

NEWSLETTER

July 2022

TABLE OF CONTENTS

Capital Market	03
04	Competition Law
Dispute Resolution	06
09	Employment Law
Energy & Infrastructure	13
17	Media and Entertainment
Ministry of Corporate Affairs ("MCA")	20
23	RBI & FEMA
RERA	24
27	Technology Law
White-Collar Crime	29



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* its circular dated June 22, 2020¹, read with circular dated October 08, 2020² (“**2020 Circulars**”) permitted REITs/InvITs to conduct annual meetings and other meetings of unitholders through video conferencing or through other audio-visual means (“**Electronic Mode**”) up to December 31, 2020.

SEBI *vide* circular dated February 26, 2021³, extended this facility to conduct annual meetings of unitholders through Electronic Mode was till December 31, 2021, and other meetings of unitholders through electronic mode till June 30, 2021.

Further, *vide* circular dated December 22, 2021⁴ this facility to conduct annual and other meetings was extended till June 30, 2022.

The Ministry of Corporate Affairs (“**MCA**”) has extended the facility of holding AGMs and EGMs through electronic mode till December 31, 2022. Accordingly, SEBI *vide* its circular SEBI/HO/DDHS/DDHS_Div2/P/CIR/2022/079 dated June 03, 2022 (“**June 03 Circular**”) 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 meetings through Electronic Mode till December 31, 2022. REITs/InvITs shall comply with procedure prescribed in Annexure - I of SEBI circular dated June 22, 2020⁵.

REDUCTION OF TIMELINES FOR LISTING OF UNITS OF PRIVATELY PLACED INFRASTRUCTURE INVESTMENT TRUST (INVIT)

SEBI, *vide* its circulars SEBI / HO / DDHS / DDHS_Div3 / P / CIR / 2022 / 087, dated June 24, 2022, has reduced the timeline for listing of units of privately placed Infrastructure Investment Trust (InvIT). The reduction has been provided for the following:

- Regulation 16(8) (a) of SEBI (Infrastructure Investment Trusts) Regulations, 2015 (“InvIT Regulations) provides that the listing of privately placed units shall be done within thirty working days from the date of allotment. These timelines prescribed in the InvIT Regulations are indicative. Considering the time taken for listing of units of privately placed InvIT in recent past, it was decided to examine the reduction of timelines for listing of units of privately placed InvIT.
- It has been decided reduce the time taken for allotment and listing of units of privately placed Infrastructure Investment Trust (InvIT), after the closure of issue to six working days as against the present requirement of thirty working days.
- The provisions of this circular shall be applicable to listing of units of privately placed InvIT under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 which opens on or after August 01, 2022.

¹ SEBI/HO/DDHS/DDHS/CIR/P/2020/102

² SEBI/HO/DDHS/DDHS/CIR/P/2020/201

³ SEBI/HO/DDHS/DDHS/CIR/P/2021/21

⁴ SEBI/HO/DDHS/DDHS_Div2/P/CIR/2021/697

⁵ SEBI/HO/DDHS/DDHS/CIR/P/2020/102



COMPETITION COMMISSION OF INDIA ISSUES CEASE AND DESIST ORDER AGAINST AMATEUR BASEBALL FEDERATION OF INDIA

By an order dated June 03, 2022, the Competition Commission of India (“CCI”) has issued cease and desist order against the Amateur Baseball Federation of India (“ABFI”) for abusing its dominant position in violation of Section 4 of the Competition Act, 2002 (“Act”). The case was initiated based on information filed by the Confederation of Professional Baseball Softball Clubs (“CPBSC”). As per the information, ABFI had directed its affiliated State Baseball Associations not to entertain unrecognized bodies and also not to allow the state-level players to participate in any of the tournaments organized by them.

While dealing with the issues involved, CCI held that ABFI is an enterprise and delineated the relevant market as – the ‘market for organization of Baseball leagues/events/tournaments in India’. Given its monopoly by being the apex body of the sport and a recognized national sports federation, ABFI was held to be in a dominant position in the relevant market.

Based on the evidence presented, findings in the Director General’s Report, and submissions made during the oral arguments, CCI observed that the communication by ABFI to CPBSC has resulted in the denial of market access to other associations. Also, such conduct has resulted in limiting and restricting the provision of services and the market itself. Further, warning to the affiliated players was an imposition of an unfair condition by a dominant entity. The foregoing observations were in the nature of abuse of the dominant position and CCI has directed ABFI to cease and desist from such conduct in the future.

DSK View: It is important to note that CCI did not impose any monetary penalty on ABFI given its conduct and necessary market correction. The order itself is not vindictive. CCI has

also clarified and interpreted the definition of an enterprise while dealing with the issues involved.

CCI PENALIZES FIRMS FOUND GUILTY OF BID-RIGGING AND CARTELIZATION IN INDIAN RAILWAYS TENDERS

By an order dated June 09, 2022, CCI has penalized seven enterprises for indulging in cartelization and bid-rigging in violation of Section 3 of the Act which proscribes anti-competitive agreements. The case was initiated based on a lesser penalty application filed by one of the cartel members.

CCI found 7 companies/ firms to have indulged in cartelization in the supply of Protective Tubes to the Indian Railways by means of directly or indirectly determining prices, allocating tenders, controlling supply and market, co-ordinating bid prices, and manipulating the bidding process. The evidence in the matter included regular email communications between the parties and filing of bids from the same IP addresses by certain parties, etc. Further, 10 individuals belonging to these entities were also held by the CCI to be liable for the anti-competitive conduct of their respective companies/ firms, in terms of the provisions of Section 48 of the Act.

CCI imposed penalties at 5% of the average turnover/ income upon the companies/ firms and certain individuals found guilty of violating the provisions of the Act besides issuing a cease-and-desist order. However, the benefit of a reduction in penalty (by 100%) was given to the lesser penalty applicant under the provisions of Section 46 of the Act.

DSK View: Under Section 46 of the Act, a cartel member may approach CCI by filing an application seeking a lesser penalty, in return for providing full, true, and vital disclosures in respect of the alleged cartel to CCI. CCI has been very prudent while dealing with all leniency and lesser penalty applications filed before them by various enterprises. Observing the

pattern and given CCI's recent orders, anti-competitive activities in railway tenders are being closely monitored by CCI.

COMBINATIONS APPROVED

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

- **June 14, 2022** – Acquisition of 24.98% shareholding of **IIFL Wealth Management Limited** by **BC Asia Investments X Limited**.
- **June 14, 2022** – Acquisition of equity share capital of **AirAsia (India) Pvt. Ltd.** (“AirAsia India”) by **Air India Ltd.** (“Air India”) an indirect wholly-owned subsidiary of Tata Sons Pvt. Ltd. (“TSPL”). Air Asia India is a joint venture between TSPL and Air India Investment Limited with TSPL presently holding 83.67% and AAIL holding 16.33% of the shareholding.
- **June 14, 2022** – Acquisition of the global biosimilars portfolio of **Viatrix Inc.** by **Biocon Biologics Limited** and an equity infusion in Biocon Biologics by **Biocon Ltd.** and **Serum Institute Life Sciences Private Limited**. The merger of two subsidiaries of Biocon Ltd. and Serum

Institute Life Sciences was announced by the companies in September 2021.

- **June 14, 2022** –Corporate restructuring of **GlaxoSmithKline Consumer Healthcare Holdings (No.2) Limited** (“JVCO”) including acquisition by **Haleon** (a new entity) via demerger and the share exchange steps involving the shareholders of JVCO.
- **June 30, 2022** – Acquisition of a minority and non-controlling stake of 1.28% of the equity share capital of **Bharti Airtel Limited by Google International LLC**. The transaction also involves certain commercial arrangements between the parties.

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 to ease of doing business in India.



HEINZER M. KNEIP C.
SUI + GER
ET
130:11 11



ELEMENTS OF SECTION 11(6) OF THE A&C ACT⁶ NEED TO SATISFIED BEFORE REFERENCE:

Recently the Bombay High Court in the case of *D.K. Infrastructure Pvt. Ltd v. Kishore Agarwal and Anr.*⁷, interpreting the judgment of the Hon'ble Supreme Court in *DLF Home Developers Limited V/s. Rajapura Homes Pvt. Ltd. And Anr.*⁸ held that the scope of inquiry under Section 11(6) of the A&C Act is extremely limited and the Court has to examine the existence of the arbitration agreement, and, the Court can decline to make a reference to arbitration only when the arbitration agreement exists, but the dispute is non-existent and has become deadwood.

In the above case, disputes arose out of the Share Purchase Agreement dated 29.06.2017 ("**Agreement**"), executed between the parties wherein it provided that Respondents would purchase shares from the Petitioner Company, one Mr. Sandip Hirani and Mr. Suresh Hirani who jointly are 100% shareholders of the Jalore Jaswantpura BOT Project Private Limited (**the 'JJBP' Company**"). As the Respondents refused to accept service of Petitioner's notice invoking arbitration, the Petitioner was constrained to approach the Hon'ble High Court under Section 11(6) of the A&C Act seeking appointment of the Arbitrator ("**Application**").

The Respondents opposed Petitioner's application on three grounds namely, the dispute between the Petitioner and the Respondent No.1 does not arise out of the Agreement secondly the Petitioner has no claim against Respondent No. 2, and lastly, if at all there is a dispute, it is between the Petitioner and JJBP Company and Respondents cannot be made personally liable as not case for the lifting of corporate veil is pleaded. However, rejecting the objections of the

Respondents and in line with the judgment of the Hon'ble Supreme Court in *Renusagar Power Co. Ltd. v. General Electric Company and Anr.*⁹, the Single Bench of Justice N.J. Jamadar held that the Agreement is the genesis of the all the disputes between the parties. The Hon'ble Court at *para* 32 also recorded its satisfaction that the disputes have arisen from the Agreement and *prima facie* amenable to the arbitration, even though the same is to be decided by the Arbitral Tribunal.

The above judgment provides an immense boost to the landscape of ADR¹⁰ in India and also minimizes the interference of the court in the arbitrability of the dispute.

COURT CAN PASS AN ORDER OF INTERIM MEASURES UNDER SECTION 9 OF THE A&C ACT AGAINST A THIRD PARTY

The Bombay High Court in the case of *Choice Developers versus Pantnagar Pearl CHS Ltd. & Ors.*¹¹, has reiterated that the scope of section 9 of A&C Act does not prevent the court to pass an order against a third party who is impleaded in the petition.

Following the law as propounded in by the division bench in *Girish Mulchand Mehta & Anr. vs. Mahesh S. Mehta*¹², the Single Judge Bench comprising of Hon'ble Mr. Justice G.S. Kulkarni held that even though the jurisdiction of section 9 of the A&C Act can only be invoked by the party to the arbitration agreement, but the Court is free to exercise the power under section 9 of the A&C Act power for making appropriate order against a third party impleaded in a petition. The Hon'ble Court further held that Section 9 does not limit the jurisdiction of the Court to pass an order only

⁶ Arbitration and Conciliation Act, 1996

⁷ ARBITRATION APPLICATION NO.59 OF 2022

⁸ 2021 SCC Online SC 781

⁹ (1984) 4 SCC 679

¹⁰ Alternate Dispute Resolution (ADR)

¹¹ ARBITRATION PETITION (L) NO. 7966 OF 2022

¹² 2010(2) Mh. L.J

against a party to the arbitration agreement or arbitral proceedings but also empowers it to pass orders even against persons who are not a party to the agreement but have been impleaded in the petition.

The above case pertained to the redevelopment of a 50-year-old dilapidated building of Respondent No.1, wherein 26 out of 30 members agreed to the redevelopment plan and vacated their premises in favour of the Petitioner. However, the Respondents Nos.2-4 refused to vacate their respective premises. The Hon'ble Court while allowing the application also reiterated the settled position as laid down in *Girish Mulchand Mehta (supra)* and other plethora of judgments that the minority members cannot act against the will of the majority members of the society and obstruct the redevelopment.

DISPUTES UNDER NATIONAL HIGHWAY AUTHORITY ACT, 1956 REGARDING COMPENSATION PAYABLE FOR LAND ACQUISITION ARE UNDER THE PURVIEW OF THE ARBITRATOR APPOINTED BY THE CENTRAL GOVERNMENT

The Punjab and Haryana HC in the case of *National Highway Authority of India Versus The Competent Authority, Land Acquisition-cum-District Revenue Officer, Ludhiana and others, with connected matters*, threw light on the powers of Arbitrator under section 3G of the National Highway Act, 1956 wherein it held that the Arbitrator has been conferred with the same powers as are available to the Reference Court appointed under the Land Acquisition Act, 1894 or the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

A Single Judge Bench comprising of Hon'ble Mr. Justice Anil Kshetarpal further held that ultimately, the dispute between the parties with respect to the correct assessment of the nature of the land as well as its market value is under the preview of the Arbitrator appointed by the Central Government.

The above judgment yet reiterates the commitment of the courts in India to provide minimal interference wherein the appointment of an arbitrator is provided for settlement of the same.

SUPREME COURT DECIDES WHETHER THE ADJUDICATING AUTHORITY (NCLT) OR THE APPELLATE AUTHORITY (NCLAT) CAN SIT IN AN APPEAL OVER THE COMMERCIAL WISDOM OF THE COMMITTEE OF CREDITORS?

The Hon'ble Supreme Court of India, in the matter of *Vallal RCK v. M/s Siva Holdings*¹³, has held that Section 12A of the IBC have been made more stringent as compared to Section

30(4) of the IBC. Whereas under Section 30(4) of the IBC, the voting share of CoC for approving the Resolution Plan is 66%, the requirement under Section 12A of the IBC for withdrawal of CIRP is 90%. When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.

UNDER 'RIGHT OF SUBROGATION' GUARANTOR IS ENTITLED TO INITIATE CIRP AGAINST PRINCIPAL BORROWER

The National Company Law Tribunal ("NCLT"), Kolkata Bench, comprising of Shri Rohit Kapoor (Judicial Member) and Shri Harish Chander Suri (Technical Member), while adjudicating a petition filed in *Orbit Towers Pvt. Ltd. v Sampurna Suppliers Pvt. Ltd.*¹⁴ has held that if a Guarantor pays the debt on behalf of the Principal Borrower, then it steps into the shoes of the Creditor and can initiate Corporate Insolvency Resolution Process ("CIRP") against the Principal Borrower. The order was passed on 27.06.2022.

CORPORATE DEBTOR CANNOT BE DRAGGED INTO CIRP MALA FIDE FOR ANY PURPOSE OTHER THAN RESOLUTION OF INSOLVENCY

The National Company Law Tribunal ("NCLT"), Mumbai Bench, comprising of Justice P. N. Deshmukh (Judicial Member) and Mr. Kapal Kumar Vohra (Technical Member), in the matter of *Gateway Offshore Private Limited and Anr. v Runwal Realtors Private Limited*¹⁵, has held that a written contract cannot be treated as a pre-requisite to prove the existence of a financial debt and the Adjudicating Authority must be satisfied that the Corporate Debtor is not being dragged into Corporate Insolvency Resolution Process ("CIRP") mala fide for any purpose other than the resolution of the Insolvency. The order was passed on 10.06.2022

NCLT HAS POWER TO RECALL ITS ORDER: NCLAT

The National Company Law Appellate Tribunal (NCLAT) bench comprising of Justice Rakesh Kumar Jain and Mr. Alok Srivastva, in the matter of *Printland Digital (India) Pvt. Ltd. versus Nirmal Trading Company*,¹⁶ recently held that the National Company Law Tribunal has the power to recall its order of closing the right to file reply. NCLAT held that there is a difference between recalling an order and review

¹³ 2022 SCC Online SC 717
¹⁴ C.P (IB) No. 2046/KB/2019
¹⁵ CP (IB) 954/MB/C-I/2019

¹⁶ Company Appeal (AT) (Insolvency) No. 504 of 2022

of an order where an issue is decided on merit by the Tribunal. The NCLAT further clarified THAT No doubt that the Adjudicating Authority has no jurisdiction to review its order after deciding a substantial issue but it has the jurisdiction to

recall the order of the kind in dispute i.e., where the right to Reply was closed by an order on the ground that the opportunities granted were not availed."

EMPLOYMENT LAW

ENFORCEMENT OF MEDICAL BENEFITS IN BALAJI DISTRICT OF ASSAM

The Employees' State Insurance Corporation, vide its notification dated June 1, 2022, has extended the medical benefit as laid down in the Regulation 95-A of the Employees' State Insurance (General) Regulations, 1950 and the Assam Employees' State Insurance (Medical Benefits) Rules, 1958 to the families of insured persons in the entire region of Balaji district in the state of Assam with effect from June 1, 2022, in addition to the already implemented area in the district.

GOVERNMENT OF TAMIL NADU ALLOWS SHOPS AND ESTABLISHMENTS TO OPERATE 24x7

The State Government of Tamil Nadu vide its order dated June 2, 2022, has permitted all shops and commercial establishments to remain open 24x7 on all days of the year for a period of 3 (three) years with effect from June 5, 2022. The Government, however, has laid down the following conditions:

- Every employee shall be given 1 (One) day holiday in a week on rotation basis, and the details of every employee shall be provided in 'Form S' added to the Tamil Nadu Shops and Establishments Rules, 1948 and shall be exhibited by the employer in a conspicuous place in the establishments.
- The employer shall exhibit details of the employees who are on holiday/leave, on daily basis, in a conspicuous place in the establishments and the wages including overtime wages of the employees shall be credited to their savings bank account.
- Every employer employing women employees shall constitute Internal Complaints Committee against sexual harassment of women under the Sexual

Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Central Act 14 of 2013) and the said Committee shall be operative.

- Women employees shall not be required to work beyond 8.00 PM on any day in normal circumstances:

Provided that the employer after obtaining written consent of the women employees shall allow them to work between 8.00 PM and 6.00 AM, subject to providing adequate protection of their dignity, honour and safety.
- Transport arrangements shall be provided to the women employee who works in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport.
- An employer shall not require or allow any person employed to work therein for more than 8 (Eight) hours in any day and 48 (Forty Eight) hours in any week and the period of work including over time shall not exceed 10 (Ten) and a half hours in any day and 57 (Fifty Seven) hours in a week.
- Further the employees shall be provided with restroom, wash room, safety lockers and other basic amenities.
- In the case of violation of any statutory provision or any of the above terms and conditions noticed by the Inspector or otherwise, necessary penal action will be initiated against the employer/manager as laid down in the Tamil Nadu Shops and Establishments Act, 1947 and the Tamil Nadu Shops and Establishments Rules, 1948.

GOVERNMENT OF HARYANA NOTIFIES STANDARD OPERATING PROCEDURE FOR VARIOUS MANUFACTURING PROCESSES IN THE FACTORIES

The State Government of Haryana, Labour Department, vide its notification dated June 3, 2022, has notified the Standard Operating Procedure (“SOP”) for the factories, in order to minimize the fire accidents and the dangerous occurrences in the factories, where the hazardous chemicals, gases and other flammable substances are being used. The SOP is prepared in accordance with the prescribed schedules defined under the rules framed under the Factories Act, 1948, and are displayed at the departmental website, i.e., www.hrylabour.gov.in, for all the stake holders, so as to follow these procedures while doing manufacturing activities.

Further, all the factory owners/ stakeholders are advised to carry out their manufacturing process safely and in accordance with the SOP. After 60 (Sixty) days from the date of the above-mentioned advisory, the officers of the Labour Department may inspect/check the status of compliance.

DECLARATION OF RATE OF INTEREST FOR EMPLOYEES’ PROVIDENT FUND ACCOUNT

The Employees Provident Fund Organisation, vide its notification dated June 3, 2022, has conveyed the approval of the Ministry of Labour and Employment pertaining to the rate of interest for the Employees’ Provident Fund Members Account for the financial year 2021-22 at the rate of 8.10% (Eight point Ten Percent) for the financial year 2021-22 to the account of each member of the Employees’ Provident Fund Scheme, 1952.

DECLARATION OF MINIMUM WAGES FOR THE STATE OF KERALA

Government of Kerala vide its notification dated June 9, 2022 has declared the consumer price index numbers for agricultural labourers and industrial workers for the month of April, 2022.

CONDITIONS FOR EMPLOYING WOMEN DURING NIGHT SHIFTS UNDER THE PUNJAB SHOP AND COMMERCIAL ESTABLISHMENT ACT, 1958

The State Government of Haryana, Labour Department, vide its notification dated June 7, 2022, has notified certain conditions for employing women during nights shifts in IT, ITEs, Banking establishments, three star or above hotel, logistics and warehousing establishments.

The Government has laid down the following conditions which are to be adhered to while employing female workers during the night shift under the Punjab Shop and Commercial Establishment Act, 1958:

- It shall be the duty of the employer or other responsible persons at work places or institutions to prevent/deter the commission of acts of sexual harassment and to provide the procedures for a resolution, statement or prosecution of acts of sexual harassment by taking all steps required as per the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The employer/occupier must submit a copy of annual return which is to be submitted to the district authority and also to the labour commissioner, Haryana.
- The employer shall maintain a complaint redressal mechanism in the shop/establishment itself and the said mechanism should ensure time-bound treatment of complaints. Such mechanism should be at any rate to provide, when necessary, a complaint committee, a special counsellor or other support services including the maintenance of confidentiality.
- The female employees should be allowed to raise issues of sexual harassment to workers in the workers’ meeting and other appropriate forums, either in written or in electronic form or through a complaint box.
- The female employee should be made aware of their rights in particular by prominently notifying the guidelines on the subject.
- In case of any criminal case the employer shall initiate appropriate action in accordance with the penal law without delay and also ensure that victims or witnesses are not victimised or discriminated while dealing with the complaints of sexual harassment and wherever necessary, at the request of the affected worker, shift or transfer the perpetrator, if circumstances so warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment.
- The employer shall provide proper lighting not only inside the shop/establishment, but also surrounding of the shop/establishment and to all places where the female workers may move out of necessity in the course of such shift.
- Declaration/consent from each women worker including security guard, supervisors, shift- in-charge or any other women staff to work during night shift i.e. between 7.00 PM to 6.00 AM shall be obtained and a copy of the same shall be forwarded to the Labour Commissioner, Haryana.

- Separate canteen facility shall be provided for the female employees, if number of female employees are more than 50 (Fifty).
- The employer shall provide transportation facility to the women workers from their residence and back (for the night shift) and security guards (including female security guard) and each transportation vehicle shall also be equipped with CCTV cameras.
- During night shift not less than 1/3rd (one third) of strength of the supervisors or shift-in-charge or other supervisory staff shall be women.
- The employer shall send a half yearly report to the Labour Commissioner Haryana about the details of employees engaged during night shifts and shall also send immediate report, whenever there is some untoward incident, to the Labour Commissioner and local Police Station as well.

ORDER REGARDING EXEMPTION OF ADULT WORKERS OF TEA FACTORIES UNDER FACTORIES ACT, 1958 IN ASSAM

The Office of Chief Inspector of Factories, Assam, vide its notification dated June 8, 2022, has issued an order exempting adult workers of the tea factories in the state of Assam from the provision of Section 51, 54, and 56, which regulate weekly hours, daily hours, and spread over, respectively, of the Factories Act, 1948, for a period of 4 (Four) months with effect from July 2022 to October 2022 to deal with the exceptional pressure of work during the peak of the manufacturing season subject to the following conditions:

- Total number of hours of work in any day shall not exceed 12 (Twelve) hours;
- The spread over of work, inclusive of intervals for rest shall not exceed 13 (Thirteen) hours in any day;
- The total number of hours of work in any week, including overtime should not exceed 60 (Sixty) hours; and
- No worker shall be allowed to work overtime for more than 7 (Seven) days at a stretch and the total number of hours of overtime work on any quarter shall not exceed 75 (Seventy Five) hours.

DRAFT PROPOSAL TO REVISE RATES OF MINIMUM WAGES IN BIHAR

The State Government of Bihar, vide its notification dated June 10, 2022, has notified the draft proposal to revise the minimum rates of wages fixed for certain categories of

employees employed in the state of Bihar and has invited objection or suggestion from the public within a period of 2 (Two) months from the date of publishing the notification, i.e., June 10, 2022.

The minimum wages have been revised on the suggestion made by the minimum wage advisory board on March 23, 2022 by adding 15% (Fifteen Percent) additionally after the 34% (thirty four percent) neutralization in the consumer price index, so that actual wages may increase.

The revised rate of wages for unskilled workers shall be INR 366 (Rupees Three Hundred and Sixty Six) per day and INR 380 (Rupees Three Hundred and Eighty) for Semi-skilled, INR 468 (Rupees Four Hundred and Sixty Eight) for Skilled and INR 566 (Rupees Five Hundred and Sixty Six) for Highly-skilled are the new wage rate. Conversion of the monthly rate of wages into daily rates of wages and vice-versa shall be worked out by dividing the monthly rates by 26 (Twenty Six) and by multiplying the daily rates by 26 (Twenty Six).

Further the above proposed rates of minimum wages to include the remuneration payable to the employee in respect of the day of rest in every period of 7 (Seven) days. Men and women workers shall get the same rates of wages for the same work or a similar nature. In addition to this, an employee shall, for the work done on the weekly day of rest, be entitled to overtime payment as the rate prescribed in Rule 25 of the Bihar Minimum Wages Rule, 1951.

EXTENSION OF THE PUBLIC UTILITY SERVICE STATUS OF URANIUM INDUSTRY

The Ministry of Labour and Employment, vide its notification dated June 16, 2022, has extended the public utility service status to services engaged in the uranium industry which is covered under the Industrial Disputes Act, 1947. The Ministry had earlier granted extension for a period of 6 (Six) months from December 19, 2021. This has been extended for a further period of 6 (Six) months with effect from June 19, 2022.

EXTENSION OF PUBLIC UTILITY SERVICE STATUS OF DEFENSE ESTABLISHMENTS

The Ministry of Labour and Employment, vide its notification dated June 16, 2022, has extended the status of public utility service enjoyed by the defense establishments. The Ministry had lastly declared the said industry to be a public utility service for the purposes of the Industrial Disputes Act, 1947 for a period of 6 (Six) months from December 24, 2021. However, due to the opinion that in public interest the extension of the public utility service status to the said industry is required, therefore, it has been extended for a further period of 6 (Six) months with effect from June 24, 2022.

EXTENSION OF APPLICABILITY OF ESI ACT TO THOOTHUKUDI DISTRICT IN THE STATE OF TAMIL NADU

The Ministry of Labour and Employment, vide its notification dated June 24, 2022, has made certain provisions of the Employees State Insurance Act, 1948 ("**ESI Act**") applicable to Thoothukudi district in the state of Tamil Nadu which shall come in force starting from July 1, 2022. The following provisions of ESI Act have been made applicable in the above mentioned district:

- Sections 38, 39, 40, 41, 42, 43 and sections 45A to 45H of chapter IV of the ESI Act;
- Sections 46 to 73 of chapter V which deals with benefits provided to the employees covered under ESI Act; and
- Sections 74, 75, 76(2), 76(4), 80, 82 and 83 of chapter VI of the ESI Act, which deal with adjudication of dispute and claims.



ENERGY

POSOCO SIGNS MOU WITH IMD FOR BETTER ELECTRICITY GRID MANAGEMENT

The National grid operator Power System Operation Corporation (POSOCO) on June 3, 2022 signed a memorandum of understanding with India Meteorological Department (IMD). The parties agreed to share the weather information provided by IMD to be used by the Power System Operators across the India for better management of Indian Power System and for the purpose of analysis. IMD will ensure availability of current weather information every hour or at lesser intervals, and weather forecasts of temperature, humidity, wind speed, wind direction, rainfall up to next 36 hours for the identified stations. Also, provide the snowfall forecast of hilly States and along the route of important transmission lines passing through hilly terrains. Further, provide weather parameters forecast at Renewable Energy plant locations.

GREEN OPEN ACCESS RULES, 2022 NOTIFIED

On June 6, 2022, Green Open Access Rules, 2022 were notified which aim to promote generation, purchase and consumption of green energy including energy from Waste-to-Energy plants. The Rules will enable simplified procedure for open access to green power as well as faster approval of Green open access, Uniform Banking, Voluntary purchase of RE power by commercial & industrial consumers, Applicability of OA charges etc. Commercial and industrial consumers have been allowed to purchase green power on voluntarily basis. Further, captive consumers can take power under Green Open Access with no minimum limitation and DISCOM consumers can demand for supply of green power to them.

The salient features of the Rules are as follows:

- Green Open Access has been allowed to any consumer and limit of Open Access Transaction has been reduced from 1 MW to 100 kW for green energy, to enable small consumers to purchase renewable power through open access.
- The Rules certainty to open access charges to be levied on Green Energy Open Access Consumers which include transmission charges, wheeling charges, cross-subsidy surcharge and standby charges. Also, cap on increasing of cross-subsidy surcharge as well as the removal of additional surcharge will incentivize the consumers to go green and address the issues that have hindered growth of open access in India.
- Transparency ensured in the approval process of the open access application. Approval is to be granted within 15 days failing which it will be deemed to have been approved subject to fulfilment of technical requirements. The approval process will be through a national portal.
- Tariff for the green energy will be determined by the Appropriate Commission, which will comprise of the average pooled power purchase cost of the renewable energy, cross-subsidy charges if any, and service charges covering the prudent cost of the distribution licensee for providing green energy to the consumers.
- The Rules aim to streamline the overall approval process for granting Open Access including timely approval, to improve predictability of cash flows for renewable power producers and also bring uniformity in the application procedure.

- The Rules mandate banking of surplus green energy with the distribution licensee.
- A uniform renewable purchase obligation on all obligated entities in the area of a distribution licensee has been provided for. It also includes Green Hydrogen/Green Ammonia for fulfilment of RPO.
- Consumers will be given green certificate for consuming green power and cross subsidy surcharge and additional surcharge will not be applicable if green energy is utilized for production of green hydrogen and green ammonia.

INTEGRATION OF CONNECTIVITY AND OPEN ACCESS APPLICATIONS OF CTUIL WITH NSWS

On June 6, 2022, Central Transmission Utility of India Limited (CTUIL) integrated filing of applications for grant of Connectivity, Long Term Access and Medium-Term Open Access to Inter State Transmission System (ISTS) in India as well as to Participating Entities located in the Neighboring Countries through the National Single Window System (NSWS) portal. NSWS a 'Aatmanirbhar' initiative platform enables 'Single-point' approvals as well as clearances needed by Investors, Entrepreneurs, and Businesses in India thereby facilitating 'Ease of Doing Business' initiatives of the Ministry of Power. It is a "one-stop-shop" for approvals and clearances which aims to guide investors to identify and to apply for approvals as per their business requirements. CTUIL, a 100% subsidiary of PowerGrid Corporation of India Limited under Ministry of Power, is the Nodal Agency for grant of Connectivity, Long Term Access and Medium-Term Open Access as per Electricity Act.

INDIA ACHIEVING THE TARGET OF 10% ETHANOL BLENDING, 5 MONTHS AHEAD OF SCHEDULE

The Government of India has been promoting Ethanol Blended Petrol (EBP) Programme with the aim to enhance India's energy security, reduce import dependency on fuel, save foreign exchange, address environmental issues and give a boost to domestic agriculture sector. The 'National Policy on Biofuels' notified by the Government in 2018 envisaged an indicative target of 20% ethanol blending in petrol by year 2030. However, the government has made various interventions since 2014, in order to encourage performance and the target of 20% ethanol blending was advanced from 2030 to 2025-26. Hon'ble Prime Minister in June, 2021 released a "Roadmap for Ethanol Blending in India 2020-25" which provides a detailed pathway for achieving 20% ethanol blending. Under this roadmap, an intermediate milestone of 10% blending is to be achieved by November, 2022. However, this milestone has been achieved by the Public Sector Oil Marketing Companies (OMCs) before the target date itself. This achievement

during the course of 8 years has developed the India's energy security and translated into a forex impact of over Rs.41,500 crores, reduced GHG emissions of 27 lakh MT and also led to the expeditious payment of over Rs.40,600 crores to farmers.

EXPANSION OF UNIVERSAL SERVICE OBLIGATION BY INCLUSION OF RETAIL OUTLETS AND REMOTE AREA ROS

The Government of India had relaxed the criteria for grant of authorization for marketing of transportation fuel by issuing Resolution dated November 8, 2019, with an objective to ensure greater participation of the private sector in the fuel retail business. Simultaneously, it also ensured setting up Retail outlets (Ros) in remote areas by these entities. It has been an endeavor of the Government that for Remote area ROs the authorized entities provide quality and uninterrupted fuel supply services to the consumers by way of Universal Service Obligation (USO).

These USO include, maintaining supplies of MS and HSD throughout the specified working hours and of specified quality and quantity; making available minimum facilities as specified by the Central Government; maintaining minimum inventory levels of MS and HSD as specified by the Central Government from time to time; providing services to any person on demand within a reasonable period of time and on non-discriminatory basis and ensuring availability of fuel to the customers at reasonable prices.

The Government has, on June 17, 2022, reported that it has expanded the horizon of Universal Service Obligation (USO) by including all ROs including Remote Area ROs under their ambit. This would obligate all Authorized entities to extend the USO to all retail consumers at all retail outlets. The objective behind this expansion was to ensure a higher level of customer service in the market and to ensure that adherence to the USO forms a part of the market discipline.

ONGC VIDESH ANNOUNCES NEW DISCOVERY IN COLOMBIA

ONGC Videsh Limited (OVL), the wholly owned subsidiary and overseas arm of Oil and Natural Gas Corporation Ltd. (ONGC), the National Oil Company of India, on June 23, 2022 announced that it has made an oil discovery in the recently drilled well, Urraca-IX, in CPO-5 block, Llanos Basin, Colombia. Urraca-1X was spudded on April 20, 2022 and drilled to target depth (TD) of 10956 ft., encountering 17 ft thick oil-bearing sands at a depth from 10201ft -10218 ft. During initial testing with Electrical Submersible Pump (ESP), fluid flowed @ approx. 600 bbl./day with around 40-50% W/C and oil of 16oAPI. Oil discovery in the Lower Mirador play in this well opens up new areas for further exploration in the northern part of the block.

Previously, ONGC Videsh discovered commercial oil in the Lower Sand pay in Mariposa and Indico fields in the block in

2017 and 2018 respectively, which are currently commercially producing @ 20,000 bbl. oil per day.

Block CPO-5 was awarded to ONGC Videsh Limited in the 2008 bid round of Colombia and it holds 70% participating interest (PI) in the block along with operatorship, while remaining 30% is held by partner Geopark. ONGC Videsh with its significant presence has control over three other exploratory blocks in Colombia and joint ownership of the oil producing company Mansarovar Energy Colombia Ltd (MECL).

INFRASTRUCTURE

STANDARD OPERATING PROCEDURE FOR DEVELOPMENT OF NATIONAL HIGHWAYS PROJECTS UNDER THE PM GATI SHAKTI NATIONAL MASTER PLAN

The Ministry of Road Transport and Highways (“**MoRTH**”) vide office memorandum number NH-15017/14/2022-P&M dated June 17, 2022 (“**Office Memorandum**”) released a standard operating procedure for developing national highway projects under the PM Gati Shakti National Master Plan (“**NMP**”). Some of the key features are reproduced herein below:

- All projects having more than INR 500 crore (Rupees five hundred crore) in civil cost must be presented before the Network Planning Group (“**NPG**”) for its comments/suggestions.
- All project proponents i.e., the concerned agencies shall submit a report of the specific national highway project in the proforma format as given in the Office Memorandum with power point presentation slides and forward it to the Planning Zone for seeking convenience of NPG.
- The meeting with NPG and MoRTH shall be held at the convenience of the NPG. On receiving the notice for the meeting, the project shall be presented by the project proponent to the NPG.
- Suggestions or comments of the NPG provided during such meeting shall be incorporated within 15 (fifteen) days in the national highway projects.

CABINET APPROVES DEREGULATION OF SALE OF DOMESTICALLY PRODUCED CRUDE OIL

The Cabinet Committee on Economic Affairs on June 29, 2022 approved the ‘Deregulation of Sale of Domestically Produced Crude Oil’. It has been decided that allocation of crude oil and condensate has to be ceased from October 1, 2022 in order to ensure marketing freedom for all Exploration and Production (E&P) operators. Further, the condition in the Production Sharing Contracts (PSCs) to sell crude oil to Government or its Nominee or Government Companies will accordingly be waived off and all E&P companies will be free to sell crude oil from their fields in domestic market. However, Government revenues like Royalty, cess, etc. will continue to be calculated on uniform basis across all Contracts. This decision will incentivize economic activities, encourage investments in upstream oil and gas sector and is a part of a series of targeted transformative reforms rolled out since 2014.

- Seeking convenience of the NPG will be desirable for projects once feasibility report of the same has been finalized even if the process for its investment decision has not been initiated. Discussions must be held prior to the draft 3D notifications.
- The Office Memorandum also consists of the necessary formats of submission for consideration by NPG.

AMENDMENT TO STANDARD REQUEST FOR PROPOSAL, IN ENGINEERING PROCUREMENT AND CONSTRUCTION MODE OF CONTRACTS

MoRTH vide circular number RW/NH-35014/35/2020-H (Part IV) (Comp no. 208779) dated May 31, 2022 (“**Circular**”) amended certain clauses of the standard request for proposal (“**RFP**”) for national highways and road works to be implemented in the engineering, procurement and construction (“**EPC**”) mode of contracts. The amended clauses include:

- Clause 2.2.2.2 [Technical capacity]: Sub-clause 2.2.2.2 (ii) (that relates to technical capacity for normal highway projects) was amended to include the following eligible projects:
 - (1) widening or reconstruction or upgradation works on:
 - a) National highways/state highways/expressway or any category of road taken up under the central road fund, economic importance and interstate

connectivity scheme, special accelerated road development programme, left wing extremism areas.

- b) Major district roads with loan assistance from multilateral agencies or on build operate transfer (“BOT”) basis
 - c) Roads within municipal corporation limits, construction of bypasses.
 - d) Construction of standalone bridges, ROBs, tunnels.
 - e) Construction/reconstruction of linear projects like airport runways, railways, metro rails and ports.
- Clause 2.2.2.4 [Financial capacity of the bidder in case of the bidder being a joint venture entity]: Sub-clause 2.2.2.4 (ii) was modified to include standalone specialized projects (sub clause 2.2.2.2.(iii)) in addition to normal highway projects (sub clause 2.2.2.2 (ii)), while determining the technical capacity in eligible projects in category 1 and/ or category 3 individually by any joint venture members as a single work.
 - Clause 2.2.2.5 [Categories and factors for evaluating technical capacity]: Sub-clause 2.2.2.5 (iii)(b), the core sector eligibility was amended to include projects with the title of the road financed by the Rural Infrastructure Development Fund (RIDF), road under Pradhan Mantri Gram Sadak Yojana (PMGSY), link road, city roads, rural road, sector/municipality road, real estate projects which demonstrated road development or construction bridges or culverts.
 - Sub-clause 2.2.2.5 (III) in addition to being renumbered was modified to state that improvement in riding quality work would be considered for technical capacity but not for similar connected works as under clauses 2.2.2.2 (ii) and 2.2.2.2 (iii). The work would be considered for similar completed works as under 2.2.2.2 (ii) for maintenance works under the EPC mode.

VALIDITY OF REGULATION RELATED TO PERFORMANCE SECURITY EXTENDED

The National Highways Authority of India (“NHAI”) vide policy circular number 3.1.34/2022 dated May 31, 2022 (“Policy Circular”) has extended the validity of office memorandum number F.9/4/2020-PPD dated November 12, 2020 issued by the Department of Expenditure, Ministry of Finance (“MoF”) related to performance security wherein

the performance security had been reduced from 5%-10% (five percent to ten percent) to 3% (three percent) of the contract value up to March 31, 2023. The same is in compliance to the MoRTH notification number F/9/4/2020 dated December 31, 2021.

CLARIFICATIONS UNDER THE CRITERIA FOR ALLOCATION OF FUNDS UNDER THE CENTRAL ROAD AND INFRASTRUCTURE FUND (CRIF) ACT, 2000

MoRTH vide circular number NH-15017/46/2018-P&M dated May 30, 2022 (“Clarifications”) provided some clarifications on the criteria for allocation of funds for the development of state roads (“Criteria”) taken up under the central road and infrastructure fund (CRIF) Act, 2000. The Clarifications are briefly provided below:

- In relation to Paragraph 5(2) of the Criteria, which covers the criteria for selection of proposals, it has been clarified that identification of proposals for allocation of funds under the Criteria shall be based on the principle of corridor development approach. If adjacent stretches in a corridor area are developed or are ongoing or the fund arrangement is tied up, the balance connecting stretches may be taken up for sanction and implementation if the length is below 10 (ten) kilometers.
- Under paragraph 5(4) of the Criteria which relates to the detailing of proposed projects in the state or union territory, as per sub-section (xi), a certificate regarding the availability of the entire unencumbered land was needed for the project from the government. However, as per the Clarifications, a certification by the state or union territory government stating that they shall ensure availability of the unencumbered land as required for the project at their own cost during the project proposal submission or finalization stage by the central government shall be *inter alia* sufficient for determining the allocation of such funds under the Criteria.

MEDIA & ENTERTAINMENT



I&B MINISTRY ASKS YOUTUBE AND TWITTER TO TAKE DOWN CONTROVERSIAL DEODORANT ADVERTISEMENT

The Information and Broadcasting Ministry has asked YouTube and Twitter to take down the double entendre “Layer’r Shot” advertisement from their social media platforms on the grounds that the said advertisement is prejudicial to the portrayal of women and is in violation of the Rule 3(1)(b)(ii) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which prohibits any user from “*displaying, hosting, uploading, modifying, transmitting, storing, publishing or sharing any information which is insulting or harassing on the basis of gender*”. The Delhi Commission for Women (DCW) has also demanded a heavy penalty to be levied on the brand to set a precedent for other companies and a FIR has also been registered by the Delhi Police against the brand, on basis of DCW’s complaint. The Advertising Standards Council of India (ASCI) has also suspended the broadcasting of the advertisement on television and has initiated a special process – “*Special Pending Investigation (SPI)*” against the advertiser. Under this process, ASCI can direct the advertiser of an advertisement alleged to be prima facie in serious breach of the ASCI Code, and the continued transmission of such advertisement is against the public interest, to suspend the advertisement whilst the investigation is pending.

YASH RAJ FILMS SUBMITTED ITS RESPONSE BEFORE THE DELHI HIGH COURT, AGAINST THE ALLEGATION OF PORTRAYING “KING PRITHIVIRAJ” AS A RAJPUT KING IN THE FILM “SAMRAT PRITHIVIRAJ”

A petition was filed by the *Gurjar Samaj Sarv Sangthan Sabha Ekta Samanya Samiti*, before the Delhi High Court, against Akshay Kumar starrer film *Samrat Prithviraj*, alleging that King Prithviraj Chauhan was a Gurjar ruler, but the film portrays the monarch as a Rajput king. In response to this submission, the producers Yash Raj Films (YRF), notified the

Court that the film is caste-neutral and does not portray King Prithviraj Chauhan as a Rajput or Gurjar. According to the Defendants, the film focuses only on honouring the Indian warrior and monarch, “*the film is caste-neutral, and the protagonist is intended to represent an Indian king. There is no indication that King Prithviraj belonged to either the Rajput or Gurjar communities.*” After hearing the arguments of the Parties, the Court dismissed the Petition however, made this clear that the Defendants shall remain bound by their statement. Further, the film was earlier titled *Prithviraj*, however, subsequent to multiple challenges stating that the title disrespects and lowers the dignity of the monarch, the title of the film was revised to *Samrat Prithviraj*.

GOVERNMENT ISSUES NEW GUIDELINES TO CURB MISLEADING ADVERTISEMENTS AND ENDORSERS BY BANNING SURROGATE ADS

The Central Consumer Protection Authority (CCPA) under the Department of Consumer Affairs has notified the “*Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022*” with the objective of protecting consumers from getting exploited and fooled by misleading and unsubstantiated claims, exaggerated promises, misinformation and false claims of advertisers. The guidelines further enumerate certain factors to be considered while publishing advertisements specifically targeting children. In the event of any claims being made in the advertisements based on or supported by any research or assessments, the guidelines have made it compulsory for the advertisers to indicate the source and date of such research and/or assessments. The guidelines have further recognised the necessity for undertaking due diligence by the endorsers of an advertisement, which was earlier issued as an advisory, under the “*Guidelines for Influencer Advertising in Digital Media*”, by the Advertising Standards Council of India (ASCI).

DELHI HIGH COURT RESTRAINS ROUGE TORRENT WEBSITES UNAUTHORIZEDLY DISTRIBUTING, BROADCASTING AND TRANSMITTING WARNER BROS CONTENT

Warner Bros in a plea filed before the Court claimed that upon investigating, they came across these rouge websites unauthorizedly streaming and downloading original cinematograph films copyrighted under the name of Warner Bros. The Complainant submitted before the Court that a cease and desist notice was further served on the rouge websites however, despite the legal notice the Defendants continued infringing the copyrights of the Complainants. After reviewing the submissions of the Complainants, the Court opined that the suit is eligible to be decided summarily as the Defendants were not represented and held that *“the Defendants did not have any real prospect of successfully defending the copyright infringement claim and they have chosen not to contest the said claim further”*. Based on the evidence placed on record by the Complainants, the Court held the Defendants as *“rouge websites”* and passed a permanent injunction invoking Order XIII A of the Code of Civil Procedure.

CENTRAL GOVERNMENT ISSUES ADVISORY AGAINST ADVERTISEMENTS PROMOTING ONLINE BETTING

In light of certain instances of advertisements related to online betting websites/platforms appearing in print, electronic, social and online media, the Information and Broadcasting Ministry (I&B) has issued an advisory to the media asking them to stop carrying advertisements of online betting platforms, as betting and gambling is prohibited and considered to be illegal in most parts of the country. Further I&B in the advisory stated that these advertisements were misleading and were not in conformity of the provisions of the Consumer protection Act, 2019, Advertising Code under the Cable Television Networks Regulation Act, 1995, advertising norms under the Norms of Journalistic Conduct laid down by the Press Council of India under the Press Act, 1978. The Ministry in the year 2020, had issued a similar advisory to private satellite TV channels to adhere to the ASCI guidelines on advertisements of online gaming.

BOMBAY HIGH COURT RESTRAINED GERMAN PERSONAL CARE BRAND SEBAMED FROM AIRING DISPARAGING ADVERTISEMENTS

In a plea filed by Hindustan Unilever Ltd. (HUL) against *“Sebamed”*, the Bombay High Court passed an interim injunction restraining the German Brand from airing advertisements that compared the pH value of the German Brand’s soap with that of HUL’s brand Dove, Lux and Pears. In January 2021, HUL had filed a suit before the Bombay High Court against Sebamed after the German Brand launched an advertising campaign comparing the HUL’s soap brands with the detergent brand *“Rin”*, alleging that the beauty soaps did not maintain the optimal pH level i.e. 5.5 required for skin

products. The Petitioners submitted that the German Brand unfairly sought to discredit HUL’s soap brands. The Court while granting the interim relief held that the *“German company cannot be allowed to continue to advertise in a manner that disparages or belittles the products of Hindustan Unilever”*.

RANCHI COURT DISMISSES A COPYRIGHT INFRINGEMENT CASE FILED AGAINST THE MAKERS OF THE FILM “JUGJUG JEEYO”

A Ranchi-based writer, Vishal Singh had filed a suit against Dharma Productions, the makers of the film *“JugJug Jeeyo”* alleging copyright infringement. The Petitioner claimed before the Court that the content of his story titled *“Bunny Rani”* was exploited by the makers in the Film without according any acknowledgment to the writer. The Petitioner submitted before the court that he had shared his story with the Defendants however, the same was discarded by the Defendants after finding it not suitable to be turned into a feature film. Later on, the Plaintiff found resemblances of the Film’s trailer with his script. The Plaintiff had demanded the Court to stay the release of the Film and to further award him damages of Rs. 1.5 crore. Following the court screening, Justice M C Jha was of the view that it is not possible for a person to reach a conclusion about similarity merely on the basis of one-page story with the minute’s trailer of the Film. The Court dismissed the Plaintiff’s claim and allowed the release of the Film as per schedule.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR) ISSUES DRAFT GUIDELINES FOR CHILDREN EMPLOYED IN THE ENTERTAINMENT INDUSTRY

Replacing the earlier regulatory guidelines of 2011, the apex body for child rights, NCPCR has issued draft guidelines for the employment of children in the entertainment industry, which include the provisions of the new laws and amendments such as the Juvenile Justice Act, 2015, Child Labour Amendment Act, 2016, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, etc. The draft guidelines require the producers to seek permission from the District Magistrate before engaging children for a film/series. The Magistrate after inspecting the worksite shall issue a permit, valid for a period of 6 months. Further, the guidelines direct the producer not to cast any children in a role where they are exposed to public ridicule, insult, harsh comments and not to be shown consuming alcohol, smoke or display nudity. Proper recreational and rest facilities to be provided to children on sets. Working hours not to go beyond a fix limit of 6 hours. The producer shall need to further ensure that the education of the children is not getting affected due to their engagement and shall be provided with tutors while they are missing school.

ANDHRA PRADESH HIGH COURT IN A PETITION FILED BY FILM EXHIBITORS RESERVED THE STATE GOVERNMENT'S NOTIFICATION TO SELL TICKETS ONLINE THROUGH ITS PORTAL "YOUR SCREENS"

In a plea filed by film exhibitors and multiplex owners, including Book My Show, Vijaywada Exhibitors Association and others, against the government's order on the online sale of movie tickets through a web portal "Your Screens", launched by the Andhra Pradesh Film Development Corporation, the Court has reserved the government's order and put a stay on its implementation. The state government had submitted before the Court that the move was undertaken to ensure transparency in the whole exercise and to avoid tax evasion. In response to this, the Petitioners submitted that the cost of the tickets to be sold on the government portal will be low as compare to those sold by private aggregators which could result in these exhibitors and distributors losing money. The Court has adjourned the next hearing in the matter for July 27, 2022.

INFRINGEMENT SUIT FILED AGAINST PARAMOUNT PICTURES FOR ITS FILM "TOP GUN: MAVERICK"

Ehud Yonay's family, whose essay inspired the 1986 film Top Gun, is suing Paramount Pictures for copyright infringement, claiming that Paramount failed to reacquire the rights to Yonay's article Top Guns. According to a case filed in Federal

Court in Los Angeles, Shosh and Yuval Yonay, the heirs of Ehud Yonay, claimed that they notified Paramount in January 2018 that they would recover the copyright in January 2020. The Yonay's further claimed that Top Gun: Maverick, the sequel to Top Gun, did not complete production in 2019, prior to the copyright transfer, but rather in May 2021. The lawsuit seeks unspecified damages, including some profits from Top Gun: Maverick and to block Paramount from distributing the film or further sequels.

ED SHEERAN AWARDED OVER USD 1.1 MILLION IN LEGAL FEES FOR THE COPYRIGHT SUIT FILED AGAINST HIS SINGLE "SHAPE OF YOU"

After winning the suit filed against the singer in 2017 by grime artist Sami Chokri and his co-writer Ross O' Donoghue alleging copyright infringement by the singer and his songwriters Steve McCutcheon and Johnny McDaid of Chokri's song "Oh Why" released in 2015, the High Court judge in London, Antony Zcaroli had ordered an interim payment of USD 1.1 million to Ed Sheeran and others as reimbursement of the legal fees incurred by them. The directions have been issued in consequence of the ruling in the 11-day trial which held that the singer "neither deliberately nor subconsciously" plagiarised the Plaintiff's song. However, the damages shall be subject to the actual assessment by another judge, of the costs and damages due.



THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2022

The MCA, *vide* its notification dated June 1, 2022 (accessible [here](#)), has issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 ("**AQD Amendment Rules**") amending the Companies (Appointment and Qualification of Directors) Rules, 2014, ("**AQD Rules**"). The AQD Amendment Rules has come into effect from June 1, 2022.

As per the AQD Amendment Rules, a new proviso has been inserted in Rule 8 (Consent to act as a director) of the AQD Rules which states that if a person seeking appointment as a director in a company is a national of a country sharing land borders with India, he/she is required to attach a security clearance from Ministry of Home Affairs of Government of India ("**MHA**") ("**NC Approval**") with the consent being furnished to the company in Form DIR-2.

Further, as per the AQD Amendment Rules, a new proviso has been inserted in Rule 10 (Allotment of DIN) of the AQD Rules which states that no application number shall be generated in case a person applying for a Director Identification Number (DIN) is a national of a country that shares a land border with India, unless NC Approval has been attached along with an application for DIN in Form DIR-3.

Consequently, pursuant to the ADQ Amendment Rules, the Form DIR 2 and Form DIR 3 have been amended to include the requirement of the applicant to make the declaration as per any one of the two options below:

- Applicant is *not* required to obtain the NC Approval prior to seeking appointment as a director; **OR**
- Applicant is required to obtain the NC Approval prior to seeking appointment as a director and the same has

been obtained and is enclosed along with the Form DIR-2.

THE COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) AMENDMENT RULES, 2022

The MCA, *vide* its notification dated June 9, 2022 (accessible [here](#)), has issued the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 ("**CR Amendment Rules**") amending the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 ("**CR Rules**"). The CR Amendment Rules has come into effect from June 9, 2022.

As per the CR Amendment Rules, a new sub-rule (4) in Rule 4 (Application for removal of name of company) of CR Rules has been inserted, which provides following revisions to the procedure for the voluntary striking off the name of a company:

- Where a Registrar of Companies ("**ROC**") finds any information in any document or application of Form STK-2 (Application by company to ROC for removing its name from register of Companies) as defective or finds the need for additional information, it can send it back to the applicant to rectify the defect within 15 (fifteen) days. If the applicant fails to do so, the ROC shall treat the form as invalid in the electronic records and inform the same to the applicant.
- After re-submission of the Form STK-2, if the ROC finds further defects or that the form is incomplete, it shall give a further time period of 15 (fifteen) days to rectify such defects and complete the form, failing which, the ROC shall treat the form as invalid in the electronic records and inform the same to the applicant.

- If any application in Form STK-2 (Application by company to ROC for removing its name from register of Companies) is re-submitted before the commencement of CR Amendment Rules, it shall not be taken into consideration for counting the maximum number of times for re-submission of such application.

Further, as per the CR Amendment Rules, the following forms have also been substituted with newer versions:

- Form STK 1, being the notice served by the ROC intimating its decision to remove the name of the company from the ROC on a *suo-motu* basis and seeking representation from the company and its directors within 30 (thirty) days of such notice;
- Form No. STK – 5, being a public notice issued by the ROC in case of voluntary application for striking off being made by a company; and
- Form STK 5A, being a public notice issued by the ROC in case the name of the company is being removed by ROC on a *suo-motu* basis.

The aforesaid forms have been amended to insert an additional reason in the format of the notice that may be issued by the ROC (which specifies the reason for striking off), being that the subscribers to the memorandum of association of the company have not paid the subscription monies which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 (one hundred and eighty) days of its incorporation as mentioned under sub-section (1) of section 10A (Commencement of business etc.) of the Companies Act, 2013.

THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) SECOND AMENDMENT RULES, 2022

The MCA, *vide* its notification dated June 10, 2022 (accessible [here](#)), has issued the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022 (“**AQD Second Amendment Rules**”) amending the AQD Rules. The AQD Second Amendment Rules has come into effect from June 10, 2022.

Rule 6 of the AQD Rules specifies the compliances required by a person who is eligible and willing to be appointed as an independent director. Sub-rule (4) of Rule 6 provides that every individual whose name is included in the databank is required pass an online proficiency self-assessment test conducted by the Indian Institute of Corporate Affairs at Manesar (“**Institute**”) within a period of 2 (two) years from the date of inclusion of his/her name in the databank, failing which, his/her name shall stand removed from the databank of the Institute.

As per the AQD Second Amendment Rules, a new sub-rule (5) of Rule 6 has been inserted to enable restoration of the name of an individual whose name has been removed from the databank as per sub-rule (4) of Rule 6 mentioned above, by paying a fee of INR 1,000 (Rupees One Thousand), and such restoration shall be subject to the following 2 (two) conditions-

- His/her name will be shown in a separate restored category for a period of 1 (one) year within which he/she will be required to take a proficiency self-assessment test, and after passing the test, his/her name will be included in the databank. The fees paid at the time of initial registration of such person shall continue to be valid for the period for which it was initially paid.
- In case he/she fails the proficiency self-assessment test within 1 (one) year, his/her name will be removed from the databank, and he/she will be required to apply afresh under the procedure mentioned above.

NATIONAL FINANCIAL REPORTING AUTHORITY AMENDMENT RULES, 2022

The MCA, *vide* its notification dated June 17, 2022 (accessible [here](#)), has issued the National Financial Reporting Authority Amendment Rules, 2022 (“**NFRA Amendment Rules**”) to amend the National Financial Reporting Authority Rules, 2018 (“**NFRA Rules**”). The NFRA Amendment Rules has come into effect on June 17, 2022.

Earlier, upon contravention of the NFRA Rules, Rule 13 (Punishment in case of non-compliance) of NFRA Rules provided for general penalty to be levied as per Section 450 (Punishment Where No Specific Penalty or Punishment is Provided) of the Companies Act, 2013. The aforesaid section provides that the company and every officer of the company who is in default or such other person is liable to a penalty of INR 10,000 (Rupees Ten Thousand), and in case of continuing contravention, with a further penalty of INR 1,000 (Rupees One Thousand) for each day after the first day during which the contravention continues, subject to a maximum of INR 2,00,000 (Rupees Two Lakhs) in case of a company and INR 50,000 (Rupees Fifty Thousand) in case of an officer who is in default or any other person.

Now, as per the NFRA Amendment Rules, Rule 13 has been amended, to provide that whoever contravenes the provisions of the NFRA Rules shall be punishable with a fine of INR 5,000 (Rupees Five Thousand) and where the contravention is a continuing one, a further fine of INR 500 (Rupees Five Hundred) for every day during the period of contravention.

**RELAXATION TO LIMITED LIABILITY PARTNERSHIPS (LLPs)
TO FILE THE ANNUAL RETURN FORM**

The MCA, *vide* its general circular dated May 27, 2022 (accessible [here](#)), had allowed the LLPs to file e-Form 11 (Annual Return of LLP) for the financial year 2021-22 without

paying additional fees up to June 30, 2022. Now, the MCA, *vide* its general circular (accessible [here](#)) dated June 29, 2022, has extended the aforesaid timeline and has allowed LLPs to file e-form 11 for the financial year 2021-22 without paying additional fees up to July 15, 2022.

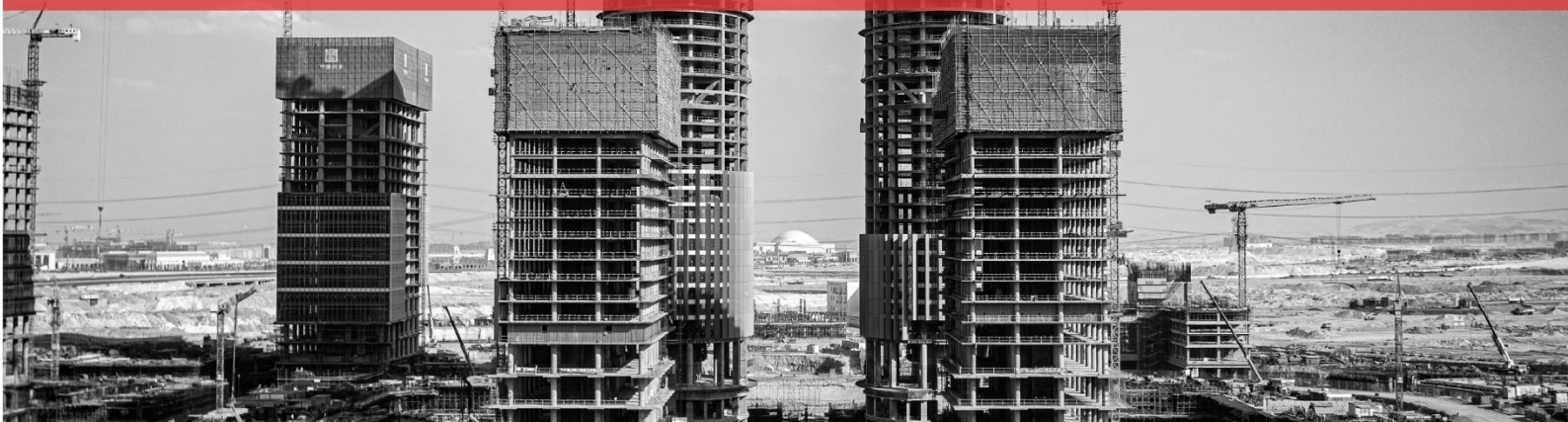


RBI & FEMA

CLARIFICATION OF LOADING OF PREPAID PAYMENT INSTRUMENTS

The Reserve Bank of India (“RBI”) has, vide a circular dated June 20, 2022, bearing reference number CO.DPSS.OVRST.No.S538/06-07-004/2022-23 issued a clarification with respect to loading of prepaid payment instruments (“PPIs”) through credit lines. The clarification is

addressed to all authorized non-bank PPI issuers. The RBI has reiterated its stance on prohibition of loading of PPis through credit lines as per the Master Directions on PPis dated August 27, 2021 (as updated on November 12, 2021). The RBI has further stated that entities who fail to adhere to the clarification, will be penalized in accordance with the provisions of the Payment and Settlement Systems Act, 2007.



AN ORAL AGREEMENT CANNOT CHANGE THE ORIGINAL TERMS AND CONDITIONS OF THE WRITTEN DOCUMENT: HON'BLE BOMBAY HIGH COURT

Bombay High Court recently in the case of *Jayesh Tanna, Director of ITMC Developer Private Limited Versus Radha Arakkal & Others.*, held that a written agreement cannot be substituted or novated by a subsequent oral understanding protecting the rights and interests of homebuyers and upholding the order passed by the RERA Appellate Tribunal.

Section 92 of the Indian Evidence Act, 1908, the Court stated that, *“where a written instrument contains the terms agreed between the parties, then it is not open to the parties to lead any oral evidence to ascertain the terms of the contract and it is only when the written contract itself does not contain the whole of the agreement or if there is any ambiguity, then oral evidence can be permitted to be adduced, to prove the other conditions, provided it is not inconsistent with the written contract”.*

Dismissing the appeal of the builders against an order of an appellate tribunal established under Real Estate (Regulation and Development) Act, 2016 (“**RERA Act**”), regarding the timeline for delivery of possession, the Hon’ble Bombay High Court held that, mere presence of allottees at meetings with the developer will not amount to consent for extension of date of possession since there won’t be any substantial evidence to show that date of possession was extended mutually by the promoter and the allottees.

HON'BLE ODISHA HIGH COURT ASKS THE STATE GOVERNMENT TO PREPARE A NEW APARTMENT OWNERSHIP AND MANAGEMENT BILL COMPLYING WITH RERA

The Hon’ble Orissa High Court, while hearing a PIL challenging the validity of the Odisha Apartment Ownership (Amendment) Rules, 2021 on the ground that it is contrary to provisions of the RERA Act, filed by Bimalendu Pradhan, a

Bhubaneswar based apartment owner pointing out the inconsistency between the Odisha Apartment Ownership (Amendment) Rules, 2021 and Sections 11(4)(e)(f) and Section 17 of the RERA Act.

Section 17(1) of the RERA Act specifically states that requests for registration of conveyance deeds in respect of real estate projects should be rejected if the ownership of the common areas is not conveyed to the association of allottees as is required under the said provision.

Hon’ble Odisha High Court previously had issued an interim order directing the Inspector General of Registration (“**IGR**”) to strictly ensure that the sale deeds registered hereafter abide by the RERA Act and rules thereunder. In the order the Hon’ble Odisha High Court had made it clear that actual registration of sale deeds where sharing of common areas has been conveyed to individual owners cannot be legally sustained as it is inconsistent with the RERA Act.

The Hon’ble Odisha High Court further stated that the State Government will have to enact a fresh apartment ownership and management bill complying to the RERA Act.

HON'BLE PUNJAB & HARYANA HIGH COURT QUESTIONS STATE AUTHORITIES ON WHETHER THE STATE-DEVELOPED PROJECTS CAN COME UNDER THE PURVIEW OF RERA

The Hon’ble High Court of Punjab & Haryana has questioned the authorities of Punjab, Haryana, and Chandigarh to provide reasoning as to why state housing projects are not brought under the purview of RERA Act.

The Hon’ble High Court of Punjab & Haryana observed that as of now only housing projects developed by private agencies are required mandatory registration under Section 3 of the RERA Act.

The Hon’ble High Court of Punjab & Haryana while passing the order observed that several people have filed cases

which array the grievances faced against the non-fulfilment of the promises of developing various housing projects by the state agencies.

The Hon'ble High Court ordered that, *"We consider it appropriate to issue a notice in this petition to the respondents and also to implead all state authorities as have been constituted in the states of Punjab, Haryana, UT Chandigarh, to seek their response as to why, in respect of ongoing projects i.e. not completed projects in terms of Section 3 of the Real Estate (Regulation and Development) Act, 2016, the concerned state bodies (in terms of article 12 of the constitution of India) are not getting their projects registered with the RERA concerned"* .

SEPERATE COMMITTEE FROM EACH STATE TO BE FORMED BY CENTRE FOR BETTER IMPLEMENTATION OF RERA

Central Government will be forming committees from each state which will be comprised of advisory groups, such as, homebuyers, developers and RERA authorities from every state to examine cases in which orders passed by the RERA Authorities are not in compliance with the order.

The forum of homebuyers, at the Central Advisory Council raised the issue of non-compliance of RERA orders even after the implementation of the RERA Act.

Thus, to ensure proper implementation of the orders it becomes the duty of the Centre to strengthen the law and protect the rights of the homebuyers.

FIVE HOUSING PROJECTS BY MAHIRA GROUP UNDER EXAMINATION – HARYANA RERA

The Haryana RERA appointed an inquiry officer and ordered examination/evaluation of five housing projects developed by Mahira Infratech and its sister concerns in sectors 63, 68, 95, 103 and 104 of Gurugram after the company's unsatisfactory response on payment delays and construction delays.

The developer had submitted documents with fabricated bank guarantees and forged signatures of the bank officials for obtaining the licenses for its affordable housing projects because of which the Department of Town and Country Planning ("DTCP") blacklisted the company, its directors & shareholders cancelling the license of the sector 68 project.

The authority has directed the developers to produce accounting books, loan related documents information with respect to allotment of units, amount realized from the allottees from the sale of units for proceeding the enquiry. An executive monitoring engineer has been appointed under RERA Act to conduct the probe and summoned to submit documents containing books of accounts and documents related to the loans, funds diverted to other accounts,

allotment of units, amount collected from the allottees from sale of units and other related documents required by the enquiry officer.

UP RERA TO USE THE PROVISIONS OF CPC TO ENFORCE ITS ORDERS

A more effective strategy for carrying out orders issued by RERA in response to the complaints from in a more robust and effective manner, was established at Uttar Pradesh Real Estate Regulatory Authority's 94th meeting.

Under Section 40(2) of the RERA Act and Rule 24 of the UP RERA Rules, legal provisions have been provided for the implementation of additional RERA directives, for example, an award of possession to allottees and their unit's registration.

According to Rule 24, the orders of UP RERA must be treated in the same way as that of a decree or order made by the principal civil court. The idea is to impose harsher penalties on those promoters who, despite the completion of projects, are evasive in providing possession to the allottees.

INTEREST FOR DELAY IN POSSESSION OF FLAT CANNOT BE DENIED BECAUSE OF NON-REGISTERED SALE AGREEMENT: MAHAREAT

The Maharashtra Real Estate Appellate Authority ("**MAHAREAT**") directed the developer, Aishwarya Light Construction Company, to pay interest for possession which has been delayed from January 1, 2018, dismissing the order which was passed by the Maharashtra Real Estate Regulatory Authority ("**MAHA RERA**").

MAHA RERA, on December 24, 2019, had allowed the developer to execute a registered agreement but not to pay the flat buyers, interest or any compensation under Section 18 of RERA Act, for delayed possession in the view of the fact that there was no registered agreement showing any date of possession, hence the appellate order was passed on 17.06.2022.

It was argued before the MAHA REAT, that no such word as "registered" is mentioned under section 18 of the RERA Act, and merely because the registered agreement of sale is not there, the allottees cannot be denied interest for delayed possession. The authority noted that despite the developer failed to complete the project in time, MAHA RERA refused to grant interest on investment.

The MAHAREAT clearly stated, *"We are of the view that a person cannot be made to wait indefinitely for the possession of the flat allotted to him and is entitled to seek the relief of refund of the amount paid by him or interest on the said amount on account of delayed possession"*.

REGISTRATION OF 3 HOUSING PROJECTS CANCELLED BY UP-RERA OVER WORK DELAY

The Uttar Pradesh Real Estate Regulatory Authority on 22 June 2022, cancelled the registration of three housing projects in Ghaziabad following complaints from buyers that the promoter had violated the agreement/contract, the RERA Act, UP RERA Rules, and the orders passed by the authority which led to non-completion of the project. The authority has taken this decision immediately and froze the bank accounts of these developers for the prevention of any further transactions.

The registration of the projects Antriksh Sanskriti Phase 2, Phase 3, and Raksha Vigyan Sanskriti Phase-2 were to be completed in July 2022, and June 2023 which began in 2015 have been cancelled and proceedings initiated under Section 8 of the RERA Act.

Section 8 of RERA Act clearly states that *“Upon lapse of registration or on the revocation of registration under this Act, the Authority, may consult the appropriate government to take such action as it may deem fit including the carrying out of the remaining development works by a competent authority or by the association of allottees or in any other manner, as may be determined by the Authority. Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works”*.

Keeping the interests of the allottees and other stakeholders in mind, UP RERA has decided to cancel the registration and to and assign it to another agency to complete the remaining construction and development work.



MEITY SEEKS PUBLIC COMMENTS ON DRAFT AMENDMENTS IN INFORMATION TECHNOLOGY RULES, 2021

The Ministry of Electronics & Information Technology (MeitY) *vide* a press note dated June 06, 2022, invited comments/suggestions from the public on the proposed draft for amendment in the Part I and Part II of the existing Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**Intermediary Rules**”) (accessible [here](#)).

The primary aim behind the aforementioned amendments to the Intermediary Rules is to ensure open, safe, trusted, and accountable internet for all Indian internet users. The amendments proposed have been introduced in order to provide additional avenues for the purpose of grievance redressal in addition to courts, and to also ensure that the constitutional rights of the citizens of India are not contravened by the significant social media intermediaries.

MINISTRY OF FINANCE ISSUES CLARIFICATIONS ON VIRTUAL DIGITAL ASSETS

Pursuant to Section 2(47A) of the Income Tax Act, 1961 (“**Income Tax Act**”), the Ministry of Finance *vide* notifications dated June 30, 2022, has provided for the following specifications in relation to the definition of a ‘*virtual digital asset*’:

- (i) The Central Government has stated the following shall stand as excluded from the purview of a ‘*virtual digital asset*’:
 - a) Gift cards or vouchers, being a record that may be used for obtaining goods or services, or a discount on goods/ services;
 - b) Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit,

loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services; an

- c) Any subscription to websites, platforms, or applications.

- (ii) In relation to a ‘*non-fungible token*’, it has been provided that a token which qualifies itself to be a virtual digital asset shall be considered as a non-fungible token within the provisions of Income Tax Act, however, the same shall exclude a non-fungible token whose transfer results in the transfer of ownership of an underlying tangible asset wherein such transfer of ownership of the underlying tangible asset is legally enforceable.

CBDT ISSUES CLARIFICATORY GUIDELINES FOR TAX DEDUCTIONS IN TRANSFER OF VIRTUAL DIGITAL ASSETS

The Central Board of Direct Taxes (CBDT) on June 22, 2022, issued guidelines in relation to the tax deduction at source required to be made in the event of transfer of a virtual digital asset, in terms of Section 194S of the Income Tax Act. The guidelines (accessible [here](#)) are primarily applicable only with respect to transfer of the virtual digital assets occurring on or through an ‘exchange’. The said guidelines clarify that in other cases, such as peer to peer transfers, the provisions of Section 194S shall be applicable.

In general, the guidelines clarify on issues in relation to transfer of a virtual digital asset, on or through an ‘exchange’ where: (i) such transfer is done directly or through a broker; (ii) the virtual digital asset being transferred is owned by a person other than the ‘exchange’; (iii) the virtual digital asset being transferred is owned by the ‘exchange’; (iv) the consideration for the transfer is not in kind; and so on.

RESERVE BANK OF INDIA BARS NON-BANK PPI ISSUERS FROM LOADING CREDIT LINES

The provisions of Master Directions on Prepaid Payment Instruments, 2021, dated August 27, 2021 (“**PPI Master Directions**”), provide that Prepaid Payment Instrument (“**PPI**”) shall be permitted to be loaded / reloaded by cash, debit to a bank account, credit and debit cards, PPIs (as permitted from time to time) and other payment instruments issued by regulated entities in India and shall be in INR only.

In this regard, Reserve Bank of India (RBI) *vide* a notice dated June 20, 2022, clarified to authorised non-bank PPI issuers that under the PPI Master Directions, non-bank PPI issuers are disallowed from loading credit lines and that such practice is required to be terminated with immediate effect.

RESERVE BANK OF INDIA EXTENDS DEADLINE FOR STORAGE OF ACTUAL CARD DATA

RBI, under the provisions of Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007, had issued circulars wherein with effect from January 1, 2022, no entity in the card transaction and/ or the payment chain, other than the card issuers and / or card networks, were permitted to store Card-on-File (CoF) data. Such aforementioned entities were instructed to purge any such data which was previously stored by them.

In this regard, RBI *vide* circular dated June 24, 2022, (accessible [here](#)) extended the deadline for storing of CoF data by another three months i.e., until September 30, 2022, after which such data shall be purged. Earlier, the RBI had set

a deadline of June 30, 2022, for merchants and payment aggregators to eliminate all card details and replace them with tokens.

MEITY PARTIALLY EXTENDS COMPLIANCE DEADLINE FOR CERT DIRECTIONS

On June 27, 2022, the Indian Computer Emergency Response Team (CERT-In) and MeitY, issued a notification (accessible [here](#)) to extend the deadline for compliance with the directions which were under sub-section (6) of Section 70B of the Information Technology Act, 2000, relating to information security practices, procedure, prevention, response and reporting of cyber incidents for Safe & Trusted Internet published by MeitY & CERT-In (“**CERT Directions**”), on April 28, 2022. The new deadline for compliance now stands extended to September 25, 2022.

The extension in deadline for compliance with the CERT Directions are in relation to:

- (i) micro, small, and medium enterprises (“**MSMEs**”) which are covered as per the criteria for classification of MSMEs, notified by Ministry of Micro, Small & Medium Enterprises, Government of India; and
- (ii) requirements relating to the aspects of registration and maintenance of ‘Validated names of subscribers/customers hiring the services’ and ‘Validated address and contact numbers’ by data centres, virtual private server (VPS) providers, cloud service providers and virtual private network service (VPN Service) providers.

WHITE COLLAR CRIME

SUPREME COURT RULES ON HOW TO DETERMINE IF TWO OR MORE ACTS FORM PART OF THE 'SAME TRANSACTION' FOR A JOINT TRIAL

The Apex Court in the case of *Ms. P vs. State of Uttarakhand & Anr. (Criminal Appeal No. 903 OF 2022 arising from the SLP (Crl.) No. 6548 of 2019)* explained whether two or more acts can form a part of same transaction. Section 220 of the CrPC outlines the trial procedure for more than one offence. The Court observed that with respect to the purpose of being tried together under Section 220 of the CrPC, whether two or more acts constitute the same transaction is purely a question of fact. The Court outlined the elements for determination of the same i.e., proximity of time, unity or proximity of place, continuity of action and community of purpose or design. The issue in this case was whether offences under Section 376, 504 and 506 IPC, formed 'one series of acts so connected together as to form the same transaction' for the purpose of trial together in terms of Section 220 CrPC read with Section 184 CrPC. In the facts of the case, the Court observed that the sexual offence took place at Delhi in February/March 2016 and the other offences took place around November 2016 in Chamoli and therefore, they cannot be said to be proximate in time and place. Further, there was no continuity of the offences of rape in Chamoli and therefore, while dismissing the appeal the court held that two sets of offences are like *chalk and cheese* and do not form a part of same transaction.

DSK View: *The Apex Court's ruling provides clarity in determining whether two or more acts form a part of same transaction. Though it is a purely a question of fact, there are certain core elements like proximity of time, unity of proximity of place, continuity of action and community of purpose or design, which must be considered.*

WHILE EXERCISING POWERS UNDER SECTION 482 OF THE CRPC, HIGH COURTS NEED NOT ENQUIRE IF THERE IS RELIABLE EVIDENCE

The Supreme Court in the case of *Jagmohan Singh vs. Vimlesh Kumar & Ors. (Criminal Appeal No.741 OF 2022 arising from the SLP (Crl.) No. 9339 of 2021)* observed that High Courts should not ordinarily embark upon an enquire whether there is reliable evidence or no. The Apex court while hearing an appeal against the decision of the Allahabad High Court which quashed the FIR, alleging to forge and fabricate a will, refused to look into the correctness of the allegations made in the FIR. The Apex Court while allowing the said appeal held that, the jurisdiction under Section 482 of the CrPC has to be exercised sparingly, carefully and with caution only when such exercise was justified by the specific provisions of Section 482 of the CrPC itself.

DSK View: *The top court has time and again observed that powers under Section 482 of the CrPC shall be exercised sparingly.*

SUMMONS UNDER SECTION 160 OF THE CRPC CANNOT BE ISSUED BY POLICE WITHOUT REGISTRATION OF FIR:

The Delhi High Court in the case of *Kulvinder Singh Kohli vs. State of NCT of Delhi & Ors. (WP (CRL) 611/2022)* held that registration of an FIR is a must and only then a police officer can issue summons or notices under Section 160 of the CrPC which outlines a police officer's power to require attendance of witnesses to set the investigation into motion. While dealing with the question that at what stage a notice under Section 160 of the CrPC can be issued, the court reiterated that without registration of FIR, an investigation cannot be said to have been initiated. For an enquiry to be held legal and valid, the police officer has to act in accordance with provisions of the CrPC and cannot go beyond his scope of powers by conducting a preliminary enquiry without making a report to be filed before the Magistrate. In the facts of the present case, the court held that neither an investigation,

nor an enquiry was validly or legally being carried out even for the limited purposes of issuing a notice under Section 160 of the CrPC. The Court concluded by stating that the notice under Section 160 of the CrPC was not issued at the right stage by the authority since, he could not have been said to be conducting investigation under the CrPC without the registration of FIR.

DSK View: *The Apex court in catena of judgements has established that investigation commences only post registration of an FIR. A summons or a notice to a person must be issued by the police authorities, following the due process and procedure of law.*

‘FAILURE OF JUSTICE’ IS A FACILE EXPRESSION, COURT MUST CIRCUMSPECT WHILE DETERMINING IT

The Delhi High Court in the case of **Devender Gupta vs. CBI (CRL.M.C. 5049/2014, CRL.M.A. 17295/2014, CRL.M.A. 621/2020 & CRL.M.A. 2813/2021)** held in reference to Section 19 of the Prevention of Corruption Act (which provides that a judicial order may be interfered with in case of irregularity in grant of sanction coupled with failure of justice) that the superior Court, should make a close examination to ascertain whether “*there was really a failure of justice or it only a camouflage*”. In this case, the petitioner approached the High Court against an order wherein the Court dismissed an application praying for dropping of the criminal proceedings pending against the petitioner on the ground that the sanction as required under Section 19 of the PC Act, was not obtained from the competent authority. The question before the Court was whether High Courts could interfere in such as criminal prosecution at the instance of the accused. The Court held that, the object behind the requirement of grant of sanction to prosecute a public servant need not detain the Court to proceed against an officer, save an except to reiterate that the provisions in this regard, either under the CrPC or the PC Act, are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of his duty and also to enable him to efficiently perform the wide range of duties casted upon him by virtue of his office.

DSK View: *This judgment clarifies that a requirement of a sanction prevents any motivated, ill-founded and frivolous prosecution against the public servant. However, the courts*

need to identify that the same should not be misused by the accused who seek midcourse reliefs from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute.

WHILE CONSIDERING A BAIL APPLICATION UNDER PMLA, THE TWIN CONDITIONS SPECIFIED IN SECTION 45(1) OF THE ACT AND THE GENERAL PRINCIPLES GOVERNING THE GRANT OF BAIL UNDER SECTION 439 OF CRPC SHOULD BE CONSIDERED

The Kerala High Court in the case of **Abdul Gafoor @ Kunhumon v. Asst. Director, Directorate of Enforcement & Ors. (Bail Application No. 2840 OF 2022 CRL. Miscellaneous Petition No. 375/2022)** held that PMLA has an overriding effect and the provisions of the CrPC would apply only if they are not inconsistent with the provisions of the said Act. According to the Court, the conditions enumerated in Section 45 of the PMLA will have to be complied with even in respect of an application for bail made under Section 439 of the CrPC. The Court went onto hold that the power to grant bail to a person accused of having committed an offence under the PMLA is not only subject to the limitations imposed under Section 439 of the CrPC, but also subject to the restrictions imposed by the twin conditions of sub-section (1) of Section 45 of PMLA. The question before the Court was whether the 2018 amendment can restore the validity of the twin conditions and will an accused charged with an offence under the Act still have to satisfy the rigours of the "twin conditions" notwithstanding the judgment of the Apex Court in **Nikesh Shah**. According to the ruling in the present case, Apex Court declared Section 45(1)(ii) ultra vires not because of any inherent defect in those two conditions in themselves, but because of its dependence on the applicability, relatable only to the offences in Part A of the Schedule as the offences under Part A of the schedule were not offences of money laundering but different predicate offences.

The Court pointed out that the amendment was introduced taking note of the same, to cure the lacuna the Apex Court found. Thus, it was held that the the twin conditions for bail declared unconstitutional by the Apex Court in Nikesh Shah stood restored by Amendment in 2018 and the court accordingly dismissed the bail application.

DSK Legal

True Value, True Values



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

Max House, Level 5,
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

Disclaimer

This document intends to provide general information on a particular subject/s and is not an exhaustive treatment of such subject/s and is intended merely to highlight issues. It is not intended to be exhaustive or a substitute for legal/professional advice. The information is not intended to be relied upon as the basis for any decision which may affect you or your business and does not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. DSK Legal shall not be responsible for any loss whatsoever sustained by any person relying on this material.