

NEWSLETTER

January 2022

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AMENDMENT TO SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

The Securities Exchange Board of India (“SEBI”) on December 06, 2021, notified amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The said amendment introduced new regulations for delisting offer and linked the delisting offer process in accordance with Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021.

PUBLISHING INVESTOR CHARTER AND DISCLOSURE OF INVESTOR COMPLAINTS BY STOCK BROKERS ON THEIR WEBSITES

SEBI *vide* circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021, has prepared an Investor Charter for Stockbrokers, detailing the services provided to Investors, Rights of Investors, various activities of Stock Brokers with timelines DOs and DON'Ts for Investors and Grievance Redressal Mechanism which is available in Annexure A of the said circular. Stock Exchanges have been directed to advise Stock Brokers to bring the Investor Charter for Stockbrokers to the notice of their clients by disclosing the Investor Charter on their respective websites, making them available at prominent places in the office, provide a copy of Investor Charter as a part of account opening kit to the clients, through e-mails/ letters etc. The provisions of the said circular shall come into effect from January 01, 2022.

CLARIFICATION REGARDING AMENDMENT TO SEBI (PORTFOLIO MANAGERS) REGULATIONS, 2020

SEBI *vide* circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/0000000679 dated December 10, 2021, specifies certain clarifications to the SEBI (Portfolio Managers) Regulations, 2021 (PMS Regulations) that were amended *vide* notification dated November 09, 2021.

The reporting requirements as per the revised formats mentioned at paragraph 2.2 of the said circular, shall be applicable for monthly reports to SEBI and quarterly reports to clients, from the month of April 2022 onwards. The remaining provisions of the said circular shall come into effect from the date of applicability of the notification as per the link provided in the said circular.

PUBLISHING INVESTOR CHARTER AND DISCLOSURE OF COMPLAINTS BY AIFS

SEBI *vide* circular SEBI/HO/IMD/IMD-I/DOF9/P/CIR/2021/682 dated December 10, 2021, prepared an Investor Charter (provided in Annexure X of the said circular) that contains details of services provided to investors, details of grievance redressal mechanism, responsibilities of the investors, etc. for ease of reference. All AIFs have been advised to take necessary steps to bring the Investor Charter to the notice of their investors in the following manner:

- (a) In case of new schemes, disclose Investor Charter in the Private Placement Memorandum (PPM);
- (b) In case of existing schemes, as a one-time measure, disclose Investor Charter to the investors on their registered e-mail.

In order to bring about further transparency in the Investor Grievance Redressal Mechanism, it was decided that data on investor complaints received against AIFs and each of their schemes and redressal status thereof shall be disclosed by all AIFs as per format at ‘Annexure Y’ of the said circular, in the following manner:

- (a) For new schemes, as a separate chapter in the PPM;
- (b) For existing schemes, by way of updating the PPM within one month of end of each financial year in

terms of SEBI Circular No. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549 dated April 7, 2021.

AIFs shall maintain data on investor complaints as per Annexure Y, which shall be compiled latest within 7 days from the end of quarter. The provisions of the said circular shall come into effect from January 01, 2022.

PORTFOLIO MANAGEMENT SERVICES FOR ACCREDITED INVESTORS

Para 3(iv) of the SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020 ("**February 13 Circular**"), inter-alia, specifies the quantum and manner of exit load applicable to the client. SEBI, *vide* a circular dated December 21, 2021¹, has decided that in case of large value accredited investors, the quantum and manner of exit load applicable to the client of the portfolio manager shall be governed through bilaterally negotiated contractual terms and the provisions of para 3 (iv) of the February 13 Circular shall not be applicable. The other provisions of the February 13 Circular shall remain unchanged.

INVESTMENT ADVISORY SERVICES FOR ACCREDITED INVESTORS

Para 2(iii) of the SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 ("**September 23 Circular**") inter alia specifies the modes and limits of fees that can be charged by an Investment Adviser (IA) from a client. SEBI, *vide* a circular dated December 21, 2021², has decided that in case of accredited investors, the limits and modes of fees payable to the IA shall be governed through bilaterally negotiated contractual terms and the provisions of para 2(iii) of the September 23 Circular shall not be applicable. The other provisions of the September 23 Circular shall remain unchanged.

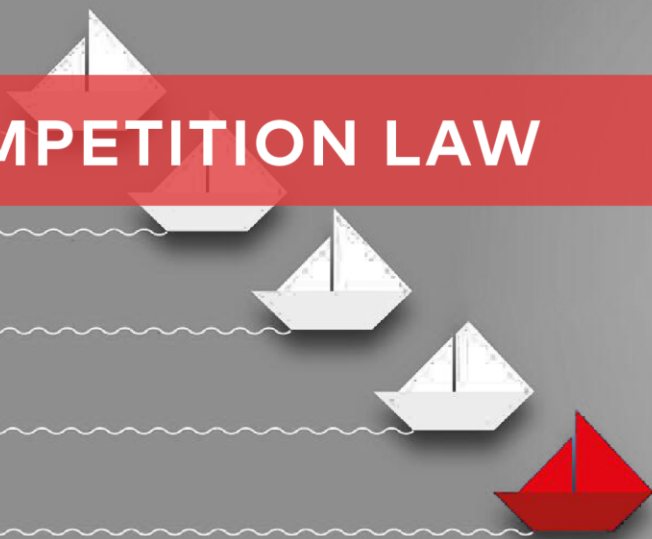
EXTENSION OF FACILITY FOR CONDUCTING ANNUAL MEETING AND OTHER MEETINGS OF UNITHOLDERS OF REITS AND INVITS THROUGH VIDEO CONFERENCING (VC) OR THROUGH OTHER AUDIO-VISUAL MEANS (OAVM)

SEBI, *vide* a circular dated December 22, 2021³, has decided to extend the facility to conduct annual meetings of unitholders in terms of Regulation 22(3) of SEBI (REIT) Regulations, 2014 and Regulation 22(3)(a) of SEBI (InvIT) Regulations, 2014 and meetings other than annual meeting, through VC or OAVM till June 30, 2022.

¹ SEBI/HO/IMD/IMD-I DOF1/P/CIR/2021/693.

² SEBI/HO/IMD/IMD-I DOF1/P/CIR/2021/694.

³ SEBI/HO/DDHS/DDHS_Div2/P/CIR/2021/697.



COMPETITION COMMISSION OF INDIA DISMISSES CASE AGAINST INTEL

By an order dated December 03, 2021, the Competition Commission of India (“CCI”) has closed a four-year-old case against Intel Technologies Pvt. Ltd. (“Intel”).

The information was filed by Velankani Electronics Pvt. Ltd., for alleged contravention of provisions of Section 4 of the Competition Act, 2002 (“Act”), which pertains to abuse of dominant position in the relevant market. The informant alleged that Intel refused to provide files that are required to manufacture compatible server-boards which interface with the processor manufactured by Intel.

An investigation was carried out in the matter by the Director-General (“DG”) who concluded that there was no denial of access to any file by Intel. DG also noted that the Informant was given access to the important resources prepared by Intel for designing a server. Accordingly, CCI dismissed the case against Intel.

DSK View: CCI’s dismissal of the case was based on the fact that there was no deliberate denial of any requisite file by Intel.

CCI SUSPENDS AMAZON DEAL WITH FUTURE GROUP

By an order dated December 17, 2021, CCI has suspended Amazon.com NV Investment Holding LLC’s (“Amazon”) acquisition of 49% shareholding in Future Coupons Private Limited (“FCPL”) for failure to disclose certain commercial arrangements in its 2019 Notice filed before CCI for approval of the combination.

FCPL in March 2021 had filed an application before CCI alleging that Amazon has taken contradictory stands regarding the purpose of its investment in FCPL and the consequent accrual of rights over Future Retail Ltd. (“FRL”)

during the arbitral proceedings between the Amazon and Future groups in relation to the sale of its retail assets.

Basis the allegations and the inquiry conducted, the CCI imposed a penalty of USD 0.27 million on Amazon for misrepresentation, suppression of material facts in relation to the scope and intent of the Combination under Sections 44 and 45 of the Act. The CCI also imposed a penalty of USD 26.3 million for failure to disclose the purpose of acquiring strategic rights over FRL through FCPL and commercial arrangements between Amazon group and FRL, under Section 43A of the Act.

The CCI has also suspended its approval of the combination in view of the information sought from Amazon.

DSK View: CCI in past has imposed penalties for suppression of material information, however, this is the first case where CCI has suspended an approval. The proceedings, in this case, may lead to new jurisprudence/ interpretation on CCI’s power to revoke or suspend an approved transaction.

CCI TO INVESTIGATE APPLE FOR ABUSE OF DOMINANCE

By an order dated December 31, 2021, CCI has ordered an investigation against Apple Inc. and Apple India Private Limited for alleged contravention of Section 4 of the Act. The information was filed by *Together We Fight Society*, a non-government organization, alleging that Apple has abused its dominant position by mandating the use of its in-app purchase system for all payments on its App Store while charging a commission up to 30% on all payments made through its in-app purchase system. The DG has been asked to probe the matter and submit a detailed report within 60 days.

DSK View: Apple is also facing an investigation by the European Commission over its app store payment rules.

COMBINATIONS APPROVED

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

- **December 15, 2021** – Acquisition of 40% of the equity share capital of **Sterling and Wilson Renewable Energy Limited** (formally known as Sterling and Wilson Solar Limited) by **Reliance New Energy Solar Limited**. The acquisition can go up to 51.07% of the equity share capital in the eventuality of full acceptance of the open offer.
- **December 20, 2021** – Acquisition of up to 16.94% equity share capital of **IRB Infrastructure Developers Limited** by **Bricklayers Investment Pte. Ltd.** on a fully diluted basis and non-fully diluted basis, through the subscription of new shares issued by way of a preferential issue on private placement.
- **December 20, 2021** – Acquisition of 100% equity share capital of **Air India Limited** and **Air India Express Limited**, and 50% equity share capital of **Air India SATS**

Airport Services Private Limited by **Talace Private Limited**, a wholly-owned subsidiary of Tata Sons.

- **December 20, 2021** – Acquisition of controlling stake in **Forbes Enviro Solutions Limited** by **Lunolux Limited** through the primary acquisition of up to 72.56% and the subsequent acquisition of up to 26% by way of an open offer under the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- **December 30, 2021** - Acquisition of 96.42% equity shareholding in **Jindal Power Limited** by **Worldone Private 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

EXTENSION OF AATMANIRBHAR BHARAT ROJGAR YOJNA

Employees' Provident Fund Organization ("EPFO") vide a circular dated December 1, 2021 has extended the registration facility under Aatmanirbhar Bharat Rojgar Yojna from June 30, 2021 to March 31, 2022. The key highlights of the Aatmanirbhar Bharat Rojgar Yojna are:

- incentive for employers and new employees registered under EPFO;
- new employees will receive incentive for 2 (Two) years from the date of registration;
- incentives in the form of payment of:
 - a) Both employee's and employer's contribution i.e. 24% (Twenty Four percent) of wages in respect of new employees employed in establishments having up to 1,000 (One Thousand) employees;
 - b) Only employee's EPF (Employee Provident Fund) contribution i.e., 12% (Twelve percent) of wages in respect of new employees employed in establishments having more than 1,000 (One Thousand) employees;
- establishment is eligible for incentive if they add prescribed minimum number of new employees over and above the reference base;
- reference base for employees is taken as number of contributory EPF members in electronic challan cum return for September, 2020;
- new employees joining with monthly wage of less than INR 15,000 (Rupees Fifteen Thousand) are entitled to receive benefits for 24 (Twenty Four) wage months from date of registration; and
- establishments registered with EPFO after October 1, 2020 shall get benefits in respect of all new employees.

NOTIFICATIONS PERTAINING TO EXTENSION OF THE PUBLIC UTILITY SERVICES STATUS

The following notifications have been issued for extending the public utility services status for the industries which are as under:

(i) Defence Establishment

The Ministry of Labour and Employment vide its notification dated December 8, 2021, has further extended the public utility service status for the defence establishment by another 6 (Six) months with effect from December 24, 2021. The services engaged in the industry of defence establishments and covered under item 8 of the First Schedule of the Industrial Disputes Act, 1947, had earlier been declared as a public utility service for a period of 6 (Six) months with effect from June 24, 2021.

(ii) Uranium Industry

The Ministry of Labour and Employment vide its notification dated December 8, 2021, has further extended the public utility service status for the services engaged in uranium industry by another 6 (Six) months with effect from December 19, 2021. The services engaged in the industry of uranium industry and covered under item 19 of the First Schedule of the Industrial Disputes Act, 1947, had earlier been declared as a public utility service for a period of 6 (Six) months with effect from June 19, 2021.

ENFORCEMENT OF CERTAIN PROVISIONS OF EMPLOYEE STATE INSURANCE ACT, 1948 TO CERTAIN AREAS IN ASSAM

The Ministry of Labour and Employment vide notification dated December 23, 2021, has appointed January 1, 2022 as the date on which the following provisions of Employee State

Insurance Act, 1948 shall come into force in certain areas of Assam⁴:

- (i) Sections 38, 39, 40, 41, 42, 43 and Sections 45A to 45H of Chapter IV which regulates, *inter alia*, contributions and method of making contribution;
- (ii) Sections 46 to 73 of Chapter V which regulates, *inter alia*, the benefits which insured persons are entitled to; and
- (iii) Sections 74, 75, Sub-sections (2) to (4) of Sections 76, 80, 82 and 83 of Chapter VI which regulates, *inter alia*, adjudication of disputes and claims.

REVISION OF VARIABLE DEARNESS ALLOWANCE BY THE GOVERNMENT OF TRIPURA

The state Government of Tripura vide its notification dated December 4, 2021 has revised the variable dearness allowance on the basis of 6 (Six) months' average Consumer Price Index Numbers for the period commencing from January 1, 2021 to June 30, 2021. The revised allowances will be applicable with effect from October 1, 2021 to the workers engaged in the following:

- construction or maintenance of roads or in building operations in Tripura;
- shops and establishments in Tripura;
- hotels and restaurants in Tripura;
- cooperative stores and societies including large size multi-purpose cooperative society, primary marketing cooperative society and primary agricultural cooperative society in Tripura.

⁴ The areas are as follows: Barpeta, Bongaigaon, Bishwanath, Cachar, Chirang, Darrang, Dhemaji, Dhubri, Golaghat, Goalpara, Lakhimpur, Majuli,

Nalbari, Marigaon, Nagaon, Sibsagar, Udalguri, West Karbi Anglong, Karbi Anglong, Karimganj and South Salmara Mankachar.

CLARIFICATION RELEASED BY NHAI REGARDING CLAIMS AND ACCRUED CLAIMS POST 100% SHARE TRANSFER IN PPP PROJECTS

The National Highways of India (“NHA”) vide policy circulars bearing numbers NHAI/11033/CGM(FA)/4/2015 dated June 9, 2015 and NHAI/11033/CGM(FA)/4/2015 dated September 9, 2015 (collectively, “NHA Divestment Circulars”) had permitted concessionaires of build-operate-transfer (“BOT”) projects (annuity based and toll based) to divest their equity in the special purpose vehicle established for their respective project after 2 (two) years from the completion of construction of all BOT based projects. Subsequently, vide policy circular bearing number 8.3.42/2021 dated December 10, 2021, NHA has further clarified that upon the 100% divestment, the outgoing promoter shall not have any residual rights over the accrued claims and the same shall vest in the new promoter. Further, to this effect, a supplementary agreement shall be required to be executed at the time of the divestment. In addition to executing the supplementary agreement, the erstwhile NHA Divestment Circulars had prescribed the following compliances for the concessionaires/promoters in relation to any prescribed 100% divestment of an SPV by the respective concessionaire:

- The concessionaire will be required to make a written representation to the Authority with a no-objection certificate from the lender’s representative regarding her change of ownership;
- The proceeds from such divestment are to be utilised by the concessionaires/promoters for, inter alia, incomplete NHA projects, any other highway projects, any other power sector projects and to retire their debt to financial institutions in any other infrastructure projects; and

- The concessionaire will provide the details of the purpose for which proceeds from the sale of divested equity are proposed to be utilised and make a representation to NHA regarding exit change of ownership

AMENDMENT TO STANDARD REQUEST FOR PROPOSAL DOCUMENT AND MODEL CONCESSION AGREEMENT FOR ROAD PROJECTS

NHA, vide policy circular bearing number 11/34.2021 December 7, 2021 (“Circular 1”) has proposed several amendments to the standard request for proposal document (“RFP”) and model concession agreement (“MCA”) of the Hybrid Annuity Model (“HAM”) in line with Rule 144 (xi) of the General Financial Rules, 2017 (“GFR”) which inter alia states that the Department of Expenditure (“DoE”) may impose restrictions on procurement from bidders from certain countries in light of national security, defence purposes etc. The amendments have detailed as below:

- Amendment to Clause 1.2.7 of the HAM RFP: As per the Circular 1, in case lowest bidder withdraws or is not selected for whatsoever reason except the reason for mentioned in Clause 2.1.12 (b)(4) i.e., the bidder has been denied security clearance as well as Clause 3.3.1 i.e., the bid has been adjudged as non-responsive, NHA shall annul the Bidding Process and invite fresh Bids.
- Insertion of Clause 1.2.12 of the HAM RFP: As per the Circular 1, a new clause has been inserted which prescribe that a bidder will now be required to provide a self-certification stating that the items offered meets the local content requirements for Class – I local supplier or Class – II local supplier, as applicable. Such self-certificate shall be supported by a certificate from the bidder’s statutory auditor or cost accountant in the event of such procurement being above INR 10 crores.

- Insertion of Clause 2.1.23 of the HAM RFP: All orders of the Ministry of Finance, Department for Promotion of Industry and Internal Trade (“**DPIIT**”), or any other governmental agency prevalent on the date of the letter of award shall be applicable to the bidder and the bidding process.
- Insertion of Clause 2.1.24 of the HAM RFP: Vide the Circular 1, a new clause has been proposed to be inserted which prescribe that countries prohibited by the Ministry of Road Transport and Highways (“**MoRTH**”) shall not be allowed to participate in the government procurement for all items related to MoRTH, except for the list of items in relation to which procurement has been permitted.
- Insertion of Clause 2.2.1 (e) of the HAM RFP: In the event any bidder from an adjoint country wishes to participate in the bidding process, in terms of Rule 144 (xi) of the GFR, it will be register itself as per DoE’s order bearing number F. No. 6/18/2019-PDD dated July 23, 2020 in this regard, and a certificate regarding such compliance will also be required to be submitted.
- Insertion of Clause 2.11.1 of the HAM RFP: A bidder will be required to submit a self-certificate that its bid meets the requisite local content for Class – I local supplier or Class – II local supplier (as the case may be) including the location where the value addition has been made, failure of which shall result in the bidder being termed as a non-local supplier. Such self-certificate shall be supported by a certificate from the bidder’s statutory auditor or cost accountant in the event of such procurement being above INR 10 crores.
- Amendment to Clause 3.8.1 of the HAM RFP: Pursuant to the Circular 1, the selected bidder will be chosen basis their local content and as per the procedure laid down in the said Clause. In this regard, the margin of purchase preference, which is the maximum extent to which the price quoted by a Class-I local supplier may be above the lowest bid for the purpose of purchase preference, has been set at 20%.
- Introduction of Clause 5.9 to the HAM MCA: Vide the Circular 1, a new clause shall be inserted which state that the concessionaire will ensure that its supply in the project highways shall meet the requisite local content requirement as per extant directions in this regard by the DPIIT’s order bearing number P/-45021/2/2017-PP (BE-II) dated September 16, 2020 as amended till the respective bid due date and Rule 144 (xi) of the GFR.

Similar amendments have also been made in the corresponding clauses of the standard request for proposal document and model concession agreement for the BOT (Toll) based projects and EPC based projects vide policy

circulars bearing number 11.33/2021 December 7, 2021 and 11.32/2021 December 7, 2021 respectively.

PERFORMANCE SECURITY IN RELATION TO PUBLIC PROCUREMENT

DoE, Ministry of Finance vide office memorandum bearing number F.9/4/2020-PPD dated November 12, 2020 had stipulated that the requisite performance security to be submitted by the successful bidders for ensuring due performance under the contract (pursuant to Rule 171 of the GFR) stood reduced from 5-10% to 3% of the value of the contract. The said reduction was applicable for all tenders/contracts issued/concluded till December 31, 2021. Subsequently, DoE, vide office memorandum bearing number F.9/4/2020-PPD dated December 30, 2021, has extended the timelines for furnishing such reduced performance security, i.e., 3% of the contract value, till March 31, 2023.

TARIFF GUIDELINES, 2021 FOR THE FUTURE PPP CONCESSIONAIRES

The Ministry of Law and Justice notified the Major Port Authorities Act, 2021 (“**MPA Act**”) on February 18, 2021. Section 27 of the MPA Act provides that in case of public private partnership (“**PPP**”) projects, Concessionaire shall fix the tariff based on market conditions. On December 21, 2021, the Ministry of Ports, Shipping and Waterways published the Tariff Guidelines, 2021 for the Future PPP Concessionaires (“**Tariff Guidelines**”). The key highlights of the Tariff Guidelines are inter alia as follows:

- The Tariff Guidelines are applicable to PPP Concessionaires (“**Concessionaire**”) for framing of Scale of Rates (“**SOR**”) along with conditionalities for each PPP project of the respective concessionaire(s) who have been authorised in the concession agreement(s) by the Board of Major Port Authority (“**MPA**”) to discharge the authorised functions or provide services at the PA.
- The projects covered under Tariff Guidelines are the ones approved by the Government but are still under bidding stage and all future concession agreements under the MPA Act.
- As per the Tariff Guidelines, the term “Scale of Rates” has been defined as the specific tariff rates along with conditionalities that are to be determined, informed and published by the concessionaires as per market conditions in respect of their respective PPP projects awarded as per MPA Act, 2021 and as per provisions therein including Section 27(1) of the MPA Act.

- SOR shall be the maximum rates or charges or tariff chargeable by the concessionaire in the PPP project and is required to be published on the concessionaire's website for maintaining transparency. Further, such SOR may be reviewed annually. The concessionaire can modify, amend, increase, decrease, delete or add new tariff/conditions either annually or any time during the year based on existing market conditions. The revised SOR shall only come into effect after expiry of 30 days of publishing such rates on the concessionaire's website.
- The SOR framed by the concessionaire must be in accordance with the concession agreement and must be published on its website. SOR may be categorized into the following categories: (a) Vessel Related Charges (if chargeable by the concessionaire under the concession agreement), (b) Cargo/Container Handling Charges, (d) Storage Charges; and (e) Other or Miscellaneous Charges.
- The status of the vessel for tariff determination purposes will be borne out by its certification by the

Customs or the Director General of shipping. This shall be the deciding factor for its classification as 'coastal' or 'foreign-going' for the purpose of levying vessel related charges.

- All concessionaires shall furnish to MPA, quarterly and annual reports on cargo traffic handled and ship berth-day output. For the container terminals, the concessionaire shall furnish to the MPA quarterly/annual reports on container traffic handled, average moves by crane per hour and average dwell time for containers.
- In the event of dispute or difference between the concessionaire and the concessioning authority regarding the fixation or revision of the SOR or tariff or any conditionality thereto, or any grievance of any user regarding procedure to be followed for fixation or revision of the SOR or any conditionality thereto, reference is required to be made to the Adjudicatory Board (constituted under the MPA Act).

MEDIA & ENTERTAINMENT



MADRAS HIGH COURT UPHOLDS THE VIEW THAT YOUTUBERS EXPRESSING HIS/HER VIEW ON PUBLIC AFFAIRS HAVE THE SAME RIGHTS AS JOURNALISTS

While quashing a sedition case filed against YouTuber M Maridhas for his controversial post on the helicopter crash of CDS Gen. Bipin Rawat at Coonoor, the Madurai Bench of the Madras High Court observed that any social media personality including a 'YouTuber' expressing his/her views on public affairs regularly, shall be entitled to enjoy similar powers and freedom of speech and expression conferred upon a journalist and/or the media under Article 19(1)(a) of the Indian Constitution. The Addl. Advocate General in his contentions submitted that the comparison of the State of Tamil Nadu with that of Kashmir by the YouTuber in his tweet was unjustified. However, Maridhas' counsel submitted before the Hon'ble Court that his client was merely expressing his opinions and was arrested for being a detractor of the state government. While passing the quashing orders, Justice Swaminathan observed that *"The petitioner's tweet was never intended to subvert the government. He had only drawn the attention of the State government to certain nefarious tendencies brewing in the State. He has merely vented out his anxiety"*.

DELHI HIGH COURT DIRECTS TRADEMARK REGISTRY TO GRANT TRADEMARK PROTECTION TO AGATHA CHRISTIE'S BOOK "AND THERE WERE NONE"

The Delhi High Court while quashing the refusal order for the trademark registration of one of the works of the famous author Agatha Christie, directed the Registrar of Trademarks to register the mark "And Then There Were None" under classes 9, 16 and 41 of the Schedule to the Trademarks Rules, 2017. The only ground on which the Registry refused to grant trademark protection to the mark was that "it was not distinctive". Whereas, the Court observed that the mark does not suffer from any limitations contemplated in the Act and is capable of being represented graphically and is able to

distinguish the services intended to be provided under the mark from those provided by others. The Court held that *"The right to register a mark under which one intends to provide good or services is a valuable right, partaking of the character of Article 19(1)(g) of the Constitution of India. Any decision not to allow registration of a mark has, therefore, to be informed by reasons which should be apparent on the face of the decision."* The registration was applied for by the author's company, Agatha Christie Limited, 80 years after publication of the work.

IT RULES, 2021 UPDATE:

Several petitions have been filed before various High Courts on the constitutional validity of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules**") which regulates social media platforms, digital news media and OTT platforms. The updates on these petitions are as follows:

- The Madras High Court has restrained the Central Government from taking any coercive actions against the members of the Indian Broadcasters and Digital Media Foundation (IBDMF) under the provisions of the IT Rules, 2021 without seeking Court's prior permission. The public interest litigation was filed by the IBDMF challenging the constitutional validity of the Rules. The petitioner's counsel alleged that the Centre has been initiating penal actions even though an interim stay has been granted by the Bombay High Court on the operation of Rules 9(1) and 9(3) of the Rules. In an earlier petition filed by the Digital News Publishers Association, a separate bench of The High Court stayed the setting up of an oversight mechanism by the centre to regulate the social media and digital media platforms as per the provisions of the Rules.

BOMBAY HIGH COURT STAYS DEFAMATION PROCEEDINGS AGAINST ALIA BHATT, SANJAY LEELA BHANSALI AND OTHERS IN RELATION TO THE UPCOMING FILM, ‘GANGUBAI KATHIAWADI’

The Bombay High Court confirmed the stay on the defamation proceedings against Sanjay Leela Bhansali, Alia Bhatt, Hussain Zaidi and Jane Borges against the complaint filed by Babuji Shah for the film *Gangubai Kathiawadi*. The counsel for the petitioners argued that no action alleging defamation was initiated through the book “Mafia Queens of Mumbai”, written in the year 2011, a chapter of which forms the base story of the film. The counsel further submitted that neither the twin tests of defamation as written down in Section 499 of IPC and reiterated in the case “*Subramanian Swamy v Union of India (2016) 7 SCC 221*” are satisfied in this case. The Court observed that the complainant, who claims to be Gangubai’s adopted son, did not disclose ingredients of defamation under section 499(1) of the IPC, neither could he submit any material before the court which *prima facie* indicates that he is a family member or a near relative of Gangubhai Kathiawadi.

KARNATAKA HIGH COURT CONCLUDES HEARING IN ONLINE GAMING CASE, RESERVES THE MATTER FOR ORDERS

In a petition that challenged the Karnataka Government’s new law banning betting and wagering in online games, the Division Bench of the Karnataka High Court concluded the hearing and reserved the matter for orders. The stand taken by the State Government is that their amendment to the Karnataka Police Act, 1963 has not banned “game of chance” or “game of skill”, they have only prevented people from risking money on the happening of an undetermined event and have additionally restrained online gaming platforms from luring inexperienced people with the inducement of unachievable prize.

PATNA HIGH COURT ISSUES DIRECTION TO VARIOUS SOCIAL MEDIA PLATFORMS IN THE CASE OF POSTING ABUSIVE AND OBJECTIONABLE COMMENTS AGAINST JUDGES AND OTHER HIGH DIGNITARIES

In the case of posting abusive and objectionable comments against judges and other high dignitaries including Union Law Minister, MPs, MLAs, etc., the Patna High Court on December 17, 2021 issued directions to Instagram, Messenger, WhatsApp, Facebook, Twitter, YouTube and Meta to cooperate in the investigation being conducted by the Economic Offenses Unit (E.O.U) of Bihar in the issue. The Court came down heavily on the social media platforms for their negligence in reporting such use of abusive language against judge and other dignitaries to the police. The Court has further ordered to register a FIR against the accused and directed the E.O.U to take appropriate action under the law.

DELHI COURT RESTRAINS SELLING AND DISTRIBUTION OF BOOK BASED ON FORMER YES BANK CEO RANA KAPOOR

A Delhi Court has passed injunctive orders against Penguin Random House preventing the selling and distribution of the book titled “*The Banker Who Crushed His Diamonds: The Yes Bank Story*”, which is based on the former YES Bank CEO Rana Kapoor, till the next date of hearing. The case was filed by Rana Kapoor through his lawyers, submitting to the Court that the book contains various baseless and derogatory allegations against him, based on statements of undisclosed witnesses and is written without consulting and/or seeking any inputs from Mr. Kapoor or his family members. The Additional District Judge has further restrained the releasing and marketing of any film, to be produced by Almighty Tech Films, which may make any direct or an indirect reference to Rana Kapoor without obtaining his prior consent.

MADRAS HIGH COURT WHILE DISMISSING THE SUIT FILED FOR COPYRIGHT VIOLATION UPHELD THAT THE BUSINESS OF ISSUING LICENSES CAN ONLY BE ROUTED THROUGH COPYRIGHT SOCIETIES REGISTERED U/S 33 OF COPYRIGHT ACT

The Madras High Court in the case *Novex Communications Pvt. Ltd. V DXC Technology Pvt. Ltd.*, has held that if any work in which copyright exists, is incorporated in a film or a sound recording, then only a copyright society registered under the provisions of the Copyright Act, 1957, can carry on the business of issuing licenses. The Court observed the distinction between the right of a copyright owner in his individual capacity and that of a commercial enterprise engaged in the business of issuing licenses, and held that, “*There is no doubt true that an owner need not necessarily join a copyright society. The first proviso to Section 33 makes it clear that the right of an owner to issue licenses, in his individual capacity, remains unimpacted, subject to the rider that such a right must be consistent with his obligations as a member of any copyright society. However, once the grant of license moves from the owner in his individual capacity, and transcends into the realm of a business, Section 33(1) and/or the second proviso applies. The legislative intent is manifestly clear that the business of licensing must be routed only through a copyright society*”. Novex alleged that despite having absolute copyright over ground performances of certain sound recordings, the Defendant played those sound recordings in the events conducted by it without obtaining a license from Novex.

BROADCASTERS HAVE APPROACHED TRAI TO NOT IMPOSE MARKET-SHARE RELATED RESTRICTIONS ON CABLE TV

Several stakeholders (Broadcasters, MSOs, DTH operators etc.) in the broadcasting sector urged the Telecom Regulatory Authority of India (TRAI) “*to adopt light-touch regulation on the issue of market dominance in the cable TV business as there is cut-throat competition in the market*”

among different service providers.” The All India Digital Cable Federation (AIDCF) has stated that video and audio streaming services, as well as the OTT platforms and stated that Competition Commission of India (CCI) is the apex body to monitor and regulate any instance of abuse of market power and anti-competitive arrangements.

UNITED ARAB EMIRATES TO INTRODUCE A NEW 21+ AGE CATEGORY FOR UNCENSORED FILMS

The United Arab Emirates’ Emirati Media Regulatory Authority (EMRA) has announced that it will no longer censor films released in cinemas. The EMRA proposes to introduce a new 21+ age category for viewers instead of cutting sensitive scenes that could offend traditional Islamic sensibilities and would screen the movies according to their international versions. This step is in furtherance to the country’s aim of luring international workers by promoting its socially liberal environment.

RELAXATION IN HOLDING OF ANNUAL GENERAL MEETING THROUGH VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS

The MCA *vide* general circular dated December 8, 2021 (accessible [here](#)) has stated that the companies whose annual general meetings ("AGM") are due in the year 2021, can conduct the same through video conferencing ("VC") or other audio-visual means ("OAVM") on or before June 30, 2022. It is clarified in the aforesaid circular that the relaxation in holding the AGM through VC or OAVM shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013 ("Act") and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

The MCA *vide* general circular dated December 14, 2021 (accessible [here](#)), has thereafter stated that even the companies proposing to conduct their AGM in the year 2022 for the financial year ended/ending any time before/on March 31, 2022 can conduct the same through VC or OAVM on or before June 30, 2022. It is also clarified in the aforesaid circular that the relaxation in holding the AGM through VC or OAVM shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Act and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

RELAXATION IN HOLDING EXTRAORDINARY GENERAL MEETINGS THROUGH VC OR OAVM

The MCA had earlier issued general circular dated June 23, 2021 (accessible [here](#)) wherein it was stated the companies can conduct extraordinary general meetings ("EGM") through VC or OAVM or transact items through postal ballot till December 31, 2021, in accordance with the framework

provided under the general circular dated April 8, 2020 (accessible [here](#)).

Now, the MCA *vide* general circular dated December 8, 2021 (accessible [here](#)) has further extended the aforesaid timeline for allowing companies to conduct EGMs through VC or OAVM or transact items through postal ballot till June 30, 2022.

INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) THIRD AMENDMENT RULES, 2021

The MCA *vide* notification dated December 28, 2021 (accessible [here](#)) has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Third Amendment Rules, 2021 ("IEPF Amendment Rules") amending Rule 6 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ("Principal Rules") to provide for surrender of shares held by the Investor Education and Protection Fund Authority ("Authority") in case the minority shares of a company are purchased by the majority shareholders under section 236 (Purchase of Minority Shareholding) of the Companies Act, 2013 ("Act").

Rule 6 of the Principal Rules had earlier provided for surrender of shares under only two circumstances being (i) delisting of the company; or (ii) winding up of the company. According to new sub-rule 11A of Rule 6 of the Principal Rules, as inserted by the IEPF Amendment Rules ("Sub-rule 11A"), in case an application for purchase of shares by the majority shareholders under section 236 of the Act is received through the company, the Authority may receive the amount entitled on behalf of the minority shareholders from the company and credit the amount to the Investor Education and Protection Fund ("Fund") and a separate ledger account shall be maintained for such proceeds.

Sub-rule 11A provides that prior to the receipt of money on behalf of such shareholders, the Authority is required to verify that the conditions specified for such acquisition by shareholders under section 236 of the Act are met, and it shall also call for a report from the company seeking confirmation on compliance with provisions of section 236 of the Act. It further provides that the company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated and the Authority shall not be liable to indemnify the minority shareholder or the company or any other person for any liability arising, leading to any litigation or complaint arising thereof.

It is also clarified in Sub-rule 11A that any claimant entitled to claim transfer of shares from the Authority under sub-section 6 of section 124 of the Act shall only be entitled to the amount received by the Authority on behalf of the minority shareholder without any interest thereon. The IEPF Amendment Rules state that any amount required to be credited by the companies to the Fund under Sub-rule 11A shall be remitted into the specified account of the Authority maintained in the Punjab National Bank and the details thereof shall be furnished to the Authority in Form No. IEPF-7 (Statement of amounts credited to IEPF on account of shares transferred to the fund) within 30 (thirty) days from the date of remittance or within 30 (thirty) days from the

date of commencement of the IEPF Amendment Rules, as the case may be.

RELAXATION ON LEVY OF ADDITIONAL FEES IN FILING E-FORMS IN RELATION TO ANNUAL FINANCIAL STATEMENTS AND ANNUAL RETURNS

The MCA had earlier issued general circular dated October 29, 2021 (accessible [here](#)), wherein it granted relaxation from levy of additional fees for the annual filings pertaining to the financial year ended on March 31, 2021 till December 31, 2021.

Now, the MCA *vide* general circular dated December 29, 2021 (accessible [here](#)), has further extended the aforesaid timeline, stating that no additional fees shall be levied upto February 15, 2022 for the filing of E-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL (i.e. forms relating to filing of audited financial statements and consolidated financial statements for a company including one person company) and upto February 28, 2022 for the filing of E-Forms MGT-7/MGT-7A (i.e. forms relating to filing of annual return), in respect of the financial year ended on March 31, 2021. Further, it has been clarified that during the aforesaid extended period, only normal fees shall be payable for the filing of the aforementioned e-forms.

EXTERNAL COMMERCIAL BORROWINGS (ECB) AND TRADE CREDITS (TC) POLICY – CHANGES DUE TO LIBOR TRANSITION

- The Reserve Bank of India (“RBI”) vide its circular bearing reference number RBI/2021-22/135 (A.P. (DIR Series) Circular No. 19 dated December 8, 2021, , has advised that due to the imminent discontinuance of LIBOR as a benchmark rate, the benchmark rate for foreign currency external commercial borrowing and trade credits (“FCY ECB/TC”) shall henceforth be referred to any widely accepted interbank rate or alternate reference rate (“ARR”) of 6-month tenor applicable to the currency of borrowing.
- Further, to take into account the differences in credit risk and premia between LIBOR and the ARRs, the all-in cost ceiling for new FCY ECB/TC shall be increased by 50 basis points to 500 basis for ECB and 300 basis points for TCs, respectively over the benchmark rates.
- Additionally, To enable smooth transition of existing ECBs/ TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/ TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.
- The RBI has further clarified that there is no change applicable in the all-in-cost benchmark ceiling for INR denominated ECBs/TCs.

DSK View: In the imminent discontinuance of LIBOR, the RBI has taken swift action to enable parties to smoothly transition to an alternate benchmark rate in relation to foreign currency denominated ECB/TC transactions.

INTRODUCTION OF LEGAL ENTITY IDENTIFIER FOR CROSS-BORDER TRANSACTIONS

- The RBI vide its circular bearing reference number RBI/2021-22/137 A.P. (DIR Series) Circular No. 20 dated December 10, 2021, has introduced the Legal Entity Identifier number (“LEI”) for cross-border transactions.
- The LEI is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. The RBI has mandated that AD Category I banks, shall with effect from October 1, 2022 obtain the LEI number from resident entities (non-individuals) undertaking capital or current account transactions of INR 50 crore and above (per transaction) under the Foreign Exchange Management Act, 1999.
- As regards non-resident counterparts/ overseas entities, in case of non-availability of LEI information, AD Category I banks may process the transactions to avoid disruptions. Further, AD Category I banks may encourage concerned entities to voluntarily furnish LEI while undertaking transactions even before October 1, 2022. Once an entity has obtained an LEI number, it must be reported in all transactions of that entity, irrespective of transaction size. Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the Global Legal Entity Identifier Foundation.

RESTRICTION ON STORAGE OF ACTUAL CARD DATA I.E. CARD-ON-FILE (COF)

- The RBI vide its circular bearing reference number RBI/2021-2022/142 (CO.DPSS.POLC.No.S-1211/02-14-003/2021-22) dated December 23, 2021, has extended the timeline for purging of CoF data by authorised non-bank payment aggregators and merchants on-boarded

by them by an additional 6 (six months) i.e. till June 30, 2020.

- Further, the RBI has also suggested that in addition to tokenisation, industry stakeholders may devise alternate mechanism(s) to handle any use case (including recurring e-mandates, EMI options etc.) or post transaction activity (including chargeback handling, dispute resolution, reward/ loyalty programme, etc) that currently involves storage of CoF data.

DSK View: *The extension is a welcome relaxation to entities that have multiple customers using their platforms and provides enough time for such entities to develop new mechanism to ensure that the end-users have a seamless experience on their platforms.*



SOCIETIES THAT CHANGE REDEVELOPMENT BUILDER MUST ENSURE NEW ALLOTTEES GET FLATS

In an order that clarifies the role of a housing society in redevelopment projects, the Maharashtra Real Estate Regulatory Authority (Maha-RERA) recently held that societies have a duty to give reasons when changing a builder midway and must also honour allotments made by the old builder towards buyers of the project's free sale component.

RAJASTHAN HC HOLDS BANKS ACCOUNTABLE UNDER RERA

In a landmark judgment, divisional bench of Rajasthan High Court has held that complaints against banks can be filed before the Real Estate Regulatory Authority (RERA) if lending banks has taken the possession of a project as a secured creditor, pursuant to the default of the promoter in paying the loan.

STAMP DUTY IN NOIDA TO BE CALCULATED AS PER CARPET AREA

Homebuyers in Noida will have to pay less for the registry of plat as the Noida authority has mandated the registry to be done as per carpet area and not by super area.

The authority has issued a order in this regard and has informed the UP Real Estate Regulatory Authority (UPRERA) and revenue department asking them to calculate the stamp duty on the bases of carpet area.

MAHARASHTRA RERA LISTS 3,425 PROJECTS AS 'LAPSED' ACROSS STATE

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has listed 3,425 projects as lapsed for exceeding the completion deadline.

Earlier, 3,371 projects were listed in October, of which 210 received extension, and 200 more projects were added to the list, stated the authorities.

The MahaRERA has listed the projects with completion deadlines in 2017, 2018 and 2019 as expired or lapsed. Most of these projects are in Mumbai, Pune, Thane and Raigad. According to the rules, the developers of these projects have been prohibited from selling and marketing the projects before seeking extension of the respective completion date, which will require consent from 51% percent buyers.

BUILDER FLOORS IN SOUTH DELHI, GURUGRAM ESCAPING RERA REGISTRATION: EXPERTS

Developers of high-value independent floors in south Delhi and Gurgaon avoiding registration mandated under the Real Estate (Regulation and Development) Act, leading to violations, brokerage firms and legal experts said.

Section 3(2) (a) of RERA does provide for an exemption from registration if the land proposed to be developed is less than 500 sq metres or the apartments proposed to be developed are less than eight.

MAHARERA CAN DECIDE PAYOUT FOR MENTAL AGONY TO FLAT BUYERS

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has held that it has jurisdiction to decide on compensation payable to flat purchasers for the mental agony caused due to delay in possession.



CENTRAL GOVERNMENT NOTIFIED CONSUMER PROTECTION (DIRECT SELLING) RULES, 2021

Ministry of Consumer Affairs, Food and Public Distribution on December 29, 2021, notified the Consumer Protection (Direct Selling) Rules, 2021 (“**Rules**”) under the aegis of Consumer Protection Act, 2019. The Rules requires existing direct selling entities to comply with its provisions within 90 days starting from December 29, 2021. The Rules also has a cross border applicability which means any direct selling entity which is not established in India but offers goods or services to consumers in India shall comply with it. Amongst others, the Rules provides for setting up of a mechanism by the State Governments for ensuring compliance of the Rules, ban direct selling entities from promoting pyramid schemes, money circulation schemes and brought much needed clarity that direct sellers as well as direct selling entities using e-commerce platform to comply with the provisions of Consumer Protection (E-commerce) Rules, 2020 etc.

Read the Rules [here](#) and our analysis of the Rules [here](#).

JPC’S REPORT ON PERSONAL DATA PROTECTION BILL, 2019 TABLED IN THE PARLIAMENT

After two years of deliberations, the chairman of Joint Parliamentary Committee (“**JPC**”) on Personal Data Protection Bill, 2019 (“**PDP Bill**”) presented the JPC’s report (“**Report**”) in parliament on December 16, 2021. The Report is divided into two parts, the first part sets out the background of data protection and privacy and gives an overview of the PDP Bill while the second part sets out the clause-by-clause examination of the PDP Bill. The Report, amongst others, proposes to include (a) non-personal data under the ambit of PDP Bill and thus recommends that the name of the PDP Bill should be changed, (b) 2 years transition period on implementation of the legislation, (c) obtaining fresh consent when minors attain 18 years of age, and (d) establishment of data protection authority etc.

Read the Report [here](#) and our analysis of the Report [here](#).

RBI EXTENDED TIMELINE FOR STORING OF CARD-ON-FILE DATA

RBI under the “Guidelines on Regulation of Payment Aggregators and Payment Gateways” prohibited authorised non-bank payment aggregators and merchants on-boarded by them to store card data (“**CoF**”) from December 31, 2021. The said timelines has now been extended by six months, i.e., till June 30, 2022, and post that CoF is required to be purged. Further, RBI has advised industry stakeholders to devise alternate mechanism(s), in addition to tokenisation, to handle any use case (including recurring e-mandates, EMI option, etc.) or post-transaction activity (including chargeback handling, dispute resolution, reward / loyalty programme, etc.) that currently involves / requires storage of CoF data by entities other than card issuers and card networks.

Read the notification [here](#).

MEITY RELEASED NATIONAL STRATEGY ON BLOCKCHAIN

Ministry of Electronics and Information Technology has recently released a 52 paged policy document titled “National Strategy on Blockchain”. The document recognizes 44 potential areas for using blockchain technology and increased digitization. It includes implementation of blockchain technology in varied fields like finance & banking, administration and law, healthcare, education, logistics, media, cyber security etc. The document has been drafted comprehensively to include weaknesses and challenges in adopting blockchain technology along with several strategies to promote adoption of blockchain technologies including introduction of various incentives in this sector.

Read the document [here](#).

WHITE COLLAR CRIME

AN ORDER DEHORS REASONING OR BEREFT OF RELEVANT REASONS CANNOT RESULT IN GRANT OF BAIL

The Supreme Court in the case of **Brijmani Devi V. Pappu Kumar and Anr.** (2021 SCC OnLine SC 1280), observed that while considering an application for bail, the court must exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other. The Court further observed that the prosecution or the informant has a right to assail the order before a higher forum in case of a non-speaking order. The Supreme Court while setting aside the order passed by the Patna High Court held that, as the High Court had lost sight of several vital aspects of the case which is in juxtaposition to a series of judgements passed by the Supreme Court, the present case was not a fit case for granting bail.

DSK View: *The court, has upheld trite law, that bail orders must be justified on merits or prima facie establish a persuasive case for granting bail. Whilst it is true that a roving an in-depth enquiry at such a premature stage before the truth is unravelled by trial is unwarranted and that any overboard observations by the court may have a likelihood of prejudicing the case of either party, it is equally important to ensure that restraints of reasoning prevent the arbitrary exercise of judicial power from taking place.*

RELIABILITY OF THE ALLEGATIONS CANNOT BE GONE INTO WHILE QUASHING AN FIR UNDER SECTION 482 OF THE CRPC

In the case of **State of Orrisa V. Pratima Mohanty and Ors.** (Criminal Appeal No. 1455-1456 of 2021) the Supreme Court faced an issue where the High Court had delved into the merits of the allegations made out in the FIR and conducted a mini trial, appreciating the evidence in the charge-sheet whilst exercising the plenary powers under Section 482 of the CrPC. The case pertained to a few corrupt servants of the

Bhubaneswar Development Authority who went on to distribute prime plots under discretionary quota to their near and dear ones, whilst keeping the general public in the dark. This egregious conduct of availing personal benefit through unjust exercise of public function at the expense of the exchequer was frowned upon by the court while allowing the appeals, and expressing the need for abolition of discretionary quotas which serve as a precursor to corruption, nepotism, and favouritism. The Apex Court reiterated that the power of quashing must be exercised sparingly and with circumspection, only in rare cases and while examining an FIR/complaint, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint.

DSK View: *The powers under section 482 of CrPC are plenary and wide so much so that in principle courts can quash proceedings even before the police gathers relevant material or investigation begins. Naturally, at such a premature stage, no court is omniscient to know the truth even before evidence is collected/tested by way of a trial. Hence, the Supreme Court has repeatedly fettered such a discretion by imposing various riders and reiterating that it can be used only in the rarest of the rare cases and, investigation/trial should normally be allowed to proceed, before the trial courts so that the truth may unravel itself.*

CENTRAL GOVERNMENT AGENCIES HAVE NO LOCUS TO INTERVENE IN PROCEEDINGS CULMINATING OUT OF A CLOSURE REPORT FILED BY STATE POLICE

The Bombay High Court in the case of **Directorate of Enforcement V. State of Maharashtra and Ors.** (Criminal Writ Petition No. 3122 of 2020), clarified the position that no investigation agency can exercise a supervisory jurisdiction over another and only an aggrieved person has the locus to challenge a closure report filed before the Magistrate. The court further held that an investigation agency cannot be termed as a victim or aggrieved/injured/interested person

and hence there was no legal provision whatsoever to afford it a right of audience before any judicial forum. The court reiterated the settled position of law that Magistrates have no inherent powers, unlike the civil courts under section 151 of the CPC or the High or Supreme Court under Section 482 of CrPC and therefore, the Magistrates cannot entertain such applications from any person other than a victim/complainant/injured person or relative of the deceased.

DSK View: *The Court through the above judgement has not only ensured that the purpose of setting up Enforcement Directorate (which is to ensure investigations under the FEMA and PMLA Acts) is preserved, but has also nipped in the bud an audacious attempt of the agency to carry out a political agenda on the pretext of representing the rights of the victim. Such judgements ensure that independence of each investigation agency is conserved, subject to the supervision of the judiciary, all within the framework of the CrPC, a procedural document intended to achieve a substantive purpose.*

ANTICIPATORY BAIL APPLICATION IS MAINTAINABLE IF A PERSON IS IN JUDICIAL CUSTODY FOR ANOTHER OFFENCE

In the case of **Anlesh Akil Somjee v State of Maharashtra** (ABA No. 2857 OF 2021) the Bombay High Court while deciding the question, whether an anticipatory bail application would be maintainable by an accused who is already arrested and is in magisterial custody in relation to another crime, held that the only restriction in granting an anticipatory bail is under section 438(4) of the CrPC. The court further clarified that (i) there is no such bar in CrPC or any statute which prohibits the Session Court or the High Court from entertaining and deciding an anticipatory bail, when such person is already in judicial or police custody in some other offence; and (ii) the restriction cannot be stretched to include arrest made in any other offence as that would be against the purport of the provision. The Court further held that an accused has every right, even if he is arrested in number of cases, to move in each of offence registered against him irrespective of the fact that he is already in custody but for different offence, for the reason that, the application will have to be heard and decided on merits independent of another crime in which he is already in custody.

DSK View: *In our view the High Court has applied the rule of statutory interpretation and sought to justify the cause of justice and fundamental rights of the accused from the fetters of the precedents.*

A PERSON MUST NOT BE CHARGED WITH SECTIONS 406 AND 420 OF THE IPC SIMULTANEOUSLY FOR THE SAME TRANSACTION

In the case of **Mallari Sivaram Rathod v State of Maharashtra** (Criminal Application No. 936 of 2021) the Bombay High Court, Bench at Nagpur, while quashing an FIR observed that, the FIR was belatedly registered after a period of 20 years wherein a dispute related to a transaction was inherently civil in nature. The court further considered various judgements passed by the Supreme Court and held that an FIR, largely based on a civil wrong where the allegations have no criminal element, can be quashed to prevent abuse of the judicial process. The court further referred to another Delhi High Court judgement (**Wolfgang Reim & Ors v. State & Anr.**) and held that Section 406 and 420 of the IPC cannot apply together, because for cheating to have taken place, dishonest intention must exist at time of inception of the transaction, as opposed to criminal breach of trust where dishonest intention comes in later i.e., after obtaining dominion over the property.

DSK View: *It is often observed that Police avoid applying their minds to allegations and register irrelevant and omnibus sections mechanically, out of sheer ignorance or on behalf of influential parties. It is also unfortunate that they often cannot discern a civil dispute from a criminal one causing further injustice to an aggrieved party.*

INVESTIGATION AGENCIES CANNOT ATTACH ASSETS ONCE THE LIQUIDATION PROCESS UNDER IBC BEGINS

In the case of **Nitin Jain Liquidator PSL Limited V. Enforcement Directorate** (2021 SCC OnLine Del 5281) the Delhi High Court has traversed through various provisions of the PMLA Act as well as the Insolvency and Bankruptcy Code to determine which of the two statutes would assume primacy and held that they both need to be interpreted harmoniously in such a manner that the legislative intent was preserved. However, in the particular facts of the case, the ED's authority to move against properties of the corporate debtor stood foreclosed once the adjudicating authority approved the mode of liquidation.

DSK View: *The High Court has taken note of the fact that the legislature wanted to ensure that during the corporate debtor's revival, it is not swamped with pending court cases and the process was not delayed prejudicing the stakeholders. The court, however, clarified that the cessation of prosecution is restricted to the corporate debtor. Individuals who were in-charge of its affairs cannot claim this exception and would still be liable to face prosecution.*



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