DSK Legal
True Value, True Values

NEWSLETTER

June 2022

TABLE OF CONTENTS

Capital Market	03
05	Competition Law
Dispute Resolution	06
11	Employment Law
Energy & Infrastructure	14
19	Media and Entertainment
Ministry of Corporate Affairs (''MCA'')	22
25	RERA
Technology Law	27
29	White-Collar Crime

RELAXATION FROM COMPLIANCE WITH PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI, vide its circulars SEBI/HO/DDHS/P/CIR/2022/0063 and SEBI/HO/CFD/CMD2/CIR/P/2022/62, dated May 13, 2022, has extended the timeline for compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") till December 31, 2022. The relaxations have been provided for the following compliances:

a. Regulation 36(1)(b): The regulation requires listed entities to send hard copies of the annual report to shareholders which have not registered their email address. However, the listed entities are required to send a complete hard copy of the annual report to those shareholders who request for the same in accordance with Regulation 36(1)(c).

   Further, the notice of the annual general meeting published by advertisement in accordance with Regulation 47 must contain a link to the annual report, so as to enable the shareholders to access the full report.

b. Regulation 44(4): The regulation requires listed entities to send proxy forms to shareholders along with the notice for the general meeting. The relaxation for this regulation is only in relation to the general meetings which are held through electronic mode only.

c. Regulation 58(1)(b): The listed entities are required to send a hard copy of the audited financial statements to those holders of non-convertible securities who have not registered their email address either with the listed entity or any depository.

SECURITIES AND EXCHANGE BOARD OF INDIA (INFRASTRUCTURE INVESTMENT TRUSTS) (AMENDMENT) REGULATIONS, 2022

SEBI vide Securities And Exchange Board Of India (Infrastructure Investment Trusts) (Amendment) Regulations, 2022 (bearing circular no. SEBI/LAD-NRO/GN/2022/83 dated May 4, 2022) ("**Amendment Regulations**"), has amended the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014.

As per the Amendment Regulations, SEBI has altered the fees payable by privately placed InvIT at the time of filing the draft placement memorandum or the letter of offer, as applicable, with SEBI, as follows:

a. In case of initial offer: 0.1% of the total issue size (including green shoe option).

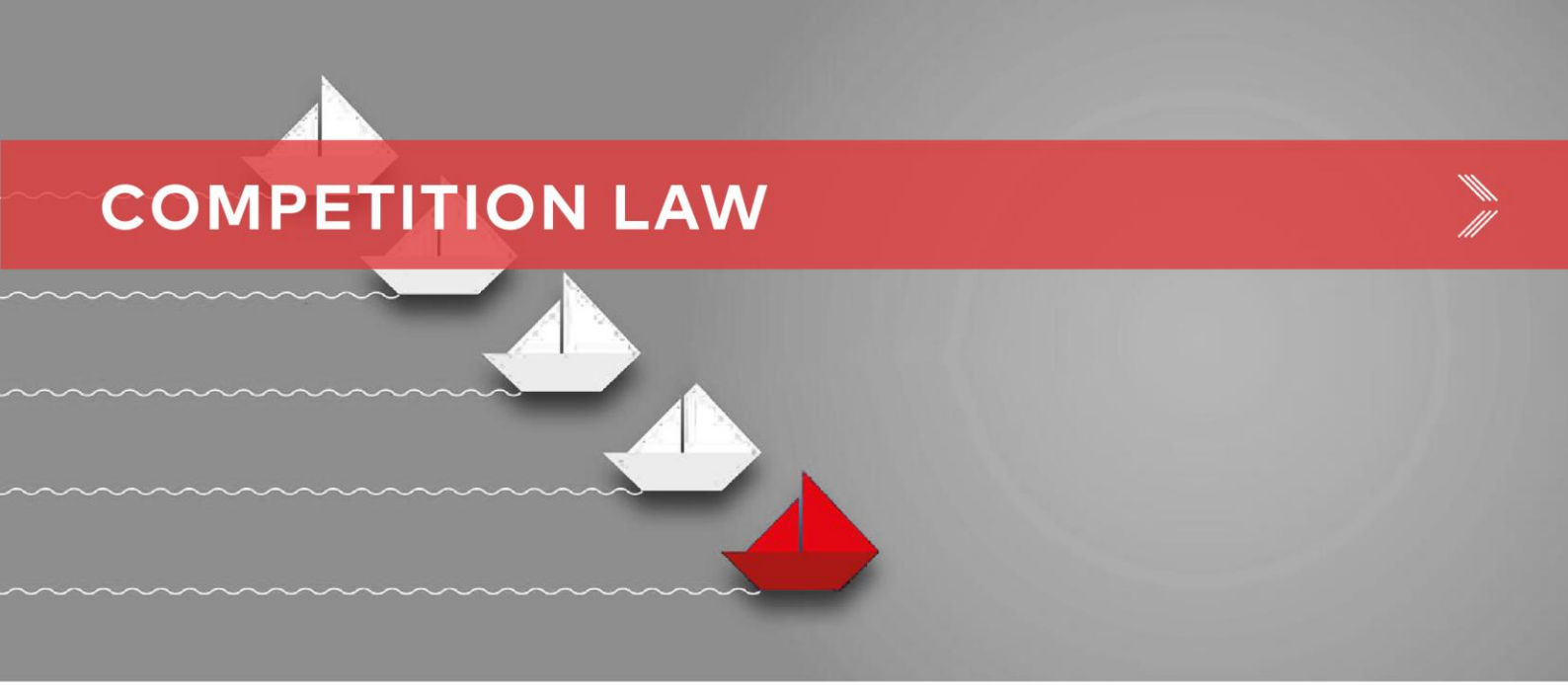
b. In case of rights issue: 0.05% of the total issue size (including green shoe option).

CIRCULAR ON STREAMLINING THE PROCESS OF RIGHTS ISSUE

SEBI vide circular SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated January 22, 2020, had stipulated procedures streamlining the rights issue process. The earlier circular dealt with the requirement regarding minimum time period between closure of trading in right entitlements on stock exchange platform and closure of the rights issue, which requires trading in rights entitlements on the secondary market platform of stock exchanges commence along with the opening of the rights issue and has to be closed at least four days prior to the closure of the rights issue.

SEBI had received market representation that in case there are trading holidays between the last date of rights entitlements trading date and issue closure, provision of minimum gap of four days may not always ensure that there are adequate days for settlement, as minimum two working days are required for settlement of Rights Entitlements traded on last day of Rights Entitlements trading window (rights entitlements traded on exchange platform have T+2 rolling settlement). It was further represented that there should be a minimum gap of three working days considering two days for settlement and one additional day for investor to make application in Rights Issue.

Therefore, in view of above, SEBI vide circular SEBI/HO/CFD/SSEP/CIR/P/2022/66, dated May 19, 2022, decided to amend para 1.4.1 and at Annexure I para C (e) of the Circular as under: The words 'at least four days' are replaced with 'at least three working days'. This circular shall be applicable for all rights issues and fast track rights issue with immediate effect.



COMPETITION LAW

COMBINATIONS APPROVED

The Competition Commission of India ("**CCI**") has approved the following combinations in view of the notices filed under Section 31(1) of the Act:

- **May 06, 2022 –** Acquisition of shares of an additional 25% of the issued and paid-up equity share capital of **Aviva Life Insurance Company India Limited** from its existing joint venture partner - **Dabur Invest Corp by Aviva International Holdings Limited** pursuant to an increase in permissible foreign investment limit in the insurance sector to 74% from 49%. The combination notification was filed under the green channel route.

- **May 06, 2022 –** Acquisition of minority stake of 10.10% in **Sagar Cements Limited** by **PI Opportunities Fund I – Scheme II**. The combination notification was filed under the green channel route.

- **May 18, 2022 – International Finance Corporation** and **IFC Emerging Asia Fund, LP** sought approval from CCI for subscribing to compulsorily and mandatorily convertible debentures ("**CCDs**") of the **Crystal Crop Protection Limited**. The CCDs would be convertible to equity shares on basis of the formulae agreed between the Parties. The combination notification was filed under the green channel route.

- **May 18, 2022 –** Acquisition of equity shareholding in **Biocon Biologics Limited** by **Serum Institute Life Sciences Pvt. Ltd.** The Proposed Combination involves a merger by absorption of **Covishield Technologies Private Limited**, a wholly-owned subsidiary of the Serum Institute Life Sciences Private Limited, into the Biocon Biologics Limited. Pursuant to the scheme of the merger in consideration of which the Serum Institute Life Sciences Private Limited will acquire approximately 15% equity shareholding on a fully diluted basis in the Biocon Biologics Limited.

- **May 31, 2022 -** Acquisition of shareholding on a fully diluted basis in **Hitachi Construction Machinery Co., Ltd.** by **HCJI Holdings G.K., Citrus Investments, HCJ Holdings 2 G.K., Japan Industrial V – GP K.K.,** and other investors.

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.*

NCLAT TERMINATES THE CIRP OF THE CORPORATE DEBTOR WHEN PARTIES DECIDE TO ENTER INTO SETTLEMENT

In the case of *National Textile Corporation Ltd. v Hero Solar Energy Pvt. Ltd*[1]., the NCLAT, Principal Bench comprising of Justice Ashok Bhushan and technical members Shri Shreesha Merla and Shri Naresh Salecha decided to terminate the Corporate Insolvency Resolution Process (CIRP) against National Textile Corporation Ltd. (Corporate Debtor/ Appellant)

An appeal was filed by the National Textile Corporation Ltd. (Corporate Debtor/ Appellant) against the NCLT order dated 27.05.2022 before the NCLAT, wherein it was submitted that the matter is settled between the Hero Solar Energy Pvt. Ltd. (Operational Creditor). Further, the Appellant sought to place the Settlement Agreement on record. The NCLAT vide order 31. 05.2022 has stayed the CIRP against the Appellant. The Operational Creditor has requested to withdraw petition under section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The withdrawal was permitted by the NCLAT and terminated the CIRP against the Corporate Debtor. On 01.06.2022 the Settlement Agreement is taken on record. As per the NCLAT directions, the expenses incurred by the Insolvency Resolution Professional (IRP) has to be paid but no IRP fee shall be paid.

CIRP CANNOT BE INITIATED SOLELY ON THE INTEREST AMOUNT

The NCLT, New Delhi Bench, in the case *of Saraf Chits Private Limited & Anr. v KAD Housing Private Limited*[2] held that CIRP cannot be initiated solely on the basis of the un-paid amount of interest when the entire principal amount has been discharged by the Corporate Debtor.

An application was filed by the by Saraf Chits Private Limited & Anr under section 7 of IBC to initiation of proceedings for a default of Rs 1,76, 04, 484/-, which inclusive of interest. Out of the entire amount, Rs 1.5 crore were paid by the Corporate Debtor to the Financial Creditor during the pendency of matter. Rs 64 lakh was the interest component and was yet to be paid. Under section 5(8)(f) of IBC, financial debt includes debt along with interest, if any, disbursed against the consideration for the time value of money. The NCLT, New Delhi (Adjudicating Authority) relied on the NCLAT judgement of *S. S. Polymers v. Kanodia Technoplast Ltd*[3] and stated that interest can be claimed only if such financial debt exists; interest is not included in the term 'debt' as per section 5(8)(f) of IBC. Thus, the application was dismissed. It was observed that CIRP cannot be initiated against the Corporate Debtor solely on the basis of un-paid amount of interest where the entire principal amount is discharged by the Corporate Debtor.

SALARY DURING NOTICE PERIOD DOES NOT FALL WITHIN THE DEFINITION OF OPERATIONAL DEBT

In the case of Sandesh Naik v. MT Educare Limited ,the NCLT Mumbai bench comprising of Justice H.V. Subha Rao and Chandra Bhan Singh as Technical Members opined in the case of Sandesh Naik v. MT Educare Limited that salary for a notice period does not amount to 'operational debt' under the IBC because it amounts to specific performance of the appointment letter and it does not count as the salary for the actual work done.

An application was filed by the operational creditor under section 9 of IBC read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate CIRP against the Corporate Debtor, MT

[1] Company Appeal (AT) (Insolvency) No. 631 of 2022
[2] (IB)-255(ND)/2021.
[3] Company Appeal (AT) (Insolvency) No. 1227 of 2019

Educare for the operational debt of Rs. 22, 41, 735. The Applicant herein was the Chief Financial Officer employed by the Respondent. Upon resignation, the appointment letter the applicant was relying upon was forged and fabricated. So the NCLT dismissed the application filed under section 9 of the IBC, stating that there exists dispute between the parties which needs to be adjudicated and settled by evidence and conducting trails before the competent court. Thus, the Applicant cannot use IBC as a substitute to debt enforcement procedures. The NCLT relied on the decision of the Apex Court, *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*

Relevant Supreme Court Case: *Kotak Mahindra Bank v A Balakrishnan & Anr.* where it is determined by the Apex Court that the holder of recovery certificate or a decree holder is entitled to invoke the provisions of the Insolvency and Bankruptcy Code, 2016 for the initiation of Corporate Insolvency Resolution Process if he is otherwise entitled under law.

RECENT UPDATES/DEVELOPMENTS ON ARBITRATION IN THE LAST MONTH

1) Power Of Arbitral Tribunal To Award Interest Is Discretionary & contingent To the agreement Between Parties: Supreme Court

The Supreme Court held in ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation*** *(Civil Appeal No. 3657 of 2022 arising out of S.L.P. (C) No. 4901 of 2022)* that the arbitral tribunal's power to award interest is conditional on the parties agreeing otherwise. The Court concluded that if the parties have agreed otherwise, the tribunal cannot award interest. The Court also observed that party autonomy is one of the most essential principles of the Arbitration and Conciliation Act, 1996, and that if the parties exercised their autonomy under Section 31(7)(a) of the Act, the arbitrator's discretion would be nullified.

A dispute emerged between the parties in this case, which was referred to arbitration. The arbitrator granted the appellant's claims in part. The appellant filed for the award's execution and requested future interest on the entire amount of the sum awarded by the arbitrator. The executing court dismissed the appellant's argument, stating that the arbitrator only authorised future interest on the principal sum. The appellants took their case to the Supreme Court after being dissatisfied with the verdict. According to the Supreme Court, the arbitrator has the power to allow future interest on the pendente lite interest. However, the arbitrator's power is contingent on the parties' consent. The Court looked at the phrase ***'unless otherwise agreed by the parties***,' and determined that if the parties agree on the grant of interest, the arbitrator is bound by that agreement. The Court determined that the parties had reached an agreement that covers the question of interest in this case, and thus dismissed the appeal.

2) Arbitral tribunal cannot rewrite the contract between parties; says the Delhi HC

In response to a challenge to an arbitral award issued against the ***Ministry of Railways in relation to its disputes with Jindal Rail Infrastructure Ltd (JRIL),*** the Delhi High Court ruled that the arbitral tribunal cannot examine the commercial wisdom of an agreement and rewrite a contract based on the commercial difficulties faced by a party in performing its obligations. According to the court, a commercial contract between the parties cannot be avoided because one of the parties later discovers that performing the same is commercially unviable. The arbitral tribunal has virtually revised the contract and reworked the agreement between the parties in this case. This is, clearly, impermissible. The court stated this in its order, which was issued on May 23, 2022, when overturning the award in the case.

JRIL had used the arbitration agreement and had got a reward of over Rs 18 crore. When the dispute was brought before the Delhi High Court, it ruled that the arbitral tribunal's decision to award the difference between the tenderers' and JRIL's prices was unsustainable. The Court went on to say that JRIL had quoted a particular price for supplying in its commercial wisdom, and that it is not open to the arbitral tribunal to examine this commercial wisdom and rewrite the agreement on the basis of JRIL's commercial difficulties in completing its responsibilities. It further stated that it is not required that all contracts result in a profit; some contracts may result in a loss. This is not a circumstance that should be used to excuse a party from fulfilling its contractual responsibilities.

3) When the parties are referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, the plaintiff is not entitled to a return of court fees: The Delhi High Court

The High Court of Delhi held in ***A-One Realtors Pvt. Ltd. v. Energy Efficiency Services Ltd***. *(2022 LiveLaw (Del) 502)* that when the parties are referred to arbitration under Section 8 of the Arbitration and Conciliation Act, the plaintiff is not entitled to the return of Court Fess. The plaintiff would only be entitled to a return if the parties were referred to arbitration for the purpose of settlement under Section 89 of the CPC, rather than Section 8 of the A&C Act, 1996.

The plaintiff argued that because the defendant's application under Section 8 of the Arbitration and

Conciliation Act was granted, the plaintiff was entitled to a refund of court fees under Section 16 of the Courts Fees Act, 1870. The plaintiff's claim that it is entitled to a return of court fees was dismissed by the court. The Court decided that, under Section 16 of the Courts Payments Act, fees is only returned when the parties are referred to arbitration for the purpose of settlement under Section 89 of the CPC.

SUPREME COURT DOUBTS THE DOCTRINE OF 'GROUP OF COMPANIES' AND REFERRED IT TO A LARGER BENCH

In the case of *Cox and Kings Limited v. SAP India Private Limited and Anr.*[4] an interesting development has led the Hon'ble Supreme Court to relook at the doctrinal contents related to the application of the 'Group of Companies' Doctrine[5], which bound the third parties/non-signatories to the arbitration agreement and referred the same to a larger bench for reconsideration.

An application was filed by Cox and Kings Ltd. under Section 11 of the Arbitration Act, 1996 (the **"Act"**) seeking the appointment of arbitrator in an international commercial arbitration in a dispute with SAP India Private Ltd. The question that arose was whether the German holding company of SAPIPL could be roped into arbitration or not. This urged the court to look into precedents set forth in this respect which led it to point out a lot of inconsistencies with regards to adjudging the underlying basis of the application of the 'Group of Companies' Doctrine.

According to Section 7 of the Act it is imperative for the parties to consent to arbitration and the same should be done with the help of written communication. In the case of *Sukanya Holdings*[6] the Apex Court held that under Section 8 of the Act non-parties cannot be included in arbitration. Later in the case of *Chloro Controls*[7] it was held that non-parties can be included in arbitration and that the Sukanya Holdings decision restricts itself only to domestic arbitration. The only requirement was that there should be a legal relationship between the non-signatory and the party to the arbitration, therefore the doctrine was held as sufficient basis for the same.

In 2015, an amendment was introduced in Section 8(1) of the Act which included 'any person claiming through or under him', but there was no amendment to Section 2(1)(h) which lays down the definition for 'party'. The ambit of the doctrine was further extended in the case of *Cheran Properties*[8] in which an award was passed against a non-signatory who was not a part of the proceedings. In *Mahanagar Telephone*[9] it was held that a non-signatory can be bound to an arbitration *via* this doctrine if a tight corporate group structure constituting a single economic reality existed.

The Court in the present case held that with respect to the previous pronouncements given, no reference has been made to the ambit of the phrase 'claiming through or under' as provided under Section 8 of the Act. It observed that the fact that a non-signatory is a part of an affiliated group of companies would not be entertained as enough reason to bind it to an arbitration. The Apex court also pointed out that the ratio given in Chloro Controls had more to do with economic convenience rather than application of law. Accordingly, the Apex Court referred the matter to a larger bench to expound on the intricacies of the 'Group of Companies' Doctrine and answer the following questions of law:

a) Whether phrase 'claiming through or under' in Sections 8 and 11 could be interpreted to include 'Group of Companies' doctrine?

b) Whether the 'Group of companies' doctrine as expounded by Chloro Control Case (supra) and subsequent judgments are valid in law?

c) Whether the Group of Companies Doctrine should be read into Section 8 of the Act or whether it can exist in Indian jurisprudence independent of any statutory provision?

d) Whether the Group of Companies Doctrine should continue to be invoked on the basis of the principle of 'single economic reality'?

e) Whether the Group of Companies Doctrine should be construed as a means of interpreting the implied consent or intent to arbitrate between the parties?

f) Whether the principles of alter ego and/or piercing the corporate veil can alone justify pressing the Group of Companies Doctrine into operation even in the absence of implied consent?

DSK View: The Apex Court doubted the correctness of the law laid down in Chloro Control (supra) and the subsequent decisions. It is matter of fact that only a small number of jurisdictions like France and India have applied this controversial 'Group of Companies' Doctrine in context of international arbitration. It is necessary that the 'Group of Companies' Doctrine is applied with caution and mere fact that a non-signatory is a member of a group of affiliated companies will not be sufficient to claim extension of the

[4] Arbitration Petition (Civil) No. 38 of 2020; 2022 SCC Online SC 570
[5] Originated in *Dow Chemical France, the Dow Chemical Company v. Isover Saint Gobain,* (ICC Case No. 4131)
[6] *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya*, (2003) 5 SCC 531
[7] *Chloro Controls India Pvt. Limited v. Seven Trent Water Purification Inc.* (2013) 1 SCC 641
[8] *Cheran Properties Ltd. v. Kasturi And Sons Ltd.* (2018) 16 SCC 413,
[9] In *Mahanagar TelephoneNigam Ltd. v. Canara Bank,* (2020) 12 SCC 767

arbitration agreement to the non-signatory. Hopefully, once the larger bench is constituted these issues will be settled once and for all and it will be a step forward in making India a hub for international arbitrations.

SUPREME COURT DIRECTED HIGH COURTS TO DISPOSE PENDING SECTION 11 (5) AND 11 (6) WITHIN 6 MONTHS

Pursuant to the direction by the Supreme Court in *M/s Shree Vishnu Constructions v The Engineer in Chief, Military Engineering Service & Ors.*[10] wherein all High Courts were directed to send a statement regarding pending applications under Section 11 (6) of the Arbitration Act, 1996 (the **"Act"**), the Apex Court in *M/s Shree Vishnu Constructions v The Engineer in Chief, Military Engineering Service & Ors.*[11] observed that many of these applications are pending since 2016 due to various reasons.

The Court noted that by keeping these applications pending, the object and purpose of Arbitration Act is defeated, and the significance of an effective Alternative Dispute Resolution Mechanism is lost. The Court further noted that if the Commercial disputes are not resolved at the earliest, not only it would affect the commercial relations between the parties but it would also affect economy of the country. Accordingly, the Court directed all High Courts that all pending applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other applications either for substitution of arbitrator and/or change of arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from the date of the Court's order.

DSK View: There has been inordinate delay in the adjudication of Section 11 Applications resulting in delayed adjudication of dispute between the parties. These direction by the Apex Court will ensure timely disposal of these administrative orders by the Courts and would enable timely adjudication of disputes by the Arbitral Tribunal.

TERMINATION OF MANDATE OF AN ARBITRATOR MUST BE WITHIN THE RIGORS OF SECTION 14(1)(A) AND NOT SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996

In the case of *Swadesh Kumar Agarwal* v. *Dinesh Kumar Agarwal & Ors.*[12], the Hon'ble Supreme Court observed that a dispute/ controversy on the mandate of the arbitrator being terminated on the ground mentioned in Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 (the **"Act"**) cannot be decided on an application filed under Section 11(6) of the Act. In the present case, the dispute arose out of partition of the properties within the family which was referred to arbitration having sole arbitrator.

In this case, the Madhya Pradesh High Court in exercise of powers under Section 11(6) of the Act terminated the mandate of sole arbitrator appointed by the parties themselves. The High Court also appointed a fresh arbitrator on the ground that the mandate of the sole Arbitrator stood terminated in view of Section 14(1)(a) of the Act. It was held that there was undue and unreasonable delay in proceeding with the arbitration proceeding by the Sole Arbitrator. The matter was subsequently referred to Hon'ble Supreme Court.

The Hon'ble Supreme Court held that there exists a difference between Section 11 (5) and (6) of the Act. Section 11(5) of the Act will be applicable when there is an absence of a procedure regarding the appointment of an arbitrator whereas Section 11(6) of the Act will be applicable only when there is an arbitration agreement and a contract containing an arbitration agreement between the parties which lays down the appointment procedure of an arbitrator. The High Court or its nominee has the power to appoint an arbitrator(s) in case of the eventualities under Section 11(6)(a) to (c). Hence, through mutual consent an arbitrator(s) can be appointed where there is absence of an arbitration agreement and the application for the same shall be made under Section 11 (5) of the Act.

In a case where there is a dispute/controversy on the mandate of the arbitrator being terminated on the ground mentioned in section 14(1)(a), such a dispute has to be raised before the "court", defined under section 2(e) of the Act, 1996 and such a dispute cannot be decided on an application filed under section 11(6) of the Act, 1996.

DSK View: The judgment of Hon'ble Supreme Court gave the much-needed clarity on the procedural aspect of the Arbitrations in terms of the termination of the mandate of the Arbitrator.

SECTION 65-B OF THE INDIAN EVIDENCE ACT, 1872 DOES NOT APPLY TO ARBITRAL PROCEEDINGS

In the case of *Millennium School v. Pawan Dawar*[13], in the said case the parties entered into an agreement wherein the respondent agreed to provide transportation services to the students and the employees of the petitioner using the buses owned by the petitioner. The agreement was for 8 years and provided a lock-in period of 5 years. A dispute arose between the parties. Accordingly, the petitioner terminated the agreement. Subsequently, the respondent applied for the appointment of the arbitrator, and the Court referred the parties to the arbitration.

The arbitrator partly allowed the claims of the respondent on the ground that the termination of the agreement was

[10] SLP (C) 5306 of 2022 dated 21.04.2022
[11] SLP (C) 5306 of 2022 dated 19.05.2022
[12] Civil Appeal Nos. 2935-2938 of 2022
[13] O.M.P. (COMM) 590/2020; 10.05.2022

illegal as the agreement provided for no termination during the lock-in period except for the grounds provided under Clause 1 of the agreement. It rejected the evidence of the petitioner on the ground that it did not comply with the requirement of Section 65-B of the Indian Evidence Act. Accordingly, the arbitrator held that the petitioner has failed to prove the deficiency in services of the respondent.

The Court held the petitioner was justified in terminating the agreement when a material breach occurred on part of the respondent. The Court further held that the arbitrator erred in rejecting the documents of the petitioner on the ground that the requirement of Section 65-B was not complied with. The Court held that in terms of Section 19 of the A&C Act read with Section 1 of the Indian Evidence Act, the provisions of Evidence Act do not apply to arbitration proceedings, therefore, there was no necessity of complying with the requirement of Section 65-B. It held that the tribunal could not reject the evidence of the respondent after initially admitting them solely on the ground that the certificate under Section 65-B was defective.

The impugned award of the arbitral tribunal was set aside to the extent that the Respondent's claim for loss of profits and cab charges were provided to him.

DSK View: This judgment shows the pro-arbitration approach of the Indian Judiciary. The said judgment will help the parties in speedy disposal absolving themselves from technical objections from the other side.

EMPLOYMENT LAW

MSME SUSTAINABLE (ZED) CERTIFICATION SCHEME

Union Minister for Micro, Small and Medium Enterprises ("**MSMEs**"), on April 28, 2022, has launched the MSME Sustainable (ZED) Certification Scheme which is an extensive drive to enable and facilitate MSMEs to adopt Zero Defect Zero Effect ("**ZED"**) practices and motivate and incentivize them for ZED certification while also encouraging them to become MSME Champions. Through the journey of ZED certification, MSMEs can reduce wastages substantially, increase productivity, enhance environmental consciousness, save energy, optimally use natural resources, expand their markets, etc.

Under the Scheme, MSMEs will get subsidies as per the following structure, on the cost of ZED certification:

- Micro Enterprises: 80%
- Small Enterprises: 60%
- Medium Enterprises: 50%

There will be an additional subsidy of 10% (Ten percent) for the MSMEs owned by women / SC / ST entrepreneurs or MSMEs in NER / Himalayan / LWE / Island territories / aspirational districts. In addition to the above, there will be an additional subsidy of 5% (Five percent) for MSMEs which are also a part of the SFURTI (Scheme of Fund for Regeneration of Traditional Industries) or Micro & Small Enterprises – Cluster Development Programme (MSE-CDP) of the Ministry. Further, a joining reward of INR 10,000 (Rupees Ten Thousand) will be offered to each MSME once they take the ZED Pledge.

THE GOA SHOPS AND ESTABLISHMENTS (AMENDMENT) ACT, 2021 NOTIFIED

The Government of Goa, vide its notification no 24/14/2021-LAB/209 has notified May 2, 2022 as the effective date for the Goa Shops and Establishments (Amendment) Act, 2021.

The amendment act implements provisions on electronic filing, auto-renewal, and restriction for employment of women employees in certain cases. It has further revised the penalty in case of non-compliance with the provisions of The Goa, Daman and Diu Shops and Establishments Act, 1973.

ENFORCEMENT OF MEDICAL BENEFITS IN NAGAPATTINAM DISTRICT OF TAMIL NADU

The Employees' State Insurance Corporation, vide its notification dated May 6, 2022, stated that medical benefit as laid down in the Regulation 95-A of the Employees' State Insurance (General) Regulations, 1950 and the Tamil Nadu Employees' State Insurance (Medical Benefits) Rules, 1955 shall be extended to the families of insured persons in the entire region of Nagapattinam districts in the state of Tamil Nadu, with effect from April 1, 2022.

AMENDMENT TO PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENTS RULES, 1958

The Government of Haryana notified the Punjab Shops and Commercial Establishments (Haryana Amendment) Rules, 2022 vide notification dated May 17, 2022 which amended the proviso to Rule 15(2)(iv) of the Punjab Shops and Commercial Establishments Rules, 1958 (**"Punjab Shops and Establishment Rules"**). The Rule 15 of the Punjab Shops and Establishment Rules, provides for conditions for the grant of exemption under section 28 (*Power to Grant Exemptions*) of the Punjab Shops and Commercial Establishments Act, 1958.

The amendment stipulates that provisions of Rule 15(2)(iv) of the Punjab Shops and Establishment Rules shall not be applicable to a woman working in information technology establishment, information technology-enabled establishments, banking establishments, three-star or above hotels, hundred percent export-oriented establishments and logistics and warehousing establishments, when exemptions provided in section 30 of Punjab Shops and Commercial

Establishments Act, 1958 have been granted. The Rule 15(2)(iv) of the Punjab Shops and Establishment Rules stipulates that no woman shall be required to work whether as an employee or otherwise in any establishment during the hours from 8:00 P.M. to 6:00 A.M.

ENHANCEMENT OF WAGE RATE UNDER MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005 (MGNREGA)

The Government of Goa, vide its notification dated April 28, 2022, has enhanced the wage rate from INR 294 (Rupees Two Hundred and Ninety-Four) to INR 315 (Rupees Three Hundred and Fifteen) per day for the job seekers for unskilled manual work with effect from April 1, 2022.

According to Section 6(1) of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 ("**MGNREGA"**), the Union Government fixes state-wise wage rates for unskilled manual workers, who work under the rural job guarantee scheme. The MGNREGA wage rates are fixed according to changes in the Consumer Price Index-Agriculture Labour, which reflects the increase in inflation in rural areas.

AMENDMENT TO TELANGANA STATE FACTORIES RULES

The Government of Telangana, vide its notification dated May 20, 2022, has made amendment to **Schedule XVIII** under Rule 95 (*Handling and processing of Asbestos manufacture of any article of Asbestos and any other process of manufacture or otherwise in which Asbestos is used in any form*) of the Telangana State Factories Rules, 1950 (**"Telangana State Factories Rules"**). Few of the provisions of **Schedule XVIII** are provided below:

- The substituted **Schedule XVIII** shall apply to all manufacturing process carried on in a factory involving exposure of workers to asbestos and / or product containing asbestos and shall apply to workers exposed to asbestos in the factory.
- It shall be the responsibility of the occupier of the factory to comply with the provisions of the schedule in respect of the workers.
- The occupier of every factory to which the **Schedule XVIII** applies to provide to workers personnel protective equipments such as hand gloves, shoes helmets, goggles, earplug, aprons, safety belt, overall suit, etc., as per the relevant national or international standards as may be required.
- No person shall carry out any demolition of plants or structures containing friable asbestos insulation material and removal of asbestos from building or structures in which asbestos is liable to become air-borne unless he is recognized and duly empowered by the chief inspector of factories to carry out such work in accordance with the provisions of the **Schedule XVIII** of the Telangana State Factories Rules.
- All loose asbestos, while not in use, will be required to be kept in suitable closed receptacles which prevent the escape of asbestos dust.
- No person shall smoke in any area where processes covered by the **Schedule XVIII** of the Telangana State Factories Rules are carried on. A notice in the language understood by majority of the workers of such factory shall be posted in the plant prohibiting smoking at such areas.

LABOUR MINISTRY EXTENDS THE PUBLIC UTILITY SERVICE OF COAL INDUSTRY

The Ministry of Labour and Employment (**"Labour Ministry"**), vide its notification dated May 26, 2022, has extended the 'public utility service' status to services engaged in the coal industry under the Industrial Disputes Act, 1947 (**"ID Act"**).

The Labour Ministry had earlier declared that the coal industry shall be a public utility service for the purposes of the ID Act for a period of 6 (six) months from November 27, 2021. However, due to the opinion that public interest required the extension of the public utility service status to the coal industry, the Ministry of Labour and Employment has extended the status for a further period of 6 (six) months from May 27, 2022.

NIGHT SHIFT FOR WOMEN WORKERS IN UTTAR PRADESH UNDER THE FACTORIES ACT, 1948

The Governor of Uttar Pradesh, vide notification dated May 27, 2022 (**"UP Notification"**), exempted all the factories from restrictions provided under Section 66(1)(b) of the Factories Act, 1948 in relation to employing women workers subject to the conditions listed in the UP Notification, which includes taking her written consent to work before 6:00 AM and after 7:00 PM, provision of free transportation from her residence to workplace and back by the employer, provision of sufficient supervision during the work hour and journey, provision of clean facilities like wash rooms, changing rooms, etc., and light near workplace.

REVISED RATES OF MINIMUM WAGES

Telangana: The Government of Telangana vide its press note declared the average State Industrial Workers Consumer Price Index numbers at 1627 (One Thousand Six Hundred and Twenty Seven) for industrial workers and 1228 (One Thousand Two Hundred and Twenty Eight) for agricultural workers. The price consumer index numbers are applicable

for the period from April 1, 2022, to September 30, 2022, in various scheduled employments covered under the Minimum Wages Act, 1948, in the state of Telangana for the purpose of calculation of variable dearness allowance.

Goa: The Government of Goa, vide its notification dated May 2, 2022, revised the minimum wages in various scheduled employments by revising the rates of variable dearness allowance on the basis of the average consumer price index number. The rate of variable dearness allowance stands at INR 85 (Rupees Eighty Five) per day for various categories of employees effective from April 1, 2022.

Kerala: The Government of Kerala, vide its notification dated May 12, 2022, has declared the consumer price index numbers for agricultural labourers and industrial workers for the month of March, 2022. The consumer price index numbers are applicable to employees in employments covered under the Minimum Wages Act, 1948.

Delhi: The Government of NCT of Delhi, vide its order dated May 23, 2022, revised the minimum wages in various scheduled employments by revising the rates of variable dearness allowance on the basis of the average consumer price index number. The rates of the adjusted dearness allowance shall be payable for all categories with effect from April 1, 2022.

Tamil Nadu: The government of Tamil Nadu, vide its gazette notification dated April 27, 2022, has revised the minimum rates of wages for employees. The dearness allowance is linked to the Average Chennai City Consumer Price Index number for the year 2010, which is 161 points (with base 2001 =100) and for every raise of 1 (One) point over and above 161 (One Hundred and Sixty One) points, an increase of INR 1.86 (Rupee One and Eighty Six Paise) per day shall be paid as dearness allowance.

ENERGY & INFRASTRUCTURE

ENERGY

DIRECTIONS ISSUED TO ELECTRICITY GENERATING COMPANIES UNDER SECTION 11 OF ELECTRICITY ACT, 2003

Vide Notification No. 23/13/2021-R&R (Pt-1), dated May 5, 2022, the Ministry of Power ("**MoP**") issued certain directions to generating companies under Section 11 of the Electricity Act, 2003 to meet the increased demand for power.

The following directions were *inter alia*, issued:

- All coal plants which function on imported coal shall operate and generate power to their full capacity. Where the imported coal-based plant is under corporate insolvency resolution proceedings initiated under the Insolvency and Bankruptcy Code, 2016, the Resolution Professional will be required to take steps to make the plant functional;
- The power shall first be sold to the PPA holders. Thereafter any surplus power left or any power for which there is no PPA will be sold through the power exchanges;
- Where the plant has a PPA with multiple DISCOMs, if one DISCOM does not schedule any quantity of power according to its PPA, the said power will be offered to other PPA holders and any remaining quantity will thereafter be sold through the power exchanges;
- Where PPAs do not provide for pass through of the present high cost of imported coal, a committee will be constituted by MoP with representatives from MoP, CEA and CERC to work out the rates at which the power shall be supplied to PPA holders;
- Where the generators / group companies own coal mines abroad, the mining profit will be set off to the extent of the shareholding of the generating / group company in the coal mine
- The PPA holders shall have an option to make payment to the generating company according to the benchmark rate worked out by the Group or at a rate mutually negotiated with the generating company;
- Payment at the above rates shall be made to the Generating Company on a weekly basis.
- Where any DISCOM/State is not able to enter into mutually negotiated rates with the generating company and is also not willing to procure power at the benchmark rate worked out by the Committee, or is not able to make weekly payment then such quantity of power shall be sold in the power exchanges;
- The net profit by sale of power not sold to PPA holder and sold in the power exchanges shall be shared between the generators and PPA holder in 50:50 ratio on monthly basis.
- The benchmark rates as decided by the committee shall be reviewed every 15 days taking into consideration the change in the price of imported coal, shipping costs etc.

NTPC INVITES EOI TO PRODUCE TORREFIED BIOMASS PELLETS FROM STARTUPS

The R&D wing of NTPC Ltd., NETRA invited proposals from Indian Startups to set up Torrefied Pellet Manufacturing Plant for Agri-Waste in order to provide a platform to Indian startups to enable them to develop advanced technology for procuring torrefied biomass pellets that are well-suited for decentralized small-scale users**.** India produces an estimated 230 MMTA of biomass that is either wasted or burnt.

Biomass co-firing in power plants has proven to be a major solution to cater to the same thereby reducing carbon footprint in the environment. Till now, the focus has been centered mainly on non-torrefied biomass pellets. However, for bulk utilization of biomass the torrefied biomass pellet production needs to be given importance, as torrefied biomass pellet has more energy density, and its characteristics are closer to coal. Further, torrefied biomass pellets will reduce average transportation costs. Currently, the technology for torrefied pellets is still in the nascent stage of development.

DIRECTIONS TO REPLACE THERMAL POWER WITH ABOUT 58,000 MU (30,000 MW) OF RENEWABLE ENERGY BY 2025-26

In order to increase the uptake of Renewable Energy (RE) utilization under the revised scheme for '*Flexibility in Generation and Scheduling of Thermal Hydro Power Stations through bundling with Renewable Energy and Storage Power*" dated April 12, 2022, and in furtherance of the national goal of achieving 500 GW of non-fossil fuel-based capacity by 2030, a target of about 58,000 MU has been fixed at national level, to be achieved by 2025-26. The Central, State and Private sector generating stations have been directed by MoP, vide notification dated May 26, 2022, to replace thermal power with renewable energy in accordance with the year-wise trajectory indicated in the said notification, i.e., 20% in 2023-24, 35% in 2024-25, and 45% in 2025-26 of the total target.

It is intended that the replacement of thermal power will save a good amount of coal annually consumed in the country resulting in reduced emissions. The substitution of thermal power with RE power will help address concerns of coal crisis and meet maximum demand benefitting the consumers. Thermal generating stations can also substitute larger amounts of thermal power with RE power over and above the targets fixed by the notification. Further hydro generating stations have also been permitted to explore opportunities for bundling of RE power with existing power and participate in the scheme. The generating stations that have installed or procured a higher capacity for the purpose of replacement power but not getting scheduled are free to sell such power in the power exchange.

All generating stations and the States have been directed to implement the directions to reduce their tariff, meet their RPO commitments, increase utilization of transmission lines and reduce emissions. The generating stations have also been encouraged to enhance their targets for replacement of thermal power with renewable power in their other plants. State Commissions have been permitted to oversee the implementation in the interest of the consumers as there may be a reduction in power purchase cost as a result of the same.

OIL MARKETING COMPANIES (OMCS) ENTER INTO A LONG-TERM PURCHASE AGREEMENT (LTPA) FOR UPCOMING DEDICATED ETHANOL PLANTS ACROSS INDIA

The Oil Marketing Companies (OMCs) - Bharat Petroleum Corporation Limited (BPCL), Indian Oil Corporation Ltd (IOCL) and Hindustan Petroleum Corporation Limited (HPCL) have entered into a long-term purchase agreement (LTPA) for upcoming dedicated ethanol plants across India. The first set of Tripartite-cum-Escrow Agreement (TPA) was signed among OMCs, project proponents and Banks of the respective ethanol plant projects. State Bank of India, Indian Overseas Bank and Indian Bank are three banks who are involved in this tripartite agreement with OMCs and project proponents. The agreement is designed to ensure that payment received by Ethanol plants is utilized for servicing the finance extended by these Banks. As per the agreement, ethanol produced by these dedicated ethanol plants shall be sold to OMCs for blending with Petrol as per Govt of India's Ethanol Blended Petrol (EBP) Program. Payment towards supply of ethanol will be credited to escrow account maintained with the financing bank to ensure servicing of loan as per schedule.

JOINT DECLARATION OF INTENT ON INDO – GERMAN GREEN HYDROGEN TASK FORCE

Union Minister for Power and New and Renewable Energy and German Minister for Economic Affairs and Climate Change signed a Joint declaration of Intent on Indo- German Hydrogen Task Force virtually. Under the agreement which was signed by both countries an Indo-German Green Hydrogen Task Force will be established to strengthen mutual cooperation in production, utilization, storage and distribution of Green Hydrogen through building enabling frameworks for projects, regulations and standards, trade and joint research and development (R&D) projects.

SECI SIGNS MOU WITH MINISTRY OF HOME AFFAIRS TO SET UP SOLAR ENERGY ROOFTOP PANELS

Solar Energy Corporation of India ("**SECI**") has signed an MoU with the Union Ministry of Home Affairs ("**MHA**") in order to harness the potential of solar energy on the available rooftop areas in the campuses of the Central Armed Police Forces (CAPF) and National Security Guard (NSG). The MoU is a step ahead towards supply of green power to the country's security forces and reinforces the government's commitment towards a sustainable future and climate commitments. GAIL India awards contract to set up India's Largest Green Hydrogen Project.

In line with the National Hydrogen Mission, GAIL (India) Limited ("**GAIL**") has awarded a contract to set up one of the largest Proton Exchange Membrane (PEM) Electrolyser in India. The project would be installed at GAIL's Vijaipur Complex, in Guna District of Madhya Pradesh, and would be

based on renewable power. The Project has been designed to produce around 4.3 Metric tons of Hydrogen per day (approximately 10 MW capacity) with a purity of about 99.999 Volume %. It is scheduled to be commissioned by November 2023. In line with the vision of Atmanirbhar Bharat, the project has been awarded to a vendor having domestic value addition of more than 50 per cent.

INFRASTRUCTURE

MANDATORY HOSTING OF TENDERS THROUGH CENTRAL PUBLIC PROCUREMENT PORTAL

The National Highways Authority of India ("**NHAI**"), *vide* policy circular bearing number 6.31/2022 dated May 4, 2022 has made it mandatory to use Central Public Procurement Portal ("**CPPP**") for all forms of tendering by the NHAI. Further, uploading of particulars of the financial evaluation and letter of award on the CPPP, has also been made mandatary for the completion of corresponding tenders.

GUIDELINES FOR REVIVAL OF STRESSED PUBLIC-PRIVATE-PARTNERSHIP PROJECTS AT MAJOR PORTS

The Ministry of Ports, Shipping and Waterways *vide* office memorandum no. PD-13/1/2018-PPP Cell/e-330932 dated May 10, 2022 issued new guidelines for dealing with stressed public-private partnership projects at major ports in India ("**Guidelines**"). These guidelines have been framed for projects which became stressed during the construction stage as well as a new category of projects which are at both pre-commercial operations date ("**COD**") and Post-COD stages and became stressed due to lenders classifying the borrowings to the projects as non-performing assets ("**NPAs**") and/or due to lenders approaching the National Company Law Tribunals ("**NCLT**") for recovery of their dues under the Insolvency and Bankruptcy Code 2016 or under Section 241(2) of the Companies Act 2013. In this regard, the Guidelines *inter alia* state as follows:

- in the event that a project becomes stressed during construction, the concessioning authority will pay the concessionaire or the concessionaire's lenders (as the case may be), as full and final settlement for taking over the concessionaire's useful assets. The settlement amount would be equal to the lower of the value of the work done by the concessionaire in accordance with the concession agreement and found useful by the major port or 90% (ninety percent) of debt due as defined in the concession agreement.

- in case of projects, both at the construction stage or after competition of the project, wherein borrowings by the lenders to the projects have been termed NPAs and/ or lenders have approached the NCLT for recovery of their dues under the Insolvency and Bankruptcy Code 2016 or under Section 241(2) of the Companies Act 2013, the concessioning authority will be required to undertake certain steps in terms of the Guidelines, which, *inter alia* include issuance of common directives in case of declaration of the concessionaire's loan account as NPA, regularly monitoring the insolvency proceedings, filing of claim with the interim resolution professional with respect to outstanding dues etc.

These Guidelines will facilitate early resolution of various issues and revival of stressed projects along with harnessing the immense potential of those projects, resulting in greater trade and employment opportunities.

IDENTIFICATION OF ABNORMALLY LOW BID AND SEEKING ADDITIONAL PERFORMANCE SECURITY/ BANK GUARANTEE

The NHAI, *vide* policy circular bearing number 9.2.35/2022 dated May 10, 2022 has issued guidelines ("**ALB Guidelines**") to identify abnormally low bids for all kinds of procurement, viz. goods, services, or works, as a result of difficulties being faced in the identification of the exceptional cases for considering a particular bid as an abnormally low bid ("**ALB**"). The ALB Guidelines, *inter alia*, are as follows:

- When responsive bids received are more than single bid:
  - Average bid of maximum 5 (five) numbers of lowest bid may be worked out.
  - If this average bid price is lower than authority's Estimated Project Cost ("**EPC**"), the lowest bidder's bid price is to be compared to the average bid price, and if the bid price quoted by L1 is lower by more than 10% (ten percent) from the average bid price, the bid quoted by L1 shall be considered as an ALB.
  - If the average bid price is higher than the authority's EPC put to tender, the lowest bidder's (L1) bid price is to be compared to the EPC, and if the bid price offered by L1 is lower by more than 10% (ten percent) from the EPC, the bid quoted by L1 shall be considered as an ALB.
- When only single Responsive bid is received:
  - If the single bid received is found to be lower by more than 10% (ten percent) of authority's EPC, then the same shall be considered as an ALB.

The ALB Guidelines further provides for the computation of amount of additional performance security, wherein, if the quoted bid has been identified as an ALB, then the amount of additional performance security shall be computed as under:

- If the bid price offered is lower than 10% (ten percent) but up to 20% (twenty percent) of the EPC, the additional performance security shall be calculated as 20% (twenty percent) of the difference between (i) EPC (as defined in the RFP) - 10% (ten percent) of the EPC (ii) the bid price offered by the selected Bidder, with a maximum ceiling of value of such additional performance security up to the value of the performance security bank guarantee.

OPERATIONS AND MAINTENANCE WORKS FOR (2/4/6 LANE) STRETCHES ENTRUSTED TO NHAI

In order to upkeep national highways in traffic-worthy conditions, the NHAI *vide* policy circular no. 9.4.24/2022 dated May 13, 2022 ("**O&M Circular**"), has issued the following instructions to streamline operation and maintenance ("**O&M**") works in furtherance of lack of due care and attention to O&M activities. In this regard, the O&M Circular, inter alia, states as follows:

- A cell headed by a chief general manager responsible for highway operation, road safety engineering and maintenance has been created at the headquarter ("**HQ**"). This cell shall report to the member concerned for overseeing maintenance and processing proposal of maintenance.

- The earlier limit of the sanction has been increased from INR 10 crores (Rupees Ten Crores) to regional officer(s) ("**ROs**") to INR 15 crores (Rupees Fifteen Crores). Similarly, project directors are now entitled for sanction of estimates up to INR 1 crore (Rupees One Crore).

- Powers have been delegated to ROs to engage agency within the cost of which agencies have been empaneled in the region for conducting the national survey vehicle ("**NSV**") survey and analyzing the data thereof to not compromise the proper maintenance of the stretches.

- The relevant defects identified through NSV survey report are being mapped in the updated "priority maintenance" module in the "datalake portal". Similarly, rectification/maintenance work performed as per the concession/contract agreement updated on the datalake portal are also being mapped. The contractor/concessionaire will get a timeline of 7 (seven) days from planned date to initiate the actual rectification work. If the module does not get updated with actual start date on day 8 (eight) for rectification work, then the authority engineer ("**AE**") or the independent engineer ("**IE**") or project director ("**PD**") should visit the site to assess the preparedness and readiness of the agency for the rectification work as per the stipulation of maintenance schedule.

- Projects on BOT (Toll)/Annuity/HAM/TOT/OMT and EPC, wherein, the obligation of maintenance shall rest with the concerned contractor/concessionaire, IE/AE should be directed to identify defects/ deficiencies vis-a-vis maintenance requirements including overlay requirements and various safety measures, as per provisions of concession/ contract agreement immediately and notify to the concessionaire/ contractor for necessary rectification. PD/ROs shall regularly monitor the progress and keep a record and if required, shall initiate action to carry out the rectification work at the risk and cost of contractor / concessionaire as per the agreement.

- In case, maintenance is the obligation of the authority, PD shall prepare the estimates for maintenance of pavement surface based on visual assessment and the concerned authority PD/ROs shall approve such estimates within their delegated power within 3 (three) days. Any estimate beyond the power of RO may be got approved from HQ within 7 (seven) days. Advance tenders may also be invited.

- Failure to adhere to above guidelines, action against IE/AE be taken immediately by the field units under intimation to HQ and action will be taken by HQ.

MODIFICATION IN THE MODEL CONCESSION AGREEMENT OF BOT (TOLL) PROJECTS PERMITTING CHANGE OF OWNERSHIP

The MoRTH *vide* office memorandum bearing number NH-24028/14/2014-H (Vol II) (E-134863) dated May 23, 2022 ("**BOT (Toll) OM**"), has approved amendments regarding the change in ownership restrictions in Clauses 5.3.1, 7.1 (k), and Definitions under the model concession agreement ("**MCA**") for build-operate-transfer (toll) projects ("**BOT (Toll)**").

As per the BOT (Toll) OM, change in ownership of concessionaires of BOT (Toll) projects shall be permitted after expiry of 1 (one) year, instead of the earlier period of 2 (two) years, after the commercial operations date/date of completion of punch list items. However, such permission shall only be accorded if there are no objections in this regard from the senior lenders, and if the concessionaire is not in default of: (i) its paying premiums to the NHAI, and (ii) its operations and maintenance obligations under the concession agreement.

MODIFICATIONS IN THE MODEL REQUEST FOR PROPOSAL AND MODEL CONCESSION AGREEMENT OF HYBRID ANNUITY MODE BASED PROJECTS

The MoRTH *vide* office memorandum bearing number NH-24028-H (Vol II) (E-134863) dated May 23, 2022, has made significant changes to the model request for proposal document ("**HAM RFP**") and model concession agreement ("**HAM MCA**") for hybrid annuity mode ("**HAM**") based projects.

In relation to the HAM RFP, the bid parameter under Clause 1.2.6 has been amended from 'assessed bid price' to 'lowest bid project cost'. Further, Appendix X-IB (Letter Comprising the Financial Bid) has also been amended to remove the requirement of providing the 'first year operations and maintenance cost' as part of the bid. Footnote 12 of the Appendix X-IB (Letter Comprising the Financial Bid) has been relating to the operations and management ("**O&M**") cost has been deleted. The details in relation to such amendments, have been reproduced hereinbelow:

- For flexible perpetual pavement including structures:
  - no maintenance charges shall be paid for the first year;
  - 0.40% (zero point four percent) of the bid project cost shall be paid for the second and fourth year;
  - 0.60% (zero point six percent) of the shall be paid in the subsequent years till the end of the concession period or the laying of the renewal layer, whichever is earlier;
  - the requirement for the renewal layer shall be worked out based on a survey and investigation of the existing pavement. The cost of the same shall be made separately to the concessionaire at 2.4% (two point four percent) of the bid project cost;
  - after the renewal layer is laid, the concessionaire shall be paid 0.40% (zero point four percent) of the bid project cost for four years and 0.60% (zero point six percent) of the original cost till the laying of the second renewal layer or the end of concession period, whichever is earlier; and
  - after laying of the renewal layer, the concessionaire shall be paid 0.40% (zero point four percent) of the original cost till the end of the concession period.
- For rigid pavement with 10 (ten) years maintenance period including structures:
  - no maintenance charges shall be paid for the first year;
  - 0.20% (zero two percent) of the bid project cost shall be paid for the second, third and fourth year;
  - 0.40% (zero point four percent) of the bid project cost shall be paid for the fifth, sixth, seventh, eighth; and
  - 0.60% (zero point six percent) of the bid project cost till the end of the concession period.
- For stand-alone bridge/tunnel works: the concessionaire shall be paid no maintenance charges for the first year, 0.20% (zero point two percent) of the bid project cost for five years, 0.40% (zero point four percent) of the bid project cost till the end of the concession period.

GOVERNMENTS PUTS OIL PIPELINE MONETISATION PLAN ON HOLD AFTER PSU' RESISTANCE

Having convinced the nodal Ministry that a proposed plan to monetise oil and gas pipeline would be an expensive means to raise capital, state-owned gas utility GAIL, Indian Oil, and Hindustan Petroleum ("**Companies**") may not go ahead with it. This came after the Government announced the monetization programme in the Union Budget 2021 to release resources that could then be deployed in new projects, helping increase investment in an economy affected by the pandemic.

The Government expected the Companies to transfer some of their pipelines to separate infrastructure investment trusts ("**InvIT**") and sell minority stakes in those to raise INR 17,000 crore (Rupees Seventeen Thousand Crore). However, several oil and gas companies opposed the move from the beginning, highlighting that while the InvIT model worked well for the road sector where the cost of funds was huge, it was not viable for state-owned oil and gas companies. The Companies informed the government that their high credit ratings, will help them to raise funds at a much lower cost than any return they would have to give InvIT investors. In light of the same, the Government may consider if the oil and gas pipelines can be managed by a third party.

MEDIA & ENTERTAINMENT

DELHI HIGH COURT ALLOWS THE RELEASE OF 'JAYESHBHAI JORDAAR' WITH A DISCLAIMER

The Delhi Court, while hearing the plea filed against the film "*Jayeshbhai Jordaar*", seeking removal of the sex determination scene from the film, asked the producers Yash Raj Films to show the relevant portions of the scene. The advocate of the Defendant argued that the film is based on "something illegal" and includes appropriate disclaimers concerning the act in question; however the Court noted that the trailer of the film does not highlight the fact that sex determination is illegal and observed that "*there is nothing to show that the lady is taken clandestinely or that this is not legal or actors are aware (in the scene) that it is an offence*". After watching the scenes from the film, the Court allowed the release of the film directing the Defendant to include a disclaimer that "*female infanticide is a punishable offence*" at all scenes where a reference as to the sex of an unborn child is being made in the film. The Court also took on record the submission of the Advocate appearing for the Defendant that "appropriate disclaimers" will be added in all official promotional materials available on social media platforms as well as OTT platforms, if the film gets an OTT release.

READ MORE

COMPLAINT FILED AGAINST KAMAL HAASAN'S SONG 'PATHALA PATHALA'

Selvam, a social activist, has filed a complaint against the Tamil superstar Kamal Hasaan for his song Pathala Pathala, with the allegation that the lyrics make fun of the Union Government. The song is the first single from Lokesh Kangaraj's forthcoming film 'Vikram', starring Kamal Haasan. The song's words that sparked controversy are as follows (translated from Tamil to English): "*here is no money left in the treasury at a time when diseases are on the rise. Because of the mistakes of the Union Govt, there's nothing left now. The key now lies with the thief*".

READ MORE

PLAGIARISM CASE FILED AGAINST MAKERS OF THE MOVIE 'KRACK'

Shiva Subrahmaniya Murthy, a writer from Hyderabad, filed a complaint at the Jubilee Hills police station against producer Tagore Madhu, stating that the film's plot was copied from a novel he published in 2015. SHO Rajshekar Reddy confirms this, stating, "*On May 12, a person called Shiva Subrahmaniya Murthy filed a complaint against Tagore Madhu for allegedly plagiarising the narrative of Krack. He says that his tale was exploited without his permission. As the video was released over a year ago, we are seeking legal counsel to see whether a lawsuit may be launched at this time. We have not yet contacted the creators*."

READ MORE

NLUD PROFESSOR ASSISTS DELHI HIGH COURTS IN THE INTERPRETATION OF SECTION 52(1)(ZA) OF THE COPYRIGHT ACT

In a recent case brought by Phonographic Performance Limited against Lookpart Exhibitions and Events Private Ltd., an event management company, the Delhi high court-appointed Dr. Arul George Scaria as an expert to assist in the interpretation of section 52(1)(za) of the Copyright Act, 1957 with regard to the fair use of sound recordings in marriage ceremonies. As reported, the Bench of Justice Pratibha M. Singh stated that the issue raised would have far-reaching implications for artists such as lyricists, music composers, singers, sound recording producers, and owners and that it would also have a significant effect on entities involved in the planning and management of weddings and other social events.

READ MORE

SUPREME COURT HELD THAT SECTION 63 OF THE COPYRIGHT ACT IS COGNIZABLE AND NONBAILABLE

In *Knit Pro International vs. State of NCT of Delhi*, the Supreme Court has ruled that copyright infringement under Section 63 of the Copyright Act is cognizable and nonbailable. In addition, citing Section 63 of the Copyright Act and Part II of the First Schedule to the Criminal Procedure Code, the court stated: *"In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with a fine only the offence can be said to be noncognizable. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever."*

READ MORE

SEBI RECOMMENDED A BAN ON CELEBRITY ENDORSEMENT OF CRYPTO PRODUCTS

India's Securities and Exchange Board of India (SEBI) proposed that no significant public personalities, including celebrities and notable sportsmen, should support crypto products and that ad disclosures should include information regarding probable breaches of current laws. Possible breach of the Consumer Protection Act if the celebrity in question fails to comply with the law. Additionally, there is the possibility of prosecution for violations of other laws, such as FEMA, the BUDS Act, the PMLA, etc. Further, The CCPA may impose a fine of up to 10 lakh on a first-time celebrity violation for fraudulent statements or even deceptive advertising. Repeated violations may result in a 50 lakh fine and a three-year ban.

READ MORE

AJAY DEVGN'S NAME CLEARED FROM THE 'DE DE PYAAR DE' FALSE ADVERTISEMENT CASE

Tarun Aggarwal, a resident of Ajmer, filed a case in the Ajmer consumer court against Ajay Devgn regarding his film "De De Pyaar De" in 2019. The complaint said that the stunt scenario shown on the film's poster was not actually performed in the movie. It was claimed on behalf of Ajay Devgn that he cannot be held accountable for the film's promotion and marketing since he merely acted in it. The court upheld the actor's request and ordered the removal of his name from the lawsuit. The court said, " *an actor has nothing to do with hoardings, posters or deciding on the parts to be edited out of a film*"

READ MORE

DELHI HIGH COURT RULED ON TRADEMARK OF FILM TITLES

In *Sholay Media Entertainment and Anr. v. Yogesh Patel and Ors.*, the Delhi High rejected the argument that film names cannot be registered under Trademark Law. Justice Pratibha M Singh held that *"The word 'SHOLAY', is the title of an iconic film, and consequently, as a mark having been associated with the film, produced and now vesting in the Plaintiffs, cannot be held to be devoid of protection. Certain films cross the boundaries of just being ordinary words and the title of the film 'SHOLAY' is one of them".* She also added that *"Titles and films are capable of being recognised under trademark law and in India 'SHOLAY' would be a classic example of such a case."*

READ MORE

MADRAS HC PASSED AN ORDER TO DISPLAY STATUTORY WARNINGS DURING VIOLENT SCENES

A man from Chennai has petitioned the Madras High Court for an order mandating the display of statutory warning lines or phrases in movie theatres during the viewing of violent scenes. This appeal was submitted by S Gopi Krishna, who claims that many college-aged kids are implicated in several crimes, including murder and chain snatching, due to the impact of film sequences. The matter is yet to be listed or heard.

READ MORE

PUNJAB AND HARYANA HIGH COURT PASSED AN ORDER ON THE FAIR USE OF MUSIC IN MARRIAGE CEREMONIES

The Punjab and Haryana High Court quashed a public notice issued by the Registrar of Copyrights that allowed sound recordings to be played at religious rituals and wedding processions without permission from the copyright owner. The Punjab and Haryana High Court heard a petition filed by Novex Communications. In its ruling, the High Court made it clear that in order to utilise sound recordings in any show, a license must be obtained from the appropriate music company. The judge who issued the order was Justice Raj Mohan Singh.

READ MORE

SC PERMITTED RELEASE OF AMITABH BACHCHAN STARRER FILM 'JHUND' ON OTT,

The Supreme Court while permitting the OTT release of Amitabh Bachchan starrer film "*Jhund*" stayed the *status quo* order passed by the Telangana High Court against the film's producer Super Cassettes Industries Pvt Ltd (T-Series). In pursuance to a petition filed by a Hyderabad-based filmmaker Nandi Chinni Kumar, alleging copyright infringement, the High Court passed an interim order staying

the release of the film on OTT platforms till the next date hearing, i.e., June 9, 2022. However, as the film was already scheduled for an OTT release on May 6, 2022, T-Series filed a Special Leave Petition before the Supreme Court challenging the High Court's order. The matter was mentioned for an urgent listing which was granted by the Hon'ble Court. While admitting the petition, the Court observed that, "*Prima facie appears that the Impugned Order is clearly against the balance of convenience. The HC has overlooked the principles with regard to grant of interim relief*". The matter has been posted for disposal on May 12, 2022.

READ MORE

GOVERNMENT SETS UP A PANEL TO REGULATE ONLINE GAMING

The government has set up a committee to regulate online gaming and to identify a ministry to oversee it. The panel will include the chief executive officer of government think tank NITI Aayog and secretaries of the ministries of home, sports and youth affairs, information and broadcasting, electronics and information technology, etc. The committee has been mandated to study global best practices and recommend a regime for a uniform regulatory mechanism. It will take into account ease of doing business as well as compliance, a level playing field, and protection of gamers from user harms such as addiction. The panel will also develop a broad structure of the proposed central laws required, consult experts and submit a report in three months.

MIB ANNOUNCES SOPS FOR FOREIGN FILM SHOOTS AND CO-PRODUCTIONS IN INDIA

MIB announced a series of schemes for foreign film shoots and co-productions to take place in India. The two schemes, Incentive Scheme for Audio-Visual Co-production and Incentive Scheme Shooting of foreign films in India are aimed at unleashing the potential of the Indian media and entertainment industry.

Under the Incentive Scheme for Audio Visual Co-production, for all qualifying projects, the Indian co-producer can claim a payable cash reimbursement of up to 30% on qualifying expenditure in India subject to a maximum of Rs. 2 crore. However, reimbursement shall be divided among the producers as per their respective share of financial contribution towards the project. The project must have been granted 'co-production' status by the I&B ministry and the participating country(ies), under one of India's official bi-lateral co-production treaties on Audio-Visual Co-production.

Under the Incentive Scheme for Shooting of Foreign Films in India, apart from the 30% reimbursement incentive, an additional 5% bonus up to a maximum of Rs. 50 lakh can be claimed, with the latter being granted for employing 15% or more manpower in India. To avail this scheme, international productions that have been granted shooting permission by the ministry of information and broadcasting and ministry of external affairs (for documentaries only) after 1 April, 2022 shall be eligible.

READ MORE

FLORIDA COPYRIGHT LAW TARGETED DISNEY COPYRIGHT

The Copyright Clause Restoration Act of 2022 places a limit of 56 years on the duration of copyright protection and allows for its retroactive application to previously established copyrights. This legislation has the potential to deprive Disney of its ownership of the copyright to the character "Mickey Mouse." This action follows Disney's decision to halt all political contributions for the time being. It has been made clear by a number of Republican members that they would not back an extension of copyright rights for Disney in the event that a measure is submitted.

READ MORE

MINISTRY OF CORPORATE AFFAIRS ("MCA")

COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2014

The MCA, *vide* its notification dated May 4, 2022 (accessible here), has issued the Companies (Share Capital and Debentures) Amendment Rules, 2022 ("**SCD Amendment Rules**") amending the Companies (Share Capital and Debentures) Rules, 2014. The SCD Amendment Rules has come into effect on May 4, 2022.

As per the SCD Amendment Rules, the Form No. SH-4 (Securities Transfer Form) has been amended to provide for the transferee to make the declaration as per any one of the two options below:

- Transferee is *not* required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("**NDI Rules**") prior to transfer of shares; ***OR***

- Transferee is required to obtain the Government approval under the NDI Rules prior to transfer of shares and the same has been obtained and is enclosed along with the Form No. SH-4.

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2022

The MCA, *vide* its notification dated May 5, 2022 (accessible here), has issued the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 ("**PAS Amendment Rules**") amending the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**PAS Rules**"). The PAS Amendment Rules has come into effect on May 5, 2022.

As per the PAS Amendment Rules, a new *proviso* has been inserted in Sub-Rule 1 of Rule 14 (Private Placement) of the PAS Rules which states that no offer or invitation of any securities under Rule 14 shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, has obtained Government approval under the NDI Rules ("**NC Approval**") and attached the same with the private placement offer cum application letter.

Consequently, the Part-B of Form PAS-4 (Private Placement Offer Cum Application Letter) has been amended to provide for 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 subscription of shares; ***OR***

- Applicant is required to obtain the NC Approval prior to subscription of shares and the same has been obtained and is enclosed along with the Form PAS-4.

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

The MCA, *vide* its general circular dated May 5, 2022 (accessible here), has stated that the companies whose annual general meetings ("**AGM**") are due in the year 2022, can conduct the same through video conferencing ("**VC**") or other audio-visual means ("**OAVM**") on or before December 31, 2022. It is clarified in the aforesaid circular that the relaxation in holding the AGM through VC or OAVM shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013 ("**Act**") and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

RELAXATION IN HOLDING EXTRAORDINARY GENERAL MEETINGS (EGM) THROUGH VC OR OVAM

The MCA had earlier issued general circular dated December 8, 2021 (accessible here) wherein companies were allowed to conduct extraordinary general meetings ("**EGM**") through VC or OAVM or transact items through postal ballot till June 30, 2022, in accordance with the framework provided under the general circular dated April 8, 2020 (accessible here). Now, the MCA, *vide* its general circular dated May 5, 2022 (accessible here), has further extended the aforesaid timeline for allowing companies to conduct EGMs through VC or OVAM or transact items through postal ballot till December 31, 2022.

SPECIAL COURT NOTIFICATION FOR THE STATE OF JHARKHAND

The MCA, *vide* its notification dated May 5, 2022 (accessible here), has notified that in exercise of the powers conferred by Section 435 (Establishment of Special Courts) of the Act, the Central Government, with the concurrence of the Chief Justice of the High Court of Jharkhand, has designated the Court of Additional Judicial Commissioner, Ranchi in the State of Jharkhand as the Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of 2 (two) years or more as per Section 435(2)(a) of the Act.

Section 435(2)(a) of the Act mandates that a Special Court shall consist of a single judge holding office as Session Judge or Additional Session Judge in case of offences punishable under the Act with imprisonment of 2 (two) years or more.

COMPANIES (INCORPORATION) SECOND AMENDMENT RULES, 2022

The MCA, *vide* its notification dated May 20, 2022 (accessible here), has issued the Companies (Incorporation) Second Amendment Rules, 2022 ("**Incorporation Amendment Rules**") amending the Companies (Incorporation) Rules, 2014. The Incorporation Amendment Rules has come into effect on June 1, 2022.

As per the Incorporation Amendment Rules, the MCA has amended the existing physical form with the e-Form No. INC 9 (Declaration by Subscribers and First Directors) to insert a declaration on compliance with NC Approval requirement as per the NDI Rules.

Further, the MCA has also amended e-Form No. INC-32 (SPICe+), to insert a new declaration in Part-B thereof, on behalf of the proposed directors that in case the person seeking appointment is a national of a country which shares land borders with India, necessary security clearance from Ministry of Home Affairs, Government of India has been attached with the consent.

RELAXATION TO LIMITED LIABILITY PARTNERSHIP (LLPS) TO FILE THE ANNUAL RETURN AND VARIOUS OTHER EVENT BASED E-FORMS

The MCA, *vide* its general circular dated May 27, 2022 (accessible here), has allowed the LLPs to file e-Form No. 11 (Annual Return of LLP) for the financial year 2021-22, without paying additional fees, up to June 30, 2022.

Further, the MCA, *vide* its general circular dated May 31, 2022 (accessible here), has also allowed LLPs to file various event based e-forms, the due dates of which are falling between February 25, 2022 and May 31, 2022, without paying additional fees, up to June 30, 2022.

The aforesaid relaxations have been provided in wake of representations received by the MCA seeking an extension of timelines for filing the aforementioned forms and in view of transition from version-2 of MCA-21 to version-3 and also to promote compliance on part of LLPs.

COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2022

The MCA, *vide* its notification dated May 30, 2022 (accessible here), has issued the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022 ("**CAA Amendment Rules**"), amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**CAA Rules**"). The CAA Amendment Rules has come into effect on May 30, 2022.

As per the CAA Amendment Rules, the MCA has inserted Sub-Rule (4) in Rule 25A (Merger or amalgamation of a foreign company with a Company and vice versa) of the CAA Rules which states that in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under Section 230 (Power to compromise or make arrangements with creditors and members) of the Act. Consequently, in Annexure A of the CAA Rules, a new Form No. CAA-16 (Declaration in terms of Rule 25A) has been inserted to provide for the applicant to make the declaration as per any one of the two options below:

- Company/body corporate is not required to obtain the NC Approval; ***OR***
- Company/body corporate is required to obtain the NC Approval and the same has been obtained.

COMPANIES (ACCOUNTS) THIRD AMENDMENT RULES, 2022

The MCA, *vide* its notification dated May 31, 2022 (accessible here), has issued the Companies (Accounts) Third Amendment Rules, 2022 ("**CA Third Amendment Rules**") amending the Companies (Accounts) Rules, 2014 ("**CA Rules**"). The CA Third Amendment Rules has come into effect on May 31, 2022.

As per the CA Third Amendment Rules, the MCA has extended the timeline for filing Form CSR-2 (Report on Corporate Social Responsibility) for the financial year 2020-21, as specified in Sub-Rule 1B of Rule 12 (Filing of Financial Statements and Fees to be Paid Thereon) of the CA Rules, allowing the same to be filed on or before June 30, 2022 (which was previously required to be filed on or before May 31, 2022).

Further, *vide* the CA Third Amendment Rules, a *proviso* has been inserted in the aforesaid Sub-Rule 1B of Rule 12, stating that, for the financial year 2021-22, Form CSR-2 shall be filed separately on or before March 31, 2023 after filing of the Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

RERA

OCCUPANCY CERTIFICATE BEFORE COMMENCEMENT OF RERA ACT WILL NOT EXCUSE THE BUILDER FROM THE JURISDICTION OF STATE RERA AUTHORITY

The Hon'ble Punjab and Haryana High Court, while hearing a petition filed by Experion Developers Private Limited (**"Experion"**), held that before the commencement of the Real Estate (Regulation and Development) Act, 2016 (**"RERA Act"**), merely obtaining the occupancy certificate by builders with no completion certificate in respect to a housing project will not render the builders outside the purview of the jurisdiction of the State Real Estate Regulatory Authority (**"RERA"**).

However, the Hon'ble Punjab and Haryana High Court stated that *"A difference has been carved out in the act itself as to what is a completion certificate and what is an occupancy certificate, and unless the petitioner has obtained the completion certificate for the project prior to the date section 3 came into effect, i.e., May 1, 2017, it was necessarily required to get itself registered with the relevant authority. But with a completion certificate still not having been obtained, simply obtaining the occupancy certificate, or having applied for such certificate in terms of Haryana Building Code, 2017, we would not consider the petitioner outside the purview of the jurisdiction of RERA."*

Further, the main contention of Experion was with respect to the jurisdiction of Haryana RERA to pass orders with the contention of having received an occupancy certificate in respect of at least a part of the project before May 1,2017. Responding to the plea of Experion, the counsel appearing for the Haryana RERA argued that having not obtained a completion certificate pursuant to the procurement of an occupancy certificate, necessarily would require to get the project registered and therefore, the jurisdiction of Haryana RERA was very much existent qua the project of Experion

MRAT: IF THE RE-DEVELOPMENT CONTRACT HAS BEEN TERMINATED, THE ONLY REMEDY AVAILABLE BY THE BUYERS IS TO SEEK REFUND FROM THE FIRST BUILDER

The Maharashtra RERA Appellate Tribunal(**"MRAT"**), in the first appeal filed by Samudra Darshan Co-operative Housing Society challenging an order of Maharashtra RERA **("MahaRERA"**) held that in a redevelopment project, once a developer is terminated by the society, the only remedy available with the flat purchaser is to seek refund from the erstwhile developer.

In the year 2005, Samudra Darshan Co-operative Housing Society (**"Society"**) appointed a builder for redevelopment pursuant to execution of an agreement wherein the builder was allowed to sell flats only after accommodating the residents in the rehabilitation component first. Pursuant to the commencement of construction, payment of additional amounts by the allottees towards payment consideration of the flats was made. Due to lack of progress in the development of the project, the Society in the year 2014, appointed a new developer for development of the project. Pursuant to the RERA Act coming into force in the year 2017, the new developer registered the project under the RERA Act. Subsequently, the allottees filed a complaint under RERA Act, seeking allotment of flats and sought directions that any one of the two developers execute sale agreements on the basis of allotment letters issued in the year 2011.

The hon'ble bench of members namely Shri. SR Jagtap and Shri. Sandhu, vide judgment dated May 6,2022 held that *"the transaction is purely and only between the allottees and the ex-developer"* and also held that *"as a new developer is appointed by the society and has not executed any agreement with the former developer, it cannot be held liable to honour commitments made by it, with the allottees as wrong held by the authority".*

Thus, MRAT, set aside the order passed by MahaRERA and remanded the matter for considering claim of allottees

afresh to the extent of refund of amount against ex-developer, holding that *"since the new developer has taken over the project, no flat can be made available to the allottees in the project"* and only the alternative claim for refund, if at all, can be considered against the previous developer.

MRAT: COMPLETION DATE CANNOT KEEP EXTENDING ON GRANT OF EACH COMMENCEMENT CERTIFICATE

The MRAT, comprising of Justice Indra Jain as a chairperson and Dr. K Shivaji, vide order dated May 04, 2022, held that the completion date cannot keep getting extended on grant of each commencement certificate and directed the builder to refund the amount paid by buyers, who did not receive the possession even on revised dates.

Further, MRAT, setting aside the order of January 2020 passed by the MahaRERA, held that the revised date of possession on the website of MahaRERA cannot be considered as an agreed date of possession. The MRAT, further reasoned that the delivery date mentioned on the MahaRERA's website is revised unilaterally without the consent of the complainant, therefore it cannot be binding on the complainant.

ADVISORY COUNCIL: RERA BEING THE CUSTODIAN OF LAW, DILUTION SHOULD NOT BE ALLOWED

Central Advisory Committee (**"CAC"**), headed by the Union Minister, Shri. Hardeep Singh Puri stated and decided that RERA being the custodian of the RERA Act, should not be diluted.

Further, the decision of CAC comes in light pursuant to the order passed by the Hon'ble Supreme Court seeking details by the central government and the state governments of the rules under RERA Act to check whether these are in accordance with the central rules.

GOVERNMENT DECIDES TO SET UP A PANEL ON RERA NON-COMPLIANCE

Pursuant to the decision in the recent meeting of CAC, in order to regulate the non-compliance of the orders of the state specific RERA authorities, a committee consisting of home buyers and realty developers has been decided to be set up.

Shri. Abhay Upadhyay, president of the Forum for People's Collective Efforts stated that, *"Despite the orders getting served, homebuyers are left in the lurch as the enforcement of these orders is taking unreasonable time. The Housing Minister himself suggested this move to study the procedure followed by the states that rank high in the enforcement of the RERA orders."* Thus, this move will lead see faster execution of the RERA orders.

HIGH COURT OF BOMBAY DIRECTS CCI PROJECTS TO DEPOSIT 100% INTEREST TO BE PAID TO FLAT BUYERS

The Hon'ble High Court of Bombay, while hearing a plea concerning the amount of pre-deposit required to be submitted before the Appellate Tribunal as a pre-requisite to hear the appeals, held that *"under RERA, before the appellate tribunal can hear the appeals, 100% of the interest to be paid to the buyers for delay in handing over the projects has to be submitted as a pre-deposit."*

It was argued that section 43(5) of the RERA Act gives the appellate tribunal discretion to seek deposit of at least 30% (Thirty Percent) of the amount. The counsel appearing for the opposite party pointed out that the RERA Act provides for a minimum 30% (Thirty Percent) deposit only of the 'penalty' imposed, not other amounts of the transaction.

HON'BLE HIGH COURT OF DELHI: TRIBUNAL HAS NO POWER TO INITIATE SUO MOTO PROCEEDINGS

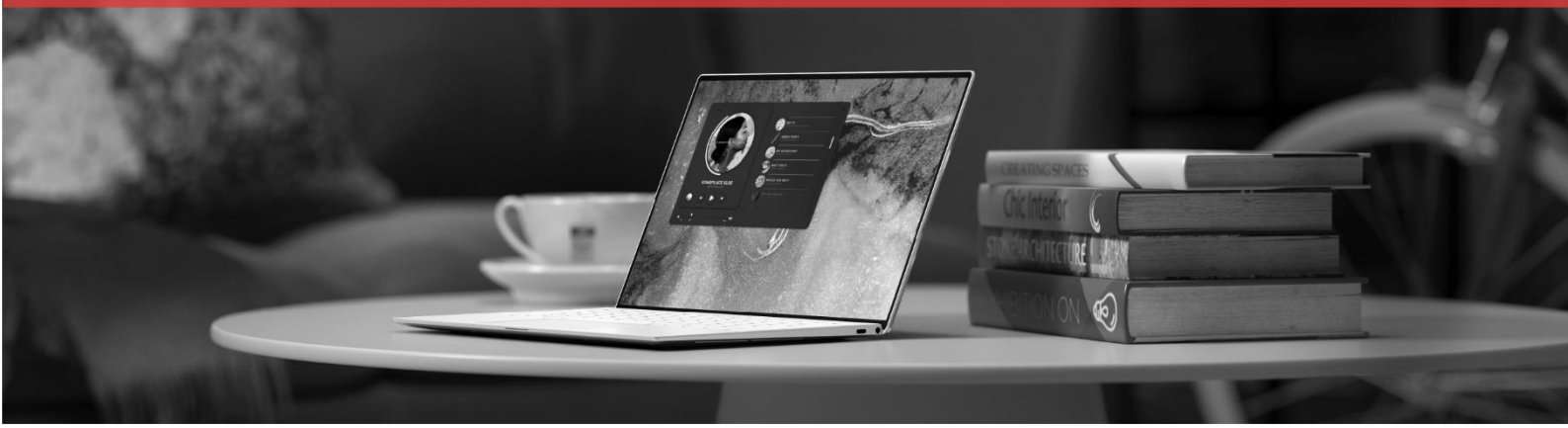
In the case of Praveen Chhabra vs Real Estate Appellate Tribunal (**"REAT"**), the Hon'ble High Court of Delhi held that REAT does not have the powers to initiate the *suo moto* proceedings to monitor construction activity in the National Capital Territory.

Analysing the relevant provisions of the REAR Act, Hon'ble Justice Yashwant Varma added that the REAT is a creation of statute, and that it is not an authority which may be recognised as being vested with inherent powers. The Hon'ble High Court of Delhi concluded that *"there was a patent lack of jurisdiction and the proceedings as drawn by the appellate tribunal are liable to be quashed in entirety."*

DELHI RERA: DELHI CORPORATIONS NOT TO APPROVE UNREGISTERED BUILDING PLANS

The Delhi RERA has directed Municipal Corporations of Delhi and Delhi Development Authority, not to approve any building plans for projects that have not been registered with the RERA. The decision comes after the RERA's order, mandating the builders to register projects with total developed area more than 500 square metres, regardless of the number of flats constructed on it.

Further, stating that there are multiple cases where builders take the money but do not complete the work, in such cases there is a problem as, "since these projects are not RERA-registered, builders avoid scrutiny and continue to make money. To avoid litigation, the buyers must invest in RERA approved projects only." Delhi RERA has also said if this order isn't followed, it will result in charging a fine of up to 10% (Ten Percent) of the estimated cost of the project.



GOVERNMENT OF RAJASTHAN ROLLS OUT THE DRAFT OF RAJASTHAN VIRTUAL ONLINE SPORTS (REGULATION) BILL, 2022

The Government of Rajasthan released a draft of the Rajasthan Virtual Online Sports (Regulation) Bill -2022 ("**Bill**") on May 17, 2022 inviting suggestions and comments from relevant stakeholders. The Bill intends to regulate online fantasy sports and different formats of virtual online sports ("**VOS**"). The Bill stipulates licensing obligation on persons offering, organizing or exhibiting 'VOS' in the State of Rajasthan. Any person or online gaming service provider desirous of obtaining such license will be required to apply to the officer appointed by the State Government. Further, such license would be granted only to an Indian citizen or a legal entity incorporated/ registered in India, and would be valid for a period of 10 (Ten) years from the date of the grant of license, subject to further renewal on payment of license fees.

The Bill also provides for the levy of penalty of upto INR 4,00,000 (Indian Rupees Four Lakhs only) per day of the contravention to any person operating as a sports engagement platform in the State of Rajasthan, without procuring a valid license. It is also mentioned that the failure of any person/entity to comply with the directions would be punishable with a fine upto INR 2,00,000.

CORPORATE, ENTERPRISE VPNS WILL NOT NEED TO MAINTAIN CUSTOMER LOGS: CERT-IN

The Indian Computer Emergency Response Team (CERT-In) released clarifications on its new cyber security directions, issued on April 28, in FAQ format (accessible here). The national cyber security agency said that the rule to maintain customer logs would not be applicable to enterprise/corporate virtual private networks (VPN) service providers. The new rules mandate VPN providers, Virtual Private Server (VPS) providers and cloud service providers to collect and store their customer data for five years or more.

However, the release of all the 44 FAQs clarified that the term VPN service providers refers to an entity that provides "Internet proxy like services" through the use of VPN technologies, standard or proprietary, to general Internet subscribers/users thereby. The FAQs also said that the non-compliance will attract penalties under the IT Act. However, the FAQs have not excluded the requirement to maintain ICT logs.

RBI DIRECTS BANKS TO OFFER CARDLESS CASH WITHDRAWAL FACILITY ACROSS ALL ATMS

The Reserve Bank of India (RBI) through a notification dated 19th may, 2022 has asked all the banks and ATM operators in the Country to provide customers with the option of Interoperable Card-less Cash Withdrawal (ICCW) at their ATMs.

"All banks, ATM networks and WLAOs may provide the option of ICCW at their ATMs. NPCI has been advised to facilitate Unified Payments Interface (UPI) integration with all banks and ATM networks. While UPI would be used for customer authorisation in such transactions, settlement would be through the National Financial Switch (NFS) / ATM networks. The on-us / off-us ICCW transactions shall be processed without levy of any charges other than those prescribed under the circular on Interchange Fee and Customer Charges,".

The RBI in April had said the absence of need for a card to initiate cash withdrawal transactions would help in containing frauds like skimming, card cloning and device tampering. The notice also clarified that the card-less cash transactions shall be processed without levy of any charges and the withdrawal limits for ICCW transactions shall be in-line with the limits for regular on-us / off-us ATM withdrawals and all the other instructions related to Harmonisation of Turn Around Time (TAT) and customer compensation for failed transactions shall continue to be applicable.

MEITY ISSUES DRAFT NORMS TO MOBILISE NON-PERSONAL CITIZEN DATA AVAILABLE WITH GOVERNMENT

The Ministry of Electronics and IT (MeitY) issued a draft of the National Data Governance Framework Policy (NDGFP) (accessible here) to mobilise the non-personal data of citizens for use by both public and private entities. The draft policy proposes the launch of a non-personal data-based India datasets program and addresses the methods and rules to ensure that non-personal and anonymized data from both government and private entities are safely accessible by the research and innovation ecosystem.

The proposed policy will be applicable to all government departments and entities; and rules and standards prescribed will cover all data collected and being managed by any government entity. The draft also proposes the setting up of an 'India Data Management Office (IDMO)', under the Digital India Corporation, which shall be responsible for framing, managing and periodically reviewing and revising the policy. The draft is proposed to cover all non-personal datasets and data and platforms, rules, and standards governing its access and use by researchers and startups.

GOVERNMENT WITHDRAWS ADVISORY ON AADHAAR CARD PHOTOCOPY

The Ministry of Electronics and Information Technology (MeitY) withdrew on 29th May, 2022, its advisory issued by a regional office of the Unique Identification Authority of India (UIDAI) on 27th May, 2022 asking the general public to not share photocopies of their Aadhaar cards conveying that such a circular could lead to misinterpretation among the general public at large.

MeitY had, through its advisory dated 27th May, 2022 advised the people to not to share photocopy of their Aadhaar cards with any organisation for apprehended misuse and suggested on sharing a masked Aadhaar which would only display the last 4 digits of Aadhaar number. However, in view of the possibility of the misinterpretation of the press release, MeitY withdrew the same with immediate effect through a press release dated 29th May, 2022.

NATIONAL MEDICAL COMMISSION RELEASES THE DRAFT OF THE NATIONAL MEDICAL COMMISSION, REGISTERED MEDICAL PRACTIONER (PROFESSIONAL CONDUCT) REGULATIONS, 2022

The National Medical Commission, through a public notice (accessible here) dated 23rd May, 2022 invited comments from public in general & Experts/stakeholders/organisations on the draft of the National Medical Commission, Registered Medical Practitioner (Professional Conduct) Regulations, 2022. The regulations have been proposed to address the codes of professional conduct, continuing professional development and medical ethics.

The draft regulations also include the 'Guidelines for the practice of Telemedicine in India'. Prior to the introduction of this draft, the telemedicine practice in the country was regulated by the Telemedicine Practice Guidelines, 2020 which provided for a set of norms to be followed by the platforms facilitating telemedicine in the country. The freshly proposed draft empowers the National Medical Commission to take legal action against such platforms/providers that fail to meet the obligations proposed by the guidelines.

WHITE COLLAR CRIME

PARTNER OF A FIRM CANNOT BE HELD VICARIOUSLY LIABLE IF A FIRM HAS NOT BEEN ARRAIGNED AS AN ACCUSED

The Supreme Court in the case of ***Dilip Hariramani v. Bank of Baroda*** (SLP Criminal No. 641 of 2021) held that a partner cannot be held vicariously liable for a criminal offence under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**"). In the present case Bank of Baroda had granted term loan to the partnership firm. On dishonour of cheques, the Bank filed a complaint under Section 138 of the NI Act against the partner of a firm. However, the partnership firm was not arraigned as an accused in the complaint. The Supreme Court, while acquitting the Appellant held that Section 141 of the NI Act imposes vicarious liability on a company or firm when (i) the company or a firm is arraigned as an accused in the criminal proceedings; and (ii) when it is proved that the company or a firm has committed an offence under Section 138 of the NI Act as the principal accused.

***DSK View**: The Supreme Court has reiterated the position that a partner or a director cannot be held vicariously liable unless the company or firm has been arraigned as an accused and committed an offence as a principal accused.*

DISHONEST INDUCEMENT TO DECEIVE A PERSON TO DELIVER ANY PROPERTY IS ESSENTIAL FOR A CASE TO FALL UNDER SECTION 420 OF THE IPC

The Supreme Court in the case of ***Rekha Jain v. State of Karnataka*** (Criminal Appeal No. 749 of 2022) observed that it is necessary to have dishonest inducement to deceive a person under Section 420 of the Indian Penal Code, 1860 ("**IPC**"). The complainant had lodged a complaint against the husband of the Appellant alleging that he had cheated the complainant and subsequently an FIR was registered for the offence under Section 420 of the IPC. Investigation was carried out against the Appellant as well, and she was named in the chargesheet for the offences under Section 420 of IPC. The Supreme Court observed that there are no allegations of inducement against the Appellant. Therefore, the Court while quashing and setting aside the criminal proceedings against the Appellant held that, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person.

***DSK View**: The Supreme Court has reiterated the importance of "dishonest inducement" in Section 420 of the IPC and rightly quashed aside the criminal proceedings. Section 420 can attract only if there are specific allegations that the accused had dishonestly induced the victim in order to deceive him to deliver the property.*

SECTION 63 OF THE COPYRIGHT ACT IS A COGNIZABLE AND NON-BAILABLE OFFENCE

In the case of ***M/s Knit Pro International v. The State of NCLT Delhi & Anr.*** (Criminal Appeal No. 807 of 2022), the Supreme Court held that the offence of copyright infringement under Section 63 of the Copyright Act, 1957 ("**Copyright Act**") is a cognizable and non-bailable offence. The Appellant filed had an application under Section 156(3) of the Code of Criminal Procedure, 1973 ("**CrPC**") and sought registration of the First Information Report ("**FIR**") against the accused for offences under Sections 51, 63 and 64 of the Copyright Act read with Section 420 of the IPC. The Respondent No. 2 had approached the Delhi High Court seeking to quash the criminal proceedings on the ground that Section 63 of the Copyright Act is not a cognizable and a non-bailable offence and relied on the judgment of *Rakesh Kumar Paul V. State of Assam* (2017 15 SCC 67). The petition was allowed by the High Court. Being aggrieved, the Appellant approached the Supreme Court wherein the Court observed that the punishment provided under Section 63 of the Copyright Act is imprisonment for a term which shall not be less than six months, but which may extent to three years and with fine. The Court further observed that the language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever and therefore, held that Section 63

of the Copyright Act is a cognizable and a non- bailable offence.

DSK View*: *The Supreme Court has clarified the ambiguity of the offences committed under Section 63 of the Copyright Act, by holding that it is a cognizable and non-bailable offence. However, this may invite several criminal complaints for infringing the copyrights material and it will also give a free hand to the police officials to make arrests without a warrant.

BOMBAY HIGH COURT QUASHED AND SET ASIDE THE CRIMINAL PROCEEDINGS FILED AGAINST INDIA BULLS HOUSING FINANCE LIMITED

The Bombay High Court in the case of ***India Bulls Housing Finance Limited v. State of Maharashtra*** (Writ Petition No. 1805 of 2021) quashed a FIR filed by a shareholder of India Bulls Housing Finance Limited against the Petitioner Company. The Company submitted that although the Respondent was a resident of Dadar, Mumbai but, shifted to Biloshi, Wada for a temporary period to fall within the jurisdiction of the approached Magistrate. It was further submitted that a similar attempt was made in some other part of India and Delhi High Court had observed that such complaint was filed with an oblique motive. The Bombay High Court found merit in the submissions made by the Company and observed that complaint filed against the Company and continuity of the proceedings is an abuse of process of law. Further, the Bombay High Court observed that the complaint filed by the Respondent lacked an affidavit supporting the complaint, which is a basic requirement. The Bombay High Court also took into consideration the Replies filed by the MCA and the RBI before the Delhi High Court which do not hold the Petitioner Company responsible for any mischief as alleged by the Respondent. The Bombay High Court exercised its inherent powers under Section 482 of the CrPC and quashed the criminal proceedings.

DSK View*: *The inherent power of the High Court under Section 482 of the CrPC is very wide and devoid of statutory limitation. The High Court to prevent an abuse of the process of any court or to secure the ends of justice can exercise the inherent power granted under Section 482 of the CrPC. In the case discussed above, the facts demonstrate the complainant's motive to initiate criminal proceedings on false and frivolous allegations to extract money from the Company. Considering the same, the Court exercised its inherent power to put an end to the continuity of such proceedings and prevented the complainant from the abusing the process of law.

BOMBAY HIGH COURT REFERS THE QUESTION OF GRANT OF TRANSIT ANTICIPATORY BAIL TO THE ACCUSED WHEN OFFENCE IS REGISTERED IN ANOTHER STATE TO A FULL BENCH

The Bombay High Court in the case of ***Prajith Thayyil Kallil v. The State of Maharashtra*** (Anticipatory Bail Application No. 161 Of 2022) along with other connected anticipatory bail applications, referred the matters to a full bench while dealing with an issue whether the Courts can grant transit anticipatory bail to the accused when the offence under which he is charged is in another state. The contention of the State is that transit anticipatory bail orders cannot be passed, and the respective court cannot grant protection to the accused under Section 438 of the Code of Criminal Procedure when the offence is registered in another state, falling outside the ambit of its jurisdiction. The Applicants however argued that apprehension of arrest determines grant of anticipatory bail and not territorial jurisdiction. Along with the issues relevant to the facts of the case, the Bombay High Court framed additional issues and referred the same to a full bench since the matter involved larger interest of the citizens.

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
DSK Legal
www.dsklegal.com

Disclaimer