DELHI ISSUED THE DELHI MINIMUM WAGES NOTIFICATION (OCTOBER 2024)

The Office of the Commissioner (Labour), Government of NCT of Delhi (Labour Department), issued a notification dated September 26, 2024 has revised the minimum wages for all scheduled employment categories, with the changes coming into effect on October 1, 2024. This revision, informed by the latest adjustment to the dearness allowance, reflects the increase in the All India Consumer Price Index ("**AICPI**") from January to July 2024, ensuring that workers' wages are adjusted to meet rising inflation and living costs. The adjustment is based on the AICPI's rise by 2.41 points, which now stands at 402.1.

The revised minimum wage rates for workers have been categorized based on skill levels. For unskilled workers, the new minimum wage is set at INR 695 (Rupees Six Hundred Ninety Five) per day. Semi-skilled workers will receive INR 767 (Rupees Seven Hundred Sixty Seven) per day, while skilled workers will earn INR 843 (Rupees Eight Hundred Forty Three) per day.

In addition to these rates for manual labourers, the notification also outlines minimum wage rates for clerical and supervisory positions. For non-matriculate staff, the minimum wage is fixed at INR 767 (Rupees Seven Hundred Sixty Seven) per day. Matriculate employees who are not graduates will earn INR 843 (Rupees Eight Hundred Forty Three) per day, and those who hold a graduate degree or higher will receive INR 917 (Rupees Nine Hundred Seventeen) per day.

The notification establishes the revised wage rates for unskilled, semi-skilled, skilled, clerical, and supervisory workers, ensuring fair compensation across different categories of employment.

The detailed revised wage rates are intended to help workers maintain a standard of living that corresponds with the increasing costs of essential commodities and services in the region.

NPCI INTERNATIONAL PAYMENTS LIMITED ("NIPL") TO DEVELOP UPI-LIKE REAL-TIME PAYMENTS PLATFORM IN TRINIDAD AND TOBAGO

NIPL has partnered with Ministry of Digital Transformation of Trinidad and Tobago to develop a real-time payments platform similar to Unified Payments Interface used in India. This partnership aims to empower Trinidad and Tobago to establish a reliable and efficient real-time payments platform for both person-to-person and person-to-merchant transactions, thereby accelerating the adoption of digital payments and supporting financial inclusion in the region.

DSK View*: *This partnership will help India expand its digital payment ecosystem globally, reinforcing its leadership in fintech innovation. For Trinidad and Tobago, it will modernize their payment infrastructure, fostering financial inclusion and enhancing payment system security.

Source

NPCI BHARAT BILLPAY LIMITED ("NBBL") NOTIFICATION ON TRANSACTIONS ROUTED THROUGH BHARAT CONNECT PLATFORM

NBBL has issued a notification on September 17, 2024, mandating the capture and transmission of unmodified payment transaction information through the Bharat Connect platform to ensure compliance with its rules, regulations, and guidelines by all ecosystem participants.

Key Highlights

(i) NBBL has reiterated the rule of not allowing credit card as a payment mode for categories like Credit Card Bill Payments ("**CCBP**") and loan repayment on Bharat Connect platform.

(ii) Customer operating units are mandated to be used to ensure that correct parameters are captured in payment request initiated to Bharat Connect while executing transactions with credit card as a payment mode and prohibited payment modes are not utilized for making such payment.

(iii) These units shall be responsible for adherence to all relevant rules, regulations and guidelines released from time to time in this regard.

***DSK View:**. The Notification issued by NBBL enhances the overall security and compliance of transactions on the Bharat Connect platform based on notification NPCI/2023-24/BBPS/023 dated December 22, 2023. By prohibiting the use of credit cards for certain transactions, such as CCBP and loan repayments, it ensures that only permissible payment modes are utilised.*

Source

CLOUDBANKIN TESTS LOAN REPORTING PRODUCT FOR CREDIT INFORMATION BUREAU (INDIA) LIMITED ("CIBIL")

Cloudbankin, India based Fintech company, has successfully tested a product that enables banks and NBFCs to report loan sanctions to CIBIL daily. This product aims to prevent individuals from taking multiple loans and automates the complete process of data collection, processing, and submission, allowing lenders to meet their reporting requirements seamlessly.

Key Features of the Platform:

(i) Processes loan sanction data in real-time through automation, ensuring accurate and timely submission to CIBIL;

(ii) Integrates smoothly with existing loan management systems thereby, minimizing operational disruption;

(iii) Offers flexible reporting options tailored to individual needs and regulatory requirements; and

(iv) Ensures adherence to evolving regulatory requirements, keeping businesses in sync with the latest compliance standards.

DSK View:. *Cloudbankin's innovation automates loan sanction reporting thereby enhancing data accuracy and regulatory compliance for financial institutions. While not mandated, this system enables real-time tracking of customer loans and credit facilities, helping institutions assess creditworthiness and preventing individuals from over-borrowing beyond their repayment capacity.*

Source

ESTABLISHMENT OF A WTO PANEL: CHINA'S CHALLENGE TO THE UNITED STATES SUBSIDIES UNDER THE INFLATION REDUCTION ACT

On September 23, 2024, the World Trade Organization (WTO) established a panel to investigate China's allegations against the United States (U.S.) regarding specific subsidies provided under the Inflation Reduction Act (IRA). This significant development underscores the escalating trade tensions between the two nations, often characterized as a "high-tech war," and highlights the complexities of international trade compliance.

Background to the Inflation Reduction Act

Signed into law on August 16, 2022, the Inflation Reduction Act (P.L. 117-169, 136 Stat. 1818) is considered one of the largest subsidy measures in modern economic history. Official estimates place the value of the climate-related subsidies under the IRA at approximately $393 billion, while some independent analyses suggesting the total could exceed $1 trillion.

The IRA aims to transition to a clean energy economy by encouraging renewable energy production rather than penalizing fossil fuel use. As outlined in *Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action*, the IRA takes a different approach than many environmental laws, which often rely on "sticks" in the form of mandates and penalties. Instead, it employs "carrots" by providing financial incentives for investing in clean energy technologies, focusing on supporting American entrepreneurs, the workforce, and domestic manufacturers.

The IRA amended existing tax credits for electric vehicles (EVs) and fuel cell vehicles, introducing additional requirements for claiming those credits. Under these provisions, purchasers are eligible for the clean vehicle credit upon meeting specific **import substitution requirements**.

The IRA is pivotal not only for the U.S. economy but also for global efforts to combat climate change. By heavily investing in clean energy, the U.S. seeks to position itself as a leader in the green economy, aligning economic growth with environmental sustainability. However, the act's emphasis on domestic production has drawn scrutiny and led to allegations of unfair trade practices.

It is essential to recognize that China's opposition to U.S. subsidies is driven by strategic motives. China currently controls approximately 60% of global production and 85% of processing capacity for critical minerals vital to renewable energy technologies. This dominance in the supply chain makes it vulnerable to disruptions and economic coercion. As the U.S. implements the IRA to bolster domestic production and establish its competitive edge, China may perceive this as an attempt to create a monopoly over clean energy technologies.

In response to China's aspirations for a monopoly in renewable energy, the U.S. has invested in rare earth mining and processing facilities both domestically and in Australia to reduce its reliance on China. This strategic move has effectively reduced China's global market share in these critical minerals from 80% to 60%. Thus, the competition over renewable energy is not merely about environmental progress but also about global economic dominance and control over critical supply chains. The ongoing strategic competition between the U.S. and China, often referred to as a "high-tech war," complicates the geopolitical landscape surrounding these trade disputes.

China's Challenge to U.S. Subsidies

China's request for a WTO panel focuses on specific subsidies that are contingent upon the use of domestic goods over imported ones or that discriminate against Chinese-origin products. The subsidies in question include:

1. Clean Vehicle Credit
2. Investment Tax Credit for Energy Property

3. Clean Electricity Investment Tax Credit
4. Production Tax Credit for Electricity from Renewables
5. Clean Electricity Production Tax Credit

Legal Basis of the Complaint

China alleges that U.S. measures related to the Clean Vehicle Credit violate several obligations under international trade agreements. These violations include discriminatory eligibility conditions against Chinese products under Article I:1 and less favourable treatment under Article III:4 of the GATT 1994. Additionally, the U.S. measures are alleged to be inconsistent with the TRIMs Agreement's Article 2.1 and 2.2, and the SCM Agreement's Articles 3.1(b) and 3.2, as they mandate the use of U.S.-origin products.

Similarly, the Renewable Energy Tax Credits are challenged on the grounds of violating Article III:4 of the GATT 1994 for discriminating against Chinese goods. China also argues that the measures breach Articles 2.1 and 2.2 of the TRIMs Agreement and Articles 3.1(b) and 3.2 of the SCM Agreement by conditioning benefits on the use of domestic over imported goods.

China's Position on Clean Energy Subsidies

China has expressed strong support for national and international efforts to combat climate change, advocating for clean energy subsidies that comply with WTO agreements. While non-prohibited, non-discriminatory subsidies are essential for the clean energy transition, China asserts that discriminatory subsidies undermine international cooperation on climate change and violate WTO rules.

U.S. Response and Initial Consultations

In response to China's allegations, the United States accepted the request for consultations on April 5, 2024. However, the U.S. did not concede that the challenged items constituted "measures" under the WTO framework, nor did it address the national security issues raised, reflecting the complexities of the ongoing tensions.

Movement Toward Panel Establishment

On July 15, 2024, China formally requested the establishment of a panel to review the subsidies. Although the Dispute Settlement Body (DSB) deferred this request during a meeting on July 26, the decision to establish a panel on September 23 underscores the WTO's commitment to addressing the issues raised.

Implications of Panel Proceedings

The establishment of this panel is crucial, as it emphasizes the importance of adhering to WTO rules and provides a structured mechanism for resolving disputes over subsidies and trade practices. The implications of the proceedings extend beyond the immediate parties involved; they will shape future subsidy practices and influence international trade dynamics amid rising protectionist tendencies.

DSK View: *The formation of a WTO panel in response to China's challenge of U.S. subsidies under the Inflation Reduction Act represents a pivotal moment in global trade and geopolitical relations, with significant implications for both trade and legal fronts.*

From a trade perspective, the panel's findings would set critical precedents for how countries structure their subsidy programs in compliance with international agreements, influencing the design and implementation of similar policies in the future. The panel's ruling may compel a reevaluation of domestic policies that prioritize local goods over imports, potentially reshaping global supply chains and altering competitive dynamics in the clean energy sector. Conversely, a ruling might embolden countries to adopt similar protectionist measures, complicating the landscape of international trade further.

This trade dispute poses challenges to specific international commitments under the Paris Agreement, COP, and G20 climate goals – among several others. The Paris Agreement emphasizes global cooperation to limit temperature rise to well below 2°C, with countries committing to Nationally Determined Contributions (NDCs). The U.S.'s focus on domestic clean energy production, while advancing its NDC goals, could trigger retaliatory actions from other nations like China, which might reduce global coordination on emissions reduction. This tension may weaken the collaborative approach required under the Paris Agreement, as countries shift from collective action to competitive, nationalistic policies.

Similarly, the G20, which has championed global collaboration on climate action and green technology investment, could see its efforts weakened as this dispute emphasizes economic nationalism over shared climate responsibility.

MEDIA & ENTERTAINMENT

THE DELHI HIGH COURT HAS ISSUED AN INTERIM INJUNCTION PROHIBITING T-SERIES FROM USING THE TITLE "AASHIQUI" FOR THEIR FILM

In a legal action initiated by Vishesh Films Private Limited ("**Plaintiff**") against Super Cassettes Industries Limited ("**T-Series**"/"**Defendant**") to stop the Defendant from producing any sequels to the film *'Aashiqui'*, the Delhi High Court ("**Court**") granted an interim injunction in the Plaintiff's favour, restraining the Defendant and/or any third party acting on their behalf from using the titles "Tu Hi Aashiqui", "Tu Hi Aashiqui Hai" or any other names/titles using the mark "Aashiqui" in respect of any films. It was submitted by the Plaintiff before the Court that in the years 1990 and 2011, the Plaintiff and Defendant had entered into agreements with respect to the production of two instalments of the film franchise "Aashiqui", wherein it was agreed that both the films would be jointly owned, credited and produced by the parties. Based on these claims, the Plaintiff sought to prevent the Defendant from releasing any sequels of the film franchise without their explicit consent. While the Defendant acknowledged joint ownership of the Aashiqui franchise, they firmly denied any plans to produce another instalment or any derivative works based on "Aashiqui" or "Aashiqui 2". They contended that their proposed film title was not similar to the Plaintiff's registered trademark and did not constitute a sequel, thereby eliminating any potential for public confusion. Furthermore, the Defendant submitted before the Court that their film would be entirely distinct from the existing Aashiqui films and it would not be a continuation, adaptation, or derivative of the previous works. After hearing the submissions of both the parties, the Court determined that the title "Aashiqui" is a suggestive mark with distinctiveness and goodwill, linked to the successful Aashiqui franchise. It noted that the proposed titles "Tu Hi Aashiqui" and "Tu Hi Aashiqui Hai" prominently feature "Aashiqui," making them easily recognizable and likely to cause public confusion. The Court found that the addition of "Tu Hi" and "Hai" did not significantly alter the overall impression of the title, especially considering imperfect recollection. As a result, the Court concluded that there was a likelihood of confusion regarding association and endorsement, therefore the Plaintiff's claim of deceptive similarity was upheld, leading to a decision to restrain the Defendant from using the title to protect the Plaintiff's established brand.

INTERIM RELIEF GRANTED TO HUL IN LAWSUIT AGAINST ABBOTT OVER HEALTH DRINK ADVERTISEMENT

The Bombay High Court ("**Court**") has granted interim relief to Hindustan Unilever Limited ("**Plaintiff/HUL**") in a lawsuit filed against Abbott Laboratories ("**Defendant**") regarding the Defendant's advertisement for their health drink 'Ensure Diabetes Care' that allegedly disparaged HUL's 'Horlicks Diabetes Plus'. The Court observed that the advertisements, which were shared via WhatsApp with doctors and pharmacies, depicted 'Horlicks Diabetes Plus' in a negative light, with a scene showing a character pushing the product aside in favor of the Defendant's 'Ensure Diabetes Care'. The Plaintiff alleged that the blurred depiction of Horlicks brand was still identifiable and was intended to create a bias against it. The Plaintiff further pointed out that the Defendant could have used an unbranded product instead but chose to include Horlicks deliberately. After hearing the Plaintiff's contentions, the Court reiterated that while companies can claim their products are superior, they cannot directly or indirectly suggest that competitors' goods are inferior without crossing the line into slander. Subsequently, the Court ordered the Defendant to cease any advertisements that negatively portray HUL's product, stating that HUL had established a strong prima facie case for the requested relief. The Court further emphasized that the balance of convenience favoured the Plaintiff, noting that failure to grant relief could result in irreparable harm that monetary compensation could not remedy. Further hearings in the case are scheduled for October 7, 2024.

INDIAN FILMMAKER SUES NETFLIX, CLAIMING 'SQUID GAME' COPIES HIS 2009 BOLLYWOOD FILM 'LUCK'

A lawsuit has been filed in a New York federal court ("**Court**") by an Indian filmmaker, Soham Shah ("**Plaintiff**") against Netflix and "Squid Game" creator Hwang Dong-hyuk ("**Defendants**"), alleging that the series plagiarizes his 2009 film "Luck", which features a similar concept. The Plaintiff has claimed that the web-series "Squid Game" mirrors the premise of his film, which involves a group of individuals competing in deadly games for a cash prize, with the stakes rising as participants are eliminated. The Plaintiff further argued that both narratives exploit the less fortunate for the entertainment of wealthy spectators. The Plaintiff contended that he developed the story for "Luck" in 2006 and released it in 2009, while the creator of the web-series "Squid Game", Hwang claims to have started writing the series in 2009 and the Plaintiff also further emphasizes the striking similarities between the two works, including plotlines and character dynamics. Netflix on the other hand has denied the Plaintiff's allegations, asserting that they lack merit and that they will vigorously defend against the claims as under the copyright law, protection does not extend to ideas or themes but rather to their specific expression. The Court's decision will ultimately depend on whether the similarities between "Luck" and "Squid Game" constitute common industry ideas or specific expressions deserving of protection.

PIL REQUESTING CREATION OF AN INDEPENDENT BODY TO REGULATE CONTENT ON OTT AND DIGITAL PLATFORMS FILED BEFORE THE SUPREME COURT OF INDIA

A public interest litigation (PIL) has been filed before the Supreme Court of India ("**Court**") calling for the creation of an independent body to oversee and regulate content on over-the-top (OTT) platforms in India. The PIL cites the recently released Netflix series "IC 814: The Kandahar Hijack" as a "vile attempt to rewrite history" while claiming to be based on real-life events. The petitioners argued that the series exemplifies the broader issue of unregulated content which can spread misinformation or biased narratives without sufficient oversight. The PIL states that while there is a regulatory body for films, the Central Board of Film Certification (CBFC), no similar organization exists for OTT content. The government has allowed these platforms to self-regulate, which they have reportedly failed to do adequately. The PIL suggests establishing an autonomous body called the "Central Board for Regulation and Monitoring of Online Video Contents" led by a secretary-level IAS officer and comprising of members from various fields such as film, media, defense, law, and academia, which would be tasked with filtering and regulating videos on various platforms for viewers in India. In addition to the PIL, there have been other calls for tighter regulations on OTT platforms. In June 2024, the NGO Save Bharat, Save Culture Foundation urged the Ministry of Information and Broadcasting (MIB) and the Ministry of Electronics and Information Technology (MeitY) to ban platforms like X (formerly Twitter) and Netflix for allegedly violating laws such as the Prevention of Child Sexual Offences Act (POCSO Act, 2012) and the Information Technology Act, 2000 by broadcasting sexually explicit content. The MIB is also working on stricter compliance requirements for OTT services and pursuant to the same had introduced the Broadcasting Services Regulation Bill, 2023. This bill proposes the establishment of Content Evaluation Committees (CECs) by the streaming platforms to certify their content before the same is released to the public and the criteria for selecting CEC members and other operational details will be in the hands of the central government.

KERALA COURT ISSUES INTERIM INJUNCTION PROHIBITING COMMERCIAL USE OF CHARACTERS AND STORYLINE FROM THE FILM "MINNAL MURALI"

In a lawsuit filed by Arun A. R. and Justin Mathew ("**Plaintiffs**"), writers of the Malayalam superhero film "Minnal Murali", against entities such as Weekend Blockbusters Pvt. Ltd., Netflix India, and Amar Chitra Katha ("**Defendants**"), the Ernakulam District Court ("**Court**") issued an interim injunction order against the Defendants restricting them from commercialization and distribution of any content related to the characters from the film. The Plaintiffs asserted that they held exclusive copyright over the characters and narrative of the film, claiming that any commercial use without their consent constituted infringement. They contended that agreements made by the Defendant, Weekend Blockbusters Pvt. Ltd. with third-party companies, such as Amar Chitra Katha, to commercialize the characters were unauthorized and allowing commercialization would dilute the originality of the Plaintiffs' work. On the other hand, Weekend Blockbusters Pvt. Ltd. argued that they held certain rights as producers of the film and contended that their partnerships to expand the franchise were lawful. Weekend Blockbusters Pvt. Ltd. claimed that entering into commercial agreements for graphic novels and merchandise was standard practice in the industry and denied infringing on the Plaintiffs' copyright, asserting that rights were shared between the writers and production company. However, after hearing the contentions of both the sides, the Court sided with the Plaintiffs, issuing an injunction prohibiting any production or commercialization of the characters of the film and ordered a halt to ongoing projects involving these characters until the case is resolved, with a next hearing scheduled for October 17, 2024.

LEGAL ACTION INITIATED BY SINGER JASLEEN ROYAL AGAINST T-SERIES AND GURU RANDHAWA FOR COPYRIGHT INFRINGEMENT

Singer Jasleen Royal ("**Plaintiff**") has filed a lawsuit in the Bombay High Court ("**Court**") against the music label T-

Series, lyricist Raj Ranjodh, and singer Guru Randhawa ("**Defendants**") alleging copyright infringement of her music. According to the Plaintiff's statement, she had created certain original compositions in the year 2022 for the promotional events associated with the film "Runway 34", starring Ajay Devgn. These compositions were shared with the Defendant, Raj Ranjodh through audio-video calls and messages and were subsequently incorporated into a scratch version of the song. At that time, singer Guru Randhawa was initially approached to record the song, but the Plaintiff was dissatisfied with his rendition, which led to a collaboration on the project between the Plaintiff and Guru Randhawa not materialising. However, all the rights in and to this music continued to be owned by the Plaintiff. In the year 2023, the Plaintiff became aware that her original compositions had been used in the song "All Right" released by T-Series, which features Guru Randhawa's vocals. The Plaintiff claims that this use was unauthorized and that she did not receive proper credit for her work. The Court has issued an interim order against T-Series, requiring the music label to remove the song "All Right" from all streaming platforms. The Court has also restrained the defendants, Raj Ranjodh and Guru Randhawa from exploiting the song in any manner.

CBFC IMPLEMENTS 'ACCESSIBILITY STANDARDS' IN CINEMA THEATRES

The Guidelines Of Accessibility Standards In The Public Exhibition Of Feature Films In Cinema Theatres For Persons With Hearing And Visual Impairment ("**Guidelines**") were notified by the Ministry of Information and Broadcasting ("**MIB**") in March with 15th September 2024, as the effective date for implementation of these guidelines. The Guidelines were issued to align with the Rights of Persons with Disabilities Act, 2016 (RPwD Act), which mandates government action to promote universal access and inclusion in information and communication, including access to films.

As per the Guidelines, a producer will mandatorily develop a separate copy of the feature films with audio description, open or closed captioning and Indian Sign Language Interpretation for their understanding. Feature films submitted for consideration in the National Film Awards and in the Indian Panorama Section of the International Film Festival of India (IFFI) and other film festivals organized by the ministry will mandatorily include closed captioning and audio description with effect from January 1, 2025. All other Feature Films being certified through CBFC including the teasers and trailers and meant for theatrical release (digital feature films), would be required to mandatorily provide accessibility features from March 3, 2026.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2024

The MCA, *vide* its Notification No. G.S.R. 555(E) dated September 9, 2024 (accessible *here*) has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 ("**CAA Amendment Rules**") which amends the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**CAA Rules**") which shall be effective from September 17, 2024. The CAA Amendment Rules has inserted a new provision addressing merger or amalgamation where the foreign company incorporated outside India being the holding company is the transferor and the Indian company being a wholly owned subsidiary company incorporated in India is the transferee, and further provides for the following compliances to be adhered to:

a) both the foreign transferor company and the Indian transferee company shall obtain the prior approval of the Reserve Bank of India (RBI);

b) the Indian transferee company is mandated to comply with all responsibilities outlined in Section 233 of the Companies Act, 2013 ("**Companies Act**") along with the CAA Rules, for fast-track mergers. In this regard, the Indian transferee company is obligated to submit an application for the merger to the Central Government; and

c) if the foreign transferor company is incorporated in a nation sharing a land border with India, a declaration regarding compliances with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, is required to be submitted in Form CAA-16 at the time of filing of the application under Section 233 of the Companies Act.

COMPANIES (INDIAN ACCOUNTING STANDARDS) SECOND AMENDMENT RULES, 2024

The MCA, *vide* its Notification No. G.S.R. 554(E) dated September 9, 2024 (accessible *here*) has notified the Companies (Indian Accounting Standards) Second Amendment Rules, 2024 ("**IAS Amendment Rules**") which amends the Companies (Indian Accounting Standards) Rules, 2015, which has introduced new provisions pertaining to sale and leaseback transaction under Indian Accounting Standard (Ind AS) 116. The amendments with respect to lease liability in sale and leaseback transactions will be applicable for financial reporting periods commencing on or after April 1, 2024.

INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2024

The MCA, *vide* its Notification No. G.S.R. 552(E) dated September 9, 2024 (accessible *here*) has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024 which amends the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, key changes in respect of which are stated below:

a) the term 'shares' has been replaced with the term 'securities' to cover every single form of security prescribed under the Companies Act;

b) a legal heir certificate issued by the revenue authority (not below the rank of Tahsildar) has been added to the

list of documents which can be submitted by the applicant for transmission of securities (which earlier provided for only succession certificate or probate of will or will or letter of administration or decree);

c) in case a copy of will is submitted along with the application for transmission of securities, the applicant(s) is also required to submit a notarised indemnity bond;

d) in case a legal heir certificate is submitted along with the application for transmission of securities, the applicant(s) is also required to submit a notarised indemnity bond along with no-objection certificate from all other legal heirs;

e) the value of the securities, for the purpose of transmission, should be the *(i)* closing price of the security on a recognised stock exchange in case of listed securities and *(ii)* face value or maturity value of the security, whichever is higher, in case of unlisted securities; and

f) the monetary threshold, in respect of securities held in demat form, for determining requirement of succession certificate, probate of will, letter of administration, decree, will, decree or order from any authority or court, or legal heir certificate, has been increased from INR 5,00,000 (Indian Rupees Five Lakhs) to INR 15,00,000 (Indian Rupees Fifteen Lakhs).

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2024

The MCA, *vide* its Notification No. G.S.R. 583(E) dated September 20, 2024 (accessible *here*) has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024 ("**PAS Amendment Rules**"), which amends the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**PAS Rules**"). As per the PAS Rules, private companies, which are not small companies as on the last day of any financial year ending on or after March 31, 2023, are required to dematerialise their shares within 18 months of end of such financial year. The PAS Amendment Rules provides producer companies with an extended time period of 5 years from the closure of such financial year to comply with requirement of dematerialisation of securities.

COMPANIES (ACCOUNTS) AMENDMENT RULES, 2024

The MCA, *vide* its Notification No. G.S.R. 587(E) dated September 24, 2024 (accessible *here*) has notified the Companies (Accounts) Amendment Rules, 2024 which amends the Companies (Accounts) Rules, 2014, which requires the companies to file Form CSR-2 *(Report on the Corporate Social Responsibility)* separately (and not as an addendum to AOC-4) for the financial year 2023-2024 by December 31, 2024, after filing of the Form No. AOC-4 or its variants, as applicable.

COMPANIES (INDIAN ACCOUNTING STANDARDS) THIRD AMENDMENT RULES, 2024

The MCA, *vide* its Notification No. G.S.R. 602(E) dated September 28, 2024 (accessible *here*) has notified the Companies (Indian Accounting Standards) Third Amendment Rules, 2024, which allows insurers to use Indian Accounting Standard (Ind AS) 104 for preparing consolidated financial statements until Ind AS 117 is notified by the Insurance Regulatory and Development Authority, key provisions in respect of which are stated below:

a) the standard applies to insurance and reinsurance contracts but excludes financial assets and liabilities issued by insurers;

b) it mandates disclosures related to insurance contracts to enhance users' understanding of financial statements associated with these contracts; and

c) it addresses the unbundling of insurance and deposit components, embedded derivatives, and includes a liability adequacy test for insurers to evaluate the adequacy of their recognized insurance liabilities based on current estimates.

RBI & FEMA

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) (SECOND AMENDMENT) REGULATIONS, 2024

The Securities and Exchange Board of India ("**SEBI**"), *vide* notification bearing reference No. SEBI/LAD-NRO/GN/2024/205 dated September 17, 2024 published the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2024 ("**Amendment Regulations**") through which it brought several amendments to Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**Primary Regulations**").

Some of the key changes include reducing the timeline for filing the draft offer document, allowing issuers to advertise public issuances through electronic mode, mandating additional disclosures and substituting certain existing ones under Schedule I of the Primary Regulations.

DSK View:. *The Amendment Regulations reflect a forward-thinking approach, promoting faster, more transparent processes while leveraging digital tools such as QR codes for improved accessibility. These changes will hopefully enhance operational efficiency for issuers while providing clarity to proposed investors.*

REDUCTION IN THE TIMELINE FOR LISTING OF DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES TO T+3 WORKING DAYS FROM EXISTING T + 6 WORKING DAYS

SEBI, *vide* notification bearing reference SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129 dated September 26, 2024 announced a reduction in the listing timeline for public issue of debt securities and Non-Convertible Redeemable Preference Shares ("**NCRPS**") from existing T+6 to T+3 working days in order to facilitate faster access to funds for issuers, quicker liquidity for the investors and to align the listing timeline of public issue of debt securities and NCRPS with that of non-convertible securities issued on private placement basis.

The new timeline will be mandatory from November 1, 2025, however if chosen then the same shall be disclosed in the offer documents filed for public issues.

DSK View:. *This update by SEBI to reduce the listing timeline for debt securities and NCRPS to T+3 working days is a progressive step aimed at enhancing market efficiency and liquidity for the investors and offers flexibility while promoting faster fund access to the issuers, thereby benefiting both stakeholders and the issuers.*

SPORTS AND GAMING

SPORTS

WFI EXCLUDES GOVERNMENT-BACKED MEDALLISTS FROM WORLD CHAMPIONSHIP TRIALS AMID POWER STRUGGLES

The Sanjay Singh-led Wrestling Federation of India (WFI), which is still seeking recognition from the sports ministry, has barred medallists from the government-backed National Championships in Jaipur from participating in the selection trials for next month's World Championships. Instead, only medal winners from the WFI-run nationals in Pune, a competition not recognized by the government, have been allowed to compete in the trials, scheduled for October 7 near Delhi. The World Championship, featuring non-Olympic weight categories, will take place in Tirana, Albania, from October 28 to 31.

This exclusion highlights the ongoing struggle for control of the sport, as the government has yet to formally recognize Sanjay Singh's leadership within the WFI. The election results were set aside due to his perceived closeness to Brij Bhushan, further complicating the situation for the country's top wrestlers.

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DELHI HIGH COURT ALLOWS AITA ELECTIONS TO PROCEED BUT ORDERS RESULTS TO BE WITHHELD

The Delhi High Court declined to issue a stay order on the All India Tennis Association (AITA) elections, set for September 28, 2024, but instructed that the publication of the results be withheld. This decision came in response to a petition filed by Somdev Devvarman and Purav Raja, who argued that the elections violated the National Sports Development Code. Their counsel claimed the elections were being conducted in a "clandestine manner" and were not publicly announced on the AITA website.

While withholding the election results, the court emphasized that if the elections were found to breach the sports code, the newly elected office bearers would be prevented from performing their duties, and an independent ad-hoc committee could be established to manage the sport's affairs.

The next hearing is on October 14, 2024.

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WADA FILES APPEAL AGAINST JANNICK SINNER ACQUITTAL

In a press release, the World Anti-Doping Agency (WADA) has confirmed that it has lodged an appeal to the Court of Arbitration for Sport (CAS) in the case of Italian tennis player, Jannik Sinner, who was found by an independent tribunal of the International Tennis Integrity Agency (ITIA) to bear no fault or negligence having twice tested positive for *clostebol*, a prohibited substance, in March 2024. WADA was of the view that the finding of "no fault or negligence" was not correct under the applicable rules and is seeking a period of ineligibility of between 1-2 years.

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PHC BANS PCB FROM SPONSORSHIP DEALS WITH BETTING COMPANIES FOLLOWING COURT RULING

After a decision from the Peshawar High Court (PHC), the Pakistan Cricket Board (PCB) has been banned from signing sponsorship deals with betting companies. This ruling followed a petition by local resident Syed Muhammad

Tanseer Ahmad Sherazi, who opposed the PCB and PSL's sponsorship deals with firms associated with international gambling organizations and casinos. As a result, gambling companies will no longer be allowed to display their logos on the uniforms of Pakistan's national cricket teams and Pakistan Super League (PSL) Twenty20 teams.

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PSG AND KYLIAN MBAPPE HEADED FOR LEGAL BATTLE OVER WAGE DISPUTE

French Ligue 1 team, Paris St Germain, is preparing to take legal action against Kylian Mbappe after the French forward declined an offer from the French football league's governing body (LFP) to mediate a wage dispute. While PSG accepted the LFP's mediation proposal, Mbappe rejected it. According to French media, Mbappe, who had a falling-out with the club last year after refusing a contract extension, is seeking approximately 55 million euros ($60.73 million). The Commission has recommended that Mbappe either resolve the issue in an employment tribunal or settle it with PSG, where he spent seven seasons and became the club's all-time top scorer before moving to Real Madrid in June 2024.

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FIA DISMISSES RED BULL AND FERRARI CONCERNS OVER MCLAREN AND MERCEDES FRONT WINGS

Formula 1's governing body has rejected complaints from Red Bull and Ferrari regarding the legality of the front wings on McLaren and Mercedes cars. Red Bull and Ferrari suspected that the front wings were excessively flexible, potentially violating the regulations. However, the FIA clarified that "all front wings are currently compliant with the 2024 regulations." Neither team has formally protested the McLaren and Mercedes wings, but the FIA responded to concerns raised by Red Bull's team principal Christian Horner, motorsport adviser Helmut Marko, and Ferrari's Frederic Vasseur after the Italian Grand Prix.

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JUDGE UPHOLDS COPYRIGHT VERDICT AGAINST WWE 2K PUBLISHER IN TATTOO DISPUTE, BUT REJECTS DAMAGES

U.S. District Judge Staci Yandle rejected a motion by WWE 2K's publisher to overturn a 2022 jury verdict that found Take-Two and other defendants had infringed on tattoo artist Catherine Alexander's copyright by using her tattoo designs in video games without her consent. However, Yandle did grant Take-Two's request to void the $3,750 in damages awarded by the jury, as Alexander failed to prove financial harm.

The case involves wrestler Randy Orton, who hired Alexander between 2002 and 2008 to ink six tattoos, including a Bible verse, tribal designs, a dove, and a skull, five of which Alexander later copyrighted. WWE paid Orton for the rights to his name, image, and likeness, which Take-Two then licensed for use in their video games. The key legal issue revolves around whether Alexander's copyright claims remain valid after the tattoos became part of Orton's body and appearance. Take-Two argued that Orton was implicitly licensed to display the tattoos and also cited fair use, asserting that the tattoos were used to create a realistic, interactive game character. Despite this, jurors in 2022 determined that Take-Two infringed on Alexander's copyright.

In her ruling, Yandle upheld the jury's decision, pointing out that the game's use of the tattoos was commercial and involved their expressive value. She emphasized that players could not only use Orton's tattoos to accurately depict him but could also repurpose them on custom-created characters, suggesting a broader use than just recreating Orton's likeness.

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GAMING

BOMBAY HIGH COURT ASKS FOR AN AFFIDAVIT FROM THE STATE STATING HOW ONLINE RUMMY IS A 'GAME OF SKILL' AND NOT A 'GAME OF CHANCE'

A Public Interest Litigation (PIL) has been filed in the Bombay High Court by social worker Ganesh Ranu Nanaware against the State of Maharashtra, Google India Pvt. Ltd., and online gambling platforms like Junglee Rummy and Rummy Circle. The petition seeks to challenge the promotion and operation of these gambling apps, which Nanaware claims have led to addiction and financial ruin, resulting in suicides among users. The Bombay High Court has ordered the respondents to submit a short affidavit addressing the maintainability of the petition within one week. The court also requested clarification on whether online rummy is considered a game of skill or chance. Nanaware's petition highlights that several celebrities have endorsed these gambling platforms, exacerbating their popularity and social harm. He argues that these endorsements mislead vulnerable individuals into gambling, causing significant distress. The PIL emphasizes that online rummy constitutes illegal gambling under various laws, including the Public Gambling Act of 1867 and the Bombay Prevention of Gambling Act of 1887. The petitioner previously sought action from government authorities but received no response, prompting him to escalate the matter to the court.

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GOVERNMENT TO FORM INTER-DEPT PANEL TO REGULATE ONLINE GAMING PLATFORMS

The Indian government is considering forming an inter-departmental committee to regulate online gaming platforms amid concerns over their rapid growth. This committee would include representatives from the Enforcement Directorate (ED), Reserve Bank of India (RBI), tax authorities, and the consumer affairs department, as outlined by the Directorate General of GST Intelligence (DGGI). In related developments, the Central Board of Indirect Taxes and Customs (CBIC) has issued show cause notices to 118 domestic online gaming entities for failing to comply with GST regulations, totalling ₹1,10,531.91 crore in unpaid taxes. The DGGI is also investigating 658 offshore entities for non-compliance and has recommended blocking 167 URLs to combat tax evasion and cyber fraud. The DGGI's annual report identifies online money gaming as a "high-risk" industry prone to issues such as money laundering and juvenile delinquency. Despite recent legal clarifications regarding taxation, enforcement remains challenging due to the opaque nature of many offshore operations. The proposed committee aims to develop comprehensive strategies for regulatory compliance, consumer protection, and national security in the burgeoning online gaming sector.

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TNOGA TAKES LEGAL ACTION AGAINST THOSE PROMOTING ONLINE GAMBLING THROUGH SOCIAL MEDIA

The Tamil Nadu Online Gaming Authority (TNOGA) has initiated legal action against six social media influencers for promoting online betting and gambling through their food and cinema vlogs. These influencers lured followers with promises of cash rewards up to ₹10 lakh daily for minimal deposits. After issuing showcause notices, TNOGA filed legal proceedings at the Metropolitan Magistrate Court in Saidapet. Convictions under the Tamil Nadu Online Gaming Act could result in fines of ₹5 lakh to ₹10 lakh and up to three years in prison. Some film celebrities involved in similar promotions are also under scrutiny. Immediate action was deemed necessary due to their significant influence on younger audiences. Additionally, a private firm faced repercussions for advertising betting apps via taxi stickers in Chennai. Notices were sent to two online gaming platforms for failing to provide registration details, with potential legal action pending. TNOGA has proposed guidelines for the online gaming sector, including restrictions on gaming hours and deposit limits.

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TAMIL NADU ONLINE GAMING AUTHORITY PUSHES KYC TO CURB UNDERAGE GAMING

The Tamil Nadu Online Gaming Authority has recommended implementing KYC verification to prevent minors from accessing online gaming platforms. This move comes as the state government intensifies its scrutiny of online gaming regulations, particularly following the COVID-19 pandemic, which has seen a rise in gaming addiction among youth. In June, the government discussed legislation to impose time and usage limits on online gaming, aiming to tackle addiction without distinguishing between different game types. Activist S. Ayyaa previously filed a Public Interest Litigation seeking restrictions on minors playing online gambling and sports betting games, highlighting the serious concerns surrounding online gambling, which has been linked to at least 17 suicides in Tamil Nadu by 2022. Despite calls for a complete ban on online gambling from affected families, the government has yet to establish specific regulations targeting this issue.

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POKER AND RUMMY ARE GAMES OF SKILL AND NOT GAMBLING'; ALLAHABAD HC DIRECTS AUTHORITIES TO PASS REASONED ORDER IN APPLICATION FOR PERMISSION TO RUN A GAMING UNIT

In a recent writ petition challenging the denial of permission to operate a gaming unit for poker and rummy, the Allahabad High Court ruled that these games are classified as games of skill, not gambling. The division bench, comprising Justices Shekhar B. Saraf and Manjive Shukla, directed the Agra City Commissionerate to revisit its decision and issue a reasoned order after providing the petitioner, M/s DM Gaming Pvt Ltd, an opportunity for a hearing within six weeks. The court noted that the initial denial was based on assumptions about potential disruptions to public peace rather than concrete evidence. It emphasized that any refusal to permit recreational gaming activities must be supported by factual findings. The ruling underscores that granting permission does not preclude authorities from monitoring for illegal gambling activities if they arise.

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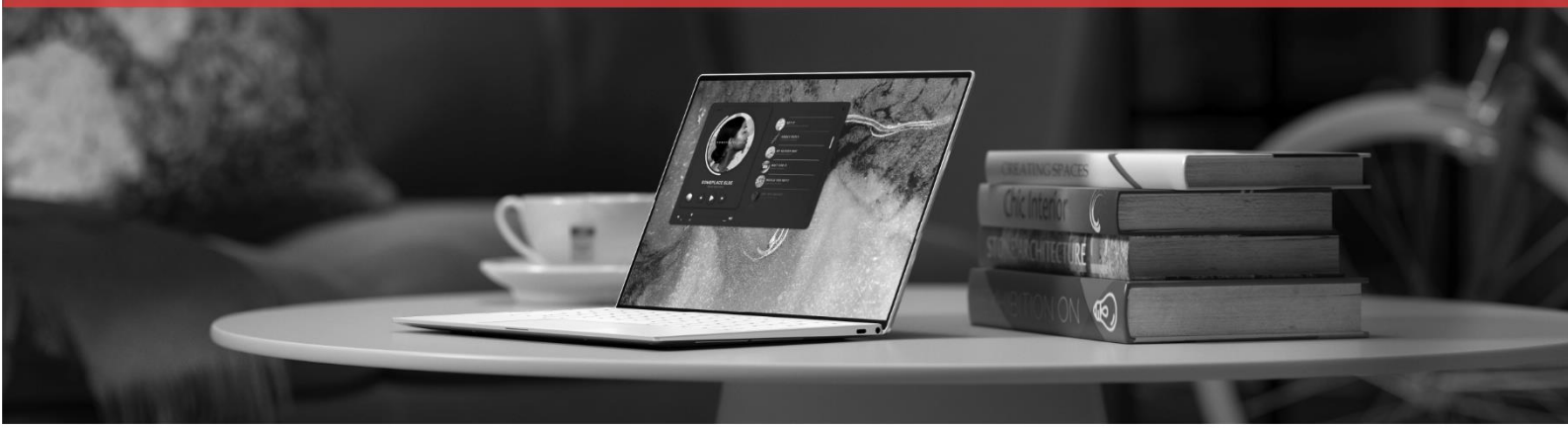

DIGITAL ADVERTISEMENTS

UNION MINISTRY OF HEALTH AND FAMILY WELFARE, RELEASES DRAFT AMENDMENTS TO THE "CIGARETTE AND OTHER TOBACCO PRODUCTS RULES, 2004"

On September 13, 2024 the Union Ministry of Health and Family Welfare ("**MHFW**") in exercise of the powers under Section 31 of the Cigarette and other Tobacco Products Act, 2003, (accessible *here*) released its Draft Amendments to the "Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2024" ("**Draft Amendments**") (accessible *here*).

Pertinently, the Draft Amendments to the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2024 ("**COTPA Rules**") (accessible *here*) proposes two significant amendments specifically relating to the digital advertisement of tobacco products. In this regard, to understand the context of the Draft Amendments it is essential to refer to the COTPA Rules, which introduced the requirement for publishers to display anti-tobacco health spots, warning messages, and audio-visual disclaimers while displaying any tobacco products or their use.

The Draft Amendments primarily propose changes along similar lines. The Draft Amendments require for all online curated content, published after September 01, 2023, to display: (i) anti-tobacco health spots of minimum thirty seconds duration; (ii) display a health warning as a static message during the use of tobacco products; and (iii) display audio-visual disclaimer on the ill effects of tobacco for a duration of twenty seconds. The Draft Amendments under Rule 11(1) make these requirements compulsory, and furthermore mandate that such disclaimers must be non-skippable.

INFORMATION TECHNOLOGY AND CYBER SECURITY

BOMBAY HIGH COURT DECLARES IT RULES AMENDMENT, 2023 AND GOVERNMENT'S FACT-CHECKING UNIT UNCONSTITUTIONAL

On September 20, 2024 , the Bombay High Court ("**BHC**") *vide* its judgement (accessible *here*) struck down parts of Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules 2021**") (accessible *here*) pertaining to the formation of Centralized Fact Checking Unit ("**FCU**") to flag fake, misleading or false information.

The present case stems from the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules dated April 6, 2023 ("**2023 Amendment**")(accessible *here*), which established the requirement for the formation of the FCU. In response to the 2023 Amendment, the Petitioners filed a case before the BHC, alleging that Rule 3(1)(b)(v) of the IT Rules, 2023, violated the principles of natural justice and was *ultra vires* of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution. Initially, the division bench of the BHC reached a split verdict in January 2024. To resolve this deadlock, the matter was referred to Justice Chandurkar for a tie-breaking decision.

Pertinently, during the period when the case was pending before Justice Chandurkar, the Central Government notified the formation of the FCU in March 2024, however this notification was stayed by the Supreme Court on the petitioner's plea.

Justice Chandurkar, in his judgement agreed with the view that in the absence of the terms "fake", "false" and "misleading" being defined, the 2023 Amendment to Rule 3(1)(b)(v) was vague and overboard. Furthermore, Justice Chandurkar agreed with the view that formation of the FCU constituted censorship since Rule 3(1)(b)(v) permitted the

Central Government to determine the truthfulness of its own business. Additionally, Justice Chandurkar held that the amendment was in violation of Article 14 of the Constitution as the Central Government acted as the final arbiter in its own cause. Justice Chandurkar also held that the amendment to Rule 3(1)(b)(v) was *ultra vires* since it created a substantive law beyond the parent statute i.e. the Information Technology Act, 2000. In light of the same, Justice Chandurkar struck down the 2023 Amendment to the IT Rules, 2021.

SUPREME COURT HOLDS THAT FAILURE TO DELETE CHILD PORNOGRAPHY INDICATES INTENT TO TRANSMIT

On September 23, 2024, the Supreme Court ("**SC**") declared that failure to delete child pornography constituted an intent to transmit such content (accessible here), thereby overruling the judgement of the Madras High Court ("**MHC**')(accessible here).

In a gist, the MHC, when initially presented with the case, held that the child pornography stored on the device, but not transmitted would not constitute an offence under the Information Technology Act, 2000 ("**IT Act**")(accessible *here*) or the Protection of Child from Sexual Offences Act, 2012 ("**POSCO Act**")(accessible *here*).

The judgement of the MHC was the appealed before the Supreme Court. Notably, when examining the safe harbour provisions under Section 79 of the IT Act, the Supreme Court held that, given the mandatory nature of Sections 19 and 20 of the POCSO Act, an intermediary is required to remove child pornographic content and immediately report such content to the concerned authority. The safe harbour under Section 79 can only be invoked if the intermediary has conducted due diligence regarding the content hosted or made available by it. Furthermore, Sections 67, 67A and 67B of the IT Act that penalize the transmission and publication of obscene material, being a complete code, must be interpreted in a purposive manner and viewed as a collective umbrella scheme of comprehensive penal provisions in this regard. This ensures that the legislative intent of penalizing various forms of cyber-offences relating to children and the use of obscene or pornographic material through electronic means is not defeated by a narrow construction of these provisions.

Importantly, the SC established that the decision of the MHC constituted an egregious error as the MHC failed to consider Section 15 and Section 30 of the POSCO Act. Pertinently, Section 15 of POSCO clearly sets out three distinct offences, one of which penalizes the storage of pornographic material involving a child and the failure of deletion thereof, which would constitute an intent to disseminate such material. The SC further held, which the MHC failed to consider, that the statutory presumption of culpable mental state under Section 30 of the POCSO Act applies if the prosecution establishes the foundational facts necessary to constitute the alleged offence. The SC concluded that the MHC committed an egregious error in its judgement and set aside the impugned judgement and reinstated criminal proceedings with regards to the present case.

CABINET SECRETARY AMENDS THE ALLOCATION OF BUSINESS RULES, 1961 TO STRENGTHEN CYBER SECURITY

On September 27, 2024, the Cabinet Secretariat amended the Allocation of Business Rules, 1961("**AOB Amendment**")(accessible *here*), the AOB Amendment aims to create a more robust cyber security ecosystem.

Notably, the amendment to the Allocation of Business Rules, 1961 ("**AOB Rules**")(accessible *here*), under Schedule I set out the various departments, ministries, offices and secretariats that shall transact the business of the Government of India.. Furthermore, Schedule II of the AOB Rules set out the various subjects falling within the purview of each ministry, department, offices and secretariats, thereby ensuring a clear delineation of the areas wherein ministries, departments, offices and secretariats can deal with.

In this regard, the AOB Amendment allows the Ministry of Communications, through the Department of Telecommunications, to oversee all matters related to the security of telecommunication networks. Additionally, the AOB Amendment brings within the purview of the Ministry of Electronics and Information Technology ("**MeitY**") all matters relating to cybersecurity under the IT Act, 2000 and requires MeitY to support other ministries and departments on matters relating to cybersecurity. Furthermore, the Ministry of Home Affairs, through the Department of Internal Security, shall oversee matters related to cybercrime. Finally, the National Security Council, under the AOB Amendment, is now required to provide overall coordination and strategic direction for matters relating to cybersecurity.

TELECOMMUNICATIONS

DEPARTMENT OF TELECOMMUNICATIONS AMENDS THE WI-FI ACCESS NETWORK INTERFACE FRAMEWORK AND GUIDELINES FOR REGISTRATION

On September 16, 2024, the Department of Telecommunication ("**DoT**") amended the Prime Minister's "Wi-Fi Access Network Interface Framework and Guidelines for Registration" Framework (accessible *here*), removing the requirement for Public Data Offices ("**PDO**") to enter into commercial agreements.

Previously, under the Prime Minister's "Wi-Fi Access Network Interface Framework and Guidelines for Registration" Framework ("**WANI Framework**") (accessible

here), PDOs were required to enter into 'commercial agreements' with telecommunication service providers ("**Telecos**"). The term "commercial agreements" was often misinterpreted/misused by Telecos, leading to PDOs being forced to purchase internet leased lines at exorbitant commercial rates. To address this ambiguity, the WANI Framework has been amended to remove the term 'commercial agreements' from Clause (a)(4) of Annexure B. Additionally, the Telecom Regulatory Authority of India ("**TRAI**") has issued a draft tariff order specifying the internet rates that must be charged under the WANI Framework (accessible here). This clarification ensures that PDOs can now access internet connectivity at fair and reasonable rates as opposed to the exorbitant rates charged earlier.

The amendments to the WANI Framework now permit PDOs that have established a single access point to set up multiple access points to expand their network coverage. To facilitate the same, PDOs can configure access points to create multiple service set identifiers ("**SSIDs**"), one for private use and another for public use. In this regard, the PDO is required to notify the authorities of the configured SSID for public use. Notably, the amendments also enable the public data office aggregators ("**PDOAs**") to enter into roaming agreements, allowing subscribers of each PDOA to access the internet through the other PDOA's network. Therefore, any two PDOAs can establish a roaming agreement to permit their subscribers to access the internet from any Wi-Fi Access Points associated with either PDOA, either directly or through centralized platforms.

TRAI SETS OUT NEW REPORTING STANDARDS FOR TELECOM COMPANIES WITH COMPLIANCE REQUIRED FROM OCTOBER 01, 2024, ONWARDS

On September 19, 2024, TRAI released directions under Section 13 of the of the TRAI Act, 1997, pertaining to the reporting and compliance requirements ("**Directions**")(accessible here) under the Standards of Quality of Service of Access (Wireline and Wireless) and Broadband (Wireline and Wireless) Service Regulations, 2024 ("**Broadband Regulations**") (accessible here).

Notably, TRAI had previously held a meeting with service providers on August 21, 2024, to discuss key aspects of the Broadband Regulations. During the meeting, service providers requested an extension for submitting their inputs, the extended date for the same was August 27, 2024. In the absence of submissions from service providers, TRAI has directed telecom operators to submit quarterly compliance reports in the prescribed format under the Broadband Regulations and ensure full compliance. The compliance requirements for the telecom operators, as outlined in the Directions issued by TRAI are as follows:

1. **Access Service (wireless):** The compliance report must be submitted within 15 days of the end of each quarter. Furthermore, in the event of any significant network outage, the same must be reported within 24 hours.

2. **Access Service (wireline):** The compliance report must be submitted within 15 days of the end of each quarter.

3. **Broadband Service (wireline):** The compliance report must be submitted within 15 days of the end of each quarter.

The Broadband Regulations and the Directions issued by TRAI are set to come into force on October 1, 2024, with all telecom operators required to ensure compliance with the same.

DGP, MAHARASHTRA TO IMPLEMENT S.37(B) OF BNSS

Section 37(b) of BNSS requires every State Government to designate a police officer in every district and police station who shall be responsible for maintaining information about persons arrested, which shall be prominently displayed (including in digital mode) in every police station and district headquarters. Vide the Government Resolution (GR) dated August 1, 2024, the Government of Maharashtra has transferred its powers to implement Section 37(b) of BNSS to the Director General of Police, Maharashtra.

Case - *Government Resolution date August 1, 2024*

NEW COMPOUNDING RULES INTRODUCED FOR FEMA OFFENCES

On September 12, 2024, the Ministry of Finance (Government of India) introduced the Foreign Exchange (Compounding Proceedings) Rules, 2024 replacing the former Foreign Exchange (Compounding Proceedings) Rules, 2000 for compounding of offences under FEMA. The key changes include:

(i) prescription of a more detailed application form requiring additional information (e.g., previous compounding applications);
(ii) changes to the monetary limits of the jurisdiction of the compounding authorities;
(iii) additional power to the compounding authority to require that applicants take necessary actions regarding contravening transactions;
(iv) clarification that compounding orders must be passed within 180 days from the receipt of the application;
(v) increased list of non-compoundable offences, which includes cases which need further investigation by ED etc.

Case - *Foreign Exchange (Compounding Proceedings) Rules, 2024*

PMLA PREVAILS OVER CRPC VIS-À-VIS SUMMONING OF PERSONS

The Appellant had challenged the summons issued by the Directorate of Enforcement (ED) under Section 50 of the PMLA (which empowers ED to summon persons to *produce documents, give evidence etc.*) as well as the complaint filed by ED upon the Appellant's non-compliance with the summons under Section 174 of the IPC (offence of non-attendance in obedience to an order from public servant) and the Magistrate's order taking cognizance of such complaint and summoning her. The challenge was *inter alia* on the ground that the summons is violative of Articles 20(3) and 21 of the Constitution of India (which protect a citizen's right against self-incrimination and right to life and liberty) and the procedural safeguards of Section 160 of CrPC (*Police officer's power to require attendance of witnesses*) ought to be applicable to PMLA. Rejecting the challenge, the Supreme Court held that:

1. PMLA will have overriding effect notwithstanding anything contained in the CrPC;

2. Chapter 12 of CrPC (within which Section 160 falls) does not apply to information relating to commission of money laundering offence (as held in *Vijay Mandal Chaudhary vs. Union of India*, 2022 SCC OnLine SC 929);

3. Issuance of summons, recording of statement etc. vis-à-vis money laundering is governed fully by PMLA;

4. The process under Section 50 of the PMLA is in the nature of an 'inquiry' and not an investigation in strict sense of the term for initiating prosecution;

5. As held in *Vijay Madanlal Chaudhary*, the statements recorded under Section 50 of PMLA are not hit by Articles 20(3) or 21 of the Constitution and are admissible in evidence;

6. When a person receives an ED summons under Section 50, he is bound to attend in person or through authorised agent as directed to state the truth; at this stage, such person summoned cannot claim protection under Article 20(3) of the Constitution the same not being testimonial compulsion;

7. The consequences of Article 20(3) or Section 25 of the Evidence Act (which makes confessions to police inadmissible) comes into play only if such person's involvement is revealed and his statements are recorded after a formal arrest made by ED.

Case - *Abhishek Banerjee vs. Enforcement Directorate*

SUPREME COURT GRANTS BAIL TO ARVIND KEJRIWAL AMID CBI INVESTIGATION

The ***Supreme Court*** released Arvind Kejriwal on bail in connection with a prosecution by CBI into alleged irregularities in the Excise Policy for 2021-2022. The Supreme Court noted the improper conduct of CBI in effecting the arrest after more than 22 months from registration of the FIR and despite filing of the chargesheet against him. The Supreme Court questioned the timing of the arrest, noting that the same was done only upon Arvind Kejriwal's release in the ED case possibly to frustrate the bail granted in that case.

Case - *Arvind Kejriwal vs. Central Bureau of Investigation*

STATUTORY BAIL UNDER S.479 OF BNSS AVAILABLE FOR CRPC CASES AS WELL

Under Section 479 of BNSS, first time-offenders (i.e., who has never been convicted of any offence in the past) become entitled for bail if they have undergone detention up to 1/3rd of the maximum imprisonment period prescribed for their offence (unless the Court orders continued detention). This was not the case under CrPC which restricted such bail to detention of 50% of the maximum imprisonment period specified. Further, under BNSS, Jail Superintendents are made responsible to make an application to the court for release of the accused on bail on completion of such 1/3rd term. BNSS came into effect on 1 July 2024.

In a welcomed decision, the Supreme Court observed that Section 479 of BNSS is more beneficial than the former Section 436A of the CrPC and recorded government's clarification that it shall apply to all undertrials in pending cases irrespective of whether their cases were registered before BNSS came into effect (i.e., under CrPC). The Supreme Court called upon Jail Superintendents across the country to file bail applications before the concerned courts for all undertrials who qualify for such bail upon completion of the prescribed period (also an obligation imposed under Section 47, preferably within two months from the passing of this order).

Case - *Re-Inhuman Conditions In 1382 Prisons vs. Director General of Prisons and Correctional Services and Ors.*

SUPREME COURT CLARIFIES SCOPE OF REVISIONAL JURISDICTION OF THE HIGH COURTS

In a case where the High Court reversed an acquittal order and ordered conviction in exercise of its revisional powers (under Section 401 of the CrPC), the ***Supreme Court*** set aside the High Court's order and remitted the matter back to the lower court while holding that the High Court does not have the power to convert a finding of acquittal into one of conviction in exercise of its revisional jurisdiction as is clear from the wordings of Section 401(3) of CrPC.

Case - *C.N. Shantha Kumar vs. M.S. Srinivas*

SECTION 50 OF NDPS ACT NOT APPLICABLE IF THE RECOVERY WAS FROM A BAG CARRIED BY THE ACCUSED

In a case where the contraband was seized from a bag carried by the Accused, the High Court reversed the conviction judgment of the trial court on the ground that Section 50 of the NDPS Act was not complied with which renders the search and seizure illegal. Section 50 *inter alia,* requires the police officer to inform the person to be searched about his right to have his search conducted in presence of the Gazette Officer or Magistrate if he/she so desires. However, the ***Supreme Court*** set aside the High Court's judgment and reiterated that if the recovery of contraband was not from the person but from a bag carried by him, the procedure formalities prescribed under Section 50 of the NDPS Act are not required to be complied.

Case - *State of Kerala vs. Prabhu*

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