

NEWSLETTER

April 2023

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MASTER CIRCULAR FOR FOREIGN VENTURE CAPITAL INVESTORS (“FVCIS”)

The Securities and Exchange Board of India (“SEBI”) has issued a master circular¹ dated March 03, 2023, for FVCIs (“Master Circular”), for effective regulation of FVCIs and to enable stakeholders to have access to all the applicable requirements/circulars at one place. This Master Circular rescinds the following circulars:

- i. SEBI Circular No. IMD/DOF-1/FVCI/CIR.No.1/2009 dated July 03, 2009;
- ii. SEBI Circular No. SEBI/IMD/DOF-1/FVCI/CIR-1/2010 dated January 12, 2010; and
- iii. SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/75 dated July 06, 2017.

The Master Circular has come into force with effect from March 03, 2023.

OPERATIONAL GUIDANCE – AMENDMENT TO SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 2018 (“BUY-BACK REGULATIONS”)

SEBI has issued a circular dated March 8, 2023², providing operational guidance with respect to the amendment to SEBI Buy-back Regulations. SEBI has notified the SEBI (Buy-back of Securities) (Amendment) Regulations, 2023 on February 7, 2023.

The amended regulations shall come into force for all buy-back offers where the board of directors of the company approve resolution with respect to buy-back on or after the 30th day of the date of notification of the amended regulations in the official gazette (i.e. March 9, 2023).

SEBI has provided guidance on the following scenarios:

- i. Buyback through stock exchange route restrictions on placement of bids, price, and volume:
 - a. As per Clause (vi) of Regulation 16 of the Buy-back Regulations, the buy-back through stock exchanges shall be subject to the restrictions on placement of bids, price and volume, as specified by SEBI. In this regard, in consultation with the stock exchanges, the following restrictions have been set-out for the companies undertaking buy-back through stock exchange route:
 - The company shall not purchase more than 25% (Twenty Five Percent) of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made.
 - The company shall not place bids in the pre-open market, first 30 (Thirty) minutes and the last 30 (Thirty) minutes of the regular trading session.
 - The company’s purchase order price should be within the range of $\pm 1\%$ from the last traded price.
 - b. The company as well as its appointed broker shall ensure the compliance with the aforesaid provisions. The stock exchange shall monitor their compliance and in case of any instance(s) of such non-compliance shall impose appropriate fines and/or other enforcement actions as deem fit.

¹ SEBI/HO/AFD/PoD/P/CIR/2023/34

² SEBI/HO/CFD/PoD-2/P/CIR/2023/35

- ii. Margin requirement for deposits in escrow account
- a. As per the sub-clause (c) of Clause (xi) of Regulation 9 and Clause (ii) of Regulation 20 of the Buy-back Regulations, the escrow account shall consist of cash and/or other than the cash.
 - b. The portion of escrow account in the form of other than the cash shall be subject to appropriate haircut, in accordance with the SEBI master circular for stock exchange and clearing corporations dated July 5, 2021, as amended from time to time.
 - c. Merchant Banker to buy-back offer is advised to ensure that the adequate amount after the applicable haircut is available in escrow account till the completion of all formalities of buy-back.

CLARIFICATION WITH RESPECT TO QUALIFIED REGISTRARS TO AN ISSUE AND SHARE TRANSFER AGENTS (“QRTAS”)

SEBI has issued a circular dated March 10, 2023³, wherein clarification has been provided with respect to QRTAs. SEBI in a previous circular SEBI/HO/MIRSD/CIR/P/2017/000000100 dated September 8, 2017, which was issued with respect to cyber security and cyber resilience framework for registrars to an issue and share transfer agents (“RTAs”), defined QRTAs as RTAs servicing more than 2,00,00,000 (Two Crore) folios. QRTAs are required to comply with enhanced responsibilities through adoption and implementation of an internal policy framework and periodic reporting requirements as specified in various SEBI circulars issued from time to time. In this regard the following is clarified:

i. Categorization of RTA as QRTA

An RTA shall be categorized as a QRTA if at any time during a financial year, the combined number of physical and demat folios being serviced by the RTA for listed companies exceeds 2,00,00,000 (Two Crore).

In case of an RTA being categorized as a QRTA, an intimation to this effect shall be sent by the RTA within 5 (Five) working days to SEBI.

ii. Period for which an RTA shall be recognized as QRTA

An RTA shall be considered as a QRTA from the date of categorization as a QRTA as per (i) above and shall be considered as such for the next 3 (Three) financial years, irrespective of subsequent fall in number of folios and shall be liable to comply with all requirements specified from time to time.

³ SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/36

⁴ SEBI/HO/IMD/IMD-PoD-2/P/CIR/2023/40

iii. Initial Relaxation

Considering the various systems and procedures to be put in place by a new QRTA, a period of 60 (Sixty) days from the date of its categorization as a QRTA as per (i) above shall be provided to the new QRTA for complying with the enhanced requirements mandated for QRTAs.

E-WALLET INVESTMENTS IN MUTUAL FUNDS

E-wallet for investment in Mutual Funds within the umbrella limit of INR 50,000 for investments by an investor through both e-wallet and/or cash, per Mutual Fund per financial year.

SEBI has vide its circular dated March 23, 2023⁴ has stated that it should be ensured that all e-wallets are fully compliant with KYC norms as prescribed by Reserve Bank of India.

STREAMLINING THE ONBOARDING PROCESS OF FPIs

SEBI has issued a circular dated March 27, 2023⁵, in order to ease the onboarding process of FPIs and reduce the time taken for granting registration and opening of demat, trading and bank accounts of FPIs, the following modifications to the ‘Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors’, issued on December 19, 2022 are specified:

- i. Granting of registration on the basis of scanned copies has been allowed but trading can only be activated following the verification of the physical documents.
- ii. SEBI has allowed DDPs to accept the use of digital signatures by FPIs for the execution of registration-related documents.
- iii. The regulator has permitted verification of PAN by DDPs through the Common Application Form (CAF) module available on the websites of the depositories.
- iv. Sebi has allowed authorized bank officials to use the SWIFT mechanism for certification of copies of original documents submitted by FPIs.
- v. For operational convenience, it is now specified that in case an FPI applicant belongs to an existing FPI investor group, it may submit its unique FPI investor group ID in the CAF, in lieu of providing complete details of all group constituents. In case the applicant wants to club additional FPIs (apart from

⁵ SEBI/HO/AFD/P/CIR/2023/043

itself) in such unique investor group ID, the FPI may only provide details of such additional FPIs, along with the investor group ID..



NCLAT UPHOLDS CCI'S ORDER IMPOSING A FINE OF INR 1,337 CRORES ON GOOGLE

The National Company Law Appellate Tribunal (NCLAT) via its order dated 29.03.2023 in *Google LLC and Anr. v. Competition Commission of India* (Competition Appeal (AT) No. 1 of 2023) has upheld the penalty of INR 1,337 crores imposed by the Competition Commission of India (CCI) on Google for its anti-competitive conduct in the Android ecosystem.

CCI had in its order dated 20.10.2022 in *Mr. Umar Javeed & Ors. v. Google LLC & Anr.*, (Case No. 39 of 2018) imposed a monetary penalty of INR 1,337 crores on Google for abusing its dominant position in multiple markets. The CCI further issued a cease-and-desist order against Google for indulging in anti-competitive practices that were found to be in contravention of Section 4 of the Competition Act, 2002 (Act). In January 2023, Google filed an appeal before the NCLAT, challenging the said order of the CCI.

NCLAT found that Google is a dominant player and has abused its dominant position by imposing various restrictions under its agreements with original equipment manufacturers (OEMs). This included the abuse of the dominant position in Online General Search, tying up of the Google Chrome app and YouTube app with Play Store and thereby violating the provisions of Section 4(2)(e) of the Act. Further, it was held that Google has perpetuated its dominant position in the online search market resulting in the denial of market access for competing search apps violating Section 4(2)(c) of the Act.

The NCLAT observed that the pre-installation of the entire Google Mobile Services (GMS) Suite amounts to imposing unfair conditions on OEMs and is an abuse of the dominant position resulting in the breach of Section 4(2)(a)(i) and Section 4(2)(d). The NCLAT further noted that by making pre-installation of the Google Mobile Services suite conditional

to the signing of the Anti-Fragmentation Agreement/Android Compatibility Commitment for all Android devices manufacturers, Google has reduced the ability and incentive of devices manufacturers to develop and sell self-device operating or alternative versions of Android and Android Forks and thereby limited the technical and scientific development, which is in breach of provisions of Section 4(2)(b)(ii) of the Act.

However, as a relief to Google, NCLAT has set aside four of the CCI's ten non-monetary directions. These directions are as follows:

1. Allowing users to uninstall the preinstalled Google apps.
2. Allowing app developers to distribute their apps through sideloading (i.e., when apps are downloaded directly from the website as opposed to Play Store).
3. Allowing access to Play Services Application Programming Interface to OEMs, app developers, and existing or potential competitors.
4. Allowing the distribution of third-party app stores through Play Store.

Thus, Google will now have to adhere to the following six directions:

1. OEMs shall not be restrained from (i) choosing Google's proprietary applications to be pre-installed and should not be forced to pre-install a bouquet of applications and (ii) deciding the placement of pre-installed apps on their smart devices.
2. Licensing of Play Store to OEMs shall not be linked with the requirement of pre-installing Google applications.

3. Google shall not offer any monetary/other incentives to, or enter into any arrangement with, OEMs for ensuring exclusivity for its search services.
4. Google shall not impose anti-fragmentation obligations on OEMs and OEMs shall be permitted to manufacture/develop Android forks-based smart devices for themselves.
5. Google shall not incentivize or obligate OEMs for not selling smart devices based on Android forks.
6. Google shall allow users, during the initial setup, to choose their default engine for all search entry points. Users should have the flexibility to easily change the default settings in their devices, in the minimum steps possible.

The NCLAT has given 30 days' time for the tech giant to pay the fine and implement the non-monetary directions.

CCI APPROVES THE INVESTMENT BY INQ HOLDING LLC IN BTS INVESTMENT 1 PTE. LTD.

The transaction relates to the investment by Qatar Investment Authority (QIA) through its subsidiary INQ Holding LLC (Acquirer) in BTS Investment 1 Pte. Ltd. (BTS1), which is proposing to raise capital from numerous investors for its investment in Viacom 18 Media Private Limited (Viacom 18). BTS1 and Viacom 18 are together referred to as the Target Entities.

The Acquirer is a Qatari-domiciled holding company and a wholly owned subsidiary of QIA. QIA is among the largest sovereign wealth funds globally. The Acquirer has no physical presence in India.

BTS1 is a company incorporated under the laws of Singapore. It is currently in the process of raising capital from various investors including reputed sovereign funds, multinationals, and global institutional investors. Viacom 18 is engaged in providing services in the Indian media and entertainment sector including (a) broadcasting of channels across genres; (b) OTT video streaming through Voot and Voot Kids; (c) production and distribution of feature films; (d) production and licensing of digital content; and (e) other allied businesses.

The CCI granted approval to this transaction on **23.03.2023**, stating that the Acquirer and the Target Entities including their affiliates do not have any (i) horizontal overlaps; (ii) vertical relationships; or (iii) complementary businesses in India. Hence, the Proposed Transaction raises no risk of any adverse effect on competition as per Section 6(1) of the Competition Act, 2002.

ABU DHABI INVESTMENT AUTHORITY GETS APPROVAL FROM CCI FOR INVESTMENT IN LENS KART

The CCI has approved investment into Lenskart Solutions Private Limited (LSPL) by Abu Dhabi Investment Authority on **23.03.2023**.

Platinum Owl C 2018 RSC Limited is a private limited company, incorporated in the Abu Dhabi Global Market (ADGM). It is acting in its capacity as a trustee for Platinum Jasmine A 2018 (Platinum Jasmine/ Acquirer), which was established under the laws of the ADGM by a deed of settlement dated 27.01.2019. Abu Dhabi Investment Authority (ADIA) is the sole beneficiary of Platinum Jasmine.

LSPL is a company limited by shares and was incorporated in 2008. LSPL is engaged in (a) the manufacture of eyewear products including eyeglasses, sunglasses, contact lenses, and eyewear accessories, and the sale of such manufactured products and (b) wholesale trading of eyewear products.

The transaction related to the proposed acquisition of certain shareholding of LSPL by Platinum Jasmine (Proposed Transaction). The Proposed Transaction was in the nature of an acquisition of shares and was notifiable under Section 5(a)(i)(A) of the Competition Act, 2002 (Act). The CCI in its analysis observed that there were no (i) horizontal overlaps; and/or (ii) vertical/complementary links between the business activities of the parties in India.

Due to the absence of any horizontal overlaps or vertical or complementary links between the parties to the Proposed Transaction, the Proposed Transaction was notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (as amended).

DISPUTE RESOLUTION



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WHEN ARBITRATION CLAUSE COVERS ALL THE DISPUTES, JURISDICTION CANNOT BE LIMITED TO A PARTICULAR DISPUTE

In *Agra Development Authority v. Baba Construction Private Limited*⁶, the Hon'ble Allahabad High Court held that when the arbitration clause covers all the disputes, then jurisdiction cannot be limited to a particular dispute. In the said case, the Appellant i.e., Agra Development Authority issued a tender for the construction of 52 Multi Story Delux Type Flats in Phase II, Taj Nagri, Agra. The Respondent i.e., M/s Baba Construction Private Limited got the tender and accordingly the parties entered into an agreement, wherein in case of any dispute between the parties, the same had to be resolved through arbitration. The Respondent had raised an invoice vide Letter dated 18.03.2010 and requested the Appellant to pay service tax on the same as per the terms of agreement. Since the service tax was not paid, the Appellant vide its letter appointed an arbitrator. In the letter by which the arbitrator was appointed, there was no mention that the arbitrator was appointed only for adjudication of service tax dispute.

Pursuant to the appointment of arbitrator, the Appellant raised a preliminary objection that the arbitrator was appointed only for the adjudication of service tax dispute which was dismissed by the arbitrator in his arbitral award dated 05.01.2012. Aggrieved by the said arbitral award dated 05.01.2012, the appellant filed a petition under Section 34 of the Arbitration and Conciliation Act 1996 ("Act") primarily on the ground that the arbitral award was passed beyond the reference. The Ld. Commercial Court dismissed the petition under Section 34 of the Act and thereafter the Appellant filed an appeal under Section 37 of the Act. The Hon'ble Allahabad High Court affirmed the order passed by the Ld. Commercial Court and held that in proceedings under Section 37 of the Act, the court does not

act as a court of appeal and accordingly dismissed the appeal of the Appellant.

OBJECTION REGARDING UNILATERAL APPOINTMENT OF ARBITRATOR CAN BE RAISED FOR THE FIRST TIME IN A PETITION UNDER SECTION 34 OF THE ARBITRATION & CONCILIATION ACT 1996

In *Hanuman Motors Private Limited v. M/s Tata Motors Finance Limited*⁷, the Hon'ble High Court of Bombay has held that an objection regarding the unilateral appointment of an arbitrator can be raised for the first time in a petition under Section 34 of the Arbitration and Conciliation Act 1996. In the said case, the Respondent appointed the arbitrator which was objected to by the Petitioner vide its letter wherein it was specifically stated that the Respondent should not proceed with the appointment of an arbitrator without the consent of the Petitioner. The said objection was also raised before the arbitrator. Despite, the said objection, the Respondent proceeded with the appointment of the arbitrator and the arbitrator passed the arbitral award on 08.11.2021 in favour of the Respondent.

Aggrieved by the said arbitral award, the Petitioner filed a petition under Section 34 of the Arbitration and Conciliation Act 1996 ("Act") primarily on the ground that the sole arbitrator was appointed without the consent of the Petitioner. The Respondent objected to the said petition on the ground that such an objection ought to have been raised before the arbitrator himself for the first time and not before this Court. The Hon'ble High Court of Bombay observed that since the nature of the objection raised by the Petitioner is such that it goes to the very root of the matter and if it is found that the learned arbitrator could not have entered upon the reference itself, there was no question of holding that such an objection could never be raised before the Court under Section 34 of the said Act, merely because it was

⁶ First Appeal From Order No. 1033 of 2021

⁷ Arbitration Petition No. 241 of 2022

not raised before the learned arbitrator and accordingly admitted the Petitioner's petition under Section 34 of the Act.

APPLICATION UNDER SECTION 12A OF INSOLVENCY AND BANKRUPTCY CODE, 2016 FOR WITHDRAWAL OF CIRP CAN BE ENTERTAINED EVEN BEFORE THE CONSTITUTION OF COC

The Hon'ble Supreme Court of India in the case of *Abhishek Singh v. Huhtamaki PPL Ltd. & Anr.* [Civil Appeal No. 2241 of 2023] held that an Application under Section 12A of the Insolvency and Bankruptcy Code, 2016 ("IBC") for withdrawal of Corporate Insolvency Resolution Process ("CIRP") can be entertained even before constitution of Committee of Creditors ("COC").

The Hon'ble Supreme Court in this order, relied on the Judgement passed by the Apex Court in *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17 wherein it held that Adjudicating Authority may invoke its inherent powers under Rule 11 of NCLT Rules, 2016 to allow/disallow an application for withdrawal or settlement, even when COC has not been constituted. The Bench opined that the Hon'ble NCLT committed an error in holding that Regulation 30A would have no binding effect and upholding the same would amount to defeating the very purpose of substituting Regulation 30A in IBBI Regulations. Further, the Hon'ble Supreme Court stated that Section 12A of IBC permits the withdrawal of applications admitted under Sections 7, 9 and 10 of IBC. The approval of 90% of COC members would be required when the withdrawal is being made after the constitution of the COC. However, Section 12A does not debar entertaining applications for withdrawal even before the constitution of the COC and thus, the said application cannot be kept pending for the constitution of the COC. In conclusion, Hon'ble Supreme Court set aside the impugned NCLT order dated 13.04.2021 and allowed the withdrawal application filed under Regulation 30A by the IRP. However, the bench clarified that the judgement would not affect the claim of the creditors of the Corporate Debtor and they shall raise their claims in appropriate proceedings.

UNSUCCESSFUL RESOLUTION APPLICANT HAS NO LOCUS STANDI TO CHALLENGE THE APPROVED RESOLUTION PLAN

The Hon'ble National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench, in the case of *M.K. Rajagopalan v. S. Rajendran & Anr.* [Company Appeal (AT) (CH) (INS) No. 58 of 2023], held that an Unsuccessful Resolution Applicant has no *locus standi* to assail a Resolution Plan (or its implementation) approved by the Adjudicating Authority. In this case, M.K. Rajagopalan ("**Unsuccessful Resolution Applicant**") was one of the Prospective Resolution Applicants for the Corporate Debtor i.e. Vasan Health Care Pvt. Ltd. whose plan was rejected by the Committee of Creditors ("**COC**"). COC approved the plan of ASG Hospital Private Ltd ("**Successful Resolution Applicant**") and the plan was subsequently approved by the Hon'ble National Company Law Tribunal vide order dated 03.02.2023 ("**Impugned Order**"). Aggrieved by the Impugned Order, the Appellant filed an appeal claiming that the process of selection of the Resolution Plan was unfair.

The Resolution Professional ("**RP**") of the Corporate Debtor argued that the Appellant being an Unsuccessful Resolution Applicant has no *locus standi* to question the approval of the Resolution Plan submitted by the Successful Resolution Applicant. The Counsel for the Successful Resolution Applicant argued Appellant can't claim that the Resolution Plan was unfair since the Appellant subjected himself to the very process of revision of the Resolution Plan and had participated in the process. After hearing contentions advanced by each side, the Hon'ble NCLAT opined that the Petitioner / Appellant, being an Unsuccessful Resolution Applicant, has no *locus standi* to assail a Resolution Plan or its implementation as he is not a "Stakeholder" as per Section 31 (1) of IBC in relation to the Corporate Debtor. Further, Hon'ble Tribunal held that the Appellant is not an "Aggrieved Person" within the ambit of Section 61(1) of the IBC especially when he is not privy to the Resolution Plan. Therefore, the appeal was dismissed.

EMPLOYMENT LAW

GOA CHIEF MINISTER'S KAUSHALYA PATH SCHEME

The Directorate of Skill Development & Entrepreneurship, Goa, vide its notification dated March 2, 2023, issued the Chief Minister's Kushalya Path Scheme ("CMKPS") for the following purposes:

- To skill, up-skill and re-skill maximum number of local youth on a large scale and at a high speed with quality standards and provide skilled manpower to the industry as well as to facilitate the creation of a pool of future entrepreneurs, who will in turn create further employment;
- To conduct skill development courses under various skill sectors like hospitality, tourism, construction, automotive, information technology and information technology-enabled services, electrical, plumbing, agriculture and other sectors as per the industry demand and to comply with the National Education Policy (NEP);
- To conduct various programmes, workshops, seminars, sessions and related activities for skill awareness, entrepreneurship, apprenticeship, sensitization of different schemes and scale-up the trainee outcome;
- The above objective shall be achieved by offering various courses for skilling, reskilling and upskilling of youth and women as per the industry demand;
- Recognition of Prior Learning (RPL) for certifying the skills of craftsmen in respective fields;
- To sign memorandum of understandings with industry partners for achieving the objectives of the CMKPS, carry out publicity and awareness programmes; and assess and certify the trainees for the courses trained under this scheme.

The CMKPS benefits the youth/women to choose and change career paths and the industry to provide skilled manpower to service as well as the manufacturing industry. The CMKPS came into force from March 2, 2023.

EMPLOYEES' PROVIDENT FUND ORGANISATION PUBLICIZES THE PROCESS OF JOINT OPTION WHICH CAN BE SUBMITTED ONLINE TILL MAY 3, 2023

The Employees' Provident Fund Organisation ("EPFO"), vide its press release dated March 4, 2023, has publicized the process of joint option which can be submitted online till May 3, 2023. The online joint (employee and employer) option form with the necessary documents has been hosted by EPFO in the unified portal for contributing on higher salary to the Employees' Pension Scheme, 1995 ("EP Scheme").

The Employees' Provident Fund ("EPF") and EP Schemes require joint requests when they contribute on a higher salary. This is not a new requirement and predates the EP Scheme and the position has been affirmed by the Supreme Court in *RC Gupta & Ors. v. Regional Provident Fund Commissioner, EPFO & Ors.*, where it was held that the exercise of option under paragraph 26 of the EP Scheme cannot be construed to estop the employees from exercising a similar option under paragraph 11(3) of the EP Scheme. It was stated that it is a necessary pre-cursor for exercising the joint option on higher salary under EP Scheme.

EMPLOYEES' STATE INSURANCE CORPORATION INCREASES MINIMUM FLOOR PRICE FOR MINIMUM WAGES BASED ON MANPOWER OUTSOURCING SERVICES

The Employees' State Insurance Corporation ("ESIC"), vide its circular dated March 6, 2023, has granted approval to increase the minimum floor price for minimum wages based on manpower outsourcing services. This will apply to all ESIC offices throughout India. The minimum service charges in the procurement of manpower outsourcing service may be fixed as 3.85% (Three Point Eight Five Percent) and the procuring entities can also fix the service charge above 3.85% (Three Point Eight Five Percent), however, such charges should not exceed 7% (Seven Percent).

GOVERNMENT OF TAMIL NADU TAKES MEASURES TO ENSURE THE SAFETY OF MIGRANT WORKERS

The Government of Tamil Nadu, vide its press release dated March 7, 2023, has listed the various measures taken by them to protect the welfare of migrant workers. An exclusive website (<https://labour.tn.gov.in/ism/>) has been designed for the registration of migrant workers in Tamil Nadu. The details of more than 6,00,000 (Six Lakhs) migrant workers have been registered on the website. Considering the welfare of migrant labours, the Government of Tamil Nadu has distributed dry food packages to migrant labours during the pandemic lockdown period directly to their place of residence.

Recently, a small unrest was created among the inter-state migrant workers due to the circulation of fake videos of assault on social media. It has already been confirmed by the police department that the videos are fake, and the Honourable Chief Minister of Tamil Nadu has also assured the same, brief meetings were also conducted in this regard.

To ensure the safety of inter-state migrant workmen working across the districts of Tamil Nadu, the district collectors, district superintendents of police, and the officials of the labour department in association with the Department of Industrial Safety and Health have been holding briefings and providing assurances to the inter-state migrant workmen to bring in more confidence among them.

E-SHRAM PORTAL INTEGRATED WITH PRADHAN MANTRI SHRAM YOGI MAAN-DHAN SCHEME

The Minister of State for Labour and Employment, Shri Rameswar Teli ("**Minister Teli**") vide a press release dated March 13, 2023, has clarified that the e-SHRAM portal has been integrated with Pradhan Mantri Shram Yogi Maan-Dhan ("**PMSYM**") scheme which is a voluntary and contributory pension scheme under which unorganised workers contribute INR 55 (Rupees Fifty Five) to INR 200 (Rupees Two Hundred) per month (based on entry age) as their contribution and an equal matching contribution is provided by Government of India. On attaining the age of 60 (Sixty) years a monthly pension of INR 3000 (Rupees Three Thousand) is provided to PMSYM scheme beneficiaries. e-SHRAM registrants can easily opt for the PMSYM scheme using e-SHRAM universal account number.

GOVERNMENT TO PROTECT THE INTERESTS OF WORKMEN AS PER THE PROVISION OF THE INDUSTRIAL DISPUTES ACT, 1947

Minister Teli, vide press release dated March 13, 2023, informed that the employment and retrenchment including layoffs are a regular phenomenon in industrial establishments. Matters relating to lay-offs in industrial establishments in the country are governed by the provisions

of the Industrial Disputes Act, 1947 ("**IDA**") which also regulates various aspects of lay-off and conditions precedent to retrenchment of workmen.

As per the IDA, establishments employing 100 (One Hundred) persons or more are required to seek prior permission from the Appropriate Government before effecting closure, retrenchment or lay-off. Further, any retrenchment and lay-off are deemed to be illegal and which is not carried out as per the provisions of IDA. IDA also provides for the right of workmen laid off and retrenched for compensation and it also contains provision for the re-employment of retrenched workmen.

Based on their respective jurisdictions as demarcated in the IDA, Central and State Governments take actions to address the issues of the workmen and protect their interests as per the provision of the IDA. In the establishments that lie in the jurisdiction of the Central Government, the Central Industrial Relations Machinery is entrusted with the task of maintaining good Industrial relations and protecting the interest of workers including on matters relating to layoffs and their prevention.

The jurisdiction in the matters pertaining to multi-national and Indian companies in Information Technology, social media, Edu-Tech firms, online shop traders, start-up companies and related sectors lies with the respective State Governments.

ENFORCEMENT OF PROVISIONS OF THE EMPLOYEES' STATE INSURANCE ACT, 1948

The Ministry Of Labour And Employment ("**MoLE**") vide notifications dated March 13, 2023, and March 24, 2023, implemented the following provisions of the Employees' State Insurance Act, 1948 ("**ESI Act**") in all the areas of Gandhinagar district in addition to the already notified areas of the said district, in the state of Gujarat, all the areas of East Khasi Hills and Ri-Bhoi districts, in addition to the already notified areas of the said districts, in the state of Meghalaya and all the areas of Kanchipuram, Tirupattur, Tiruvannamalai and Viluppuram districts, in addition to the already notified areas of the said districts, and in all the areas of Kallakurichi district, in the State of Tamil Nadu which will come into effect from April 1, 2023:

- sections 38 to 43 and sections 45A to 45H of Chapter IV (which relates to contribution) of the ESI Act;
- sections 46 to 73 of Chapter V (which relates to benefits) of the ESI Act; and
- sections 74, 75, sub-sections (2) to (4) of sections 76, 80, 82 and 83 of Chapter VI (which relates to adjudication of disputes and claims) of the ESI Act.

THE KARNATAKA TAX ON PROFESSION, TRADES, CALLINGS AND EMPLOYMENTS (AMENDMENT) ACT, 2023

The Parliamentary Affairs and Legislation Secretariat of the Government of Karnataka vide notification dated March 14, 2023, has amended various provisions of the Karnataka Tax on Profession, Trades, Callings, and Employments Act, 1976, including the provision regarding escaped tax, interest on delayed payments, and consequences of failure to deduct or to pay tax.

GOVERNMENT OF GUJARAT DECLARES EMPLOYMENT OF LABOURERS IN THE FERTILIZER INDUSTRY AS PUBLIC SERVICE

The Government of Gujarat, vide its notification dated March 16, 2023, has declared the employment of labourers in the fertilizer industry as a public service. The Government has confirmed that the employment of labourers in the fertilizer industry in Gujarat is public service for the purposes of the IDA and the Labour Laws (Gujarat Amendment) Act, 2015. Hence for the period 1 (One) year from the issuance of the notification, i.e., till March 15, 2024, employment of services of such labourers/ employees will be regarded as public utility service.

CODE ON WAGES, 2019 MAKES MINIMUM WAGES UNIVERSALLY APPLICABLE ACROSS EMPLOYMENTS

Minister Teli, vide press release dated March 20, 2023, informed that the provisions of the Minimum Wages Act, 1948 have been rationalised and subsumed under the Code on Wages, 2019, which makes minimum wages universally applicable across employments. As per Section 4 of the Minimum Wages Act, 1948, the minimum rate of wages may consist of:

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the Cost Of Living Index Number Applicable To Such Workers (“**Cost of Living Allowance**”); or
- (ii) a basic rate of wages with or without the Cost of Living Allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or
- (iii) an all-inclusive rate allowing for the basic rate, the Cost of Living Allowance and the cash value of the concessions, if any.

MEASURES TAKEN UNDER OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 TO PROVIDE DECENT WORKING CONDITIONS TO MIGRANT WORKERS

The MoLE, vide press release dated March 23, 2023, has clarified the measures taken under the Occupational Safety, Health and Working Conditions Code, 2020 (“**OSH Code**”) to provide decent working conditions, minimum wages, grievance redressal mechanisms, protection from abuse and exploitation, enhancement of skills and social security to all categories of workers including migrant workers.

There exist several social security and welfare schemes for workers including migrant workers. Some of the prominent schemes are as follows:

- Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana launched in 2015 provide for life & disability cover due to natural or accidental death.
- PMSYM scheme launched in 2019 provides for old age social security in the form of a monthly pension.
- Ayushman Bharat Pradhan Mantri Jan Arogya Yojana launched in 2018 provides INR 5,00,000 (Rupees Five Lakhs) health coverage for secondary and tertiary health benefits to those migrant workers who are covered as eligible beneficiaries as per deprivation and occupation criteria.
- PM-SVANidhi Scheme facilitates collateral-free working capital loans of up to INR 10,000 (Rupees Ten Thousand) for 1 (One) year tenure to street vendors.
- Pradhan Mantri Awas Yojana caters to the housing needs of all eligible beneficiaries.

CODE ON WAGES, 2019 STIPULATES GOVERNMENT TO REVIEW MINIMUM WAGES EVERY 5 (FIVE) YEARS

The MoLE has issued a press release dated March 23, 2023, stating that the provisions of the Minimum Wages Act 1948, have been rationalized and amalgamated in the Code on Wages, 2019. Section 8(4) of the said Code stipulates that the Appropriate Government shall review or revise minimum rates of wages at an interval not exceeding 5 (Five) years.

MODEL WELFARE SCHEME FOR THE BUILDING AND OTHER CONSTRUCTION WORKERS (“BOCW”)

The MoLE vide press release dated March 27, 2023, has clarified that the data of more than 2,60,00,000 (Two Crore Sixty Lakhs) BOCWs registered on the e-SHRAM portal is being shared with State Governments. The meeting of the parliamentary consultative committee of the members of parliament for the MoLE was held in New Delhi on March 27, 2023.

The MoLE had issued a model welfare scheme for the BOCWs with guidelines to provide for life & disability cover, health & maternity cover, financial assistance for the education of the wards of BOCWs, transit accommodation, skill development and awareness programmes.

THE CENTRAL BOARD TRUSTEES, EPF RECOMMENDS AN 8.15% RATE OF INTEREST TO EPF SUBSCRIBERS FOR FY 2022-23

The Central Board Trustees, EPF vide press release dated March 28, 2023, has recommended an 8.15% (Eight Point One Five Percent) annual rate of interest to be credited on

EPF accumulations in members' accounts for the financial year 2022-23. The interest rate would be officially notified in the government gazette after approval of the Ministry of Finance, following which EPFO would credit the rate of interest into its subscribers' accounts.

ENERGY

RENEWABLE GENERATION OBLIGATION OF 40% IMPOSED ON COAL/LIGNITE-BASED THERMAL GENERATING STATION

The Ministry of Power (“MoP”) through powers conferred under the Electricity Act, 2003 notified the Revised Tariff Policy, 2016 vide Resolution No. 23/2/2005-R&R (Vol-IX) and imposed an obligation on all generating companies establishing a coal/lignite-based thermal generating station and having the Commercial Operation Date (COD) of the project on or after 1st April 2023 to establish renewable energy generating capacity (in MW) i.e. Renewable Generation Obligation (RGO) of a minimum of forty percent (40%) of the capacity (in MW) of a coal/lignite-based thermal generating station or procure and supply renewable energy equivalent to such capacity.

A coal/lignite based thermal generating station with Commercial Operation Date (COD) of the project between 1st April 2023 and 31st March 2025 will be required to comply with RGO of 40% by 1st April 2025, and any other coal/lignite based thermal generating station with Commercial Operation Date (COD) of the project after 1st April 2025 will be required to comply with RGO of 40% by the COD.

Further, a captive coal/lignite based thermal generating station will be exempt from the requirement of RGO subject to its fulfilling Renewable Purchase Obligations as notified by the Central Government.

MINISTRY OF POWER ISSUES LETTER TO ALL STATES REGARDING ‘FAIR DISTRIBUTION OF AVAILABLE DOMESTIC COAL’

The MoP, vide letter dated 24th March, 2023, informed the Chief Secretaries of all States that against the requirement of 222 million tonnes of domestic coal in quarter one (April-June, 2023), the likely availability from all sources would be

201 million tonnes due to constraints in railway logistics. The MoP further directed that the available coal should be distributed amongst the GENCO’s in a fair and transparent manner. The MoP also laid down the following principles for fair distribution: a) domestic coal to be allocated in the ratio of the fortnightly average generation of generating station; b) while implementing the above, coal required by all the pithead stations (taking coal through conveyor and other dedicated means) of respective GENCOs would be excluded since it did not use the railway network; c) all plants off taking coal through ‘road only’ mode as per their requirement would also be excluded; and d) coal made available from captive mines would be excluded for allocation of rail stakes from CIL/SCCL.

The MoP stated that if States were found to be selling power generated from domestic coal at notified price in significant amount in the power exchange, their rakes would be reduced accordingly. Further surplus power may be made available to other DISCOMs through PuShP Portal developed by the Central Electricity Authority. All States were therefore directed to immediately plan and make arrangements of any shortfall in domestic coal at their level so that power demand was fully met.

PNGRB ISSUES THE UNIFIED LEVELIZED TARIFF FOR NATURAL GAS PIPELINES

The Petroleum and Natural Gas Regulatory Board (“PNGRB”), in order to usher rapid growth of the natural gas market in the country, has brought out amendments in its three regulations namely:

- (a) Natural Gas Pipeline Tariff Regulations,
- (b) Natural Gas Authorisation Regulations and
- (c) Natural Gas Capacity Determination Regulations.

The amendments acted as stepping-stones for the implementation of a “Unified Tariff” for Natural Gas Pipelines in the country. On 29th March 2023, the PNGRB issued the Unified Levelized Tariff for natural gas pipelines with a mission of one nation, one grid, one tariff - which tariff is effective from 1st April 2023. The following are relevant to understand Unified Tariff for Natural Gas Pipelines:

- (a) PNGRB has notified a levelized Unified Tariff of Rs.73.93/MMBTU and created three tariff zones,
 - The first zone is up to 300 km from the gas source,
 - The second zone is 300 – 1200 km from the gas source, and
 - The third zone is beyond 1200 km from the gas source.
- (b) The Natural Gas Pipeline Grid in India covers all the interconnected pipeline networks owned and operated by entities viz. Indian Oil Corporation Limited (IOCL), Oil and Natural Gas Corporation Limited (ONGC), GAIL (India) Limited, Pipeline Infrastructure Limited (PIL), Gujarat State Petronet Limited (GSPL), Gujarat Gas Limited (GGL), Reliance Gas Pipelines Limited (RGPL), GSPL India Gasnet Limited (GIGL) and GSPL India Transco Limited.

- (c) These entities (who are now part of the National Grid) will get the tariff as per their entitlement while customers would pay a Unified tariff as directed by PNGRB. In case of any difference in the entitlement amounts of entities and what consumers pay, the PNGRB is yet to notify an inter-se settlement mechanism between entities. To address these settlement issues, an industry committee has been constituted.
- (d) The objective of these amendments is to provide access to natural gas in far-flung areas at competitive and affordable rates to achieve the long-cherished objective of one nation one grid and one tariff.
- (e) To simplify the implementation of a unified tariff, an entity-level integrated natural gas pipeline tariff has been introduced in the said amended regulations which will act as a building block for Unified tariff at the national level.
- (f) In addition, other amendments like allowing unaccounted gas, moratorium period, ramp up in capacity, etc. have been incorporated.

INFRASTRUCTURE

AMENDMENT TO CENTRAL MOTOR VEHICLES RULES, 1989 - HYBRID ELECTRIC VEHICLES

The Ministry of Road Transport and Highways (“**MoRTH**”) has issued a notification bearing number G.S.R. 180I dated March 13, 2023 (“**Notification**”), which has proposed draft rules amending the Central Motor Vehicles Rules, 1989 (“**Draft CMV Rules**”). Objections and/or suggestions with respect to the said Draft CMV Rules are invited to be sent to the Additional Secretary (MVL) before the expiry of 30 (thirty) days from the date on which the Notification was published in the official gazette i.e., by April 12, 2023. The Notification intends to bring different categories of hybrid electric vehicles within the ambit of the Central Motor Vehicles Rules, 1989.

The Draft CMV Rules substituted rule 2(u) of the Central Motor Vehicles Rules, 1989 and inserted definitions of the following terms:

- Electric power train
- Pure electric vehicle
- Hybrid electric vehicle (HEV)
- Strong Hybrid Electric Vehicle (Strong HEV)
- Plug-in Hybrid Electric Vehicle (PHEV)/ Range Extended Electric Vehicle (REEV).

- Parallel Hybrid Electric Vehicle
- Series Hybrid Electric Vehicle
- Series Parallel Hybrid Electric Vehicle

AMENDMENT IN THE ROUGHNESS PARAMETERS FOR FLEXIBLE AND RIGID PAVEMENTS

MoRTH observed that the Model RFP and EPC/BOT (Toll)/HAM/TOT project agreements have different values of roughness parameters.

Hence, in order to bring uniformity in all agreements and contracts i.e. for EPC/ BOT(Toll)/ HAM/ TOT projects, MoRTH has issued the notification no. RW/NH-33044/88/2021-S&R(P&B)/DNT(215840) dated March 23, 2023, amending the maximum riding quality value (roughness) parameter in all such contracts as follows:

Roughness (BI) for flexible pavement (mm/km)		Roughness (BI) for rigid pavement (mm/km)	
Desirable	Acceptable	Desirable	Acceptable
2000	2400	2200	2400

ADDENDUM TO DREDGING GUIDELINES FOR MAJOR PORTS, 2021, TO PROMOTE THE CONCEPT OF 'WASTE TO WEALTH'

Ministry of Ports, Shipping and Waterways ("MoPSW") through Press Information Bureau has issued a notification dated March 24, 2023, whereby it has notified that an addendum to the Dredging Guidelines for Major Ports, 2021 ("Addendum") has been issued to explore the beneficial use of dredged material.

The Addendum promotes the concept of 'Waste to Wealth' in the dredging sector and explores the beneficial use of dredged material including for purposes such as engineering use for construction, environmental enhancement such as beach nourishment etc. The Addendum has highlighted the

need for providing data on factors such as types of soil and their characteristics, quantity of dredged material, disposal sites etc., to the potential bidders. An additional guideline to provide the data on soil type, soil characteristics, dredged material etc., to the potential bidders in advance, has been suggested. However, the same will be subject to permission from the relevant competent state authority and the environment condition for the disposal of the dredged material. The bidder may submit the bids with cost towards execution of dredging work and the estimated value of dredged material with bid evaluation parameter as net cost. The net cost referred herein shall mean the cost of dredging i.e., the price quoted for the value of the dredged material. This is an innovative step taken towards sustainability by the MoPSW.



UPI TRANSACTIONS OVER INR 2,000 TO ATTRACT 1.1% FEE

National Payments Corporation of India (NPCI) has issued a circular dated March 24, 2023 (OC No. 164/2022-23) to authorized PPIs and Banks operating in UPIs. *Vide* the Circular, NPCI has stated that in relation to interoperability of UPI with prepaid instruments (PPIs), an interest of up to 1.1% per transaction will be levied from April 01, 2023 on all merchant transactions initiated using PPI wallets. The aforesaid interest will be levied on transactions of value of INR 2,000 or more made to all online merchants, large merchants and small offline merchants.

Later, *vide* its circular dated March 29, 2023, NPCI clarified that: (i) the interchange fees will not be levied on Peer-to-Peer (P2P) and Peer-to-Peer-Merchant (P2PM) transactions between two bank accounts; and (ii) the customers will not be charged any such interchange fees. With this, the customers no also have an option to add their prepaid wallets on the UPI apps in addition to the existing options of bank accounts and Rupay credit cards.

DSK View: *With approximately 8 billion transactions being done on a monthly basis, UPI's usage has integrated itself with day-to-day functioning of India. As the policy will not be applicable for the bank account to bank account-based UPI payments i.e., normal UPI payments, the interchange charge will have no direct effect on the business or the consumer. The RBI has been actively regulating the Fintech space. This move, though long overdue, will have an impact on non-bank PPI issuers who are trying to enter the PPI space as TPAPs (i.e., Third Party Application Providers). With India rapidly adopting digital payments for day-to-day transactions, this move by NPCI will have a significant impact on PPI issuers and merchants.*

Source: [NPCI Press Release](#)

RBI AND CENTRAL BANK OF THE UAE SIGN MOU TO PROMOTE INNOVATION IN FINANCIAL PRODUCTS AND SERVICES.

The RBI and the Central Bank of the United Arab Emirates (CBUAE) signed a Memorandum of Understanding (MoU) on March 15, 2023, to increase cooperation and work towards innovating financial products and services.

In accordance with the MOU, the two central banks intend to collaborate on various FinTech projects, particularly those involving digital currencies (CBDC) of UAE and India including considering the interoperability of the CBDCs of India and UAE. To facilitate cross-border CBDC transactions for trade and remittances, the regulatory bodies shall put in place a mechanism to conduct proof-of-concept and a bilateral CBDC bridge to facilitate the process (on pilot basis as of now). The regulatory bodies aim to lower the costs of cross-border exchange of digital currencies and improve the effectiveness of thereof, apart from strengthening the economic connections between India and the UAE. As per the press release from the RBI, the MoU also provides for collaboration and information exchange on issues relating to Fintech and financial products and services.

DSK View: *Dubai is considered as the fintech capital of the Middle East, Africa and South Asia. It has made significant advancement in fintech sector and an alliance between India and UAE is expected to help both the countries to boost the innovations in fintech sector. It will be interesting to watch how both nations stand to gain from this collaboration in terms of improving their financial systems.*

Source: [RBI Press Release](#)

RBI LAUNCHES A CAMPAIGN ON THE DIGITAL PAYMENTS AWARENESS WEEK 2023

The RBI launched Digital Payments Awareness Week 2023, which was observed from March 06, 2023 to March 12, 2023, on the theme “Digital Payment Apnao, Auron ko bhi Sikhao” (lit. translated as ‘Adopt Digital Payments and Teach the Others too’). In his speech, Mr. Shaktikanta Das (Governor, RBI) emphasised on the ease and convenience of digital payments. And various initiatives which are being taken by banks and non-bank payment system operators to promote the digital payment atmosphere in India and urged the Indian population to adopt the same as an alternative to liquid payments.

DSK View: *The growth of digital financial transactions across the nation has been significantly facilitated by the Indian government. To serve one of the Fintech landscapes which is growing, it is launching novel initiatives relating to digital payments. In a series of published notifications and circulars, the effort of the RBI to structure the financial landscape of India is evident. As the event seeks to address the accessibility gaps in the Indian digital payments system, the readers of Fintech must maintain a vigil watch on the ways the RBI will adopt to penetrate through the rural regions of India to give them a push towards getting digital.*

Source: [RBI Press Release](#)



DELHI HIGH COURT ORDERS AGAINST EVERGREENING OF DIABETES DRUG, REFUSES INJUNCTION AGAINST INDIAN GENERIC MANUFACTURERS

The Hon'ble Delhi High Court has refused to grant interim injunction in favour of the German pharma company, Boehringer Ingelheim Pharma GMBH & Co. KG ("Plaintiff"), in suit proceedings initiated by it against several Indian Pharma companies. The judgement was passed in six commercial suits initiated by the Company, which were connected for involving the same suit patent and molecule pertaining to the diabetes drug – Linagliptin ("drug").

In the present case, Plaintiff owned two patents relating to the drug, one being the genus patent (Indian Patent No. 227719 which expired on February 21, 2022) and the other being the species patent (Indian patent No. 243301 expiring on August 18, 2023). Soon after expiry of the genus patent, the Defendant companies launched their generic products, save for the Defendants in CS(COMM) 239 and 240 of 2019 who launched their product in market before such expiration.

Upon perusal of the documents filed under both the patent applications, it was observed that the two patents' claim were exactly the same. Relying on the judgment of the Division Bench in *AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd., (2021) 87 PTC 374 (DB)*, it was held that if the patent concerning the same invention is granted more than once, then it will be against the legislative intent of limiting the life of the patent. It was held that the Plaintiff, by filing multiple patents for different aspects of the same product, was seeking to extend the term of the patent beyond twenty years, which amounts to evergreening and was impermissible under the Indian Patent Law.

The court also observed that till the time the genus patent expired, the Plaintiff sought injunctive reliefs claiming that

the drug is covered in both genus patent and species patent, but after the expiry of the term of genus patent, the Plaintiff made the assertion in subsequent suits that the drug is covered only in the species patent. It was held that having obtained all benefits based on the assertion that the drug is claimed and covered in genus patent, the Plaintiff could not now take a stand to the contrary. It was held that affidavits of experts were relied upon by both parties, however the effect of the same could not be considered at an interlocutory stage.

While addressing the issue regarding balance of convenience and irreparable injury, the Court held that it is a settled position of law that where monetary damages are the adequate compensation for the Plaintiffs, an interim injunction should not be granted and the same was applied to the present case. Also considering the element of public interest, it was held that in case interim injunction was granted in favour of the Plaintiff, irreparable injury would be cause not only to the Defendants but also to the public.

On deliberating on the above, Court was of the *prima facie* view that the species patent was vulnerable to revocation on the ground of prior claiming and the Plaintiff had failed to make out a *prima facie* case for grant of interim injunction. Accordingly, the applications seeking interim injunction were dismissed with costs of INR 2,00,000/- in favour of each of the Defendants. Costs of INR 2,00,000/- were also awarded in favour of the Delhi High Court Legal Services Committee on account of detriment caused to the public interest.

DSK View: *The Court has reaffirmed the judicial point of view that grant of patent cannot be a prima facie proof of its validity. Separate registration of genus and species patents cannot ensure blanket immunity and exclusive right to the patentee unless it passes the test of evergreening.*

[Boehringer Ingelheim Pharma GMBH & Co. KG v. Alkem Laboratories Ltd & Anr., 2023/DHC/2249]

DEFAULT ON THE PART OF THE TRADE MARKS REGISTRY CANNOT BE A BASIS FOR RECTIFICATION OF A TRADE MARK

The Delhi High Court, while deciding the cancellation petition seeking removal of the Defendant’s registered mark ‘CLARIWASH’, held that a registered proprietor and user of the mark cannot be deprived of its rights on account of the fault of the Trademark Registry.

In the present case, the Petitioner claims to have adopted the trademark “CLARIWASH” in the year 2010 and is the registered proprietor of various ‘Clari’ formative marks. The Petitioner is also the registered proprietor of the mark “CLARI-FI” with the user claim of 1st April, 2009. While Respondent No. 1 applied for the registration of the mark “CLARIWASH” in Class 03 on 16th April, 2010 with the user claim of 16th November, 2009.

The Petitioner contended that the Examination Report issued wrongly notes the mark of the Respondent no.1 as “CHARIWASH” instead of “CLARIWASH”. Based on the said examination report, the Certificate of Registration of Trade Mark was issued in favour of Respondent no.1 for the word mark “CHARIWASH”. However, Respondent No. 1 took steps to rectify the said defect, and subsequently, the Certificate was modified by the Registry to “CLARIWASH”.

The Hon’ble Court, while arriving at the decision, analysed that the mark of Respondent no.1 was published correctly as “CLARIWASH” in the Trademark Journal and it was open for the Petitioner to file the Opposition, which they failed to do. It was further held that the registration of a trademark entails valuable rights and Respondent no.1 cannot be deprived of the same on account of an error committed by the Registry. The Court also observed that the petitioner has not filed any application for registration of the mark “CLARIWASH” till date and at the time of filing the application, the Petitioner was only the registered proprietor of the mark “CLARI-FI”, which is nowhere similar to the registered trademark "CLARIWASH" of Respondent No. 1. Hence, the petition is dismissed accordingly.

[Loreal India Private Limited v. Rajesh Kumar Taneja Trading as Innovative Derma Care & Anr., C.O. (COMM.IPD-TM) 497/2022]

FORMATION OF IP DIVISION IN MADRAS HIGH COURT

The Madras High Court has directed the State government to notify the Madras High Court Intellectual Property Division Rules, 2022 with the exception of the Rule relating to Court fees.

The Hon’ble Court observed that delay in issuance of notification by the State Government leaves the aggrieved persons in the lurch. Despite the availability of a remedy before the Madras High Court, they are unable to pursue their remedy in the absence of the notification regarding the IP Division. A direction is also passed to the Registrar General of the High Court, to make arrangements to inaugurate the IP Division, once these Rules are notified.

DSK View: Litigants intending to pursue disputes pertaining to intellectual property were left remediless for a long time after the abolition of the IPAB as now all cases are being transferred to various High Courts. Formation of IPD before the Madras High Court will bring a positive change in the importance of IP and make enforcement of IP rights easy.

[Galatea Ltd. v. The Registrar General & Ors., 2023 LiveLaw (Mad) 58]

PUBLIC NOTICE ON ABANDONMENT OF TRADE MARKS APPLICATIONS

Vide public notices dated February 6, 2023, the Controller General of Patent, Design and Trade Marks had released lists of trademark applications which will be considered abandoned on account of –

- a) In case of trademark applications which were objected, non-filing of the reply to Examination Report by the Applicant within the prescribed time as specified under the Trade Marks Act, 1999 and Rules made thereunder (“the Act and Rules”); and
- b) In case of trademark oppositions, non-filing of Counter Statement to Notice of Opposition by the Applicant within the prescribed time as specified under the Trade the Act and Rules.

To ensure a proper notice to parties, the Registry had published the said lists for public review and invited the aggrieved to bring to the attention of the Registrar of Trade Marks, applications where the filing was done within time, within a period of 30 days from the publication of the notice. In furtherance of the aforesaid notice, the Controller General of Patent, Design and Trade Marks has issued fresh notices on March 27, 2023 publishing the list of trademark applications which have been ordered as ‘Abandoned’ subsequent to the issuance of notices dated February 6, 2023. Another opportunity has been given to the aggrieved to reach out to the Registry within a period of 45 days in case their application has been inadvertently ordered as Abandoned.

The public notices and list of trademarks / oppositions can be accessed [here](#).



INDIA FLAGS EU'S CARBON TAX AT THE WTO

The Carbon Border Adjustment Mechanism ('CBAM') is a policy proposed by the European Union ('EU') that aims to reduce the risk of carbon leakage by imposing a carbon price on imported goods based on their carbon footprint. The draft of the CBAM Regulation (available [here](#)) states that importers of certain energy-intensive goods, namely, iron and steel, cement, fertilizers, aluminium, electricity and hydrogen, would have to pay a levy in respect of their imports.

Such levy on the imports would correspond to the charge imposed on comparable domestic industries under the EU Emissions Trading System ('EU ETS'). The European Parliament and the Council have agreed that the CBAM Regulation would enter into force on October 1, 2023, and there will be a three-year transition period, during which only the reporting obligations for the importers would apply. Subsequently, the obligation for importers to pay a levy for imports of carbon-intensive goods will kick in 2026.

Since India is a major exporter of various metal products, namely, iron, steel and aluminium to the EU, it would face extra scrutiny under the CBAM mechanism. It is estimated that the implementation of the CBAM regulation would translate into a 20-35% tax on India's exports of metals to the EU, which would increase further by 2034, when the CBAM Regulation would cover all range of products exported to the EU.

In this regard, India shared a document titled "*Concerns on emerging trend of using environmental measures as protectionist non-tariff measures*" with the WTO Committee on Trade and Environment (JOB/TE/78) highlighting that the CBAM Regulation will significantly hurt the global trade prospects of developing countries, including India. It has been put forth that developing and poor countries cannot be

made to take the same set of commitments as rich nations in issues involving climate change and protection of environment. It is being reported that the CBAM may require New Delhi to recalibrate its approach towards the free trade agreement it is currently negotiating with the EU.

During the entire course of the WTO Committee Meeting on Trade and Environment held on 14 March 2023, India maintained that any measures taken to combat climate change should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Defending the CBAM, the EU has maintained that the measure has been brought to help in the fight against climate change and that it would be applied in an even-handed manner such that it does not constitute arbitrary or unjustifiable discrimination for third-country producers or act as a disguised restriction on international trade. It has been explained that the third countries with the same prevailing carbon price would have not pay any CBAM charge at all and thus, the measure also incentivizes other member countries to reduce their carbon footprint.

Further, it was stated that the slow and progressive implementation of CBAM would allow the interested companies to prepare and invest in green technologies in order to obtain a complete offset of the adjustment and thus, would promote worldwide decarbonisation.

Notwithstanding the above, the EU has stated that it is willing to collaborate with India specifically in order to ease the administrative burden for its businesses. It plans to work with India through the EU-India Clean Energy and Climate Partnership, as well as through projects like the Accelerating Climate-Smart Infrastructure programme in South Asia.

DSK View: *The CBAM Regulation and its implementation is likely to impact Indian exports and is against the Global South's position that countries who were historically polluters should pay to remedy the environmental damage caused. It has always been India's position that developing countries who have not been historical polluters should not be forced to cut emissions and make green commitments in sync with the developed countries. The carbon tax therefore may have a significant impact on the ongoing FTA negotiations between the two countries.*

Once the CBAM is in place, importers in the EU would be required to report the direct and indirect emissions of the imported products. However, if the imports were subject to a carbon price in their country of origin, the importers may

claim a deduction. While India does not presently have an emissions trading system in place, the Indian Parliament had recently approved the Energy Conservation (Amendment) Bill, which was covered in the December edition of our Newsletter. The Amendment enables the Government to set up a domestic carbon trading scheme a draft of which is currently open for public comments and consultations. The establishment of such an emissions trading system may help the Indian exporters of carbon-intensive goods to offset their liabilities to an extent.

At this juncture, it is difficult to predict with certainty the long-term impact of these measures on two major trading partners. However, it is definitely an interesting space to watch in the times to come.

MEDIA & ENTERTAINMENT



CALCUTTA HIGH COURT DIRECTED YOUTUBER DHRUV RATHEE TO REMOVE VIDEO DISPARAGING “REAL” FRUIT JUICE

In a case filed by Dabur India Limited (“Plaintiff”) against the YouTuber Dhruv Rathee and others (“Defendants”) in relation to his recent video analysing the health effects of fruit juices, the Calcutta high Court (“Court”) granted interim relief to the Plaintiff and directed the YouTuber to remove the offending portions from the video wherein he allegedly disparaged the Plaintiff’s packaged fruit product “Real” juice. The Plaintiff claimed that the YouTuber in his video made “unfair comparisons” between carbonated drinks and RTS fruit beverages. He further advised consumers to not to consume packaged fruit juices stating that it leads to type 2 diabetes and hair loss. Further, the video made brazen reference to “Real” fruit juices and the YouTuber mischievously blurred Dabur’s registered logo only partially. The Court observed that, *“the impugned video shows an earlier advertisement which had been aired by the petitioner in respect of its product Real and also shows the petitioner’s product Real in a blurred manner. The product of the petitioner Real has been repeatedly targeted both overtly and covertly in the impugned video”*. Further, the Court held that the YouTuber has contravened the provisions of section 29(9) of the Trade Marks Act, 1999 and the Copyright Act, 1957.

DELHI HIGH COURT ISSUED NOTICE TO RANA KAPOOR FOR HIS RESPONSE IN THE CASE RELATED TO PENGUIN RANDOM HOUSE’S BOOK TITLED “THE BANKER WHO CRUSHED HIS DIAMONDS: THE YES BANK STORY”

In an appeal filed by the publishing company Penguin Random House (“Appellant”) against the orders passed by the Additional District Judge of Karkardooma Courts confirming the operation of an *ex-parte* ad interim injunction order against the Appellant restraining them from selling and distributing a book on former Yes Bank CEO Rana Kapoor,

titled *“The Banker Who Crushed His Diamonds: The Yes Bank Story”*, the Delhi High Court has issued notice to Rana Kapoor for his response and directed that the trial court record be requisitioned. The Appellants submitted before the Court that many averments in the book are based on multiple newspaper reports on the Rana Kapoor and are in the nature of fair comment in public interest. Further, the book does not amount to commercial exploitation of Rana’s personality rights and reporting on the professional aspects of private lives of public figures are covered under the freedom of speech and expression. The next hearing for the case is scheduled on July 24, 2023.

DELHI HIGH COURT HELD THE LANGUAGE USED IN TVF’S WEB SERIES “COLLEGE ROMANCE” TO BE OBSCENE

In a petition filed by TVF Media Labs Private Limited, casting director of the series “College Romance” and its actors (“Petitioners”) against the Delhi sessions court’s and ACMM’s orders for registration of FIR against the Petitioners, the Delhi High Court (“Court”) upheld the orders of the session court and ACMM. A complaint was filed against the Petitioners alleging that the web series contains vulgar and obscene materials and depicts women in indecent form in violation of sections 292 (Sale, etc. of obscene books, etc.) and 294 (obscene acts and songs) of the IPC, section 67 (punishment for publishing or transmitting obscene material in electronic form) and 67A (punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form) of the IT Act and section 2(c), 3 and 4 of the Indecent Representation of Women Prohibition Act. The Court observed that when the entire content of the series was seen, it would lead any common person to the conclusion that the language used is foul, indecent and profane. Referring to IT Rules of 2021, the Court said that *“the online content curator and intermediaries are in clear violation of the guidelines as neither there was any classification nor any warning regarding the profanity of language or excessive use of expletives”*. The Court further

observed that *“that the content and its availability to the public at large cannot be weighed or seen in the context of tolerance of the community who has been tolerating use of such expletives in spoken language by few in public to some extent”*. The Court upheld the orders of the sessions court to the extent that a case is made out under 67A of the IT Act, however section 292 and 294 of IPC are not made out and offence under 67 of the IT Act are dropped out.

COURT DISMISSES PLEA SEEKING STAY ON THE RELEASE OF UPCOMING FILM “ADIPURUSH”

In a case filed by an advocate (“Applicant”) against the upcoming film “Adipurush” alleging that Lord Rama and Hanuman are shown in an unwarranted and inaccurate depiction wearing leather straps and the depiction thus hurts the religious sentiments of the Applicant and others, the Additional Senior Civil Judge, Delhi dismissed the case after noting that the Applicant wishes to withdraw the same. The Applicant had sought a permanent injunction against the trailer/promo of the film. However, the Applicant requested the court to withdraw the case when it came to his knowledge that the filmmakers are planning to make certain alterations to the film. The advocate appearing on behalf of the producers of the film submitted before the court the film has already been granted a CBFC certificate in September 2022 after examination of the same by the examining committee of the board and therefore, the producers have the right to show the same to the public unless asked to be withdrawn by a superior authority.

A PUNJAB COURT STAYS THE RELEASE OF FILM “CHAMKILA” BASED ON PUNJABI SINGER AMAR SINGH CHAMKILA OVER PERSONALITY RIGHTS ISSUE

In a petition filed by the late producer Gurdev Singh Randhawa’s sons, Isjeet and Snajot Randhawa (“Petitioners”) against the film “Chamkila”, based on the life story of the singer Amar Singh Chamkila (“Personality”), the Civil Judge, Senior Division, Harsimranjit Singh has ordered Reliance Entertainment, producer Imtiaz Ali, actors Diljit Dosanjh and Parineeti Chopra (“Defendants”) not to broadcast, release, upload or stream the film in the theatres or on any platform. The Petitioners have claimed that on October 12, 2012, the rights to make a biopic on the Personality were assigned to Gurdev Singh Randhawa by the Personality’s first wife against an assignment fee of Rs. 5 Lakhs. However, after the death of Gurdev Singh Randhawa in November 2022, his sons decided to produce the biopic. As a result of which, the Personality’s first wife started making excuses to put the shoot of the biopic on hold. After investigation, the Petitioners came to know that the Defendants have already started working on said film on the Personality and Bibi Amarjot Kaur, while working together with the Personality’s first wife.

T-SERIES ISSUES A PUBLIC NOTICE TO THE PRODUCERS OF THE FILM “HERA PHERI 4”

A public notice has been issued by Super Cassettes Industries Private Limited (T-Series) to the producers of the film “Hera Pheri 4”, claiming that the audio and visual rights of every song in the acclaimed “Hera Pheri” franchise is solely and exclusively owned by T-Series on all modes, mediums and formats (whether existing now and arising in future) throughout the entire world and in perpetuity. T-Series has claimed that is the absolute owner of the copyrights in relation to the Master Recordings, Literary Works and Musical Works embodied in the sound recordings and visuals of all the songs and the same was assigned to them by Base Industries Group.

THE KERALA HIGH COURT HELD THAT ENACTMENT OF SCENES RELATED TO USAGE OF PSYCHOTROPIC SUBSTANCES CANNOT LEAD TO THE ASSUMPTION THAT THE ACTOR HAVE ACTUALLY DONE THE SAME

In a criminal complaint filed against the producer and director of the Malayalam film “Nalla Samayam” under sections 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”), alleging that one of the characters in the trailer of film was seen claiming that MDMA gives energy and happiness to the user, which in turn is giving a wrong message to the society and is thereby acting against the anti-drug campaign of the government, the Kerala High Court (“Court”) quashed the criminal proceedings on the ground that, Section 27 (punishment for consumption of narcotic drug or psychotropic substance) of the NDPS Act will not apply since *“enactment of scenes in a movie cannot lead to the assumption that the actors had actually done what they had enacted. If that reasoning is adopted, actors in villainous roles stand the risk of being tried and convicted for murder, arson and rape”*. The Court further held that Section 29 (punishment for abetment and conspiracy) will also not apply as the accused ought to have abetted or conspired to commit an offence and since section 27 itself is not applicable, there is no question of abetment or conspiracy.

SMOKING SCENES IN FILMS WILL NEED CBFC’S APPROVAL FIRST

As per the proposed amendments to movie-making rules, filmmakers will have to convince the Central Board of Film Certification (CBFC) about the need for a smoking scene in the film. Even after justification and the same being approved by the board, appropriate tobacco warnings will need to be placed during those particular scenes. Further, none of the billboards outside the theatres can show the said smoking scenes. As per the existing rules, mandatory anti-tobacco warning and disclaimer at the beginning and intermission of the film are to be given however, this change

is being brought into due to the improper implementation of these said rules in every cinema.

THE SALES TAX DEPARTMENT SUBMITS BEFORE THAT BOMBAY HIGH COURT THAT ANUSHKA SHARMA IS THE “FIRST OWNER OF COPYRIGHTS” OF ALL HER ARTISTIC PERFORMANCES AND IS LIABLE TO PAY TAXES

In a tax petition filed by Anushka Sharma challenging the orders of the Deputy Commissioner of Sales Tax, Mazgaon regarding dues from 2012-13 and 2013-14 for assessment under the Maharashtra Value Added Tax Act, the Sales Tax Department has submitted its response before the Bombay High Court claiming that since she is providing her services and earning income through contract for services and not through contract of services (not employed with anybody) as per section 17 of the Copyright Act, 1957, *“she is first owner of Copyrights created in her artistic performances. As per various tri-party agreements for services provided by Anushka Sharma, along with her artistic performance the Copyright is get transferred and used by her client company for which she is receiving valuable consideration”*. The actress in her petition submitted that the assessing officer wrongly held that by endorsing products and anchoring she acquired copyrights which are tangible goods, that are sold and transferred. She contended that *“the copyright always remains with the producer or the respective artist as the case maybe”*.

US COPYRIGHT OFFICE HELD THAT AI ASSISTED WORKS CAN NOW BE GRANTED COPYRIGHT PROTECTION

The US Copyright Office has affirmed that majority of works generated by artificial intelligence are not copyrightable. The US Office clarified that as per the well established law, copyrights can only be issued to works that are “product of human creativity” and “non-humans” are excluded from the definition of a author. However, the US office further

clarified that certain instances of AI-assisted materials qualifies for copyright protection. Such instances being an application containing AI-generated material, where a human has *“selected or arranged”* the same in a *“sufficiently creative way that the resulting work constitutes an original work of authorship”*. In a case dealing with a non-human creator of a work seeking copyright protection, the 9th Circuit U.S. Court of Appeals ruled that a book containing words authored by a spiritual being can only qualify if there is a *“human selection and arrangement of the revelations”* and must contain *“some element of human creativity”* since copyright laws are only intended to protect works created by humans.

POST MALONE SETTLES COPYRIGHT LAWSUIT OVER HIS SONG “CIRCLES”

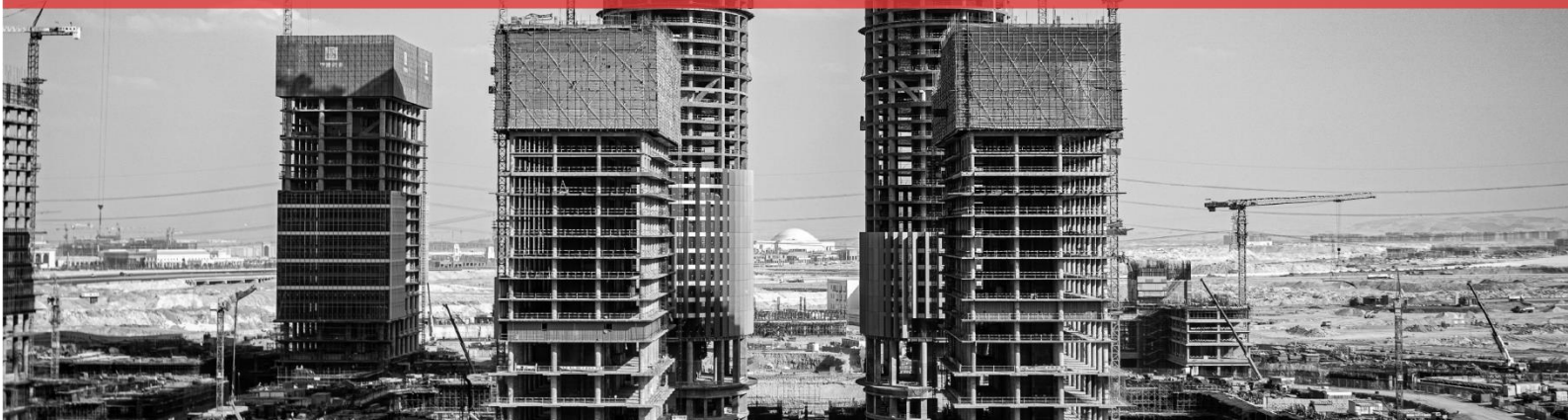
In a lawsuit filed by a member of a Canadian rock band Down with Webster, Tyler Armes (“Plaintiff”) against Austin Post, popularly known as “Post Malone” (“Defendant”) alleging copyright infringement against the Defendant for his 2019 song “Circles”, the New York Federal Court was informed of a settlement between the parties during the jury selection round. The Plaintiff had submitted before the court that he co-wrote the keyboard chords and the guitar melody with the Defendant and has *“significant inputs”* on the bassline for which no compensation and credits were given to him. He further submitted that the instrumentation and vocal melodies in the song recorded during the 2018 recording session are *“note for note rhythmically and melodically identical”* to the final version of the song. The Defendant in his defence had submitted that while the Plaintiff may have been present during the 2018 recording session, however he didn’t write any of the music used in the finished song and wasn’t present at the future sessions as well. The trial was set to feature witnesses playing instruments on the stand. Post was also expected to testify during the four-day trial.

RBI & FEMA

FINANCE BILL, 2023

On 24 March, 2023, the Lok Sabha passed the Finance Bill, 2023 ("Finance Bill"), with several amendments, one of which included increasing the taxation for market-linked debentures, on a retrospective basis. Market-linked debentures ("MLDs") are non-convertible securities whose return is linked to a market index or a changing rate. Prior to the introduction of the change in the Finance Bill, the long-term capital gains taxation structure for MLDs was similar to that of equity instruments. Therefore, redemption or transfer of an MLD after holding it for 12 months would result in long term capital gains tax. However, post the Finance Bill, any capital gains on MLDs will be considered short term capital gains and taxed accordingly from April 1, 2024.

DSK View: MLDs provide income at the end of the tenure and generally there is no regular interest income earned during the tenure of such securities. The introduction of a retrospective taxation structure for income generated from MLDs in the Finance Bill, has taken investors and issuers by surprise. Investors who purchased MLDs for its pure tax benefits, are now finding the instruments non-beneficial and are looking for ways to exit their investment in MLDs. Issuers are resorting to convert their MLDs into plain vanilla non-convertible debentures by modifying nomenclature of the instruments, providing a fixed rate of interest, etc. The Finance Bill has been passed by the Lok Sabha and has received Presidential assent. However, it is yet to be passed by the Raj Sabha.



BILL TO BE PASSED BY ORISSA GOVERNMENT TO ENABLE THE FORMATION OF ASSOCIATION OF HOMEBUYERS

The state administration intends to pass a novel bill in the assembly that calls for the formation of an organization of homebuyers in real estate developments if 07 (seven) people or 50% (Fifty Percent) of allottees, whichever is lower, are allocated apartments. The Orissa Apartment Ownership Act 1982 will be replaced by the Odisha Apartment Ownership Bill 2023, and it would provide for the registration of common facilities such as hallways, stairways, elevators, play areas, and the whole apartment complex's land in the name of the buyers' associations. The shared area is proportionally registered in the names of the individual buyers under the 1982 Act.

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (MahaRERA) ISSUES NOTICES TO 14 PROJECTS FOR ADVERTISING WITHOUT REGISTRATION NUMBER

MahaRERA has taken Suo Moto action against 14 (Fourteen) real estate projects that have advertised their projects without mentioning their registration number with the regulator. This is a violation of the RERA Act, which requires developers to register their projects and display their registration number in all advertisements. MahaRERA has issued show-cause notices to these projects and asked them to present their case within 7 (seven) days. The regulator has also warned that penal action will be taken against those who fail to respond appropriately. The projects that have received notices are from Mumbai, Pune, Nagpur, Nashik, and Aurangabad. MahaRERA has appealed to homebuyers to avoid investing in projects without registration number and to check the details of the projects on its website.

MAHARERA: HOMEBUYERS CAN ACCESS ALL PROJECT DETAILS WITH QR CODE

The MahaRERA has started assigning QR codes to the registration certificates of developers across the state. The

QR codes can be scanned by homebuyers to access all the details of the projects, such as location, layout, amenities, approvals, status, complaints, and penalties. The initiative is aimed at enhancing transparency and accountability in the real estate sector and protecting the interests of homebuyers. MahaRERA has also launched a mobile app for homebuyers to lodge complaints and track their status online.

DELHI HIGH COURT HELD THAT BANKS CANNOT BE ASSIGNED THE ROLE OF BUILDERS AND ENDOWED WITH THE RESPONSIBILITY OF COMPLETING THE PROJECTS:

The Hon'ble High Court of Delhi held that banks are not responsible for completing real estate projects and cannot assume the role of builders. On a petition seeking a comprehensive scheme to address the grievances of homebuyers who are paying EMIs without getting possession of their flats, the Hon'ble High Court of Delhi held that banks can only check if there is any misutilisation of loans by developers and take appropriate legal action in case of default. Further, the Hon'ble High Court of Delhi held that banks could approach the National Company Law Tribunal ("NCLT") to get an insolvency resolution professional appointed to revive and complete the project.

MAHARERA FINDS 1,781 BANK ACCOUNTS LINKED TO MULTIPLE PROJECTS, ISSUES NOTICES

MahaRERA has found out that 1,781 projects have violated the rules by linking their bank accounts to more than one project. This is against the Real Estate (Regulation & Development) Act 2016 ("RERA Act"), which requires developers to have a single bank account for each project and to use 70% (seventy percent) of the funds received for that project only. MahaRERA has issued show-cause notices to these projects and has also updated its system to block any attempt to link multiple projects to one bank account. The regulator has taken these measures to ensure financial

discipline and transparency in the real estate sector and to protect homebuyers' interests.

LAUNCH OF THE MAHARERA REAL ESTATE AGENT CERTIFICATION TRAINING PROGRAM

The All-India Institute of Local Self Governance (AIIISG) has developed a course to enable real estate agents across Maharashtra to receive training for the MahaRERA certification exam. The course has been designed with the goal of making it widely accessible throughout the state. To complement the course, an online exam will be conducted starting at the end of April, with the Institute of Banking Personnel Selection (IBPS) aiding with the examination process. Over 523 real estate agents have registered themselves for the first round of the MahaRERA certification training program, which was initiated to prepare realtors for the MahaRERA certification exam. In January, MahaRERA announced that it would be mandatory for all new registrations and renewals of real estate agents to undergo this training and obtain a certificate, starting from May 1, 2023. The new regulation also requires real estate projects to only engage with agents who are registered with

MahaRERA, emphasizing the importance of being certified under the regulatory framework.

PUNJAB RERA AUTHORITY RESTRAINS MONA TOWNSHIP PRIVATE LIMITED FROM MAKING FRESH CONSTRUCTION IN FRONT OF ALLOTTEES HOUSE

The RERA Authority, Punjab, has restrained Mona Township Private Limited, and its directors from making any fresh construction in front of the house of the allottee. The complainant's counsel contended that the road in front of her house has been reduced from 39.3 feet to 24 feet, because of which the construction opposite her house is now much closer vis-à-vis the distance given in the layout plan. It was further submitted by the complainant's counsel that the amendment in the layout plan has been made without obtaining consent of two-third of allottees, as required by the provisions of Section 14 (2) (ii) of the RERA Act. Hence, keeping in view the violation made by the developer, the construction opposite should be halted till the disposal of the main complaint. The Hon'ble Punjab RERA bench directed Mona Township Private Limited and its director to stop all construction before complainant's house till further orders and proper investigations.



DATA PROTECTION

SEBI MANDATES DATA LOCALISATION NORMS ON ALL REGULATED ENTITIES

The Securities and Exchange Board of India, via a circular dated March 6, 2023 (accessible [here](#)) mandated all regulated entities to use cloud computing by introducing a framework for the adoption of cloud services (“**Framework**”). The Framework is applicable on the following regulated entities: (i) stock exchanges; (ii) clearing corporations; (iii) depositories; (iv) stockbrokers through exchanges; (v) depository participants through depositories; (vi) asset management companies / mutual funds; (vii) qualified registrars to an issue and share transfer agents; and (viii) KYC registration agencies (collectively, “**REs**”). The Framework, which serves as a baseline for standards of security and for the legal and regulatory compliance requirements for RE, provides for the REs to store and process their logs and data within the legal boundaries of India. The REs whose country of incorporation is outside India also have to keep the original data/ transactions/ logs available and easily accessible in legible and usable form within the legal boundaries of India.

FINTECH

VIRTUAL DIGITAL ASSETS RELATED ACTIVITIES SUBJECTED TO PMLA

The Department of Revenue, Ministry of Finance, vide notification dated March 7, 2023 (accessible [here](#)), brought activities related to virtual digital assets under the ambit of the Prevention of Money Laundering Act, 2002 (“**PMLA**”). Now, all virtual digital asset service providers and cryptocurrency exchanges will have to report any suspicious activity that they notice in relation to: (i) exchange between virtual digital assets and fiat currencies; (ii) exchange between one or more forms of virtual digital assets; (iii)

transfer of virtual digital assets; (iv) safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; or (v) participation in and provision of financial services related to an issuer’s offer and sale of a virtual digital asset to the Financial Intelligence Unit – India as a ‘reporting entity’ under the provisions of PMLA.

INFORMATION TECHNOLOGY

CLARIFICATION ON APPLICABILITY OF FDI RULES ON DIGITAL NEWS MEDIA PLATFORMS

The Ministry of Information and Broadcasting (“**MIB**”) has issued a clarification dated On March 10, 2023 (accessible [here](#)) in relation to the Press Note 4 of 2019 (accessible [here](#)) which introduced 26% FDI through Government route in the sector ‘Uploading/ Streaming of News & Current Affairs through Digital Media’. MIB has clarified that the OTT platforms which only provide a platform or act as a medium for hosting third-party news content without being editorially involved in the aggregation or curation, similar to the role of hosting news feed by a DTH or a cable service provider on an *as-is basis* will not be covered under the 26% FDI rule.

GOVERNOR OF CHHATTISGARH GIVES ASSENT TO THE STATE’S GAMBLING LAWS

The State Assembly of Chhattisgarh had passed a bill prohibiting gambling, which includes wagering or betting in person or through online platforms for financial gain, in January 2023. On March 23, 2023, the governor of Chhattisgarh, Shri Biswabhusan Harichandan, gave his assent to the Chhattisgarh Gambling Prohibition Act, 2022 (“**Act**”) (accessible [here](#)) which replaced the Public Gambling Act, 1867. The penalty for owning or having a charge over a gambling house may invite imprisonment for 6 months to 5 years with a fine ranging from fifty thousand rupees to one

lakh rupees. The penalty for engaging in online gambling may invite imprisonment ranging from 1 to 7 years with a fine ranging from fifty thousand rupees to ten lakh rupees.

TELECOMMUNICATION

TRAI DIRECTS TELECOM SERVICE PROVIDERS TO REPORT MAJOR OUTAGES

The Telecom Regulatory Authority of India (“TRAI”) while exercising its powers under Section 13, read with Section 11, of the Telecom Regulatory Authority of India Act, 1997, directed all telecommunication service providers (“TSPs”) to report all incidences of network outages affecting telecom services to consumers of a district for more than 4 (four)

hours continuously within 24 (twenty-four) of their occurrence in the format enclosed in such direction (“**Direction**”) (accessible [here](#)). The Direction further instructed all TSPs to inform TRAI about the cause of the outage, the analysis of the cause, and the steps undertaken by the TSP within 72 (seventy-two) hours of restoration of the services. TRAI also released an information note for the press (accessible [here](#)), informing that they have decided to collect information on outages as they affect the availability and quality of telecommunication services in the country. These Directions were an extension to similar directions issued by TRAI in February 2023 (accessible [here](#)) which instructed all TSPs to improve their quality of service.

WHITE COLLAR CRIME

BAIL CANNOT BE CANCELLED MERELY BECAUSE OF REGISTRATION OF A SUBSEQUENT CRIME

In the case of *Renjith v. State of Kerala*, (CRL. MC No. 854 of 2023), the Kerala High Court has held that mere registration of a subsequent crime against the accused by itself cannot result in an automatic cancellation of bail granted in the previous offence. The Court opined that the registration of a subsequent crime is only an indication of an allegation, or a complaint of the accused having been involved in a subsequent crime. In the present case, the Petitioner was an accused in Crime No. 31 of 2022. The Petitioner was granted bail by the Magistrate in the said case with the condition that he should not get involved in any other crime while being on bail. Later, Petitioner was arrayed as an accused in Crime No. 1072/2022 for offences punishable under sections 294(b), 323, 308, 354 and 354A of the Indian Penal Code, 1860 ("IPC"). A petition was filed through the Prosecutor to cancel the bail granted in the first crime due to his involvement in the second crime in violation of the conditions of bail. The Magistrate cancelled the bail granted to the Petitioner in the first crime. The High Court observed that bail once granted ought not to be cancelled for the mere asking and there must be cogent and overwhelming circumstances existing to cancel the bail which should not be resorted to in a mechanical manner. The Court further held that the presumption of innocence available to the accused in the second crime, the right to liberty as a fundamental right under Article 21 of the Constitution of India which envelopes every provision of the Code of Criminal Procedure, 1973 ("CrPC") are factors which cannot be forgotten by the Court when called upon to cancel the bail. Thus, despite the registration of the subsequent crime against the Petitioner, the High Court set aside the order cancelling the bail.

DSK View: In this case the High Court while reiterating cardinal principle of criminal jurisprudence, the doctrine of presumption of innocence, has held that while arriving at the conclusion to cancel the bail, the Court must also consider whether the accused had misused the liberty granted in such

a manner that it has a tendency to interfere with the due course of the administration of justice.

ACQUITTAL IN CORRUPTION CASE AFTER 20 YEARS OF INCARCERATION

The Supreme Court in the matter of *Jagtar Singh v. State of Punjab* (Criminal Appeal No. 2136 of 2010) acquitted a cleaner of corruption charges where no evidence was produced for demand of illegal gratification. It was alleged by the Respondent that the convict who was a cleaner made a demand of ₹ 500/- as illegal gratification which was later settled for ₹ 300/- for supplying copy of a death certificate. Complainant being reluctant to pay visited the DSP, Vigilance where the Complainant handed over three currency notes of ₹ 100/- each to the DSP, Vigilance, who after coating the same with phenolphthalein powder recorded their numbers in the memo and handed them to the Complainant. The Appellant was allegedly arrested red-handed while accepting the bribe. It was observed by the Court that the death certificate had been prepared prior to the date on which the Appellant was assigned the duty to prepare them. The Appellant relied on the recent judgment delivered by the Constitution Bench in *Neeraj Dutta v. State (NCT of Delhi)* [(2022) SCC Online 1724] where it was laid down that the demand and recovery both must be to substantially proved in conviction under the Prevention of Corruption Act, 1988. Moreover, the trial Court had specifically held that there was no evidence produced on record to prove the demand of illegal gratification. The High Court had passed its judgment on the assumption that the money having been recovered from the Appellant, there was demand of illegal gratification. The Supreme Court set aside the judgment of the High Court as the present case was not the one where there was circumstantial evidence to prove the demand.

DSK View: The Supreme Court in this case, has reiterated the principle laid down in the case of *Neeraj Dutta*, wherein it was held that to prove allegations of bribery it is essential to prove both demand and acceptance of illegal gratification.

Merely proving the acceptance of bribe cannot be a ground for conviction.

LONG PERIOD OF UNDERTRIAL DETENTION ALONE IS NOT A GROUND TO GRANT BAIL TO AN ACCUSED

The Kerala High Court in the matter of **Sunil N.S. v. State of Kerala** (Bail Appl. No. 1023 of 2023) has held that simply because a petitioner/accused is in jail for six years, it cannot be a ground to release him in case when serious offences are alleged. The prosecution's case in the present matter is that in furtherance of a criminal conspiracy by a movie star, who was also an accused in the case, the Petitioner along with certain other accused abducted and sexually assaulted the victim in a moving car. The offences alleged against the Petitioner and other accused were under Sections 120B, 109, 342, 366, 354, 354B, 357, 376D, r/w section 34 of the IPC and Sections 66E and 66A of the Information Technology Act, 2000. The Petitioner had earlier approached the Supreme Court, where the Apex Court dismissed the bail application with an observation that if the trial is not concluded within a reasonable time, the Petitioner is at liberty to renew his application for grant of bail before the High Court. Therefore, the present bail application came to be filed. The High Court, after having considered the submissions of the parties, observed that when there are serious allegations against an accused affecting the conscience of the society, the Court cannot allow bail application solely on the ground of personal liberty. The gravity of the offence alleged against the accused is also a criteria to be considered by the Court while deciding the bail application. Thus, the Court held that the Petitioner is not entitled to bail even though he has been in jail for about six years.

DSK View: *The Court in this matter observed that merely because the accused is in jail for a long period of time cannot be ground to grant bail where serious offences are alleged.*

The Court here seems to adopt a narrow view while considering the right to liberty of an individual. Conclusion of trial may take time and refusing grant of bail in the course of trial leads to imposition of punishment on the accused even before his guilt is established.

MERELY THE ALLEGATION OF FAILURE TO KEEP UP PROMISE WILL NOT BE ENOUGH TO INITIATE CRIMINAL PROCEEDINGS

The Supreme Court in the matter of **Sarabjit Kaur v. State of Punjab & Anr.** (Criminal Appeal No. 581 of 2023) opined that merely on the allegation of failure to keep up a promise will not be enough to initiate criminal proceedings. In the present case an appeal was filed by the Appellant before the Supreme Court against order of the High Court dismissing petition for quashing of FIR under Sections 420, 120B and 506 of the IPC. The dispute arises out of an Agreement to Sale. A complaint was first filed against the property dealers. On investigation, it was observed that the dispute being civil in nature, police did not take any action. Thereafter, another complaint was filed by Complainant against the Appellant and 2 others wherein FIR was registered under Sections 420, 120-B and 506 IPC against the Appellant. The Supreme Court in the present case held that a breach of contract does not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. The Court observed that from the facts available on record, it is evident that the complainant had improved his case ever since the first complaint was filed in which there were no allegations against the Appellant. The Court further observed that the entire idea of the complainant was to convert a civil dispute into criminal and put pressure on the Appellant for return of the amount allegedly paid. The Court while quashing the FIR held that criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes.



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