

NEWSLETTER

February 2022

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CLARIFICATION WITH RESPECT TO SUBMISSION OF NOC FROM THE LENDING SCHEDULED COMMERCIAL BANKS/ FINANCIAL INSTITUTIONS/ DEBENTURE TRUSTEE

SEBI, in continuation of the circulars dated November 16, 2021¹ and November 18, 2021² in relation to the Master Circular on Scheme of Arrangement by Listed Entities³, vide circular dated January 03, 2022⁴, has clarified that the NOCs required from lending scheduled commercial banks/ financial institutions/ debenture trustee have to be submitted prior to receipt of the NOC from the stock exchange under Regulation 37(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

DISCLOSURE OBLIGATIONS OF HIGH VALUE DEBT LISTED ENTITIES IN RELATION TO RELATED PARTY TRANSACTIONS

SEBI, vide circular dated January 7, 2022⁵, has extended to high value debt listed companies, the application of the circular dated November 22, 2021⁶, whereunder listed entities were required to make the following disclosures in related to related party transactions under the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015:

- information to be reviewed by the audit committee for approval of related party transactions;
- information to be provided to shareholders for consideration of related party transactions; and
- format for reporting of related party transactions to the stock exchange.

¹ SEBI/HO/CFD/DIL1/CIR/P/2020/249

² SEBI/HO/CFD/DIL2/CIR/P/2021/659

³ Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated December 22, 2020

⁴ SEBI/HO/CFD/SSEP/CIR/P/2022/003

OPERATIONALISATION OF THE FRAMEWORK FOR GOLD EXCHANGE IN INDIA

SEBI has, pursuant to the notification of 'electronic gold receipts' as 'securities' within the meaning of the Securities Contract (Regulation) Act, 1956 on December 24, 2021, vide circular dated January 10, 2022⁷, notified the framework for operationalisation of a Gold Exchange.

SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATIVE INVESTMENT FUNDS) (AMENDMENT) REGULATIONS, 2022

SEBI, vide notification dated January 24, 2022⁸, has notified the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2022 to insert a new chapter III-B (Special Situations Funds). Further, SEBI, vide circular dated January 27, 2022⁹, has decided as follows:

- Each scheme of Special Situations Fund ("SSF") shall have a corpus of at least Rs. 1,00,00,00,000/- (Rupees one hundred crore only).
- SSF shall accept an investment of value not less than Rs. 10,00,00,000/- (Rupees ten crore only) from an investor. In case of an accredited investor, the SSF shall accept an investment of value not less than Rs. 5,00,00,000/- (Rupees five crore only). Further, in case of investors who are employees or directors of the SSF or employees or directors of the manager of the SSF, the minimum value of investment shall be Rs. 25,00,000/- (Rupees twenty-five lakh only).
- SSF intending to act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 shall ensure

⁵ SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/0000000006

⁶ SEBI/HO/CFD/CMD1/CIR/P/2021/662

⁷ SEBI/HO/CDMRD/DMP/CIR/P/2022/07

⁸ No. SEBI/LAD-NRO/GN/2022/68

⁹ SEBI/HO/IMD-I/DF6/P/CIR/2022/009

compliance with the eligibility requirement provided thereunder.

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2022

SEBI vide notification dated January 24, 2022 has notified the following amendments in relation to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015¹⁰

- a. In regulation 17, which deals with the maximum number of directorships, the appointment and reappointment of a person who was earlier rejected by the shareholders in a general meeting shall only be done with the prior approval of shareholders. The statement annexed to the notice to be given to the shareholders shall contain the rationale behind such reappointment.
- b. In regulation 39(7), the report of the monitoring agency needs to be placed before the audit committee on a quarterly basis.
- c. In regulation 39(2), the new share certificates shall be issued in demat form only
- d. In regulation 40(1), no transfer of securities shall take place unless the securities are held in demat form and in case of transmission or transportation of securities shall be effected only in demat form.

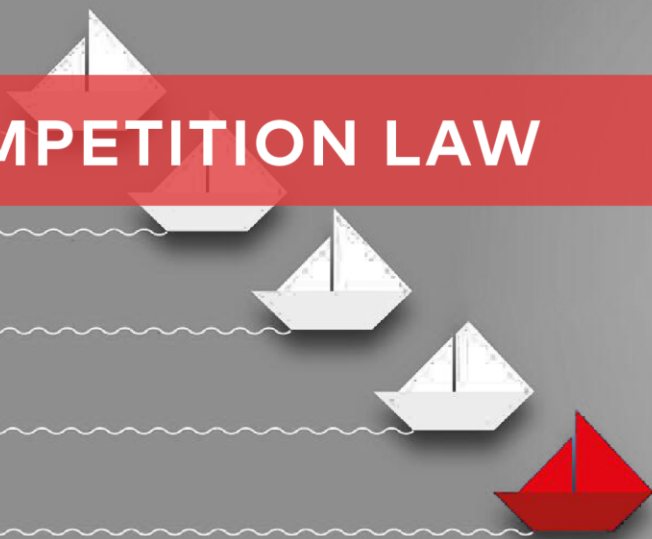
SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) (AMENDMENT) REGULATIONS, 2022

SEBI vide notification dated January 25, 2022 has notified the following amendments in relation to SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003¹¹

- a. In Regulation 6, the period of one month for keeping custody of any books, registers, other documents has been removed.
- b. In Regulation 6, more powers have been given to the investigating authority to conduct investigations.
- c. Regulation 11(2) has been modified to remove the requirement of press release where earlier the Board was required to issue a press release in respect of any final order passed under sub-regulation (1) in at least two newspapers of which one shall have nationwide circulation and also to put the order on the website of SEBI.

¹⁰ SEBI/LAD-NRO/GN/2022/66

¹¹ SEBI/LAD-NRO/GN/2022/71



COMPETITION COMMISSION OF INDIA PENALIZES SHIPPING LINES

By an order dated January 20, 2022, the Competition Commission of India (“CCI”) has penalized four maritime transport companies (shipping lines) namely - Nippon Yusen Kabushiki Kaisha (“**NYK Line**”), Kawasaki Kisen Kaisha Ltd. (“**K-Line**”), Mitsui O.S.K. Lines Ltd. (“**MOL**”) and Nissan Motor Car Carrier Company (“**NMCC**”), for indulging in cartelization in the provision of maritime motor vehicle transport services to automobile Original Equipment Manufacturers (“**OEMs**”) for various trade routes.

The case was based on a leniency application filed in 2014 by NYK Line. The application mentioned that NYK Line, K-Line, MOL, and NMCC colluded in respect of providing maritime motor vehicle transport services to automobile OEMs for alleged contravention of Section 3 of the Competition Act, 2002 (“**Act**”), which pertains to anti-competitive agreements.

The inquiry revealed that there was an agreement between NYK Line, K-Line, MOL, and NMCC with the objective of enforcement of “Respect Rule”, which implied avoiding competition with each other and protecting the business of incumbent carrier with the respective OEM.

CCI held all the four opposite parties guilty of anti-competitive agreement from 2009 to 2012. Further, 14 individuals of NYK Line, 10 individuals of K-Line, 6 individuals of MOL, and 3 individuals of NMCC, were also held liable for the anti-competitive conduct of their respective companies, under the provisions of Section 48 of the Act. As three companies filed lesser penalty applications, CCI gave the benefit of reduction in penalty by 100% to NYK Line and its individuals, 50% to MOL and its individuals, and 30% to NMCC and its individuals, besides passing a cease-and-desist order.

DSK View: *In view of the evidence and arguments presented, CCI found that the maritime transport companies resorted to multi-lateral as well as bilateral contacts/ meetings/ e-mails with each other to share commercially sensitive information which included freight rates. They also aimed to preserve their position in the market and maintain or increase prices, including by resisting requests for price reduction from certain OEMs.*

CCI ORDERS INVESTIGATION AGAINST GOOGLE

By an order dated January 07, 2022, CCI has ordered a probe against Google for its alleged abuse of its dominant position in the news aggregation market. This amounts to a violation of Section 4 of the Act. The order was based on information filed by the Digital News Publishers Association, which promotes and protects the interest of digital news publishers.

The information relates to unilateral and non-transparent determination and sharing of advertisement revenues and imposition of unfair conditions on publishers by Google, which is the most dominant search engine and consequently gets to decide the share of ad revenues to be paid to digital news publishers.

CCI has asked DG to complete the investigation and present a report within 60 days.

DSK View: *Antitrust authorities in Australia and Europe are investigating similar complaints against Google and Facebook. Australia has also adopted a code in relation to the process of revenue sharing among stakeholders.*

COMBINATIONS APPROVED

CCI has approved the following combinations in view of the notices filed under Section 31(1) of the Act:

- **January 11, 2022** – Acquisition of Series C Preferred Stock convertible to common stock of **Sutherland Global Holdings Inc.** in two tranches by **Coral Blue Investment Pte Ltd.**
- **January 21, 2022** – Acquisition of shares of **Future Generali India Life Insurance Company Limited** by **Generali Participations Netherlands N.V.**
- **January 21, 2022** – Acquisition of 100% of the shareholding in **GlaxoSmithKline Asia Private Limited** by **GlaxoSmithKline Consumer Healthcare Overseas Limited** and **GlaxoSmithKline Consumer Healthcare UK Trading Limited**. The acquirers will also acquire the trademarks pertaining to “Iodex” and “Ostocalcium”

brands in India along with the legal, economic, commercial, and marketing rights of such brands and other associated assets (GSK Consumer Brands) from **GlaxoSmithKline Pharmaceuticals Limited**.

DSK View: Transactions beyond a certain threshold requires CCI's approval. The CCI has introduced an automatic system of approval for combinations under 'Green Channel'. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. This system would significantly reduce the time and cost of transactions and thereby contributing towards ease of doing business in India.

EMPLOYMENT LAW

TAMIL NADU LABOUR WELFARE BOARD ISSUES NOTICE FOR PAYMENT OF LABOUR WELFARE FUND CONTRIBUTION FOR THE YEAR 2021

The Tamil Nadu Labour Welfare Board (“Welfare Board”) vide notice dated January 7, 2022 has issued directions on payment of Labour Welfare Fund Contribution for the year 2021. The Welfare Board has directed employees working in factories, motor transport undertakings, plantations and 5 (Five) or more employees working in the catering and shops/establishments should contribute to Labour Welfare Fund (“Welfare Fund”) at rate of INR 10 (Indian Rupees Ten). Similarly, the employer’s rate in such sectors shall be INR 20 (Indian Rupees Twenty). Such contribution shall be made along with filing of Form A for year 2021 on or before January 31, 2022. Persons who are employed for a period of 30 (Thirty) days in a year should contribute to the Welfare Fund. If an organization failed to contribute to the Welfare Fund on or before January 31, 2022 appropriate recovery action will be taken under Revenue Recovery Act as per the Provision of Section 28 of Tamil Nadu Labour Welfare Fund Act, 1972.

ANDAMAN AND NICOBAR MINIMUM WAGE NOTIFICATION

The Administrator of Andaman and Nicobar Island vide notification dated January 11, 2022 has declared the minimum rate of wages in the union territory of Andaman and Nicobar to be effective from ^t January 1, 2022.

- Unskilled employees – INR 507/- per day
- Semi-skilled/ Unskilled Supervisory – INR 564/- per day
- Skilled/ Clerical – INR 649/- per day
- Highly Skilled – INR 707/- per day

ESIC NOTIFIES RELAXATION IN ELIGIBILITY CONDITION OF 2 YEARS INSURABLE EMPLOYMENT BEFORE UNEMPLOYMENT AND CONTRIBUTORY CONDITION OF ATAL BEEMIT VYAKTI KALYAN YOJANA

The Employees State Insurance Corporation (“ESIC”) vide its notification dated January 12, 2022 has decided to relax the eligibility condition of 2 (Two) years insurable employment before unemployment and contributory condition of Atal Beemit Vyakti Kalyan Yojana (“ABVKY”) with effect from July 7, 2021. The ESIC has relaxed the eligibility condition of ABVKY, which now stipulates that: -

- The Insured Person (“IP”) should have been in insurable employment for a minimum period of 12 (Twelve) months immediately before his/her unemployment and should have contributed for not less than 78 (Seventy-Eight) days in the one completed contribution period in 12 (Twelve) months immediately preceding to unemployment.

The ABVKY scheme was introduced by the ESIC on pilot basis for a period of 2 (Two) years w.e.f. July 1, 2018 for providing relief to the IPs who have become unemployed. However, to provide benefit to the IPs who have become unemployed during COVID-19 pandemic, the scheme was extended till June 30, 2022.

THE BIHAR PROFESSIONAL TAX (AMENDMENT) RULES, 2021

The Government of Bihar vide notification dated January 13, 2022 has notified amended provisions regarding registration and enrolment under The Bihar Professional Tax Rules, 2011 (“The Rules”).

As per The Rules:

- the employer or assessee shall electronically submit application within a period of 15 (Fifteen) days of any

- change in the name of employer or deductor or date of liability;
- the employer shall apply for fresh registration if change pertains to the change in Permanent Account Number, or the name as per such Permanent Account Number, Tax Deduction and Collection Account Number, or the name as per such Tax Deduction and Collection Account Number, jurisdiction of the circle, name and style, Goods and Services Tax Identification Number;
- the employer or tax assessee through his own login shall also update at the official website of the Commercial Taxes Department in case of any change in mobile number, e-mail address, address of the place of the business or name of the firm, nature of profession or trade; and
- the employer or assesses seeking cancellation shall also submit an application electronically within a period of 30 (Thirty) days along with supporting documents at official website of the commercial taxes department.

GOVERNMENT OF HARYANA GRANTS EXEMPTION TO CERTAIN CATEGORY OF EMPLOYERS UNDER STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020

The State Government of Haryana vide its order dated January 17, 2022, has decided to exempt certain categories of employers from the ambit of Haryana State Employment Local Candidates Act, 2020 (“**Haryana State Employment Act**”). According to the provisions in the law, every employer employing more than 10 (Ten) persons is required to employ 75% (Seventy-Five Percent) local candidates for the posts where the gross monthly salary or wages are less than INR 50,000 (Indian Rupees Fifty Thousand). To ensure smooth implementation of the Haryana State Employment Act, the Government granted deemed exemption to the following, namely:

- vacancies in the new start-ups and IT /ITES (IT Enables Services) of employers, the exemption has been granted for a period of 2 (Two) years from the date of commencement of work or business or manufacturing process;
- short term employment of less than 45 (Forty-Five) days;
- vacancies under any employer engaged in agricultural activities;
- vacancies under an employer for domestic work or services; and
- any class, post, skill, and category of employment as may be notified by the state government where the candidate of the desired skill, qualification, or proficiency required in such employment is not available.

The Haryana State Employment Act was passed by the legislature on November 6th, 2021, and it stands effective

from January 15, 2022. The Haryana State Employment Act and the Rules will remain effective for 10 (Ten) years from their effective date.

GOVERNMENT OF TAMIL NADU NOTIFIES THE INTEREST RATE ON STATE INDUSTRIAL EMPLOYEES CONTRIBUTORY PROVIDENT FUND

The State Government of Tamil Nadu vide notification dated January 19, 2022 has notified that the rate of interest on the deposits and balances applicable on each member of the Tamil Nadu Government Industrial Employees Contributory Provident Fund for the financial year 2020-2021 shall be 8.50% (Eight-Point Five Percent).

ESIC EXTENDS THE BENEFITS OF ASSAM EMPLOYEES’ STATE INSURANCE (MEDICAL BENEFIT) RULES, 1958 TO CERTAIN OTHER DISTRICTS IN THE STATE

The Employees’ State Insurance Corporation (“**ESIC**”), vide its notification dated June 21, 2022, has fixed January 1, 2022 as the date from which the medical benefits as laid down in the Regulation 95-A of the Employees’ State Insurance (General) Regulations, 1950 and Assam Employees’ State Insurance (Medical Benefit) Rules, 1958 shall be extended to the families of IPs in the entire area of Barpeta, Bongaigaon, Bishwanath, Cachar, Chirang, Darrang, Dhemaji, Dhubri, Golaghat, Goalpara, Karbi Anglong, Karimganj, Lakhimpur, Majuli, Nalbari, Marigaon, Nagaon, Sibsagar, South Salmara Mankachar, Udalguri, West Karbi Anglong districts in the State of Assam, in addition to the already implemented area in the district.

As per Regulation 95-A, the family of an IP shall become entitled to medical benefit from the day the IP himself becomes entitled to medical benefit and shall continue to be so entitled so long as the IP is entitled to receive medical benefit for himself, or in the case of death of the IP till such date up to which the IP would have remained entitled to medical care, had he survived. Further the nature and scale of medical benefit to which the family of an IP shall be entitled shall be specified by the State Government in consultation with ESIC from time to time and the appropriate office shall arrange to add in Form 4, Form 4-A, the particulars of the family entitled to medical benefits.

GOVERNMENT OF RAJASTHAN NOTIFIES THE INTEREST RATE FOR GENERAL PROVIDENT FUND

The State Government of Rajasthan vide the notification on January 24, 2022 has notified that the General Provident Fund (GPF) and other similar funds, shall carry interest at the rate of 7.1% (Seven Point One Percent) per annum. This rate will be in force during the financial year 2021-22 for the period of January 1, 2022 to March 31, 2022.

ENERGY

MINISTRY OF POWER ISSUED THE 'CHARGING INFRASTRUCTURE FOR ELECTRIC VEHICLES (EV)-REVISED CONSOLIDATED GUIDELINES AND STANDARDS

Ministry of Power, Government of India ("MoP"), has on January 14, 2022, issued the 'Charging Infrastructure for Electric Vehicles (EV) – revised consolidated Guidelines and Standards' ("Guidelines")¹². The Guidelines amend the existing guidelines issued on December 14, 2018 and amended from time to time. The Guidelines have been issued to accelerate the E-mobility transition in the country. The Guidelines, *inter alia*, lay down the following:

- (a) Owners can charge their EVs at their residence/office using existing electric connections;
- (b) Any entity/individual can set up public charging stations that meet the applicable technical, safety and performance standards;
- (c) Public Charging Stations can apply for electricity connection and the Distribution Company licensee will release connection within the timelines stipulated in the Electricity (Rights of Consumers) Rules 2020;
- (d) Any Public Charging Station/Chain of Charging Stations can obtain electricity from any generation company though open access upon payment of necessary charges.

The Guidelines also stipulate certain compliance requirements for Public Charging Stations, including those set up for long range EVs and/or heavy duty EVs. Under the Guidelines, the Bureau of Energy Efficiency (BEE) is required to create and maintain a national online database of all Public Charging Stations in consultation with the State Nodal Agencies. The applicable tariff for supply of electricity to

Public EV Charging Stations, the service charge payable to charging stations and roll out requirements for public charging infrastructure, including implementation mechanism are also covered under these Guidelines. The rollout of EV Public Charging Infrastructure will be carried out in two phases: a) under Phase 1 (1-3), all mega cities with population of 4 million and above, all existing expressways connected to the mega cities and important highways will be taken up for coverage; and b) under Phase 2 (3-5 years), big cities like state capitals, UT headquarters will be covered.

PGCIL HAS SIGNED JOINT DEVELOPMENT AGREEMENT WITH AFRICA 50 TO DEVELOP THE KENYA TRANSMISSION PROJECT

As per Press Release issued by the Press Information Bureau ("PIB") on January 12, 2022, Power Grid Corporation of India Limited (PGCIL) has signed a Joint Development Agreement with Africa50, a pan-African infrastructure investment platform to continue developing the Kenya Transmission Project on a public-private partnership basis. Under the arrangement, PGCIL will provide technical and operational know-how to the project while Africa50 will be responsible for project development and finance.

PNGRB SEEKS COMMENTS ON THE DRAFT PETROLEUM AND NATURAL GAS REGULATORY BOARD (AUTHORIZING ENTITIES TO LAY, BUILD, OPERATE OR EXPAND CITY OR LOCAL NATURAL GAS DISTRIBUTION NETWORKS) REGULATIONS, 2022

The Petroleum and Natural Gas Regulatory Board ("PNGRB") vide Public Notice No. PNGRB/Auth/1-CGD(79)/2019, dated

¹² The Guidelines can be accessed at: https://powermin.gov.in/sites/default/files/webform/notices/Final_Consolidated_EVCI_Guidelines_January_2022_with_ANNEXURES.pdf

05.01.2022, has sought views/comments on the draft “Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2022” (“**PNGRB Authorization Regulations Amendment 2022**”) from stakeholders by 25.01.2022, pursuant to which an open house will be held. (copy of the same is attached)

The PNGRB Authorization Regulations Amendment 2022 seeks to amend: a) Regulation 5(6)(b)(iv) by substituting the omitted sub-clause (iv) with “(iv) entity has an adequate number of technically qualified personnel with experience in construction, pre-commissioning and commissioning of [hydrocarbon steel pipelines] and also has a credible plan to independently undertake and execute the CGD project on a standalone basis. Explanation- The entity shall have at least three technically qualified personnel on its permanent rolls having experience of not less than [three year] in the following areas...”; and b) Schedule D, para 1.

PNGRB INVITES ELECTRONIC BIDS UNDER 11 A CGD BIDDING ROUND

The PNGRB, vide Public Notice No. PNGRB/Auth/1-CGD(85)/2021(P-3642), dated 07.01.2022, has invited electronic bids under 11 A CGD Bidding Round for the following additional Geographical Areas (Gas): a) Lakhimpur Kheri, Sitapur, Bahraich, Shrawasti, Balrampur, Siddharth Nagar & Maharajganj districts (UP); b) Banka, Dumka, Godda, Jamtara, Pakur & Sahibganj districts (Bihar and Jharkhand); c) Birbhum, Murshidabad, Maldah & Dakshin Dinajpur districts (West Bengal); d) Koriya, Surajpur, Balrampur and Surguja districts (Chhattisgarh); and e) Kondagaon, Bastar, Sukma, Narayanpur, Bijapur and Dantewada districts (Chhattisgarh). A press release has also been issued by the PNGRB with respect to the same.

ADDENDUM 4 TO PLI ACC BATTERY SCHEME RELEASED BY MINISTRY OF HEAVY INDUSTRY

Ministry of Heavy Industries (“**MHI**”) has issued Addendum No.4 to indicate proposed modifications to the tender documents issued on 22.10.2021 for ‘Selection of Manufacturers for Setting Up Manufacturing Capacities for Advance Chemistry Cell (ACC) under the Production Linked Incentive (PLI) Scheme’. Under the Addendum 4 the following modifications have been specified: a) a certificate prepared according to the International the International Financial Reporting Standards (“**IFRS**”) or Generally Accepted Accounting Principles (“**GAAP**”) or Indian Accounting Standards (“**Ind AS**”) from a statutory auditor specifying the Net Worth of the Bidder is required to be submitted (in the initial tender documents this certificate was required to be from a reputed auditor); b) details of bank account for submission of Bid Security has been added;

c) the Bid is required to be accompanied by the audited annual reports of the Bidder for the Financial Year preceding the year in which the Bid is made along with a certificate prepared according to the IFRS or GAAP or IND AS from a statutory auditor (in the initial tender documents this certificate was required to be from a reputed auditor) specifying the Net Worth of the Bidder.

GREEN ENERGY CORRIDOR PHASE II FOR INTRA-STATE TRANSMISSION SYSTEM WAS APPROVED BY THE CABINET COMMITTEE ON ECONOMIC AFFAIRS CHAIRED BY THE PRIME MINISTER

A Press Release dated 06.01.2022 was posted by the Press Information Bureau (“**PIB**”) stating that the Cabinet Committee on Economic Affairs chaired by the Prime Minister has approved the scheme on Green Energy Corridor (GEC) Phase-II for Intra-State Transmission System (InSTS), which proposes to add approximately 10,750 circuit kilometres (ckm) of transmission lines and approx. 27,500 Mega Volt-Amperes (MVA) transformation capacity of substations. The scheme is also said to facilitate grid integration and power evacuation of around 20 GW of Renewable Energy power projects in certain States. The Scheme has been designed to help achieve the target of 450 GW installed RE capacity by 2030 and contribute to India’s energy security.

NHPC SIGNS PROMOTERS AGREEMENT WITH GREEN ENERGY DEVELOPMENT CORPORATION OF ODISHA LTD. TO DEVELOP SOLAR PROJECTS

As per Press Release dated 06.01.2022 issued by the PIB, NHPC Limited has signed Promoters Agreement (“**NHPC**”) with Green Energy Development Corporation of Odisha Ltd. (“**GEDCOL**”) for ‘Development of 500 MW Floating Solar Projects on different water bodies in Odisha’. Under the said agreement, NHPC and GEDCOL will jointly establish a Company for implementation of 500 MW Floating Solar Power Projects in Odisha and other such projects subsequently.

HIMACHAL PRADESH CABINET APPROVES DRAFT ELECTRIC VEHICLE POLICY

The Himachal Pradesh cabinet approved the Draft Electric Vehicle Policy (“**Policy**”) this month. The Policy promotes sustainable transport system for making Himachal Pradesh a global hub for electric mobility development and manufacturing of electric vehicles. Additionally, the Policy shall also aid in creating public and private charging infrastructure for electric vehicles in addition to providing subsidy and incentives to the electric vehicles manufacturing industries.

IMPORTANT JUDGEMENTS/ ORDERS

In **Lanco Amarkantak Power Ltd. v. Haryana Electricity Regulatory Commission and Ors.**, (Appeal No. 48 of 2019) the Appellate Tribunal for Electricity (APTEL) vide judgment dated January 13, 2022, allowed the element of interest on O&M expenses to be included in the tariff determined by the commission.

FACTS-

The appeal was filed by Lanco Amarkantak, (Appellant), a thermal power generator, seeking recovery of its dues towards supply of electricity to respondent Haryana Power Purchase Centre (“HPPC”), it being the nodal agency for distribution licensees for procurement of electricity for supply in the State of Haryana. The Appellant had entered into a Power Purchase Agreement (“PPA”) with respondent Power Trading Corporation (“PTC”) on October 19.10.2005, PTC and subsequently into a Power Sale Agreement (“PSA”) dated September 21, 2006 with HPPC. The Appellant commenced supply under the PPA/PSA on May 7, 2011, with HPPC making ad hoc payments. Eventually vide order passed in December 2011, the Hon’ble Supreme Court directed proper tariff determination which resulted in a tariff order being passed by the State Commission on January 1, 2015 which would cover the period commencing from May 2011 onwards. The tariff order dated January 1, 2015 was challenged in appeal by the Appellant, claiming that it was entitled to a higher capacity charge on the element of O&M. Vide order dated March 21, 2018, the contention of the appellant on the issue of O&M was upheld and the matter

was remanded to the State Commission for fresh decision. Vide order dated September 22, 2019, the State Commission while granting the necessary relief on O&M expenses in relation to tariff determination, declined to award interest in light of the fact that the remand order did not direct so. This order has been challenged in this appeal.

During the above proceedings, the appellant had also filed a claim before the State Commission in 2016 seeking award of differential tariff based on tariff determined by the State Commission by order dated 23.01.2015 and the *ad hoc* payments that had been received since the commencement of the supply of electricity, the claim agitated at that stage being inclusive of the award of interest on the principle of time value of money. The State Commission by its order dated July 12, 2016 granted the principal amount claimed but denied the interest part. That order was challenged by appeal no.308/2017 before APTEL, which was allowed by APTEL and relief of payment of interest granted in favour of Appellant vide Judgment dated May 22, 2019.

JUDGEMENT-

In light of the Judgment dated May 22, 2019 passed by APTEL in appeal 308 of 2017 having become final and binding on the issue of interest, the APTEL in the present appeal held that denial of interest part on the added element of O&M expenses was unjust. Thus, APTEL set aside the impugned order passed by the State Commission to the extent it denied the element of interest, and directed the State Commission to pass a fresh order on this issue.

INFRASTRUCTURE

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

The Department of Expenditure (“DoE”), Ministry of Finance, vide office memorandum bearing number F/4/1/2021-PPD (“OM”) dated January 06, 2022, has relaxed the Global Tender Enquiry (“GTE”) requirements under rule 161(iv) of the General Financial Rules, 2017 (“GFRs”) for the procurement of medical devices.

DoE vide office memorandum bearing number OM No. F. 12/17/2019-PPD dated May 16, 2020 and May 28, 2020 in relation to the amendment to Rule 161(iv) of the GFRs (“GTE OM”), had stipulated the no GTE shall be invited for tenders up to INR 200 crores or such limit as the DoE may prescribe from time to time except in exceptional cases.

In this regard the Ministry of Health and Family Welfare (“MoHFW”) has referred to the DoE and has sought to

exempt procuring entities from seeking approval for floating GTEs with respect to 128 medical devices as specified in Annexure A of the OM. After making a due study of the market conditions, MoHFW had concluded that the said medical devices are not manufactured domestically. Hence, the reference.

On examining the matter, DoE has exempted the procuring entities from instructions under GTE OM for the said medical devices till March 31, 2023. DoE has also requested MoHFW to review the domestic availability of the Medical Devices at the end of the year 2022, keeping in view the production linked incentive scheme, etc. launched by the Department of Pharmaceuticals in medical devices and other relevant factors based on consultation with such Department.

RELIEF FOR CONTRACTORS/DEVELOPERS OF THE ROAD SECTOR IN VIEW OF THE PANDEMIC

The Ministry of Road Transport & Highways (“MoRTH”), Government of India, vide circular no. COVID-19/RoadMap/JS(H)/2020 dated January 04, 2022, has provided certain relief measures in addition to the reliefs stipulated under MoRTH letters dated August 26, 2021, and October 08, 2021, and has requested the respective implementing agencies to implement the measures accordingly. These measures can be summarized as:

- In order to improve the liquidity of the funds available with the contractors and concessionaires, the relaxation in Schedule H/G of model concession agreements for road projects has been extended till March 31, 2022.
- The arrangement with respect to the direct payment to the approved sub-contractor through escrow account may be continued till March 31, 2022, or till the completion of the work of the sub-contractor whichever is earlier.
- The reduced performance security of 3% of the value of the contract for all existing contracts (excluding contracts under dispute where arbitration or court proceedings have started or been completed) will be applicable to all tenders/contracts issued/concluded till March 31, 2022.
- Retention money can be continued to be released in proportion to the executed work and no reduction of retention money may be made from the bills raised by the contractor till March 31, 2022.
- For HAM/BOT contract, if the concessionaire is not in breach of the contract, the performance guarantee may be released on pro-rata basis in terms of such contract.
- The extension of time to contractor/concessionaire may be examined and considered on a case-to-case basis.
- For all new contracts entered into during April 2021-June 2021, waiver of penalty for delay in submission of performance security or bank guarantee may be granted in general to all such contracts for one month from the due date as per the provisions of such contract.
- Extension of time to consultants may be examined and considered on a case-to-case basis.
- For BOT/TOT concessionaire, an extension in concession period may be provided for reduction in the collection of user fees as per the provisions of the concession agreement.

- For all tolling contracts, reduction in collection of fees may be compensated in accordance with the user fee collection contracts.
- For achievement of financial closure in concession agreements entered into between April 2021-June 2021, extension of time may be granted to the concessionaire for one month from the due date according to the provision of the contract and depending on the location of the project.

STANDARD OPERATING PROCEDURE TO DEBAR / PENALIZE / DECLARE THE CONTRACTOR / CONCESSIONAIRE AS NON-PERFORMER IN NATIONAL HIGHWAYS AND OTHER CENTRALLY SPONSORED ROAD PROJECTS

MoRTH had, vide circular bearing number RW/NH-33044/76/2021-S&R (P&B) dated October 06, 2021 (“Circular 1”), issued standard operating procedure (“SOP”) to debar/penalize/declare the contractor or concessionaire in national highways and centrally sponsored road projects as non-performer. Thereafter, the DoE had also issued guidelines relating to debarment of firms from bidding vide OM No. F-1/20/2018-PPD dated November 02, 2021 (“Debarment Guidelines”).

Accordingly, with the approval of the competent authority, MoRTH has, vide circular bearing number RW/NH-33044/76/2021-S&R (P&B) dated January 04, 2022 (“Circular 2”), amended Circular 1 in the following manner:

| Original Provision | Amended Provision |
|--|--|
| <p>8. Upon declaration of non-performer/debarred, the Contractor/Concessionaire will not be able to participate in any bid with MoRTH or its executing agencies till such time the Contractor/Concessionaire is removed from the list of non-performers or the debarment persists. The Contractor/Concessionaire shall include its JV partners/promoters etc. whose credentials were considered while qualifying them for the project. Non-performer/debarment status of a bidder on the bid due date will be the criteria for eligibility of a</p> | <p>8.1. Upon declaration of non-performer/debarred, the Contractor/Concessionaire will not be able to participate in any bid for National Highways projects with MoRTH or its executing agencies till such time the debarment persists or the Contractor/Concessionaire is removed from the list of non-performers. In bidding for a particular project, bids from only such firms should be considered for placement of contract, which are neither debarred on the date of opening of tender nor debarred on the date of issue of Letter of Acceptance (LoA).</p> |

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| <p>bidder to participate in the said bid.</p> | <p>Contracts concluded before the issue of the debarment/declaration as non-performer order shall, not be affected by the debarment order(s) issued subsequently.</p> <p>8.2. In case, any debarred/ declared non-performer firm submits the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred/ declared non-performer firms shall be returned to them.</p> <p>8.3. Debarment/declaration as non-performer of a particular firm shall automatically extend to all its allied firms. In case a joint venture/ consortium</p> |
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| | <p>is debarred, all partners/members shall stand debarred for the entire period.</p> |
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MEDIA & ENTERTAINMENT



SUPREME COURT REFUSES TO ENTERTAIN WRIT PETITION FILED AGAINST STREAMING OF THE MOVIE “WHY I KILLED GANDHI”

A writ petition was filed by Mr. Sikarnder Behl against the release, publication, exhibition of the movie “Why I Killed Gandhi”, on the streaming platform “Limelight”. The Petitioner contended that the film has been produced with the intention of tarnishing the image of Mahatma Gandhi and to justify and glorify his assassin Nathuram Godse. The Petitioner further argued that the release of the film might create communal disharmony, spreading hatred and disturbing peace. Though the Petitioner had sought a stay on the movie, the Supreme Court refused to entertain the petition stating that “*Writ petition under Art 32 may only be filed when there is a question of violation of Fundamental Right. No Fundamental Right of the petitioner appear to have been violated. However, it appears that the petitioner is a citizen and may have a serious cause of concern. Petitioner is at liberty to approach the High Court under Art 226. This petition is not entertained*”.

FIR FILED AGAINST GOOGLE CEO SUNDAR PICHAI, YOUTUBE MD GAUTAM ANAND & OTHERS IN COPYRIGHT INFRINGEMENT CASE

The Mumbai Police has registered an FIR against Sundar Pichai, Gautam Anand and others for offenses under sections 51, 63 and 69 of the Copyright Act following a magistrate’s order, in a complaint filed by Suneel Darshan, regarding the illegal upload and publication of his movie “Ek Haseena Thi Ek Deewana Tha” on YouTube. The Chief Metropolitan Magistrate Court observed that “*There is a prima-facie case of infringement of the various copyright works...Now a days piracy and infringement of copyright has become a menace, due to rapid advancement of technology and therefore a huge loss of money accrues to the Film & TV Industry causing a heavy loss to the economy and therefore there is a need to curb such menace*”. The complainant further alleged that the

content was not taken down from the platform despite several emails were sent to the company and the companies have been gaining revenues from the advertisements shown during and after the broadcast of the film.

VARIOUS BROADCASTERS INCLUDING STAR INDIA AND SONY PICTURES HAVE APPROACHED THE TDSAT AGAINST TRAI LETTER SEEKING INFO ABOUT DELIVERY OF LINEAR CONTENT ON OTT PLATFORMS

Various broadcasters such as Star India, Sony Pictures Network India and Sun TV Network have challenged the recent letter issued by Telecom Regulatory Authority of India (TRAI) before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). The broadcasters have refused to share the detailed architecture indicating the media being used to deliver linear content by the broadcasters on OTT platforms, as sought by TRAI through its letter, as they believe that TRAI has no jurisdiction over OTT platforms as the content is provided without using any satellites or any existing infrastructures regulated by TRAI. The broadcasters further contended that they have the right to provide their content on OTT platforms, conferred to them under section 37 of the Copyright Act which gives broadcasting reproduction rights to broadcasters. TRAI argued that the letters were issued to the broadcasters in their capacity as broadcasters and not as OTT platforms, to further ascertain whether there has been a breach or not. However, the TDSAT directed TRAI not to take any coercive actions against the broadcasters for not furnishing the details and to file its reply on the issue of jurisdiction within three weeks.

BOMBAY HIGH COURT HAVE ASKED THE STATE GOVERNMENT TO STATE ITS POSITION ON WHETHER ONLINE POKER GAMES AMOUNT TO “GAMBLING” OR IF “IT IS A GAME OF SKILL”

The Aurangabad bench of Bombay High Court was hearing a Public Interest Litigation (PIL) filed by social activist Munawar

Ahmed seeking restraints on the “illegal activities” of conduct of online and offline poker games. The petitioner elaborated upon how the game of poker falls under the category of “wagering” and “betting” and leads to “addiction to gambling”, which is illegal as per the Bombay Prevention of Gambling Act, 1887. The petitioner has sought the Court’s direction to restrain private companies from running online as well as offline poker games and has requested that the state legislation should take necessary steps in the direction of effective enforcement of gambling prohibition laws. The Court has asked the Maharashtra government whether an online poker game amounts to gambling or if it was a game of skill. The state government will soon submit a report on the same.

DELHI HIGH COURT WHILE REFUSING TO STAY THE LEGENDS LEAGUE CRICKET TOURNAMENT OBSERVED THAT NO ONE CLAIMS COPYRIGHT OVER THE GAME OF CRICKET

The Delhi High court refused to stay ‘Legends League Cricket’ on a recent lawsuit. In this case, Mr. Samir Kasal, claimed to have conceptualised a tournament with retired legendary players. Justice Asha Menon, while hearing the matter, observed that the format of the “Legends League Cricket” is significantly different from that of the plaintiffs and the idea and the concept are not copied. The learned judge further stated that no one could claim copyright over the game of cricket, which has several permutations and combinations of “innings” and “overs.” Further, the court observed that mere conceptualization of league match with retired cricketers in a ‘T-10 Format’ at venues where there’s Indian diaspora does not give someone exclusive right over it. Therefore, an injunction shall not be granted in this case as, if an order is passed at this stage, the loss to the players, defendants, sponsors, media partners and the public at large cannot be fairly compensated. However, to safeguard the plaintiff’s interest, the court directed the organizers to “maintain accounts of their expenditure and earnings and file the same in court within one month of the conclusion of the league.

LYRICIST JAVED AKHTAR HAS SOUGHT DISMISSAL OF THE DEFAMATION CASE FILED AGAINST HIM REGARDING HIS RSS-TALIBAN REMARKS

Lyricist Javed Akhtar has sought the dismissal of the defamation case filed against him by a Rashtriya Swayamsevak Sangh (RSS) worker, alleging that during a television interview, the lyricist compared RSS and Vishva Hindu Parishad with the Taliban. The Application states that the alleged remarks are neither specific to the Plaintiff, nor are specific to RSS or a member of the Party, thus the suit is not maintainable as the plaintiff does not have a cause of action in his favour. The application states, “It is settled position of law that when the alleged defamation is made towards an un-identifiable class of persons, then it does not amount to defamation at all”. The Joint Civil Judge Senior

Division Thane has now sought Plaintiff’s response on the application.

BOMBAY HIGH COURT REFUSED TO STALL THE RELEASE OF THE WEB-SERIES “MISSION TO PAKISTAN”

The Bombay High Court, while refusing to grant an ad-interim injunction against the release of a web series titled “Mission to Pakistan”, in the suit filed by Solflicks Filmworks Pvt. Ltd. against Zee Entertainment Enterprises Ltd., has ruled in favour of the defendant. The plaintiff submitted before the Hon’ble Court that in the year 2019, the parties had signed a development agreement to commission the works and to further develop it, which was followed by signing a production agreement last year. As per the clauses of the development agreement the plaintiff shall have the exclusive copyright over the initial concept developed thereto. However, the court observed that “Undoubtedly, the plaintiff pitched and claimed the copyright in the initial concept. However, for lawful and valuable consideration, the plaintiff not only duly assigned the copyright in the Initial Concept but also agreed that the further work based on the initial concept, shall be in the nature of the work made for hire”.

KIM KARDASHIAN AND FLOYD MAYWEATHER SUED OVER ALLEGED CRYPTO SCAM

A class action lawsuit has been filed in the U.S. District Court for the Central District of California, against Kim Kardashian, Floyd Mayweather and the celebrity promoters, alleging that stars and their promoters made false and misleading statements in social media posts to artificially inflate the price of a cryptocurrency “EthereumMax”. While the Kardashian promoted the token through an Instagram post, Mayweather promoted the token during one of his boxing matches by accepting the said token as a payment for the tickets. The lawsuit also states that the branding of the said token is done in such a manner to mislead the investors into believing of an association of the said token with “Ether”, the second largest cryptocurrency.

TOY MAKING COMPANY LEGO SUED OVER COPYING THE DESIGN OF THE LEATHER JACKET WORN BY TOY ANTONI IN THE SERIES “QUEER EYE”

James Concannon, the artist who designed the leather jacket worn by the cast member Antonio Porowski in the Netflix show, Queer Eye, has sued the Danish toy giant “Lego” for copying the jacket’s design for a Lego set based on the show, without the artist’s permission. The Artist alleges that he never permitted Netflix to feature the jacket on the show but believed that it was an oversight. However, the company in its argument states that with the decision of giving the actor the jacket, the artist granted an “implied license” to Netflix to exploit the same through any means.

A DEFAMATION SUIT HAS BEEN FILED AGAINST NETFLIX OVER A FALSE CLAIM MADE IN THE SERIES “THE QUEEN’S GAMBIT”

Former Georgian chess world champion Nona Gaprindashvili has filed a defamation case against Netflix demanding a compensation of \$ 5 million, claiming that a line said by a character in the series *The Queen’s Gambit* in which she claims that she had “never faced men” in her career was sexist and belittling towards the complainant. The lawyers of the defendant had tried to sought dismissal of the suit by

submitting before the court that the series is a work of fiction and is therefore covered under the First Amendment of the US Constitution protecting its right of free speech. However, the judge while allowing the suit, noted that “*the fact that the series was a fictional work does not insulate Netflix from liability for defamation if all the elements of defamation are otherwise present*”.

NOTIFICATION OF AMENDMENTS TO SECTION 403 OF THE COMPANIES ACT, 2013

The MCA *vide* notification dated January 11, 2022 (accessible [here](#)) has notified that the provisions of Section 56 of the Companies (Amendment) Act, 2020 ("CAA 2020") shall come into effect from July 1, 2022.

Further, the MCA *vide* notification dated January 11, 2022 (accessible [here](#)) has notified that the provisions of the second and third proviso to clause (i) of Section 80 of the Companies (Amendment) Act, 2017 ("CAA 2017") shall come into effect from July 1, 2022.

Section 56 of the CAA 2020 and Section 80 of CAA 2017 amended Section 403(1) (Fees for filing) of Companies Act, 2013 ("Act") which deals with the fee required to be paid by companies in relation to submission, filing, registering or recording any document with the Registrar of Companies ("ROC").

COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES, 2022

The MCA *vide* notification dated January 11, 2022 (accessible [here](#)) has notified the Companies (Registration Offices and Fees) Amendment Rules, 2022 ("Amendment Rules") which amends the Companies (Registration Offices and Fees) Rules, 2014 ("Rules"). The Amendment Rules shall come into effect on July 1, 2022 and is pursuant to the notification of the coming into force of the aforesaid amendments to Section 403 of the Act.

Under the Amendment Rules, the MCA has amended the Rules and has substituted Point B of Part A of the Annexure in the Rules (i.e. Fee for filing under Section 403 of the Act), which provides the additional fee applicable for delay in filing of certain forms with the ROC (which Point B does not

include the additional fee payable for the delay in filing the following forms: **(i)** forms for increase in nominal share capital (Form SH-7); **(ii)** forms under Section 92 /137 of the Act (Form MGT-7/ Form AOC-4); and **(iii)** forms for filing charges (Form CGH-1, Form CHG-4, etc.) and which have been dealt with separately in the Annexure to the Rules).

The Amendment Rules prescribe the following additional fee, and has newly prescribed higher additional fees in certain specified cases (as detailed below) for the period of delay in filing of forms with the ROC as under:

- (i)** For a period of delay up to 15 (fifteen) days in filing of Form ADT-1 (Notice to the ROC by company for appointment of auditor under Section 139 of the Act) and Form DIR-3C (Intimate information of directors, managing director, manager and secretary by an Indian company under Section 157 of the Act): An additional fee in the multiple of 1 (one) time of normal fees shall be levied.
- (ii)** For delay of more than 15 (fifteen) days and upto 30 (thirty) days in filing of the forms mentioned in point (a) above and upto 30 (thirty) days in the remaining forms: An additional fee in the multiple of 2 (two) times of normal fees or a higher additional fee of 3 (three) times of normal fee shall be levied.
- (iii)** For delay of more than 30 (thirty) and upto 60 (sixty) days in filing: An additional fee in the multiple of 4 (four) times of normal filing fees or a higher additional fee of 6 (six) times of normal filing fees shall be levied.
- (iv)** For delay of more than 60 (sixty) days and upto 90 (ninety) days in filing: An additional fee of 6 (six) times

of normal filing fees or a higher fee of 9 (nine) times of normal filing fees shall be levied.

- (v) For delay of more than 90 (ninety) days and upto 180 (one hundred and eighty) days in filing: An additional fee of 10 (ten) times of normal filing fees or a higher additional fee of 15 (fifteen) times of normal filing fees.
- (vi) For delays beyond 180 (one hundred and eighty) days in filing: An additional fee of 12 (twelve) times of normal filing fees or a higher additional fee of 18 (eighteen) times of normal filing fees shall be levied.

Additionally, the Amendment Rules have clarified the following points, and has also specified the cases where the higher additional fee as stated above become payable:

- (i) Higher additional fee shall be payable if there is a delay in filing e-form INC-22, or e-form PAS-3, as the case may be, on 2 (two) or more occasions, within a period of 365 (three hundred and sixty five) days from the date of filing of the last such belated e-form for which additional fee or higher additional fee, as the case may be, was payable.
- (ii) Wherever higher additional fee is payable, additional fee shall not be charged.
- (iii) E-form INC-22, or e-form PAS-3, as the case may be filed prior to the commencement of the Amendment Rules shall not be reckoned for the purposes of determining higher additional fee.

MASTER CIRCULAR: BANK FINANCE TO NON-BANKING FINANCIAL COMPANIES (NBFCs)

The Reserve Bank of India (“RBI”) vide its circular dated January 5, 2022 bearing reference number RBI/2021-22/149 DOR.CRE.REC.No.77/21.04.172/2021-22 (“**Master Circular – Financing to NBFCs**”), addressed to scheduled commercial banks, has consolidated all instructions on regulatory policies regarding financing by banks to Non-Banking Financial Companies (NBFCs), issued earlier vide separate circulars. The Master Circular – Financing to NBFCs, *inter alia* provides instructions in relation to (i) bank finance extended to NBFCs registered with the RBI, and NBFCs which do not require registration with the RBI, (ii) activities which are not eligible for bank credit, (iii) bank finance to factoring companies, etc..

DSK View: *The RBI has been gradually deregulating credit related matters in respect of banks in order to give greater operational freedom for credit dispensation. Several aspects relating to bank financing of NBFCs, have also been progressively deregulated by the RBI. However, the Master Circular – Financing to NBFCs continues to stipulate certain restrictions on financing, in view of the types of activities undertaken by NBFCs.*

REGISTRATION OF ASSIGNMENT OF RECEIVABLES (RESERVE BANK) REGULATIONS, 2022 (“ASSIGNMENT REGULATIONS”)

The RBI vide its notification dated January 14, 2022 bearing no. DOR.FIN.081/CGM(JPS) – 2022 (“**Circular on Assignment of Receivables**”) has issued the Assignment Regulations pertaining to the manner of filing of particulars of transactions in relation to assignment of receivables by Factors (*as defined under the Factoring Regulation Act, 2011*). As per Assignment Regulations, where any trade receivables are financed through a Trade Receivable Discounting System (“**TReDS**”), particulars of the same need

to be filed by the Central Registry (*as defined under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*) within 10 (ten) days of creation of assignment or satisfaction of the same, in Form I or Form II, respectively.

In case the particulars aren’t filed within 10 days as aforesaid, the Central Registrar may, on being satisfied with the application made in this behalf stating the reasons for the delay, allow the particulars to be filed within such additional time not exceeding 10 (ten) days. Every Form for registration of any transaction relating to assignment of receivables or satisfaction of receivables on realisation, shall be accompanied by the fee, as prescribed by the Government of India, under the Registration of Assignment of Receivables Rules, 2012.

The Assignment Regulations have come into effect from January 17, 2022 (i.e., the date on which the same were notified in the Official Gazette).

DSK View: *Currently there are 3 (three) entities which are operating the TReDS platform in India (namely – RXIL, M1xchange and Invoicemart). The Assignment Regulations seem to be a move towards providing operational efficiency for exchange of credit information as well as timebound reporting of transactions pertaining to assignment of receivables.*

REGISTRATION OF FACTORS (RESERVE BANK) REGULATIONS, 2022:

The RBI vide its notification dated January 14, 2022 bearing no. DOR.FIN.080/CGM(JPS) – 2022 (“**Circular – Factoring Registration**”) has notified regulations for laying down the manner in which certificate of registration will be issued to companies proposing to undertake factoring business (“**Registration of Factors Regulations**”). The key provisions

applicable to companies who wish to register as an NBFC-Factor include:

- a. **Net Owned Fund:** minimum Net Owned Fund of INR 5,00,00,000 (Rupees Five Crores), or as specified by the RBI from time to time.
- b. **Principal Business Criteria:** financial assets in the factoring business to constitute at least 50% (fifty per cent) of total assets; and income derived from factoring business should not be less than 50% (fifty per cent) of gross income.
- c. **Registration:** an application to be made to the RBI for grant of certificate of registration as NBFC-Factor under the Factoring Regulation Act, 2011.

Existing NBFC-Investment Credit Companies (“NBFC-ICC”) intending to undertake factoring business may also apply, provided (i) they satisfy the criteria set forth under the Registration of Factors Regulations; (ii) they don’t accept or hold public deposits; (iii) have total assets of INR 1,000 Crore and above, as per the last audited balance sheet; and (iv) they comply with other regulations issued by RBI from time to time.

NBFC-Factors or eligible NBFC-ICCs which have received a certificate of registration by the RBI, need to commence business within 6 (six) months from the date of grant of such certificate.

The Registration of Factors Regulations have come into effect from January 17, 2022 (i.e., the date on which the same were notified in the Official Gazette).

DSK View: The Government of India amended the Factoring Regulation Act, 2011, thereby widening the scope of companies that can undertake factoring business. The Registration of Factors Regulations complements the amendments made to the aforesaid law by permitting certain types of NBFCs to undertake the factoring business subject to conditions specified thereunder.

FRAMEWORK FOR FACILITATING SMALL VALUE DIGITAL PAYMENTS IN OFFLINE MODE:

The RBI vide circular dated January 3, 2022 bearing reference number RBI/2021-22/146 CO.DPSS.POLC.No.S1264/02-14-

003/2021-2022 (“**Framework**”) has issued a framework to enable small value digital payments in offline mode (transaction not requiring internet or telecom connectivity) using cards, wallets, mobile devices, etc. under Payments and Settlement Systems Act, 2007.

The Framework has been issued to Authorised Payment System Operators and Participants (Banks and Non-banks) who wish to provide / enable payment solutions for facilitating small value digital payments in offline mode. The key features of the Framework include:

- a. allowing offline payments using any channel or instrument like cards, wallets, mobile devices, etc. and without Additional Factor of Authentication (AFA)
- b. offline payments to be in proximity (face to face) mode only.
- c. payment instruments shall be enabled for offline transactions with explicit consent of customer.
- d. transactions using cards shall be allowed without requirement to switch on contactless transaction channel.
- e. upper limit of an offline payment transaction shall be INR 200 (Rupees Two Hundred) and total limit for offline transactions is INR 2,000 (Rupees Two Thousand) at any point in time.
- f. customers may get their grievances addressed under the Reserve Bank – Integrated Ombudsman Scheme.

DSK View: Under the new framework, certain payments can be carried out offline with specific consents from customers. The Framework stipulates an overall limit of INR 2000 (Rupees Two Thousand) for all transactions, until balance in the account is replenished (which can only occur in an online mode). The Framework has been notified to facilitate digital transactions in areas with poor or weak internet or telecom connectivity, especially in semi-urban and rural areas where connectivity is a challenge.

MAHARASHTRA STAMP ACT AMENDMENT ACT, 2022

The Government of Maharashtra on January 20, 2022 published Maharashtra Stamp (Amendment) Act, 2022 (“**Stamp Act Amendment**”) thereby modifying the ceiling on stamp duty rates applicable to certain types of mortgage and other securities. Some key changes are as follows:

| Sr. No. | Article | Old Rates | New Rate |
|---------|--|--|---|
| 1. | Article 6(1)(b) Agreements evidencing deposit of title deeds to secure repayment of debt in any other case | 0.3% of the amount secured by such deed subject to a maximum of INR 10 lakh. | 0.3% of the amount secured by such deed subject to a maximum of INR 20 lakh Provided that, in case of instrument executed in favour of consortium of banks, the duty chargeable shall not exceed fifty lakh rupees |

| | | | |
|----|---|--|---|
| 2. | Article 6(2)(b) – Agreements evidencing pawn, pledge, or hypothecation of movable property to secure repayment of debt in any other case. | 0.3% of the amount secured by such deed subject to a maximum of INR 10 lakh. | 0.3% of the amount secured by such deed subject to a maximum of INR 20 lakh. Provided that, in case of instrument executed in favour of consortium of banks, the duty chargeable shall not exceed INR 50 Lakh. |
| 3. | Article 40(b) – Mortgage deed, when possession is not given or agreed to be given by the mortgager. | (ii) in any other cases, 0.3% of the amount secured by such deed, subject to a maximum of INR 10 lakh. | (ii) in any other cases, 0.3% of the amount secured by such deed, subject to a maximum of INR 20 lakh. Provided that, in case of instrument executed in favour of consortium of banks, the duty chargeable shall not exceed INR 50 Lakh. |

DSK View:

It appears that the Government of Maharashtra intends to maximize its revenue. The increase in ceiling of the stamp

duty will result in a higher cost of borrowing with respect to secured lending.



FPCE MOVES SC FOR TIME-BOUND IMPLEMENTATION OF RERA BY WEST BENGAL GOVERNMENT:

Home buyers' body FPCE has filed a plea in the Supreme Court seeking directions to the West Bengal government for the time-bound and proper implementation of the real estate regulatory law RERA in the state. The Supreme Court, in May last year, had struck down West Bengal government's law -- WBHIRA -- for regulating real estate sector saying it was "unconstitutional".

H-RERA SIGNS MOU WITH JUPITICE JUSTICE TECHNOLOGIES TO DIGITIZE COMPLAINT REDRESSAL SYSTEM:

Haryana Real Estate Regulatory Authority, Gurugram (HARERA) has entered into a memorandum of understanding (MoU) with Jupitice Justice Technologies Private Limited for complete digitalization of Gurugram RERA's complaint redressal.

SUPREME COURT WANTS MODEL BUILDER-BUYER AGREEMENT IN PLACE:

The Supreme Court on Monday once again emphasized the need for a model builder-buyer agreement to safeguard the

interest of middle-class home buyers and asked the Centre to consider framing uniform rules under the provisions of RERA. The top court said that it wants that instead of leaving it to the States, the Centre makes the model builder-buyer agreement and model agent-buyer agreement which shall be applicable for the whole of the country.

UP RERA AUTHORIZES URBANAC BUILDING TECHNOLOGIES TO TAKE OVER STUCK COMMERCIAL PROJECT IN NOIDA:

The Uttar Pradesh Real Estate Regulatory Authority (UP RERA) has approved acquisition of a commercial project in Noida by Urbanac Building Technologies.

Urbanac will invest Rs 250 crore in developing one million sq ft of office and retail space spread across two towers.

MAHARERA TELLS THANE COLLECTOR TO ATTACH PROPERTY OF DEFAULTING BUILDER:

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has directed the Thane collector to attach the property of a builder and recover dues to the tune of Rs 80 lakh liable to be paid to buyers for delayed possession of flats as per a previous order issued by it.



TELANGANA HIGH COURT ISSUES NOTICE AGAINST DEPLOYMENT OF FACIAL RECOGNITION TECHNOLOGY

Responding to a petition filed by a social activist from Hyderabad on challenging the use of facial recognition technology (“FRT”) by Telangana Police, the Telangana High Court has issued a notice to the State Government. The petitioner argued that the deployment of FRT is needless, inappropriate, not legal and the same has been done without putting any safeguards in place. Further, the petitioner challenged the use of FRT on grounds that it restricts the right to privacy without complying with the applicable laws and does not meet the three-fold requirement as laid out in the case of Justice K.S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors. (i.e., legal basis, need (aim of the State) and proportionality of the action).

Read more [here](#).

RBI RELEASES FRAMEWORK ON OFFLINE DIGITAL PAYMENTS

The Reserve Bank of India (“RBI”) on January 3, 2022, released a framework (“Framework”) for facilitating small-value digital payment in offline mode. Authorized Payment System Operators and Payment System Participants providing such services shall ensure compliance with the provisions of the Framework. The upper limit of an offline payment transaction will be Rs. 200 subject an overall limit of Rs. 2,000 and the customers shall have the recourse of Integrated Ombudsman Scheme, 2021 of RBI in case of any grievances.

Read the Framework [here](#).

RBI SETS UP FINTECH DEPARTMENT

RBI, on January 7, 2022, set up a separate FinTech Department to focus on facilitating innovation and dynamically growing the financial sector in India. The new department has been created with effect from January 04, 2022, by subsuming the FinTech Division of Department of Payment and Settlement Systems, Central Office. All matters pertaining to facilitation of constructive innovation and incubations in the FinTech sector will now be dealt by the FinTech Department.

Read more [here](#).

GOOGLE VS DIGITAL NEWS PUBLISHERS’ ASSOCIATION: CCI DIRECTS INVESTIGATION

In response to a complaint made by the Digital News Publishers Association (“DNPA”), Competition Commission of India (“CCI”) has initiated an investigation into the alleged abuse of dominant position by Google in news aggregation industry. DNPA has claimed that Google is leveraging its dominating position in the relevant markets and news publishers also appeared to be reliant on Google for the majority of their traffic, making Google an indispensable trade partner for news publishers. In this context, Google abuses its dominant position and unilaterally decides the amount to be paid to the publishers for their content, as well as the terms of the said amount. Taking note of this, CCI has initiated an investigation to examine whether Google has imposed any discriminatory condition on news publishers in contravention to the provisions of the Competition Act, 2002.

Read the order [here](#).

WHITE COLLAR CRIME

RIGORS OF SECTION 45 OF PMLA MUST GET TRIGGERED WHILE CONSIDERING ANTICIPATORY BAIL APPLICATION IN CONNECTION WITH OFFENCES UNDER PMLA

The Supreme Court in the case of *The Asst. Director Enforcement directorate vs. Dr. V.C. Mohan* (Criminal Appeal No. 21 Of 2022) observed that, once the prayer for anticipatory bail is made in connection with offences under the Prevention of Money Laundering Act (“PMLA”), the underlying principles and rigors of Section 45 of the PMLA Act must get triggered although the application is under Section 438 of Code of Criminal Procedure. This appeal took exception to the judgment passed by the High Court of Telangana at Hyderabad in a Criminal Petition, whereby the High Court granted anticipatory bail to the respondent in connection with offence concerning the PMLA Act. As per the Apex Court, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian Penal Code and that does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play. On the argument of the respondent that this objection was never taken before the High Court as it was not reflected from the impugned judgment, the Apex Court noted that it was not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind. Thus, the court set aside the impugned judgment and order and relegated the parties to the High Court for reconsideration of the Criminal petition afresh for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure in connection with the PMLA offence.

DSK View: *It cannot be denied that an offence under the PMLA Act is dependent on the offence which would be under ordinary law governed by inter alia the IPC however the statute does not explicitly state nor indirectly imply that when considering the prayer for grant of anticipatory bail in*

connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play.

OPEN-ENDED INVESTIGATION INTO AN ALLEGED LARGER CONSPIRACY WHICH SUPPOSEDLY MAY HAVE RAMIFICATIONS ON NATIONAL SECURITY CANNOT ALONE BE A GROUND TO REFUSE BAIL AND INDEFINITELY INCARCERATE A PERSON

The Supreme Court in the case of *Md Enamul Haque v. CBI* (Criminal Appeal No 121 of 2022) granted bail to the Appellant in a multi-crore cattle smuggling case for the offences under sections 120B, 420 of the IPC and Sections 7, 11, 12 of the Prevention of Corruption Act, 1988. The Additional Solicitor General appearing on behalf of CBI argued that the investigation was still pending, involving the complicity with the officials of the Border Security Force rendering it inappropriate to grant bail to the appellant. However, the Apex court observed that it is a vague assertion that the investigation is in progress and there was no explanation as to why the custody of the Appellant was required after a lapse of over a year, considering the fact the chargesheet and the supplementary chargesheet being filed. The Supreme Court therefore held that the detention of the appellant is not warranted and directed him to be released on bail.

DSK View: *An accused’s rights include the right to a fair trial and an aspect of fair trial is speedy trial which is a facet of the fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Once compliance to procedure established under law has been done, continued detention is inhumane. It is necessary that probe agencies are pulled up in cases where they are suspected of abuse of power. Investigation must be completed within the stipulated time and an open-ended probe comes at the cost of right to personal liberty. However, it is imperative to look at the nature of the alleged offence circumstances surrounding the detention.*

MAGNITUDE OF OFFENCE CAN'T BE THE ONLY CRITERION FOR DENIAL OF BAIL

The Delhi High Court in the case of **Surendra Singh Bhati V. State (NCT of Delhi)** (Bail Application No. 3750/2021), while granting bail to two accused in a multi-victim crore scam, recently observed that the magnitude of the offence cannot be the only criterion for denial of bail. The Court noted that the object of bail is to secure the presence of the accused at the time of trial; this object is, thus, neither punitive nor preventative, and a person who has not been convicted should only be kept in custody if there are reasons to believe that they might flee from justice or tamper with the evidence or threaten the witnesses. The Court noted that when there is no apprehension of interference in administering justice in a criminal trial by an accused, the Court should be cautious while considering depriving the accused of their liberty. Incarceration cannot be prolonged based on a mere vague belief that the accused may thwart the investigation.

DSK View: *The right to life is an important fundamental right. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. Therefore, matters regarding personal liberty must be taken seriously by the judiciary. It is clear that, if there is no apprehension of interference in the administration of justice in a criminal trial by an accused then the Court should consider all facts before depriving the accused of their personal liberty. The Court has taken a laudable view while concluding that continued custody of the petitioner was no longer required. It is important to consider a range of factors, beyond the magnitude of offence before denying bail.*

CIRCUMSTANCES UNDER WHICH AN APPEAL WOULD BE ENTERTAINED AGAINST AN ORDER OF ACQUITTAL

The Supreme Court in the case of **Rajesh Prasad V. State of Bihar** (Criminal Appeal Nos. 111-113 of 2015) summarized the circumstances under which an appeal would be entertained by it from an order of acquittal. The Supreme Court stated that ordinarily the court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. The Court relied on a catena of judgements and summarized the circumstances under which the Supreme Court may entertain an appeal against an order of acquittal and pass an order of conviction: (i) Where the approach or reasoning of the High Court is perverse, (ii) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused (iii) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of

the crime. (iv) Where the High Court applied an unrealistic standard of 'implicit proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner (v) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused (vi) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence (vii) Where acquittal would result is gross miscarriage of justice. (viii) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, or based on extenuating circumstances which were purely based in imagination and fantasy (ix) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature.

DSK View: *While the circumstances under which an appeal would be entertained against an order of acquittal had been decided previously by various courts in a series of judgements, the Supreme Court consolidated and clarified the different possibilities. The Supreme Court upheld rights of the acquitted by carving out only certain situations wherein appeal to such an order would exist. This is a step forward in the Apex Court's practice of supporting speedy justice and minimising frivolous litigation.*

THE HIGH COURT WHILE EXERCISING REVISIONAL JURISDICTION UNDER SECTION 401, CRPC CANNOT CONVERT AN ACQUITTAL INTO CONVICTION

The Supreme Court in the case of **Joseph Stephen v. Santhanasamy** (Criminal Appeal Nos. 90-93 of 2022) held that a High Court is prohibited from converting a finding of acquittal into one of conviction while exercising its powers of revision under Section 401 of the CrPC. The Supreme Court observed that if an order of acquittal is passed by the first appellate court, in that case, the High Court has two options available (i) to remit the matter to the first appellate Court to rehear the appeal; or (ii) in an appropriate case remit the matter to the trial Court for retrial. However, the Supreme Court while quashing the order passed by the Madras High Court thereby reversing the order of acquittal, and convicting the accused, the Court remitted the matter back to the High Court with a direction to treat the revision applications as appeals under section 372 of CrPC (right of a victim to file an appeal against an order acquitting the accused), as the appellate courts have wider scope and jurisdiction than the revisional court.

DSK Legal Knowledge Center

Contact Details for any queries: knowledge.management@dsklegal.com

Mumbai

1203, One World Centre, Tower 2B,
Floor 12B, 841, Senapati Bapat Marg,
Elphinstone Road,
Mumbai - 400013.
Tel +91 22 6658 8000

Mumbai

C-16, Dhanraj Mahal,
3rd Floor,
Apollo Bunder, Colaba,
Mumbai - 400001.
Tel +91 22 6152 6000

Bengaluru

206 & 207, 2nd Floor,
HM Geneva House,
14, Cunningham Road,
Bengaluru - 560052.
Tel +91 80 6836 1111

New Delhi

ESC House 155, 1st & 2nd Floor,
Okhla Industrial Area, Phase 3,
New Delhi - 110020.
Tel +91 11 4661 6666

Pune

301, 3rd Floor, Power Point, Lane 6,
North Main Road, Koregaon Park,
Pune - 411001.
Tel +91 20 6763 7900

✉ contactus@dsklegal.com
in DSK Legal
🌐 www.dsklegal.com

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