

NEWSLETTER

May 2022

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REVISION OF UPI LIMITS IN PUBLIC ISSUE OF EQUITY SHARES AND CONVERTIBLES

Earlier, SEBI *vide* circular dated June 28, 2019 had mandated the use of Unified Payment Interface as an additional payment mechanism with Application Supported by Blocked Amount (ASBA) for Retail Individual Investors submitted through Intermediaries. NPCI *vide* circular dated December 09, 2021 further enhanced the per transaction limit in UPI from Rs. 2 lakhs to Rs. 5 lakhs for UPI based (ASBA) in Initial Public Offers (IPOs).

Accordingly, it has been decided *vide* SEBI circular SEBI/HO/CFD/DIL2/CIR/P/2022/45 dated April 05, 2022 (“**April 05 Circular**”) that all Individual Investors applying in Public Issues where the application amount is up to INR 5 Lakhs shall use UPI and shall also provide their UPI ID in the bid-cum-application form submitted with any of the entities: a syndicate member, a stock broker registered with recognised stock exchange (whose name is mentioned on the website of the stock exchange as eligible for this activity), a depository participant (whose name is mentioned on the website of the stock exchange as eligible for this activity), a registrar to an issue and share transfer agent (whose name is mentioned on the website of the stock exchange as eligible for this activity).

This April 05 Circular has come into force on Public Issues opening on or after May 01, 2022.

STANDARD OPERATING PROCEDURES (SOP) FOR DISPUTE RESOLUTION AVAILABLE UNDER THE STOCK EXCHANGE ARBITRATION MECHANISM FOR DISPUTES BETWEEN A LISTED COMPANY AND ITS SHAREHOLDER(S) INVESTOR(S)

Regulation 40 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015, and bye-laws, listing agreement and regulations of the stock exchanges provides for a dispute resolution under the stock exchange arbitration

mechanism for disputes between a listed company and its shareholder(s)/ investor(s).

In this regard, SEBI *vide* circular SEBI/HO/CFD/SSEP/CIR/P/2022/48 dated April 08, 2022 advised stock exchanges to put in place Standard Operating Procedures (SOP) for operationalizing the resolution of all disputes pertaining to or emanating from investor services such as transfer/transmission of shares, demat/remat, issue of duplicate shares, etc. and investor entitlements like corporate benefits, dividend, bonus shares, rights entitlements, credit of securities in public issue, interest /coupon payments on securities, etc.

Registrar and Share Transfer Agents (RTA) offering services to shareholder(s)/ investor(s) on behalf of listed companies, shall continue to be subjected to the stock exchange arbitration mechanism.

The required SOP needs to be put in place by June 01, 2022.

CLARIFICATION ON APPLICABILITY OF REGULATION 23(4) READ WITH REGULATION 23(3)(E) OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 IN RELATION TO RELATED PARTY TRANSACTIONS

Regulation 23(3)(e) of the LODR Regulations specifies that omnibus approval granted by the audit committee shall be valid for a period not exceeding one year and shall require fresh approvals after expiry of one year. Regulation 23(4) SEBI LODR Regulations requires shareholder approval for material related party transactions (RPTs). Section 96(1) of the Companies Act, 2013 specifies that the time gap between two Annual General Meetings (AGMs) cannot be more than fifteen months.

SEBI *vide* circular SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated April 08, 2022, specified that the shareholders’ approval of

omnibus RPTs approved in an AGM shall be valid up to the date of the next AGM for a period not exceeding fifteen months. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year.

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2022

SEBI has clarified that the amendments relating to allocation in the net carried out by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 shall come into force in the following manner:

- (a) for public issues of a size less than ₹10,000 crore and opening on or after April 1, 2022; with effect from April 1, 2022;
- (b) for public issues of a size equal to or more than ₹10,000 crore and opening on or after April 1, 2022; with effect from July 1, 2022.

REDUCTION OF TIMELINES FOR LISTING OF UNITS OF INFRASTRUCTURE INVESTMENT TRUSTS

The Securities and Exchange Board of India *vide* circular bearing number SEBI/HO/dDHS/DDHS_Div3/P/CIR/2022/55 dated April 28, 2022, has rationalized and detailed the timelines for allotment and listing of units of infrastructure investment trusts post closure of issuance, to 6 (six) working days as against the previous requirement of 12 (twelve) working days. A few key highlights of the activities to be undertaken are as follows:

- (a) the issuance shall close on the closure date (“T”);
- (b) the modification of fields, receiving of bids by the RTA etc. shall take place within T+1 days;

- (c) RTA reconciliation, transfer of shares from the sponsor’s demat account to the trust’s demat account etc. to be completed within T+2 days;
- (d) finalization of “technical rejection”, transfer of shareholding in the holding company and/or the special purpose vehicle or the ownership of the projects, allotment of public issue of units etc. shall take place within T+3 days; and
- (e) trading shall commence on the T+6th day

REDUCTION OF TIMELINES FOR LISTING OF REAL ESTATE OF UNITS OF REAL ESTATE INVESTMENT TRUSTS

In order to regulate the public issue of units of Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT), the timeline has been reduced from 12 days to six days. The timelines are as follows:

- (a) the issuance will close on the closing date “T”;
- (b) the modification of fields, receiving RTA and acceptance of applications by designated branches of Self Certified Syndicate Banks (SCSB) has to be completed within **T+1 day**;
- (c) confirmation of funds blocked (final certificate) by SCSBs, RTA reconciliation, transfer of shares from the sponsor’s demat account to the trust’s demat account etc. to be completed within **T+2 days**;
- (d) finalization of “technical rejection”, transfer of shareholding in the holding company and/or the special purpose vehicle or the ownership of the projects, allotment of public issue of units etc. shall take place within **T+3 days**; and
- (e) trading commences within **T+6 days**.



COMPETITION COMMISSION OF INDIA PENALIZES FIRMS FOUND GUILTY OF BID-RIGGING AND CARTELIZATION IN INDIAN RAILWAYS TENDERS

By an order dated April 04, 2022, the Competition Commission of India (“CCI”) has penalized eleven enterprises for indulging in cartelization and bid-rigging in violation of Section 3 of the Competition Act, 2002 (“Act”) which proscribes anti-competitive agreements.

The case was initiated based on a reference received from the North-western Railways. CCI in their investigation report and the subsequent inquiry found the enterprises to have indulged in cartelization in the supply of High-Performance Polyamide Bushes (“HPPA”) and Self Lubricating Polyester Resin Bushes (“SLPR”) to the Indian Railways by determining prices, allocating tenders, controlling supply, co-ordinating bid prices and manipulating the bidding process. The evidence in the matter included regular e-mail communications and WhatsApp exchanges between the parties, quoting of identical/ similar prices by certain parties, filing of bids from the same IP addresses by certain parties in close proximity, etc. Of the eleven entities, four were lesser penalty applicants before the CCI.

Further, fourteen individuals of these eleven entities were also held to be liable for the anti-competitive conduct of their respective companies/ firms, in terms of the provisions of Section 48 of the Act. CCI imposed penalties of 5% of the average turnover/ income upon the companies/ firms and their respective individuals found guilty of violating the provisions of the Act. CCI gave the benefit of reduction in the penalty of 80% to the first lesser penalty applicant and its individuals, 40% to the second lesser penalty applicant, 30% to the third lesser penalty applicant and its individuals, and 20% to the fourth lesser penalty applicant and its individual while directing the parties to pay penalties, besides issuing a cease-and-desist order

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

CCI REVISES LONG FORM FOR MERGER & ACQUISITIONS

CCI has notified the revised format of Form II- long-form of merger notification vide Notification no. CCI/CD/Amend/Comb. Regl./2022 effective from May 01, 2022. The concerned form is filed under section 6(2) of the Act, where the post-combination market share exceeds 15% in cases of horizontal overlap and 25% in cases of vertical overlap. Generally, these are the cases requiring detailed examination to assess the likely effect of the combination on competition in India.

The amendment to the Form – II is aimed to remove duplicity and limit the information required so that they remain focused and relevant to the objective of assessment of a merger, suitably clustering the information on a common subject, streamlining the flow of information for better navigation and appreciation of material furnished in the notification.

Also, the template of the revised long-form is based on the structure of the short form to have modular formats of merger notification that would reduce the time and effort required to move from the short form to the long form. Further, revision in the long-form has been undertaken without sacrificing the cause of merger regulation. Revised long-form is intended to strike a balance between facilitation and enforcement functions and create a culture of compliance.

COMBINATIONS APPROVED

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

- **April 04, 2022** – Acquisition of certain compulsorily convertible preference shares of **Hero FinCorp Limited** by **AHVF II Holdings Singapore II Pte. Ltd.**
- **April 18, 2022** – Acquisition of minority stake of **BDR Pharmaceuticals International Private Limited** by **Multiples Private Equity Fund III, SRF Transnational**

Holdings Limited, Balkrishna Industries Limited, Dharmayug Investments Limited, QRG Investments and Holdings Limited, Mr. Nishant K. Agarwal, and Ms. Mallika Srinivasan.

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.*

DISPUTE RESOLUTION



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THE STANDARD FOR REJECTING A REFERENCE ON THE GROUND THAT THE DISPUTES ARE NOT ARBITRABLE OR THE AGREEMENT IS INVALID, IS THAT OF 'BEYOND ANY DOUBT' STATES THE DELHI HIGH COURT

Recently, a single judge bench, of the Hon'ble Delhi High Court comprising of Justice Vibhu Bakhru, in *Parsvnath Developers Ltd. v. Future Retail Ltd.*¹ while relegating the parties to the Arbitration, noted that the standard of proof for rejecting a reference on the ground that the disputes are not arbitrable or the agreement is invalid is that of 'beyond any doubt'.

In the said case, the Petitioner entered into an agreement with Delhi Metro Rail Corporation Ltd (DMRC), for constructing a shopping complex under the name of 'Parsvnath Mall' and also entered into a Sub-License Agreement ("**the Contract**") with the Respondent for sub-licensing certain properties to the Respondent in the said Mall. Certain disputes *qua* payment of service tax under the Finance Act, 2007 arose between the parties, following which the Petitioner filed a petition under Section 11 of the Arbitration & Conciliation Act, 1996 ("**the Act**").

The Respondent opposed the petition mainly on the ground of (i) the Contract being insufficiently stamped; and, (ii) the disputes being *ex facie* barred under the Limitation Act, 1963. Rejecting the contentions of the Respondent and after referring to a plethora of judgments, the Hon'ble Court held that 'whether the Contract is sufficiently stamped or not' is a contentious issue and requires adjudication by the Arbitrator. The Hon'ble Court also held that 'whether the Petitioner's claims are barred by limitation' is required to be

decided by the Tribunal and accordingly allowed the petition.

In addition to setting out the 'standard of proof' under Section 11 of the Act, the above judgment has once again tested and examined the scope of interference of the courts under the Act.

LIQUIDATED DAMAGES STIPULATED IN THE PUBLIC UTILITY CONTRACT, WHEN NON-QUANTIFIABLE, BE AWARDED PROVIDED THE SAME IS GENUINE PRE-ESTIMATE OF LOSSES SUFFERED BY THE EMPLOYER, HOLDS THE DELHI HIGH COURT WHILE SETTING ASIDE AN ARBITRAL AWARD

The Delhi High Court in cross petitions under Section 34² of the Act partially set aside the award dated 29.07.2020 ("**Impugned Award**"), while holding that and held that liquidated damages stipulated in the public utility contract, when non-quantifiable, be awarded provided the same is genuine pre-estimate of losses suffered by the employer. The Hon'ble Court also held that it is difficult to sustain the award of damages based on "guess work", particularly when no material exists on record to make any educated guesses as to the quantum of damages payable.

In the said case, M/s. Haryana Vidyut Prasaran Nigam Limited ("**HVPNL**") awarded the Contract for the supply and installation of Three Sub-stations and Six 200 & 60 KV Bays ("**Project**") to Contractor, M/s. Cobra Instalaciones Y. Services, S.A. and M/s Shyam Indus Power Solution Pvt. Ltd. JV ("**Cobra**"). Certain disputes *qua* execution of the Project arose between the parties, following which the arbitration was invoked by Cobra and arbitral proceedings commenced before the Learned Sole Arbitrator.

¹ ARB.P. 14/2020.

² HARYANA VIDYUT PRASARAN NIGAM LIMITED (HVPNL) vs. M/S COBRA INSTALACIONES Y. SERVICES, S.A. & M/S SHYAM INDUS POWER SOLUTION PVT. LTD. (JV), O.M.P. (COMM) 8/2021; M/S COBRA INSTALACIONES Y.

SERVICES, S.A. & M/S SHYAM INDUS POWER SOLUTION PVT. LTD. (JV) vs. HARYANA VIDYUT PRASARAN NIGAM LIMITED (HVPNL), O.M.P. (COMM) 597/2020

Cobra assailed the Impugned Award on the grounds that (a) the Arbitral Tribunal has sustained a levy of 50% of LD imposed by HVPNL and (b) it rejected the claim for reimbursement of sales taxes which is payable in addition to quoted rates. On the contrary, HVPNL assailed the Impugned Award inasmuch as it is entitled to retain the full 100% amount of LD and not just 50% as losses are not quantifiable. HVPNL also contended that Impugned Award qua LD is wrong and inconsistent as the Learned Arbitral Tribunal rightly held that HVPNL was engaged in the activity of providing utilities and the loss on account of delay in this regard was not quantifiable.

Allowing HVPNL's petition, the Hon'ble Court held that there was no reason for the Arbitral Tribunal to have reduced the levy of LD to 50% after having found that losses are incapable of being determined with any precision. The Hon'ble Court also noted that there is inconsistency in the findings of the Arbitral Tribunal and the award of 50% LD was a 'guess-work', which is arbitrary and plainly erroneous and accordingly set aside the award *qua* the LD. The High Court in the above judgment upheld that in the case of a contract of public utility, the losses arising out of delay in execution of the work of such utility are impossible to compute in precise monetary terms.

A PETITION FILED UNDER SECTION 7 OF THE IBC IS MAINTAINABLE EVEN IF IT IS BASED ON AN UNSTAMPED CREDIT FACILITY AGREEMENT IF THERE ARE OTHER MATERIAL ON RECORD TO PROVE THE EXISTENCE OF A FINANCIAL DEBT

In *Aashish Kadam & Anr. v Nagpur Nagarik Sahakari Bank Ltd. & Anr.*, the NCLAT decided an important question of law relating to mortgage by deposit of title deed in the insolvency proceedings. In this case, the NCLAT observed that if a credit facility agreement is unstamped, even then a petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") could be admitted if there are other material on record to prove the existence of a financial debt.

AMOUNT INVESTED BY A PROMOTER OR AN INVESTOR IN A JOINT VENTURE PROJECT IS NOT A FINANCIAL DEBT

In *M/s Jagbasera Infratech Pvt. Ltd. v Rawal Variety Construction Ltd.*, the NCLAT discussed the issue of default repayment falling within the definition of 'financial debt' under Section 5(8) of the IBC. The Appellant had entered into a Memorandum of Understanding ("MoU") and a Joint Venture Agreement with the Respondent.

As per the agreed terms and conditions, the Appellant paid an amount of Rs. 4.21 cr to the Respondent. Subsequently, the Respondent defaulted in returning the said amount.

Thereafter, the Appellant filed a petition under Section 7 of the IBC before the NCLT which was eventually appealed before the NCLAT. The NCLAT observed that a bare perusal of the MoU and the Joint Venture Agreement would show that the parties had entered into the agreement as joint development partners for development of land. Further, the Appellant was a profit share owner who would receive a residual gain in the event of success of the project. As such, the monies invested by the Appellant could not be considered to be a financial debt under Section 5(8) of the IBC.

CIRP CAN BE INITIATED ON THE BASIS OF AN ARBITRAL AWARD

The NCLT, Kolkata while deciding a case titled *Viom Infra Ventures Limited v Bahula Infotech Private Limited, C.P (IB) No. 197/KB/2021* held that a petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is maintainable on the basis of an unchallenged arbitral award.

The parties to the petition executed a Master Lease Agreement ("**Agreement**"). Subsequently, when disputes had arisen in terms of the Agreement, the matter was referred to arbitration which culminated into an arbitral award. The Petitioner thereafter filed the present petition on the basis of the arbitral award. The NCLT dealt with the issue of initiating CIRP on the basis of an arbitral award and placed reliance on the judgment titled *K. Kishan v. Vijay Nirman Company Private Limited*³ passed by the Supreme Court wherein it has been held that in order to initiate CIRP on the basis of an arbitral award under Section 9 of IBC, the debt needs to be undisputed. In the present case, the NCLT held that the petition was maintainable on the basis of an arbitral award which was not under challenge.

SUPREME COURT SETS ASIDE AN INTERIM AWARD DUE TO FAILURE IN DETERMINING THE FACTUAL FOUNDATION FOR APPLICABILITY OF GROUP OF COMPANIES DOCTRINE

The Group of Companies doctrine is useful in forcing a non-signatory into an arbitration. It is one of the exceptions to concepts like Consent and Part Autonomy in arbitration. The Supreme Court recently in *Oil and Natural Gas Corporation Ltd. (ONGC) vs Discovery Enterprises Private Limited (DEPL)* (Civil Appeal 2042 of 2022; decided on 27 April 2022) has provided guidance on the applicability of the 'Group of Companies' doctrine.

ONGC had initiated arbitration against DEPL based on a signed agreement and Jindal Drilling and Industries Limited (JDIL) based on the Group of Companies doctrine. In summary, ONGC had argued that DEPL and JDIL are group companies having corporate and functional unity. Specifically, ONGC had produced evidence to show

³ (2018) 17 SCC 662

employees of JDIL represented DEPL, DEPL was promoted by JDIL, DEPL was incorporated to further JDIL's interests and there was sharing of other resources too. ONGC also had filed a discovery and inspection application seeking Memorandum of Association, Articles of Association, Salary registers, etc of JDIL to bring out the best evidence.

Meanwhile, JDIL sought its removal from the arbitration on the ground that it is not a signatory to the arbitration agreement. The Arbitral Tribunal directed that ONGC's application for discovery and inspection be "*deferred until the issue of the jurisdiction is decided*". Thereafter, the Arbitral Tribunal through an Interim Award directed the removal of JDIL from arbitration as it was not a signatory to the arbitration agreement.

The High Court did not interfere with the Interim Award, but the Supreme Court concluded that the Arbitral Tribunal made a fundamental error of law in not deciding the application by ONGC on discovery and inspection of documents before deciding the jurisdiction issue. Not only it violated the principles of natural justice, but it *also resulted in a situation where vital evidence that could have assisted the Tribunal in its determination of the challenge under Section 16 was shut out.*

Considering the emphasis of the Arbitral Tribunal on JDIL being a non-signatory to the arbitration agreement and the judgments relied upon by the Arbitral Tribunal, the Supreme crystallized the following as determining factors in the applicability of the Group of Companies doctrine:

- (i) *The mutual intent of the parties;*
- (ii) *The relationship of a non-signatory to a party which is a signatory to the agreement;*
- (iii) *The commonality of the subject matter;*
- (iv) *The composite nature of the transaction; and*
- (v) *The performance of the contract.*

The Supreme Court set aside the Interim Award, corresponding High Court judgment, and directed the Arbitral tribunal to decide the issue afresh.

DSK View: *In our view, the Supreme Court has appropriately settled the determining factors in the applicability of the Group of Companies doctrine. While initiating an arbitration against non-signatories, the parties will have to lead evidence on the above five points to establish their case when based on the Group of Companies doctrine.*

DEFICIENCY OF REASONS FOR A FINDING IS A CURABLE DEFECT UNDER SECTION 34 (4) BUT ABSENCE OF ANY FINDING ON A CONTENTIOUS ISSUE IS INCAPABLE OF BEING CURED

In the case of *I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.*,⁴ the Supreme Court clarified the difference between 'finding' and 'reasons' in the context of arbitral awards. 'Finding' is a decision on an issue, and 'reasons' are the links between the materials on which certain conclusions are based and the actual conclusions.

The dispute between the parties arose when ICICI Bank Ltd. (ICICI) terminated the Service Provider Agreement for technology related services entered into between ICICI and I-Pay Clearing Services Ltd. (I-Pay). The sole arbitrator passed an award directing ICICI to pay INR 50 Crores as damages along with interest of 18% per annum. ICICI challenged the award on the ground that no conclusive findings were recorded on whether the agreement was terminated illegally by ICICI, even though a specific issue was framed. Hence, I-Pay filed an application under Section 34(4) of the Arbitration and Conciliation Act 1996 (Act) to remit the proceedings back to the sole arbitrator to take appropriate steps on this matter. The Bombay High Court dismissed this application and held that the sole arbitrator could not have proceeded with the claims of I-Pay without recording a finding on the issue of termination.

I-Pay challenged this decision before the Supreme Court and argued that the award of damages was based on the finding of the arbitral tribunal that ICICI had illegally and abruptly terminated the agreement, and that the award only lacked certain reasons, which constitutes a curable defect under Section 34(4) of the Act. The Supreme Court opined that given there is no finding on the important issue of "whether the contract was illegally and abruptly terminated by the respondent?", there was no reason to interfere with decision of the Bombay High Court. It was held that the discretionary power conferred under Section 34(4) of the Act, can be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings already recorded in the award. However, where there are no findings on the contentious issues in the award, no award can be remitted to the arbitrator, and it is an acceptable ground for setting aside the award itself.

DSK View: *This decision is a valuable step towards ensuring that awards where findings on key issues are not recorded, cannot be enforced or remitted back to the arbitral tribunal for curing the defects. Parties must be diligent in examining whether arbitral awards record finding on each contentious issue.*

⁴ MANU/SC/0005/2022

ARBITRATION CLAUSE IN TAX INVOICE DOES NOT CONSTITUTE AN ARBITRATION AGREEMENT

In the case of *Concrete Additives and Chemicals Pvt Ltd v. S.N Engineering Services*,⁵ the Bombay HC held that adding arbitration clause to a tax invoice cannot be considered as a valid arbitration agreement while rejecting the application made under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**). The Court rightly pointed out that the tax invoices are issued after entering into the valid contract through purchase orders and neither does the purchase orders contain arbitration clause nor there is a conscious agreement to arbitrate.

With regards to the arbitration clause incorporated in the tax invoice and its binding nature, the court stated that it is a

unilateral act on part of the applicant and not part of the contract. The aforementioned situation does not fit in the context of 'arbitration agreement' as mentioned in Section 7 of the Arbitration Act. Applicant's contention that as tax invoices are accepted by the respondent henceforth creating a valid arbitration agreement was also not accepted by the court holding that they are relevant to the extent of delivery of goods and payment regarding the same.

DSK View: *The parties, while entering into the contract must expressly mention their intention to arbitrate, if there is any. The conscious adding of arbitration clause in the primary contract would allow the parties to go for arbitration without any complications.*

⁵ ARB APL NO.23207 OF 2021

EMPLOYMENT LAW

REVISED RATE OF INTEREST MADE UNDER SPECIAL DEPOSIT SCHEME

The Ministry of Finance, vide its notification dated April 1, 2022, notified that the deposits made under the Special Deposit Scheme for Non-Governmental Provident, Superannuation, and Gratuity Funds, shall bear interest at 7.1% (Seven Point One Percent) with effect from April 1, 2022, to June 30, 2022.

AMENDMENT TO GOA BOILERS RULES

The Government of Goa, vide its notification dated April 7, 2022, has published Goa Boiler (Fifth Amendment) Rules, 2022 to further amend the Goa Boiler Rules, 1983.

Rule 8(2) which provides for registers to be kept or maintained as per the Goa Boiler Rules, 1983, has been amended for the Chief Inspector of Boilers, Goa to also keep in his office, a register in Form A of all boilers registered in the state or the registry of which has been transferred from another state. Further, the Chief Inspector of Boilers, Goa shall send a notice in Form B to the owners for examination of boilers before granting the certificate of registration.

AMENDMENT TO PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (EMPLOYEES' SERVICE) REGULATIONS, 2015

The Pension Fund Regulatory and Development Authority, vide its notification dated April 13, 2022, issued the Pension Fund Regulatory and Development Authority (Employees' Service) (Amendment) Regulations, 2022 to amend the Pension Fund Regulatory and Development Authority (Employees' Service) Regulations, 2015 in order to revise the mode of recruitment to fill up the posts in the authority. The Pension Fund Regulatory and Development Authority (Employees' Service) (Amendment) Regulations, 2022 provides that:

- (i) Two-third of the total posts to be filled from internal candidates and one-third of the posts to be filled by deputation or direct recruitment or contract.
- (ii) In case of non-availability in any category, i.e., internal and deputation/direct recruitment/ contract, the post may be filled from other categories.

RELAXATION OF TIME LIMIT FOR DEPOSITING AND FILING ESI CONTRIBUTION

The Employees' State Insurance Corporation ("ESIC"), vide its notification dated April 13, 2022, provided relaxation in relation to the time limit for depositing and filing Employees' State Insurance ("ESI") contribution by the employer. As a one-time opportunity, employers have been allowed to deposit contributions for the month of March 2022 up to April 30, 2022, instead of April 15, 2022. Accordingly, the employers have also been allowed to file the return of contribution up to May 26, 2022, instead of May 11, 2022, for the contribution period of October 2021 till March 2022.

EXTENSION OF PUBLIC UTILITY SERVICE STATUS FOR ALUMINUM SEGMENT SERVICES

The Ministry of Labour and Employment, vide its notification dated April 20, 2022, has extended the public utility services status of the industries engaged in manufacturing of alumina and aluminium and mining of bauxite by another 6 (Six) months from April 16, 2022. The services in industry of manufacturing of alumina and aluminium and mining of bauxite which have been covered under items 30 and 31 of the First Schedule to the Industrial Disputes Act, 1947 had been declared earlier as a public utility service for a period of 6 (Six) months from October 2021, which has now been further extended.

RATE OF INTEREST OF GENERAL PROVIDENT FUND IN TAMIL NADU FOR THE FINANCIAL YEAR 2022-23

The Government of Tamil Nadu, vide its notification dated April 19, 2022, has fixed the rate of interest of general provident fund and other similar funds at the rate of 7.1% (Seven Point One Percent) for the first quarter with effect from April 1, 2022 to June 30, 2022.

The Government of India, in the fifth resolution announced that during the financial year 2022-2023, accumulations at the credit of subscribers to the General Provident Fund and other similar funds shall carry interest at the rate of 7.1% (Seven Point One Percent) with effect from April 1, 2022 to June 30, 2022. The rate of interest on belated final payment of Provident Fund accumulation remaining unpaid for more than 3 (Three) months of its becoming payable shall be at the same rates, i.e., 7.1% (Seven Point One Percent).

AMENDMENT REGARDING MAINTENANCE OF REGISTERS IN TAMIL NADU SHOPS AND ESTABLISHMENTS RULES, 1948

The Government of Tamil Nadu, vide its notification dated March 30, 2022, has notified amendments to the Tamil Nadu Shops and Establishments Rules, 1948 which permits electronic maintenance of registers. Rule 16 of the Tamil Nadu Shops and Establishments Rules, 1948, which provides for maintenance of registers and records, and display of notices, has been amended to include the following registers which shall be maintained either electronically or manually by the employer:

- (i) Register of persons employed in Form-U;
- (ii) Register of Employment in Form-V;
- (iii) Register of Wages in Form-W; and
- (iv) Register of Leave and Social Security Benefits in Form-X.

Further, in cases where the registers are maintained electronically, the layout and presentation of the registers may be adjusted without changing the integrity, serial number, and contents of the columns of the registers.

DRAFT RULES ON OCCUPATIONAL SAFETY, HEALTH, AND WORKING CONDITIONS (TAMIL NADU) RULES, 2022 NOTIFIED BY THE TAMIL NADU GOVERNMENT

The Government of Tamil Nadu, vide its notification dated April 11, 2022, has notified the Draft Occupational Safety, Health and Working Conditions (Tamil Nadu) Rules, 2022 (“**Draft Occupational Rules**”) which have been framed under the Occupational Safety, Health and Working Conditions Code, 2020. The key provisions of the Draft Occupational Rules are as under:

- (i) Any employer seeking registration for an establishment not registered under any other labour law shall apply

within 60 (Sixty) days in Form I to the registering office along with the prescribed fee:

- (a) In case of factory or building and other construction works, electronically through the online portal of the Directorate of Industrial Safety and Health;
 - (b) In case of establishment other than factory or building and other construction works, electronically through online portal of Labour Welfare Department.
- (ii) Employer of every establishment on commencement or cessation of operation shall submit to the registering officer Form II electronically within 30 (Thirty) days. Notice of cessation has to be enclosed with a certificate that payment of workers has been made and the premises are free from hazardous chemicals and substances.
 - (iii) The employer shall arrange free of cost medical examination for every worker over 45 (Forty Five) years of age annually, i.e., within 120 (One Hundred and Twenty) days from the commencement of every calendar year. Further, the medical examination shall be conducted by a qualified medical practitioner as per proforma in Form III.

The Government of Tamil Nadu has invited objections and suggestions from the public which shall be addressed to the Secretary to the Government, Labour Welfare and Skill Development Department, through the Director of Industrial Safety and Health, Guindy, Chennai 32. (e-mail id: cif@tn.gov.in) within 45 (Forty Five) days from the date of publication of the notification, i.e., April 11, 2022.

DRAFT INDUSTRIAL RELATIONS (TAMIL NADU) RULES, 2022

The Government of Tamil Nadu, vide its notification dated April 11, 2022, issued Draft Industrial Relations (Tamil Nadu) Rules, 2022 (“**Draft Tamil Nadu IR Rules**”) which have been framed under the Industrial Relations Code, 2020 and shall extend to the whole of Tamil Nadu. The key provisions of the Draft Tamil Nadu IR Rules are as follows:

- (i) There shall be an agreement between the employer and worker which shall be signed by the parties to the agreement and a copy thereof shall be sent to the Conciliation Officer concerned. Once the agreement is submitted, the employer shall constitute a Works Committee in the manner provided in the Draft Tamil Nadu IR Rules.
- (ii) Number of members constituting the Works Committee shall be fixed, as to afford representation to the various categories, groups and class of workers engaged in, and to the sections, shops or departments of the establishment. However, the total number of

members of the Works Committee shall not exceed 20 (Twenty). Further, the number of representatives of the workers in the Works Committee shall not be less than the number of representatives of the employers and there shall be adequate representation for women workers in the Works Committee.

(iii) Where workers of an industrial establishment are members of a registered trade union, the employer shall ask such trade union to inform him in writing as to:

- how many of the workers are members of such trade union; and
- how their membership is distributed among the sections, shops or departments of the industrial establishment.

(iv) The employer may deduct the amount of subscription from the wages of the employee, on the request of the Trade Union, after obtaining their written consent. The amount so deducted shall be construed as an authorised deduction.

(v) If the employer adopts the model Standing Order of the Central Government with respect to matters relevant to his industrial establishment or undertaking, then, he shall intimate the concerned certifying officer electronically the specific date from which the provisions of the model Standing Order which are relevant to his establishment have been adopted.

The Government of Tamil Nadu has invited objections and suggestions from the public which shall be addressed to the Secretary to the Government, Labour Welfare and Skill Development Department, Fort St. George, Chennai – 600 009 through the Commissioner of Labour, DMS Campus, Chennai – 600 006 or by e-mail - com.tnlabour@nic.in, within 45 (Forty Five) days from the date of publication of the notification, i.e., April 11, 2022.

DRAFT CODE ON WAGES (TAMIL NADU) RULES, 2022

The Government of Tamil Nadu, vide its notification dated April 11, 2022, has issued the Draft Code on Wages (Tamil Nadu) Rules, 2022, which has been framed under the Code on Wages, 2019. The key provisions of the said draft code are:

- (i) Minimum rate of wages shall be fixed on 'day' basis keeping in mind the following criteria:
- (a) Standard working class which includes a spouse and 2 (Two) children apart from the earning worker;
 - (b) Net intake of 2700 calories per day per consumption unit;

- (c) 66 metres cloth per year per standard working-class family;
- (d) Housing rent expenditure to constitute 10% of food and clothing expenditure;
- (e) Fuel, electricity, and other miscellaneous items of expenditure to constitute 20% of the minimum wages

(ii) A normal working day shall be comprised of 8 (Eight) hours of work and one or more intervals of rest which in total shall not exceed 1 (One) hour. The working day of an employee shall not exceed more than 12 (Twelve) hours a day.

(iii) Every employer to issue wage slips, electronically or otherwise to the employees. In case of employment through contractor, the establishment or the company shall make the payment to the contractor who would further pay the employees.

(iv) Annual return to be filed electronically by every employer of an establishment under Occupational Safety and Health Code.

The Government of Tamil Nadu has invited comments and suggestions from the public which shall be addressed to the Secretary to the Government, Labour Welfare and Skill Development Department, Fort St. George, Chennai – 600 009, through the Commissioner of Labour, DMS Campus, Chennai – 600 006 or by e-mail – com.tnlabour@nic.in, within 45 (Forty Five) days from date of publication of the notification, i.e., April 11, 2022.

GUIDELINES TO SETTLE THE LEGITIMATE DUES OF WORKERS UNDER PAYMENT OF BONUS ACT, 1965 IN WEST BENGAL

The Government of West Bengal, vide its circular dated April 22, 2022, has issued guidelines to be followed by all employers and employees of the state covered under the Payment of Bonus Act, 1965

All establishments, where bonus was paid in the previous year, have been requested to see that the rate of bonus payable this year is not lower than that of the previous year. In case, however, where there is a dispute, the same may be settled amicably through negotiations. Employers are also requested to consider payment of an amount of ex-gratia in lieu of bonus as is admissible at the maximum stage, to those workmen and employees who have crossed the eligibility limit as per payment of Bonus Act, 1965. All employees, whether in casual employment or re-employed after retirement or employed through contractors and have worked for not less than 30 (Thirty) days during the year should be paid bonus.

The employers who are in default towards payment of bonus for the previous years have been requested to make such payments during this year along with the payment of bonus for the current year.

The guidelines further provide that the payments of bonus should be completed by September 23, 2022, to all Muslim employees/workers before Id-UI-Fitr.

FINAL WITHDRAWAL OF PROVIDENT FUND FOR INTERNATIONAL WORKERS

The Employees' Provident Fund Organisation ("EPFO"), vide its circular dated April 27, 2022, has clarified that international workers from countries not having a Social Security Agreement with India are eligible for withdrawal of their provident fund accumulations on retirement from services in employees' provident fund covered

establishments after attaining the age of 58 (Fifty Eight) years provided they have ceased to be in the employment of an employees' provident fund covered establishment.

REVISED RATES OF MINIMUM WAGES

Andhra Pradesh: The Government of Andhra Pradesh, vide its notification dated April 1, 2022, has declared the average state industrial workers' consumer price index numbers at 1,574 (One Thousand Five Hundred and Seventy-Four) for industrial workers and 1,228 (One Thousand Two Hundred and Twenty Eight) for agricultural workers, for the half-year ending December 2021. The price consumer index numbers are applicable for the period from April 1, 2022, to September 30, 2022, for various scheduled employments under the Minimum Wages Act, 1948 in the state of Telangana for the purpose of calculation of variable dearness allowance.

ENERGY

REVISED SCHEME FOR FLEXIBILITY IN GENERATION AND SCHEDULING OF THERMAL/HYDRO POWER STATIONS THROUGH BUNDLING WITH RENEWABLE ENERGY AND STORAGE POWER

On April 12, 2022, the Ministry of Power, vide notification dated F. No. 09/11/2021-RCM repealed the Scheme for Flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power, notified on November 15, 2021, and issued a fresh revised scheme ("**Revised Scheme**"). The Revised Scheme aims to propel growth in installed capacity of Renewable Energy (RE) as well as its uptake and help India's energy transition from fossil fuel-based energy system.

➤ Under the Revised Scheme:

- All new and existing coal/lignite/gas based thermal generating stations or hydro power stations have been referred as 'Generating Station'. Any generating company having such Generating Stations may establish or procure renewable energy from a RE power plant which is either co-located within the premises or at new locations.
- The generating companies will be allowed to utilize such renewable energy for supplying power against their existing commitments/PPAs i.e., replacement of thermal hydro power to procurers anywhere in India. The RE in the mix will count towards RPO compliance of the Distribution Licensee.
- The RE power plant under the scheme may be established on a standalone or in combinations with Battery Energy Storage System (BESS). Thus, RE power will mean either standalone RE power or RE power with BESS.

➤ Tariff Determination of RE Power Plants under the Revised Scheme:

- In case of RE power plant co-located within the premises of a generating station, the appropriate Commission will determine the tariff of RE supplied, provided such RE power plant is established through competitive EPC tendering.
- In other cases, the RE will be procured on a competitive bid basis.
- Any BESS to be established with RE power plant will be established through a competitive bid process.

➤ Transmission Charges as per the Revised Scheme:

- No additional transmission charges will be levied for bundling of RE power with thermal/hydro power when the RE power plant is co-located within the premises of a generating station.
- No transmission charges for use of the Inter-State Transmission System (ISTS) shall be levied when the RE power from an RE power plant is being scheduled to the thermal/hydro generating stations as a replacement power, for supply to procurers of another generating station located at a different location and owned by the same generating company. Provided that the evacuation of RE power is being made from the same switchyard of the thermal/hydro power plant, up to total transmission capacity.
- In any other cases the waiver of transmission charges for use of ISTS for sale through power exchange or to any third party shall be as per extant policy of the Central Government.

➤ Transmission Connectivity and Access under the Revised Scheme:

- The thermal/hydro generating station and the RE generating station will ensure that connectivity is obtained for full installed capacity including overload if applicable as per the extant Regulations to ensure full evacuation.
- No additional access shall be required to the extent of total transmission capacity at places where RE generation and thermal generation are co-located and where margins are available in the transmission system for evacuation of thermal/hydro generation.

➤ Deviation Settlement Mechanism (DSM) under the Revised Scheme:

- To provide flexible scheduling and operation of thermal/ hydro stations, while giving the DC of a generating station the generator will not take into the account the forecast of generation from renewables from the plant set up in the same premises. Once the schedule for a specific thermal/ hydro generating station has been received, then depending upon the forecast available for renewables, that generating station will supply to meet the schedule from thermal/ hydro power and replacement RE power.

➤ Renewable Purchase Obligation under the Revised Scheme:

- The renewable energy procured by the beneficiaries under Revised Scheme will qualify towards meeting their Renewable Purchase Obligations (RPO).

➤ Additional mechanism for RE bundling

- Distribution Licensee will have the flexibility to procure RE power within the existing PPA to meet their RPO. There will be no requirement of signing additional agreement in cases where the landed tariff of RE power (with or without energy storage system) is less than the ECR of the generating station.
- A standard terms and conditions of RE bundling for facilitating operation of the scheme will be annexed with the existing PPA/PSA.
- Requirement of selling the RE power in power market when it is not feasible to replace the thermal/ hydro power: During certain periods, the replacement of thermal/hydro power may not be feasible on account of technical minimum schedule or forced/planned shutdown of a generating station. To avoid stranding of RE power, the generating station will be allowed to sell such RE power to third parties/ Power exchange and no clearance will be required from beneficiaries of the station. Since an RE power plant would not be operating under the flexibility scheme during such

conditions, there will be no requirement of sharing gains/losses derived through sale of such RE power in the market.

- The generating company may procure RE power in tranches. Accounts of the quantum of RE power supplied to beneficiaries under the scheme will be submitted to the appropriate Commission on a quarterly basis. at least cost to the PPA holder; and b) enabling PPA holder/obligated entity to meet its RPO obligations/
- The trajectory for bundling of RE power with thermal/hydro power will be worked out to meet the following: continuous supply of reliable power at least cost to the PPA holder; and b) enabling the PPA holder/obligated entity to meet its RPO obligations.

EXPRESSION OF INTEREST (EOI) FOR SETTING UP A MANUFACTURING ZONE ON PILOT BASIS FOR POWER AND RENEWABLE ENERGY SECTOR

Vide notification dated April 13, 2022, the Ministry of Power has issued expression of interest (EOI) for setting up a manufacturing zone for power and renewable energy sector, in line with the orders issued on March 14, 2022, for implementing a scheme for setting up a manufacturing zone for power and renewable energy sector on a pilot basis with a budgetary outlay of Rs. 400 crores over a period of five years, as per approval of the Standing Finance Committee in its meeting held on January 24, 2022.

The Ministry of New and Renewable Energy and Ministry of Power has jointly proposed a scheme to establish three manufacturing zones, out of which two will be brownfield manufacturing zones already having developed land and one greenfield zone in a coastal area (“Scheme”).

The aim of the Scheme is to:

- Establish a manufacturing facility on cutting edge, clean and energy efficient technology for minimizing dependency on import of equipment/critical component/critical spares etc. required for power sector and renewable energy equipment;
- To promote ‘Make in India’ and ‘Atmanirbhar Bharat’ and make India a global leader in the field of power and renewable equipment manufacturing;
- To promote indigenization through domestic manufacturing of items presently being imported;
- To promote setting up an exclusive manufacturing zone in the country by providing hassle free allotment of land and clearances, state of art technology CTF and CIF bring down manufacturing costs, making domestic industry competitive and self-reliant in manufacturing of power and renewable equipment; and
- To exploit the benefits arising due to optimization of resources and economies of scale

SECI ISSUED TENDER FOR 500 MW/1000 MWH STANDALONE BATTERY STORAGE SYSTEMS

The Solar Energy Corporation of India Limited (SECI) has issued a tender for setting up 500 MW/1000 MWh Standalone Battery Energy Storage Systems (BESS) in India.

The tender has been issued under the Standard Bidding Guidelines issued by the Ministry of Power in March 2022. The total capacity to be set up is 1000 MWh (500 MW x 2hrs), which will constitute two projects of 500 MWh (250 MW x 2 hrs) capacity each. The Projects will be installed in the vicinity of the Fatehgarh-III Grid-Substation of the ISTS network, in the State of Rajasthan. The Buying Entities will be offered the storage capacity to charge and discharge the same daily through RE power, as per their energy shifting requirements.

The Projects will be set up on a “Build-Own-Operate” basis, with the connectivity and necessary permissions being under the scope of the Project Developer. Land for the Projects will be provided by the CTU to the Developers on a right-to-use basis. SECI is the implementing agency of this tender and will be procuring capacity on behalf of the Buying Entities, charging a facilitation fee in the form of a trading margin.

Out of the total capacity being installed under the tender, 60% of the capacity will be off taken by SECI on behalf of the Buying Entities, and the offtake of 40% of capacity will be the responsibility of the Developers, through third-party or market sale. Out of the 60% capacity off taken by SECI, 30% will be earmarked to be used by NLDC, POSOCO for Grid Ancillary Services.

The Developer will make the BESS available for 2 operational cycles per day, i.e., 2 complete charge-discharge cycles per day. The term of the Projects will be 12 years, with the Scheduled Commissioning Date being 18 months from the date of signing of the Battery Energy Storage Purchase Agreement (BESPA).

INDIA'S FIRST PURE GREEN HYDROGEN PLANT COMMISSIONED IN JORHAT

As per a Press Information Bureau (PIB Press Release dated April 20, 2022, Oil India Limited has commissioned India's first 99.99% pure Green Hydrogen pilot plant with an installed capacity of 10 kg per day at its Jorhat Pump Station in Jorhat, Assam. The plant produces Green Hydrogen from the electricity generated by the existing 500kW Solar plant using a 100 kW Anion Exchange Membrane (AEM) Electrolyser array. The plant is expected to increase its production of green hydrogen from 10 kg per day to 30 kg per day in future.

SJVN, BHEL, REMCL SIGN PACT TO DEVELOP RENEWABLE ENERGY PROJECTS FOR RAILWAYS

Satkuj Jal Vidyut Nigam (“**SJVN**”) has entered into a memorandum of understanding (“**MoU**”) with engineering firm Bharat Heavy Electricals Limited (“**BHEL**”) and REMC Limited to develop renewable energy projects for Indian Railways. The MoU is expected to ensure efficient consumption of power in the Indian Railways, while also resulting in more competitive tariffs for the overall benefit of consumers. The MoU will also enable SJVN to meet its target of renewable energy and Indian Railways to meet its target of net-zero carbon emission by 2030.

SJVN currently has twelve solar power projects of 3,065 MW capacity under various stages of development with a total portfolio of more than 16,900 MW. They are looking to expand their portfolio under this MoU to 5000 MW installed capacity by 2023, 25,000 MW by 2030 and 50,000 MW by 2040.

GLOBAL MONETARY POLICY TIGHTENING TO SUBDUCE CRUDE OIL PRICES

With the global tightening of monetary policies by many central banks on account of inflationary pressures, demand as well as prices of crude oil is expected to be affected. As a fallout of the measures being taken to tighten money supply to curb inflation, interest rates will increase. The high crude oil prices are significant for India since they determine domestic petrol and diesel cost. At present India imports 85 per cent of its crude oil needs. The high crude oil price has resulted in state-owned oil marketing companies to increase retail selling price of petrol and diesel throughout the country, which will significantly impact the commodity prices.

POWER REGULATOR ACTS TOUGH ON HARYANA AGRICULTURE SUPPLY LOSSES

While finalizing the annual revenue requirement for distribution companies, Uttar Haryana Bijli Vitran Nigam (“**UHBVN**”) and Dakshin Haryana Bijli Vitran Nigam (“**DHBVN**”), the Haryana Electricity Regulatory Commission (“**HERC**”) has directed the two DISCOMs to ensure agriculture supply losses are brought down to 14%. The DISCOMs have been specifically asked to decode the data on agriculture supply in general and metered and non-metered agriculture and tubewell connections in particular within the next two months. The concentrated efforts by HERC to bring down AT&C losses and other sources has led to a decrease in subsidy money on agriculture sale power from Rs. 6,393.47 to Rs. 6,050.68 crore after deducting a revenue of Rs. 110 crore projected to be collected from farmers from the rate of 10 paisa per unit as carrying charges.

As per available information, there are a total of 6,61,760 agriculture consumers who have been provided power from 4,591 feeders by the UHBVN and DHBVN. Further UHBVN

has a total of 3,30,280 consumers while DHBVN has 3,31,480 consumers.

INFRASTRUCTURE

RELIEF FOR CONTRACTORS/DEVELOPERS OF ROAD SECTOR IN VIEW OF COVID-19 PANDEMIC

The Ministry of Road Transport and Highways (Highways Division) (“**MoRTH**”), *vide* notification bearing number COVID-19/RoadMap/JS(H)/2020 dated April 11, 2022 (“**Extension Notification**”), has extended the relief measures for a period of 6 (six) months from April 01, 2022 to October 31, 2022. A few key salient features of the Extension Notification are as follows:

- Relaxation in project completion schedules will continue to be extended till October 31, 2022 to improve the liquidity of funds available with the contractors and concessionaire.
- Performance security shall be to the tune of 3% (three percent) of the contract value for all contracts concluded till October 31, 2022 (except contracts under dispute where arbitration/ court proceedings have already been initiated or completed). Since retention money is a part of the Performance Security till construction period, the retention money may be released in proportion to work already executed and no reduction may be made from bills raised by contractor till October 31, 2022, whereas performance guarantees for hybrid annuity mode/build operate transfer projects may be released on pro rata basis, provided that the concessionaire is not in breach of the same.
- penalties may be waived for 1 (one) month, in case of any delay in submission of performance security or bank guarantee in new contracts entered into during April, 2022- October 2022.
- A 1 (one) month’ extension may be granted to concessionaire for achievement of financial closure in concession agreements entered between April 2022 - June 2022.
- For tolling contracts, reduction in collection of fees may be compensated in accordance with the user fee collection contracts

CHANGES IN BIDDER’S ELIGIBILITY CRITERIA OF NATIONAL HIGHWAY PROJECTS UNDER HYBRID ANNUITY MODE

The MoRTH *vide* circular bearing number F. No. NH-24028/14/2014-H(Vol-II) (Comp no. 134863) dated April 11,

2022 (“**Amendment Circular**”), has amended the provisions relating to the ‘Threshold Technical Capacity’ in standard request for proposal document of hybrid annuity mode (“**HAM**”) projects (“**HAM RFP**”). In this regard, a few key amendments are as follows:

- Insertion of Clause 2.2.2 (AA) of the HAM RFP: for normal highway projects (including major bridges/ROB/flyovers/tunnels)
 - The bidder must have completed at least one similar work of 20% (twenty percent) of the estimated project cost from the eligible projects under category 1 and/or category 3 as given in Clause 3.4.1 (which relates to technical capacity for the purpose of evaluation of bids).
 - If a major bridge/ROB/flyover/tunnel is a part of the project, then the bidder shall demonstrate additional experience in completing the construction of such bridge/ROB/flyover/tunnel in the last 10 (ten) financial years preceding the bid due date, subject to certain additional qualifications as set for in the Amendment Circular.
- Insertion of Clause 2.2.2 (AAA) of the HAM RFP: for standalone specialized projects
 - In case of major bridges/ROB/flyovers projects of less than or equal INR 1000 crores (Rupees One Thousand Crores): The bidder shall have completed at least one similar major/ROB/flyover project in the last 10 (ten) financial years preceding the bid due date, having span equal to or greater than 50% (fifty percent) of the longest span or 100m, whichever is less of the structure proposed in the project and the cost of the such similar project shall be at least 20% (twenty percent) of the estimated project cost.
 - In case of bridges/ROB/flyovers projects of more than 1000 crores (Rupees One Thousand Crores): The bidder shall have completed at least one similar major/ROB/flyover project in the last 10 (ten) financial years preceding the bid due date, having span equal to or greater than 50% (fifty percent) of

the longest span or 100 m, whichever is less and the cost of the such similar project shall be at least 20% (twenty percent) of the estimated project cost or INR 1000 Crores (Rupees One Thousand Crores), whichever is less.

- In case of tunnel projects: the bidder shall have completed at least one tunnel project in the last 10 (ten) financial years preceding the bid due date, consisting of a single or twin tubes (including tunnels(s) for roads/railways/metro rail/irrigation/hydro-electric projects etc.) having at least 50% (fifty percent) of the cross sectional area of the tunnel to be constructed or cross sectional area of two lane highway tunnel whichever is less and 20% (twenty percent) length of the tunnel to be constructed in the project of 2 km, whichever is less and the cost of the such similar project shall be at least 20% (twenty percent) of the estimated project cost or INR 1000 Crores (Rupees One Thousand Crores), whichever is less

AMENDMENTS TO THE CRITERIA FOR ALLOCATION OF FUNDS FOR DEVELOPMENT OF STATE ROADS UNDER THE CENTRAL ROAD AND INFRASTRUCTURE FUND ACT, 2000

The MoRTH vide circular number No. NH-15017/46/2018-P&M(Pt.-II) dated April 08, 2022 has amended the criteria for allocation of funds under the Central Road and Infrastructure Fund Act, 2000.

- Paragraph 4 (2), which relates to the identification and prioritisation of state roads, has been amended to include connectivity to pilgrim and tourist centres, airports, important monuments and heritage places in the consideration basis which projects on state roads shall be identified and prioritised by the state governments and union territories.
- Paragraph 5 (1) (ii), which relates to the criteria for selection, engineering aspects of road safety works etc., has been amended to include wayside amenities, rest areas, food courts and roadside ducts for laying utility services, such as optical fibre cable, etc. These works shall now be considered for sanction and implementation basis the extant policy of MoRTH applicable for national highways subject to the modification that all approvals, authorities, etc., and the criteria for state roads.
- Paragraph 6 (1) which relates to approval and financing schemes, has been amended to include the framework of GatiShakti as the guiding principle for the identification, sanction and implantation of the projects to ensure

effective convergence and improve connectivity in addition to identification by the State and Union Territories

MODIFICATION OF DEBARMENT PERIOD IN INTEGRITY PACT

The National Highways Authority of India (“NHA”) vide policy circular no. 5.10/2022 dated April 25, 2022, has amended para 2 of the Article 3 of the Integrity Pact which provides for the disqualification and thereby debarment/exclusion of the transgressing bidder/contractor/concessionaire from any future tenders/contracts. As per the amendment, in case a transgression under the Integrity Pact has been committed by the bidder so as to put his reliability and credibility in question, the procuring entity shall be entitled to blacklist/holiday list for such bidder for a minimum period of 6 (six) months up to a maximum period of 2 (two) years instead of 1 (one) year.

AMENDMENT TO GENERAL FINANCIAL RULES, 2017 TO INCLUDE STAGewise RETURN OF BID SECURITY/EARNEST MONEY DEPOSIT TO BIDDERS

The Department of Expenditure (“DoE”), Ministry of Finance vide office memorandum bearing number F 1/2/2022-PPD dated April 1, 2022, has amended Rule 170 (ii) of the General Financial Rules, 2017 to provide that in case of 2 (two) packet or 2 (two) stage bidding processes, the bid security of bidders who are unsuccessful at the technical evaluation stage, shall be returned within 30 (thirty) days of declaration of result of such technical evaluation stage.

RE-TENDERING IN CASE OF WITHDRAWAL OF OFFER BY LOWEST BIDDER IN PROCUREMENT OF WORKS AND GOODS

The DoE, vide office memorandum bearing number F.1/1/2021-PPD dated April 21, 2022, has amended para 7.5.11 (i) (f) of the Manual for Procurement of Goods, 2017 and para 5.6.8 (i) (f) of the Manual for Procurement of Works, 2019 to provided that in the event the lowest bidder fails to sign the procurement contract, or fails to provide the performance security, or otherwise withdraws form the procurement process, the procuring entity shall re-tender.

AMENDMENTS TO DEFENCE ACQUISITION PROCEDURE, 2020

The Ministry of Defence (“MoD”), vide notification dated April 13, 2022, has amended the Defence Acquisition Procedure, 2020 (“DAP”). A few key highlights of the amendments are as follows:

- Earnest money deposit (in the form of bank guarantee, insurance surety bond, account payee demand draft, fixed deposit receipt, banker's cheque) shall be accepted as security towards the bid and the pre-contract integrity pact for all procurement schemes above INR 100 Crores (Rupees One Hundred Crores).
- Post signing of the contract, the pre contract integrity pact shall be secured by the performance cum warranty bank guarantee till completion of the contract.
- For projects upto INR 100 Crores (Rupees One Hundred Crores) and for MSMEs/start-ups, the earnest money deposit requirement has been waived.
- Any import of defence equipment from a foreign jurisdiction, irrespective of the value and type of acquisition, shall require specific approval of the Defence Acquisition Council/the Ministry of Defence. Further, the procedure relating to acquisition has also been simplified with compression of timelines

CLARIFICATION ON CALCULATING THE VALIDITY OF PRIOR ENVIRONMENTAL CLEARANCE GRANTED UNDER THE PROVISIONS OF EIA NOTIFICATION 2006, WHICH INVOLVE FOREST LAND

The Ministry of Environment, Forest and Climate Change ("MoEFCC") *vide* office memorandum bearing number F.NO.IA-3-22/10/2022-IA.III[E 177258] dated April 11, 2022 ("O.M.") has clarified that for projects involving large forest lands and requiring Stage-I and Stage-II forest clearance ("FC") under the provisions of the Forest (Conservation) Act, 1980, the validity period of the prior environmental clearance ("EC") granted after Stage-I FC, shall be reckoned from the date of grant of Stage-II FC or a maximum period of 2 (two) years, whichever is less. This is in line with the consideration that substantial time gets consumed in obtaining Stage-II FC especially in large projects involving large forest areas, like, hydro power projects which results in the project proponent being unable to implement the project, and constrained to approach MoEFCC for extension of validity/re-issuance of EC.

REDUCTION OF TIMELINES FOR LISTING OF UNITS OF INFRASTRUCTURE INVESTMENT TRUSTS

The Securities and Exchange Board of India *vide* circular bearing number SEBI/HO/dDHS/DDHS_Div3/P/CIR/2022/55 dated April 28, 2022, has reduced the timelines for allotment and listing of units of Infrastructure Investment Trust ("InvIT") after closure of issuance, to 6 (six) working days as against the previous requirement of 12 (twelve) working

days. A few key highlights of the activities to be undertaken are as follows:

- the issuance shall close on the closing date ("T");
- the modification of fields, receiving of bids by the registrar to an issue ("RTA"), Demat Account of InvIT is credited with the SPV shares, etc. shall take place within T+1 days;
- RTA reconciliation, transfer of shares from the sponsor's demat account to the trust's demat account etc. shall be completed within T+2 days;
- finalization of "technical rejection", transfer of shareholding in the holding company and/or the special purpose vehicle or the ownership of the projects as disclosed in the offer document, allotment of public issue of units to applicants other than strategic investors, etc. shall take place within T+3 days;
- investment manager and RTA to file allotment details with designated stock exchange(s) and confirm all formalities are complete except demat credit within T+4 days;
- investment manager on behalf of InvIT shall make listing application to stock exchange(s) to give listing and trading permission and stock exchange(s) to issue notice for listing and commencement of trading within T+5 days; and
- trading shall commence on the T+6th day.

MEDIA & ENTERTAINMENT



SUPREME COURT REFUSES TO PUT A STAY ON 'LOCKUPP' SCREENING

The Supreme Court dismissed a plea seeking an injunction against Alt Balaji and its agents from displaying and distributing the series 'Lockupp' on OTT platforms, YouTube, and other social media platforms, alleging copyright infringement by the show's creators. The remedy was sought as an interim relief in a Special Leave Petition filed against the Telangana High Court's order dated February 26, 2022, lifting the trial court's ad-interim injunction against the reality show 'LockUp'. Despite the fact that the show had already aired, a bench comprising of Justices MR Shah and BV Nagarathna granted the petitioner the right to ask the Trial Court for an expedited hearing on their interim injunction.

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MADRAS HIGH COURT ADMITS ILAİYARAJA'S PLEA OVER COPYRIGHT ON MUSICAL WORKS

A Division Bench of the Madras High Court has admitted a plea filed by musician Ilayaraja, against the Single Judge's order restraining the musician from claiming copyright over entire musical work and sound recordings related to 30 films produced during the period of 1980s. Initially, a permanent injunction order was passed by the single judge on 13th February 2020 against Ilayaraja, granting relief to Indian Record Manufacturing Company Limited (INRECO), who had claimed the exclusive copyright over the musical works on the basis of the agreement signed with the respective film producers. However, under this plea Ilayaraja submitted before the Division Bench that, being the author and producer of the works, he is the lawful owner of the copyright over the musical works. The Court while admitting the plea, held that *"the single judge has erred in exercising the jurisdiction, as the dispute falls within the provisions of the Commercial Courts Act, 2015"*. Further, at

the time of execution of the above agreements with the recording companies in the year 1980, no assignment of digital media rights was processed.

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KERELA HIGH COURT DISMISSED AN APPEAL FILED BY THE CREW OF 'UPPUM MULAKUM'

The Kerala High Court dismissed an appeal filed by the broadcasting crew of the famous Malayalam sitcom 'Uppum Mulakum' seeking a restraining order against the airing of a replica of the appellant's show. As the Apex Court stated, there can be no copyright in an idea, subject matter, themes, storylines, plots, or historical or legendary facts; in such a case, the breach of copyright will be limited to the form, manner, arrangement, and expression of the concept. The Court underlined that when ideas begin or grow from a common source, similarities are inevitable, and unless the essential or significant components of the manner of expression used in the copyrighted work are violated, the same cannot be deemed infringing. The Court stated that simply employing the same actors in a different setting, even if it is about the day-to-day life of a family, may not bring the matter within the ambit of copyright as defined in Section 14, particularly when one is dealing with a Hindu family and the other is dealing with a Christian Anglo-Indian family.

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BOMBAY HIGH COURT DISMISSED THE STAY ON SHAHID KAPOOR'S FILM 'JERSEY'

Shahid Kapoor's passion project 'Jersey' has suffered another roadblock when an author named Rupesh Jaiswal filed a copyright infringement complaint against the sports drama film at the Bombay High Court. The High Court, however, ruled in favour of Jersey, dismissing the stay on the film. The writer, who sought a court injunction against the

film's distribution in the Bombay High Court, claimed ownership of the film's premise, storyline, and idea. Jaiswal claimed in his appeal that both the Telugu original film from which Jersey was adapted and the remake plagiarised his plot. He claimed to have filed a screenplay titled The Wall with the Film Writers Association in 2007. Additionally, Jaiswal stated that there were significant parallels between the films and his screenplay and that the filmmakers altered their scripts to avoid plagiarism claims.

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BOMBAY HIGH COURT ORDERED CCI TO REFRAIN FROM TAKING ANY ACTION AGAINST DISNEY, STAR INDIAN, AND ASIA NET STAR

In response to a case filed by Asia net Digital Network, the Bombay High Court has ordered the Competition Commission of India (CCI) to refrain from making any orders against Star India, Asianet Star Communications, and Disney Broadcasting (India) until further orders. They had gone to the High Court to appeal an order by the antimonopoly watchdog, which had initiated an inquiry into them in response to a complaint brought by ADNPL, a Kerala-based cable TV network firm. The broadcasters were all owned by the Walt Disney Company. The appeal was against an order made by the Competition Commission of India on 28.2.2022, which asked the commission to conduct an inquiry under Section 26(1) of the Competition Act 2002. The Bench said that the goal of the current order was to maintain a status quo or neutral position for the parties until the Court reopens after the summer holiday and the CCI has been given a fair time to file an affidavit and submit a compilation of relevant law.

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DELHI HIGH COURT GRANTED RELIEF TO BOTH THE PARTIES IN RMPL VS. PPL CASE

In a judgment dated April 11, 2022, Delhi High Court granted relief to both RMPL and PPL in their dispute over copyright society registration. As a pro tem measure, the Court has issued a stay of the single judge's ruling to the degree that it prevents RMPL from operating as a Copyright Society. Additionally, the Division Bench asked the Government of India to evaluate the PPL application during the appeal's pendency—within four weeks. The Division Bench of the Delhi High Court issued the ruling in response to an appeal filed by RMPL against a single judge's March 9, 2022, order.

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EXCUSES22 WINS AGAINST MYFAB11 IN A COPYRIGHT INFRINGEMENT CASE

Excuse22 has obtained an injunction against MyFab11, which was accused of launching a replica version of the exchange the day before IPL 2022. The Delhi High Court issued an ex-parte order in favour of Excuses 22, India's First Sports Stock Exchange, a fantasy game software brand registered with Hulm Entertainment Pvt. Ltd. The defendant's version included an identical gaming interface, front-end analytics game data, including player pricing, and advertising and promotional methods. Excuse22 is India's first Sports Stock Exchange gaming app. Myfab11.com's domain registration was also ordered to be suspended by the domain registrar.

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BOMBAY HIGH COURT FAVOURED SHEMAROO ENTERTAINMENT IN SHEMAARO VS. NEWS NATION CASE

The companies announced a non-exclusive agreement under which News Nation would broadcast and exploit Shemaroo Entertainment's audio-visual song clips, sceneries, and conversation snippets on its channels from July 1, 2019, until June 30, 2022. The Agreement was terminated in August 2020 at the request of the Defendants. According to Reports, they continued to broadcast audiovisual songs, clips, and sequences from the Plaintiff's Copyrighted cinematographic films on their channels. Despite Shemaroo's warnings, News Nation claimed to have refused to pay damages, defending its use of the film on the grounds of fair use and de minimis. News Nation's attorney, contended that the Defendant, distributed the Plaintiff's material in the course of its routine and usual business of reporting news and other programming. He contended that the Defendant's use of the Plaintiff's work was acceptable under Section 52 of the Copyright Act on the grounds that it was made in good faith. Further, he argued that the case was barred by the De Minimis Non-Curat Lex principle due to the Defendant's brief and justified use of the Plaintiff's material. The High Court held that the Defendant's conduct could not be justified since it was using the Plaintiff's material in a manner that was not permitted under the terminated agreement.

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ED SHEERAN "SHAPE OF YOU" CASE

In the copyright infringement suit filed against the singer Ed Sheeran over his popular song "Shape of You", the U.K. High Court concluded the case while holding that the singer "neither deliberately nor subconsciously" copied parts of the song "Oh Why", performed by Sami Choksi in the year 2015. The judge acknowledged that though "there were similarities between the one-bar phrase" in both the songs, differences between the relevant parts of the songs can be identified

while comparing the musical elements. The Court had observed that in order to establish copyright infringement, the defendants needed to prove that Ed Sheeran had prior listened to the song “Oh Why” and the similarities are not

just a coincidence, but Sami Choksi failed to establish the same

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COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2022

The MCA *vide* its notification dated April 6, 2022 (accessible [here](#)), has issued the Companies (Management and Administration) Amendment Rules, 2022 ("**MA Amendment Rules**") amending the Companies (Management and Administration) Rules, 2014 ("**MA Rules**"). The MA Amendment Rules will come into effect on April 6, 2022.

As per the MA Amendment Rules, a new sub-rule (3) has been inserted in Rule 14 (Inspection of Registers, returns, etc.) of the MA Rules which has excluded certain details of the members from being disclosed during the inspection of register and returns granted to a member, debenture-holder, other security holder or a beneficial owner. As per the newly inserted sub-rule, the following particulars of the register or index or return in respect of the members of a company shall not be made available during any inspection: (i) address or registered address (in case of a body corporate); (ii) e-mail ID; (iii) Unique Identification Number; and (iv) Permanent Account Number (PAN).

COMPANIES (INCORPORATION) RULES, 2022

The MCA *vide* its notification dated April 8, 2022 (accessible [here](#)), has issued the Companies (Incorporation) Amendment Rules, 2022 ("**Incorporation Amendment Rules**") further amending the Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**"). The Incorporation Amendment Rules will come into effect on April 8, 2022.

The Incorporation Amendment Rules has inserted a second proviso to Rule 12 (Application for Incorporation of Companies) of the Incorporation Rules providing that in case of incorporation of a Nidhi company, a declaration under Section 406 (Power to Modify Act in its application to Nidhis) of the Companies Act, 2013 ("**Companies Act**"), will be required to be obtained from the Central Government

before commencing the business and such declaration shall be submitted at the time of incorporation of the company. Consequently, e-Form INC-20A (Declaration for commencement of business) has been amended to capture details relating to the approval received from Government for commencement of the business such as the letter-number/registration number/approval issued under Section 406 of the Companies Act and the date of approval/registration.

Further, e-Form INC-32 (SPICe+) has also been amended to include a declaration in Part B of the e-Form to state that the company shall not commence the business of Nidhi unless all the required approvals including the declaration to be issued under Section 406 of the Companies Act have been obtained from the Central Government.

NIDHI (AMENDMENT) RULES, 2022

The MCA *vide* its notification dated April 19, 2022 (accessible [here](#)), has issued the Nidhi (Amendment) Rules, 2022 ("**Nidhi Amendment Rules**"), further amending the Nidhi Rules, 2014 ("**Nidhi Rules**").

The key provisions of the Nidhi Amendment Rules have been summarised below:

- (i) The definition of "**Branch**" has been inserted in the Nidhi Rules to mean 'a place other than the registered office of Nidhi'.
- (ii) Rule 3A of the Nidhi Rules provides that a company shall not be allowed to file Form SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment) upon its failure to file e-Form NDH-4 to declare itself as a Nidhi company within the prescribed timelines. Rule 3A has been amended to insert new provisos to provide that a company which,

- (a) has not complied with the requirements of Rule 3A, or
- (b) fails to comply with such requirement on or after the commencement of the Nidhi Amendment Rules, or
- (c) in case the application submitted by the company in e-Form NDH-4, such application is or has been rejected by the Central Government,

shall not be allowed to raise any deposit from its members or provide any loan to its members under the provisions of the Nidhi Rules from the date of such non-compliance, or from the date of the commencement of the Nidhi Amendment Rules, or the date of rejection of the application in e-Form NDH-4, whichever is later (“**Relevant Date**”). Provided that if any company raises deposits after the Relevant Date, such deposit shall be deemed to have been raised in pursuance of Chapter V (Acceptance of Deposits by Companies) of the Companies Act, and shall be subject to all the requirements under the aforesaid chapter, or under any other provisions of the Companies Act or the rules made thereunder in relation thereto.

- (iii) Rule 3A shall not apply to those companies which are incorporated as Nidhi on or after the commencement of the Nidhi Amendment Rules.
- (iv) A new Rule 3B has been inserted which provides for the conditions to be fulfilled by public companies desirous of being declared as a Nidhi (on or after the commencement of the Nidhi Amendment Rules), which are stated below:
 - (a) the company shall file e-Form NDH-4 within a period of 120 (one hundred and twenty) days of its incorporation provided that **(A)** it has not less than 200 (two hundred) members **(B)** it has net owned funds of INR 20,00,000 (Rupees Twenty Lakhs). The company shall not be allowed to file Form SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment) upon its failure to comply with the aforesaid condition; and
 - (b) the company shall attach along with e-Form NDH-4, the declaration with regard to fulfilment of fit and proper person criteria by all the promoters and directors of the company.
- (v) The minimum paid up equity share capital requirement of INR 5,00,000 (Rupees Five Lakhs) for Nidhi companies has been now increased to INR 10,00,000 (Rupees Ten Lakhs). Every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules, shall be required to comply with the new paid-up share

capital requirements within 18 (eighteen) months from the date of such commencement.

- (vi) Rule 5 of the Nidhi Rules which pertains to ‘Requirements for Minimum Number of Members, Net Owned Fund etc’ shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi Amendment Rules (new provisions have been brought in through the Nidhi Amendment Rules which detail out the requirements relating to minimum number of members, net owned funds, etc. at the time of incorporation and thereafter as further detailed herein).
- (vii) Rule 6(d) of the Nidhi Rules has been amended to provide for complete prohibition on a Nidhi company to acquire or purchase securities of any other company or control the composition of the board of directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management. Prior to the amendment, such acquisition/purchase/arrangements were allowed subject to the Nidhi company passing a special resolution in relation thereto and obtaining approval of the jurisdictional Regional Director.
- (viii) Nidhi companies are now restricted from raising loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi.
- (ix) A member of the Nidhi company cannot transfer more than 50% (fifty per cent) of his/her shareholding (as on the date of availing of loan or making of deposit) during the subsistence of such loan or deposit and shall at all the times retain the minimum number of shares required under of rule 7(3) of the Nidhi Rules (i.e. 10 equity shares or shares equivalent to INR 100).
- (x) The minimum threshold for net owned funds for Nidhi companies has been increased from INR 10,00,000 (Rupees Ten Lakhs) to INR 20,00,000 (Rupees Twenty Lakhs). Further, every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules shall comply with this requirement within a period of 18 (eighteen) months from the date of such commencement.
- (xi) A Nidhi proposing to open more than 3 (three) ‘branches’ within the district (where it is located and operating) or any branch outside the district, shall obtain the prior permission of the Regional Director by applying in e-Form NDH-2 with an intimation to be given to the jurisdictional Registrar of Companies (“**ROC**”) about opening of every branch within 30 (thirty) days of such opening.

(xii) Nidhis can now open collection centres or offices or deposit centres outside the State where its registered office is situated and can do so, even if the financial statement and annual return (up to date) have not been filed with the jurisdictional ROC.

(xiii) The new Rule 10(6) of the Nidhi Rules has set out the requirements that are to be fulfilled for closing of a Nidhi 'branch' which *inter alia* includes (a) conducting of a board meeting to approve the proposal to close the branch along with the plan as to how the existing deposits have been or shall be paid off and how the existing loan shall be recovered; and (b) obtaining of prior approval of the Regional Director for such closure.

After obtaining approval from the Regional Director, Nidhi is also required to (a) publish advertisement in a newspaper in vernacular language in the place where it carries on business at least 30 (thirty) days prior to such closure; (b) fix a copy of such advertisement or a notice informing such closure in the notice board of Nidhi and the relevant branch at least 30 (thirty) days from the date of publication of advertisement; and (c) give an intimation to the jurisdictional ROC within 30 (thirty) days of such closure. The erstwhile provisions did not provide for requirement of conducting board meeting to approve the proposal for closure along with the plan for repayment of the existing deposits nor did it require prior approval of the Regional Director.

(xiv) Any place, not being a registered office or a 'branch', where a Nidhi carries on its operation shall be closed within a period of 6 (six) months from the date of commencement of the Nidhi Amendment Rules, and

intimation shall be sent to the jurisdictional ROC in this regard in e-Form NDH-2.

(xv) A Nidhi shall not declare dividend exceeding 25% (twenty-five) per cent in a financial year.

COMPANIES (REGISTRATION OF CHARGES) AMENDMENT RULES, 2022

The MCA *vide* its notification dated April 27, 2022 (accessible [here](#)), has issued the Companies (Registration of Charges) Amendment Rules, 2022 ("**RC Amendment Rules**") further amending the Companies (Registration of Charges) Rules, 2014 ("**RC Rules**"). The RC Amendment Rules will come into effect on April 27, 2022.

The RC Amendment Rules has notified that Rule 3 (Registration of Creation or Modification of Charge) of the RC Rules shall not apply to any charge required to be created or modified by a banking company under Section 77 (Registration of Charges) of the Companies Act in favour of the Reserve Bank of India ("**RBI**") when any loan or advance has been made to it under clause (4) (d) of Section 17 (Business which the Bank may transact) of the Reserve Bank of India Act, 1934 ("**RBI Act**"). As per section 17(4)(d) of the RBI Act, the RBI can grant loan against the security of promissory notes of any scheduled bank or State co-operative bank, supported by documents of title to goods, such documents having been transferred, assigned, or pledged to any such bank as security for a loan or advance made for *bona fide* commercial or trade transactions, or for the purpose of financing agricultural operations or the marketing of crops.

ISSUE OF MASTER CIRCULARS

The Reserve Bank of India (“RBI”) has consolidated extant instructions on various matters and issued master circulars for ease of reference from compliance perspective. The RBI has, *inter alia* issued consolidated master circulars for the following matters:

- i. Master Circular – Housing Finance
- ii. Master Circular – Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances
- iii. Master Circular – Bank Finance to Non-Banking Financial Companies (NBFCs)
- iv. Master Circular – Guarantees and Co-acceptances
- v. Master Circular – Asset Reconstruction Companies

DSK View: *The consolidation of instructions will streamline the regulatory framework and ease compliance for the stakeholders.*

ESTABLISHMENT OF DIGITAL BANKING UNITS (DBUS)

The RBI has, vide circular dated April 7, 2022, bearing reference number RBI/2022-23/19 DOR.AUT.REC.12/22.01.001/2022-23 issued guidelines (“DBU Guidelines”) for setting up of Digital Banking Units (“DBUs”). The DBU Guidelines apply to all domestic scheduled commercial banks (excluding Regional Rural Banks, Payments Banks, and Local Area Banks) (“Banks”) and have come into effect from April 7, 2022. The key features of DBU Guidelines include:

- i. **Definitions:**
The DBU Guidelines have defined ‘DBUs’, ‘Digital Banking’ and ‘Digital Banking Products’.
- ii. **Permission for opening of DBUs:**
General permission has been accorded to scheduled commercial banks (excluding Regional Rural Banks,

Payments Banks and Local Area Banks) to open DBUs, provided they have past digital banking experience in Tier 1 to Tier 6 centers.

iii. **Infrastructure and Resources:**

The DBU Guidelines have laid down the infrastructure and resource requirements expected from banks looking to set up a DBU. A few such requirements are as follows:

- DBUs have been given the status of a banking outlet. However, the formats and designs will be separate and distinct for DBUs as compared to existing banking outlets.
- Banks have been directed to choose suitable smart equipment, such as interactive teller machines, interactive bankers, service terminals, cash recyclers etc., for front-end or distribution layer of the digital banking system.
- The back-end including the Core Banking System and other back office related information systems may be shared with incumbent systems with logical separation. Banks have also been given the flexibility to adopt more core-independent digital native technologies, basis their digital strategy.

iv. **Cyber Security:**

In addition to ensuring physical security of the infrastructure of the DBU, adequate safeguards for cyber security of the DBUs have to be ensured by the Banks.

v. **Products and Services:**

Each DBU is required to offer certain minimum digital banking products (which would include digitally value-added services to conventional products) on both liabilities and assets side of the balance sheet of the digital banking segment. An illustrative list of such products has been provided in the DBU Guidelines.

vi. **Digital Banking Customer Education:**

In addition to onboarding of customers, DBUs are required to offer hands-on customer education on safe digital banking products and practices. Efforts to provide customer education will also need to be continuously monitored. The board of directors are required to ensure provisions for accurate on-site and off-site monitoring systems.

vii. **Customer Grievances:**

Banks will have to ensure adequate digital mechanism to offer real time assistance and redressal of customer grievances.

viii. **Business Facilitators:**

Banks have been granted the option to engage digital business facilitators / business correspondents as per applicable RBI guidelines, to expand the virtual footprint of DBUs.

ix. **Reporting Requirements:**

Banks are required to report the Digital Banking Segment as a sub-segment within the existing "Retail Banking Segment" as per RBI directions issued in the matter, for digital banking products / services applicable to Retail Banking segment. Additionally, banks are also required to furnish information relating to opening, closure, merger or shifting of DBUs

DSK View: A committee for establishment of DBUs was formed, following the Finance Minister's announcement during the Budget speech for the financial year 2022-2023, to set up of 75 DBUs in 75 districts to commemorate 75 years of India's independence. The DBU Guidelines are a product of the recommendations of the aforesaid committee. Establishment of DBUs will improve access to banking services, help in achieving greater financial inclusion as banks will be able to reach a wider audience without having to spend time and money setting up brick-and-mortar outlets. It will also facilitate tracking of financial transactions thereby reducing instances of money laundering and is also expected to boost the economy.

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) (AMENDMENT) REGULATIONS, 2022

The Securities and Exchange Board of India ("SEBI") has issued Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2022 ("Amended NCS Regulations") on April 11, 2022 to amend certain provisions of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("Principal Regulations"). The Amended SEBI NCS Regulations have come into force from April 11, 2022. Some of the key amendments are given below:

- i. Regulation 23 (*Obligation of Issuer*) and Regulation 38 (*Other Obligations of the Lead Manager*) of the Principal Regulations were amended to require the issuer and lead manager of secured debt securities to ensure that the security cover for such debt securities is 100% (one hundred percent) or higher, as may be specified in the offer document and/or debenture trust deed, in order to ensure that the same is sufficient to discharge the principal amount and the interest thereon at all times.
- ii. Regulation 40 (*Due Diligence by Debenture trustee*) and Regulation 44(3) (*Listing Application*) have been amended to introduce separate due diligence certificate formats for secured debt securities and unsecured debt securities. Earlier, the Principal Regulations provided a common format of due diligence certificate for all debt securities.
- iii. Regulation 43(2) (*Creation of security for secured debt securities*) applicable to issuance of public debt securities and Regulation 48(2) (*Creation of Security*) which is applicable to privately placed debt securities, have been amended:
 - a. to state that all charges created in respect of secured debt securities shall be disclosed in the offer document and the debenture trust deed;
 - b. to require execution of an undertaking, stating that the assets on which charge has been created to meet the security cover requirement of 100% (one hundred percent) or higher, are free from any encumbrances; and
 - c. all consents required to create the encumbrance on the assets have been obtained prior to creation of the charge.

Previously, an undertaking was required only if the charge was being created over additional assets other than the assets comprising of 100% (one hundred percent) security cover.

DSK View: The Amended NCS Regulations are a result of the proposals made in the SEBI Board meeting held in February 2022. Some of the critical amendments include bringing in the requirement of separate formats for due diligence certificates, including for unsecured issuances and requirement of maintaining security cover of 100% or more to ensure that monies are sufficient to discharge principal and interest payments, etc. While some modifications may have been undertaken to align the regulatory framework with other laws such as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Debenture Trustees) Regulations, 1993, the requirement with respect to due diligence and maintenance of security cover, seem to be a move to ensuring greater protection of rights and interests of investors.

SEBI (DEBENTURE TRUSTEES) (AMENDMENT) REGULATIONS, 2022

The SEBI has issued SEBI (Debenture Trustees) (Amendment) Regulations, 2022 (“**Amended Debenture Trustee Regulations**”) on April 11, 2022 to amend certain provisions of the SEBI (Debenture Trustees) Regulations, 1993. The Amended Debenture Trustee Regulations have come into force on April 11, 2022.

The amendments include modifications to Regulation 15(1) (*Duties of debenture trustees*) to, *inter alia*, include responsibility on debenture trustee of monitoring any breaches by the issuer of the issue terms, ensuring implementation of conditions pertaining to security creation, debenture redemption reserve and recovery expense fund, carry out due diligence on a quarterly basis (for all listed debt securities) and obtain a statutory auditor’s certificate regarding, amongst other things, security cover.

DSK View: *The above modifications have been made mainly to align the regulatory framework and terminology with respect to ‘security cover’ and ‘asset cover’ as given under SEBI (Debenture Trustee) Regulations, 1993 and SEBI (Listing Obligations and Disclosure Requirements), 2015.*

REGULATIONS PERTAINING TO NON-BANKING FINANCIAL COMPANIES

A. Loans and Advances – Regulatory Restrictions – NBFCs

The RBI has, vide circular dated April 19, 2022, bearing reference number RBI/2022-23/29 DOR.CRE.REC.No.25/03.10.001/2022-23, issued detailed guidelines on regulatory restrictions on loans and advances by NBFCs (“**Regulatory Restrictions – Guidelines**”) in furtherance of RBI circular dated October 22, 2021 on Scale Based Regulation: A Revised Regulatory Framework for NBFCs (“**NBFC SBR Regulations**”). The Regulatory Restrictions – Guidelines shall come into effect from October 1, 2022.

Salient features of the Regulatory Restrictions – Guidelines are given below:

- (a) NBFCs are not permitted to extend loans and advances aggregating INR 5 Crores or more to the following entities:
 - (i) directors (including the chairman/ managing director) or relatives of directors;
 - (ii) any firm in which any of their directors or their relatives is interested as a partner, manager, employee, or guarantor;
 - (iii) any company in which any of their directors, or their relatives is interested as a major

shareholder, director, manager, employee, or guarantor,

unless the same is sanctioned by the board of directors/ committee of directors.

A director or his/her relative shall be deemed to be interested, if she/he is a major shareholder or is in control of the respective holding or subsidiary company.

- (b) NBFCs are permitted to grant loans and advances to their Senior Officers (*which shall have the same meaning as given to ‘Senior Management’ under section 178 of Companies Act, 2013*) after satisfying the following conditions:
 - (i) Such loans and advances shall be reported to the board of directors;
 - (ii) No senior officer or any committee comprising, *inter alia*, a senior officer as member, shall, while exercising powers of sanction of any credit facility, sanction any credit facility to a relative of that senior officer. Such a facility shall be sanctioned by the next higher sanctioning authority under the delegation of powers.
- (c) While appraising loan proposals involving real estate, NBFCs are required to ensure that the borrowers have obtained prior permission from government/ local government/ other statutory authorities for the project, wherever required and disbursements are made only after the borrower has obtained requisite clearances.
- (d) NBFCs are required to have a board approved policy on grant of loans and advances to directors, senior officers, relatives of directors and entities where directors or their relatives have major shareholding. The policy is also required to include a threshold beyond which such loans shall be reported to the board of directors.

B. Large Exposures Framework for Non-Banking Financial Company - Upper Layer (NBFC-UL)

The RBI has, vide circular dated April 19, 2022, bearing reference number RBI/2022-23/32 DOR.CRE.REC.24/21.01.003/2022-23 issued detailed guidelines on Large Exposure Framework for NBFCs in the upper layer (NBFC-UL) (“**LEF Guidelines**”) in furtherance of the NBFC SBR Regulations. Some of the key features of the LEF Guidelines are given below:

- i. The LEF Guidelines have introduced a definition of ‘large exposure’ to mean the sum of all exposure values of an NBFC-UL to a counterparty and/or a group of

connected counterparties, if it is equal to or above 10% of the NBFC-UL's eligible capital base.

- ii. **Applicability:** The LEF Guidelines shall be applicable to NBFC-ULs, both at the standalone level and at the consolidated (group) level with both on and off-balance sheet exposures being taken into consideration.
- iii. **Scope of counterparties and exemptions:** NBFC-UL's exposure to all its counterparties and groups of connected counterparties will be considered while calculating exposure limits. However, the LEF Guidelines have laid down certain exceptions, such as exposure to the Government of India and State

Governments which are eligible for zero percent risk weight under capital regulations applicable to NBFC-UL, exposure where the principal and interest are fully guaranteed by the Government of India, investment in equity capital of insurance companies to the extent specifically permitted by RBI, etc.

- iv. **Credit Risk Transfer Instrument:** Exposures can be offset with credit risk transfer instruments and an indicative list of such instruments has been provided in the LEF Guidelines.
- v. **Large Exposure Limits for NBFC-UL:**

	NBFC-UL (Other than Infrastructure Finance Company)	NBFC-UL (IFC)
Single Counterparty	<ul style="list-style-type: none"> • 20% • additional 5% with Board approval • additional 5% if exposure towards Infrastructure loan/investment <p>(Single counterparty limit shall not exceed 25% in any case)</p>	<ul style="list-style-type: none"> • 25% • additional 5% with Board approval
Group of connected Counterparties	<ul style="list-style-type: none"> • 25% • additional 10% if exposure towards Infrastructure loan/investment 	35%

- vi. The LEF Guidelines also lay down exposure limits with respect to factoring transactions, interconnectedness through control and through economic dependency.
- vii. **Breach of Large Exposure Limits:** The LEF Guidelines also contain penal provisions for breach of Large Exposure limits which have not been reported to the RBI immediately and rapidly rectified.

- iii. Core Investment Companies identified as NBFC-UL shall continue to maintain, on an on-going basis, adjusted net worth in accordance with the Master Direction DoR(NBFC).PD.003/03.10.119/2016-17 - Core Investment Companies (Reserve Bank) Directions, 2016 dated August 25, 2016.

C. Scale Based Regulation (SBR) for NBFCs: Capital requirements for Non-Banking Finance Companies – Upper Layer (NBFC-UL)

The RBI has, vide circular dated April 19, 2022 bearing reference number RBI/2022-23/30 DOR.CAP.REC.No.21/21.06.201/2022-23, issued detailed guidelines on the capital requirements for NBFC-UL (“**SBR Circular**”) in furtherance of the NBFC SBR Regulations.

The key features of SBR Circular are as follows:

- i. NBFC-ULs are required to maintain Common Equity Tier 1 ratio of at least 9% of their risk weighted assets, where the term “Common Equity Tier 1 (CET1) ratio” has been clearly defined.
- ii. The SBR Circular is applicable to all NBFCs identified as NBFC-UL, except Core Investment Companies.

DSK View: The LEF Guidelines and the SBR Circular, aim to address issues such as credit risk concentration in NBFCs while identifying what would be considered a large exposure while stipulating reporting requirements for large exposures. The sum of all the exposure values of an NBFC to a single counterparty has been restricted to 20% of its available eligible capital base. Additionally, the applicability has been increased and is now both at standalone and consolidated level.

The RBI is rapidly recognizing the importance of NBFCs in the chain of financing and their increasing role in the banking segment. The above guidelines and circulars are part of a slew of regulatory changes issued by the RBI for NBFCs and seem to be a step closer to bringing them at par with scheduled commercial banks and are improvements to the NBFC SBR Regulations.

LEGAL ENTITY IDENTIFIER (LEI) FOR BORROWERS

The RBI has, vide a circular dated April 21, 2022 bearing reference number RBI/2022-23/34 DOR.CRE.REC.28/21.04.048/2022-23 (“LEI Circular”), extended the guidelines on Legal Entity Identifier issued in 2017, to Primary (Urban) Co-operative Banks (UCBs) and Non-Banking Financial Companies (NBFCs).

As per the revised requirements laid down in the LEI Circular, non-individual borrowers with an aggregate exposure of INR 5 crore and above from banks and financial institutions, are required to obtain a LEI number as per the timelines given

thereunder. Borrowers who fail to obtain an LEI number within the timelines stipulated under the LEI Circular, shall not be sanctioned any new exposure, nor shall they be granted renewal/enhancement of any existing exposure.

DSK View: *The LEI number helps banks to effectively monitor the aggregate exposure of corporate borrowers and also enables lenders from sanctioning multiple loans to entities with businesses in multiple sectors and dealing with large number of banks and NBFCs. It will assist lenders in detecting fraudulent activities such as ever-greening of loans and also help lenders to assess and monitor the total borrowing by an entity against common collateral.*



HON'BLE SUPREME COURT EMPOWERS CONSUMER COURTS TO DIRECT REFUND AS COMPENSATION TO BUYERS FOR NON-DELIVERY OF FLAT

The Hon'ble Supreme Court, *vide*, order dated April 7, 2022, in the case of Experion Developers Private Limited vs Sushma Ashok Shiroor, held that, both Real Estate Regulatory Authority ("**RERA**") and consumer forum run parallel.

The three-judge bench comprising of Justice Uday U. Lalit, Justice S. Ravindra Bhat and Justice P.S. Narasimha ("**Bench**") upheld the decision passed by the National Consumer Disputes Redressal Commission ("**Commission**") for compensation by the developer to the consumer for its failure to deliver possession of the apartment within the time stipulated as per the 'Apartment Buyers Agreement'.

The Bench was of the view that 9% interest granted by the Commission from the date of deposit was fair and it is clear that the Consumer Protection Act, 2019 and the Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**") neither exclude nor contradict each other. The Bench relied on the judgment passed in the matter of Imperia Structures Ltd v. Anil Patni & Anr. [(2020) 10 SCC 783] which had held that:

"Remedies under the Consumer Protection Act were in addition to the remedies available under special statutes. The absence of a bar under Section 79 for the initiation of proceedings before a forum which is not a civil court, read with Section 88 of the RERA Act makes the position clear. Section 18 of the RERA Act specifies that the remedies are without prejudice to any other remedy available."

SUPREME COURT ASKS STATES TO RESPOND ON CENTER'S QUESTIONS ON IMPLEMENTATION OF RERA RULES

The Hon'ble Supreme Court ordered the Central Government to investigate, if the regulations enacted by various states under the RERA Act were in compliance with

the interests of property buyers. Pursuant to which the Central Government wrote to the states seeking information regarding whether an agreement to sale as notified under RERA rules of different states is compliant with the RERA Act.

To aid the Central Government's exercise, the Hon'ble Supreme Court had directed all chief secretaries to answer the RERA related queries on or by May 15, 2022. In addition to that, the Hon'ble Supreme Court directed the Additional Solicitor General, Aishwarya Bhati and Amicus Curiae, Devashish Bharuka to file a status report after receiving all the relevant information from the states. As of now, the Central Government has found discrepancy between the RERA rules framed by the states and the RERA Act upon receiving requisite responses from 5 (Five) state governments.

The Hon'ble Supreme Court has been emphasizing on the need to frame uniform rules under the provisions of RERA Act and a for a model builder-buyer agreement to safeguard the interest of middle-class home buyers.

ESTABLISHMENT OF BIHAR RERA CONCILIATION AND DISPUTE RESOLUTION CELL (BCDRC) FOR CONCILIATION OF DISPUTES BETWEEN PROMOTERS AND ALLOTTEES

The Bihar Real Estate Regulatory Body has set up BCDRC to facilitate amicable conciliation of disputes between promoters and allottees through dispute settlement forum or cell.

Further, the process of conciliation is likely to be completed in two or three sittings. One conciliator each from buyers' association, promoter or builder association along with former district judge and former adjudicating officer shall become part of the conciliation forum.

NOIDA AUTHORITY TO AID REAL ESTATE DEVELOPERS TO GET STRESS FUNDS

The Noida Authority, in lieu of faster completion of real estate projects, has decided to grant mortgage permission to real estate developers to access Centre's stress funds. The decision in this regard was taken during the 204th board meeting of the Noida Authority. This mortgage will be provided under Special Window for Affordable & Mid-Income Housing (SWAMIH) fund (which is a category II alternative investment fund).

The investment manager of the SWAMIH fund is SBI Cap Ventures, a wholly owned subsidiary of the State Bank of India. The said fund was launched for several real estate projects across the country that were stalled due to a financial crunch.

In the present case, the funds will be given to projects that are close to completion and the funds can be accessed only after thorough scrutiny by SBI Cap Ventures. The decision of authority may help developers to complete the project and handover possession of the properties to the homebuyers.

APEX COURT DENIES EXAMINING PLEA ON SETTLING STAMP DUTY ON CARPET AREA

The Hon'ble Supreme Court on April 18, 2022, refused to adjudicate on the issue as to whether stamp duty shall be payable on the basis of "super area" or "carpet area" while registering title deeds of flats in the state of Uttar Pradesh.

Carpet area means that area in the flat which you could cover through a carpet and it is generally referred to as the net usable area of an apartment. This excludes the area covered by the external walls but includes the area covered by internal partition walls of the apartment.

On the other hand, super area refers to the built-up area and includes common spaces such as lifts, stairs, etc.

A bench consisting of Justice Uday U. Lalit and Justice Bela M. Trivedi, while examining a plea to decide stamp duty on the aforementioned parameters, stated that it would be better if the issue is examined by competent authority as the Apex Court's decision would become final and the parties would lose the option to appeal.

The Hon'ble Supreme Court passed the order while hearing pleas of Amrapali homebuyers.

DTCP IN HARYANA GIVES GUIDELINES ON STRUCTURAL SAFETY OF BUILDING AS IT PROPOSES TO INCLUDE TWO LAYERS OF INDEPENDENT CHECKS BEFORE OCCUPANCY CERTIFICATE IS ISSUED

The Directorate Town and Country Planning ("DTCP") has issued guidelines for the structural safety of the buildings in the state of Haryana after the incident of Chintels Paradiso.

The two independent checks include-

1. Empaneling structural engineers and proof consultants to vet buildings and certify that they are according to the Haryana Building Code.
2. The other is inspections by a third-party agency, to be picked by the DTCP, to assess construction quality before issuance of an occupancy certificate.

The current rules do not have the provision for such structural checks which play an important role in the certification of the building. The guidelines will come into effect only after all the suggestions received are considered.

HOMEBUYER PERMITTED TO WITHDRAW FROM THE PROJECT DUE TO ERRONEOUS INFORMATION IN THE BROUCHER: MAHARASHTRA RERA

Maharashtra Real Estate Regulatory Authority ("Maha RERA"), on April 22, 2022, passed an order allowing aggrieved purchasers to withdraw from the real estate project since the builder had made misleading representation and provided inaccurate information in their advertising brochure at the time of booking the flat.

The homebuyers purchased a flat in 'Ruparel Skygreens I' project registered with Maha RERA. They filed a written request in December 2021, requesting refund as well as interest under Sections 12 and 18(1) of the RERA Act.

In response to the claim of the homebuyers, the builders claimed that the complainants were not entitled to a refund because they had violated the provisions of section 19(6) and 19(7) of the RERA Act and were obligated to make timely payments as per the letter of allocation signed. Further, they also stated that the allotment was signed under the provisions of the Maharashtra Owners of Flats Act (MOFA), 1963, and as such, the parties were bound by the provisions of the MOFA, and Maha RERA could not issue reliefs for the allegations.

According to Maha RERA, the homebuyers had put their hard-earned money into booking the flat and had paid a significant sum to the builder, but despite receiving funds from the homebuyers, the builder failed to fulfil its obligations. After examining both sides, the Maha RERA concluded that the homebuyers was entitled to a refund plus interest under section 12 of the RERA Act.

DELHI RERA MANDATES REGISTRATION IF PLOT SIZE EXCEEDS 500 SQUARE METERS

Section 3 of the RERA Act provides conditions for registration of a project with RERA. As per the tenor of Section 3 (2) (a) of the RERA Act, registration is not required for plots admeasuring less than 500 square meters or the number of apartments proposed to be developed is less than eight.

However, many developers of Delhi used this provision to their advantage to avoid the registration claiming that the number of apartments is less than eight and to register their project, they have to meet both the conditions.

In order to tackle this loophole, Delhi RERA has made it mandatory for the builder to register the project if the area on which the project is being developed exceeds 500 square meters, irrespective of the number of apartments built on it.

Delhi RERA also clarified that, in case the number of apartments proposed to be developed exceeds eight, in all phases, on any size of the plot, the registration is mandatory. In case of non-compliance of the same, Delhi RERA may levy a penalty which may extend up to 10% of the estimated cost of the real estate project, in case the order is not followed.



RESERVE BANK ISSUES GUIDELINES FOR ESTABLISHMENT OF DIGITAL BANKING UNITS

The Reserve Bank of India, vide circular dated April 7, 2022 (accessible [here](#)), issued guidelines for establishment of digital banking units (“**Guidelines**”). ‘Digital Banking Units’ or ‘DBUs’ are similar to brick-and-mortar banking outlets which house certain minimum digital infrastructure for delivering digital banking products & services as well as servicing existing financial products & services, digitally. The Guidelines are applicable to all domestic scheduled commercial banks (excluding regional rural banks, payments banks and local area banks). The Guidelines permit all scheduled commercial banks with past digital banking experience to open DBUs in Tier 1 to Tier 6 centres (unless specifically restricted), without having the need to take permission from RBI. Such banks setting up DBUs will be, *inter alia*, required to offer certain minimum digital banking products and services; ensure physical security of the infrastructure of the DBU; and implement adequate cyber security safeguards to protect the DBUs from cyber breaches and threats.

CERT-IN ISSUES DIRECTIONS RELATING TO CYBER SECURITY PRACTICES

On April 28, 2022, the Indian Computer Emergency Response Team (CERT-In) issued new cybersecurity directions setting forth requirements governing the timeline for reporting cyber security incidents, maintenance of KYC and transaction information for crypto exchanges and wallets, maintenance of customer details by data centres, cloud services and VPN providers, and maintenance of logs in the Indian jurisdiction (“**Directions**”) (accessible [here](#)). The new Directions require all service providers, intermediaries, data centres, body corporates and government organisations to report cybersecurity incidents (of the nature specified in the Directions) within 6 hours of noticing of the same. Such entities are also required to designate a single point of contact who will be responsible for cooperating with CERT-In.

Further, in view of the increasing popularity of virtual assets, CERT-In has also mandated that cryptocurrency/virtual asset service providers, cryptocurrency/virtual assets exchanges and custodian wallet providers will be required to maintain all information obtained as part of Know Your Customer (KYC) as well as records of financial transactions for a period of five years. Such information/records are to be maintained in such a way that individual transaction can be reconstructed along with the relevant elements.

WHITE COLLAR CRIME

AT A PRE-TRIAL STAGE, HIGH COURTS MUST NOT HASTILY GRANT RELIEF OF QUASHING A COMPLAINT FILED UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT

The Supreme Court in the case of **Rathish Babu Unnikrishnan vs. The State (Govt of NCT of Delhi) & Anr** (Criminal Appeal No.694-695 of 2022) observed that High Courts should be slow to grant the relief of quashing a complaint under Section 138 of Negotiable Instruments Act, 1881 (“NI Act”) at a pre-trial stage. The appellant had challenged a Delhi High Court judgement which dismissed the application under Section 482 of the CrPC for quashing of the summoning order issued against the appellant under Section 138 of the NI Act. The appellant’s contention was that the criminal process could not be issued as the essential ingredient for an offence under Section 138 of the NI Act (that the dishonoured cheque received by the complainant is against “legally enforceable debt or liability”) was not satisfied. On the other hand, the respondent contended that when the cheques are issued; and the signatures thereon are admitted, the presumption of a ‘legally enforceable debt’ will arise in favour of the holder of the cheque. Therefore, the moot question the Apex Court dealt with was whether summons and trial notice should have been quashed on the basis of factual defences. The court observed that, the approach of the court should be careful enough to not to prematurely extinguish a case by disregarding the legal presumption which supports the complaint. The Court while dismissing the appeal held that the appellant must get a fair opportunity to adduce his evidence in an open trial by a judge who can weigh the material to reach the truth of the matter.

DSK View: An integral aspect of a criminal process is the legal presumption supporting the complaint and therefore the Apex Court has rightly ruled that it cannot be disregarded. It is non-judicious to not conduct a trial and accordingly, not allow the Court to evaluate evidence on both sides. Courts should rightfully emphasize precautionary principles in

invoking the powers endorsed under section 482 of the CrPC to quash the criminal proceedings.

VICTIM HAS A RIGHT TO BE HEARD AT EVERY STAGE FROM INVESTIGATION

In the case of **Jagjeet Singh & Ors vs Ashish Mishra Alias Monu & Anr** (Criminal Appeal No.632 of 2022), the Supreme Court while remanding back a matter of bail application to the Allahabad High Court for hearing it afresh, categorically held that a victim shall be given an adequate opportunity of hearing. The court further observed that a victim cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. A victim has a legally vested right to be heard at every step post the occurrence of an offence. A victim has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. The court further clarified that that victim and complainant/informant are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a victim, for even a stranger to the act of crime can be an informant, and similarly, a victim need not be the complainant or informant of a felony. The court further held that victims certainly cannot be expected to be sitting on the fence and watch the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

DSK View: It is important that powers vested in courts are not abused by taking a myopic view and only consider the evidence on record and merits of the case without paying heed to other relevant factors. The courts must ensure a balance wherein, neither the right of an accused is expropriated, nor the victim is denuded of his right.

INADEQUATE REASONS IN THE OPINION OF THE PRESIDING JUDGE OF THE SENTENCING COURT WOULD NOT SATISFY THE REQUIREMENTS OF SECTION 432(2) OF THE CRPC

The Supreme Court in the case of **Ram Chander vs State of Chhattisgarh** (Writ Petition (Crl No. 49 of 2022) observed that a presiding judge of the sentencing court while giving opinion on a remission application, should give adequate reasons. The court observed that the purpose of Section 432(2) CrPC is to enable the executive to make an informed decision taking into consideration all the relevant factors. In this case, the petitioner, who was undergoing a sentence of imprisonment for life, filed an application for premature release. The superintendent of the jail sought the opinion of the special judge who opine that in the facts and circumstances of the case, it would not be appropriate to allow remission of the remaining sentence of the petitioner. Accordingly, the law department prevented the release of the petitioner since the presiding judge of the sentencing court did not give a positive opinion with regard to the release of the petitioner. Being aggrieved, the petitioner approached the Apex Court by filing a writ petition. The State opposed the petition by contending that, it had an undoubted discretion to remit or refuse to remit the sentence and no writ could be issued to direct the State Government to release the petitioner. The Apex Court ruled that while the court can review the decision of the government to determine whether it was arbitrary, it cannot usurp the power of the government and grant remission itself and directed the State to take a final decision on the petitioner’s application for remission afresh within a month of receiving the opinion of the Special Judge.

DSK View: *The opinions of presiding judges should be reasoned, and due weightage should be given to the government. It is understood that an opinion with inadequate reasoning will not serve the purpose for which the exercise under section 432(2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors.*

IN CASES UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, ACCUSED CANNOT CLAIM A BLANKED EXEMPTION FROM PERSONAL APPEARANCES

In the case of **Mahesh Kumar Kejriwal vs Bhanuj Jindal** (Crim Appeal No. 3382 of 2022) the Petitioner had filed an application in a complaint filed under section 138 of the NI Act, claiming a blanket exemption from appearing, on all dates, when the case would be listed before the Magistrate, for his personal appearance. The said application was dismissed by the Magistrate. Later, partly allowing the revision application, the Sessions Court directed that the accused shall furnish bail bonds/surety bonds to the satisfaction of the Magistrate by putting in appearance before the Magistrate, and on their furnishing an undertaking to the effect that no dispute regarding identity would be raised and that their counsel would regularly appear, the trial Court shall exempt him from personal appearance. Further, seeking a blanket exemption, the petitioner moved the High Court of Punjab and Haryana, which dismissed his petition. The High Court observed that there is no specific provision in the CrPC, empowering the trial Judge concerned to pass an order of blanket exemption. The Apex Court while dismissing the petition held that the order passed by the Sessions court appears to be justified and requires no interference.

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