

# NEWSLETTER

*August 2022*

# TABLE OF CONTENTS

Capital Market	03
05	Competition Law
Dispute Resolution	07
09	Employment Law
Energy & Infrastructure	14
19	Intellectual Property Rights
International Trade / WTO	21
23	Media and Entertainment
RBI & FEMA	26
28	RERA
Technology Law	30
32	White-Collar Crime



## **GOVT DECLARES 'ZERO COUPON ZERO PRINCIPAL INSTRUMENTS' AS SECURITIES**

The Ministry of Finance (Department of Economic Affairs) *vide* a gazette notification S.O.3210(E) dated July 15, 2022, declared 'zero coupon zero principal instruments' as securities under the Securities Contracts (Regulation) Act, 1956.

These instruments will be issued by a Not-for-Profit Organization (NPO) which is registered with the social stock exchange segment of a recognized stock exchange. In September 2021, SEBI's board cleared a framework for SSE for fundraising by social enterprises. NPOs desirous of raising funds on the SSE will be required to be registered with the exchange.

With regard to fundraising, it has been proposed that eligible NPOs may raise funds through equity, zero coupon zero principal bonds, mutual funds, social impact funds, and development impact bonds.

## **SEBI NOTIFIES SOCIAL STOCK EXCHANGE FRAMEWORK**

SEBI has notified a framework for the social stock exchange to provide social enterprises with an additional avenue to raise funds. The market regulator has issued SEBI (Issue of Capital and Disclosure Requirements) Third Amendment Regulations, 2022. The amendment inserts Chapter X-A for dealing with the social stock exchange. The regulator has also amended rules governing alternative investment funds and LODR (Listing Obligations and Disclosure Requirements) norms parallelly to bring the social stock exchange into existence.

These rules provide for a separate segment for social stock exchange in the existing stock exchanges. NPOs and for-profit social enterprises having social intent and impact as their primary goal will be eligible to get listed on the social

stock exchange. Also, such an intent should be demonstrated through its focus on eligible social objectives for the underserved or less privileged populations or regions.

Furthermore, the market regulator has provided a list of sixteen broad activities in which such enterprises will have to engage, including eradicating hunger, poverty, malnutrition, and inequality; promoting healthcare, supporting education, employability, and livelihoods; gender equality empowerment of women and LGBTQIA+ communities, and supporting incubators of social enterprise.

Corporate foundations, political or religious organizations or activities, professional or trade associations, and infrastructure and housing companies, except affordable housing, will not be eligible to be identified as a social enterprise.

## **SEBI ISSUES OPERATIONAL CIRCULAR FOR LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS OR NON-CONVERTIBLE SECURITIES, SECURITIZED DEBT INSTRUMENTS, AND COMMERCIAL PAPER**

SEBI has issued an operational circular dated July 29, 2022, for listing obligations and disclosure requirements or Non-convertible Securities, Securitised Debt Instruments, and/or Commercial Paper for effective regulation of the corporate bond market and to enable the issuers and other market stakeholders to get access to all the applicable circulars at one place. The provisions of this circular shall come into force with effect from 01-08-2022.

The Circular is divided into eleven chapters as summed up below –

Chapter I provides formats for filing financial information. Chapter II contains formats for audit reports for quarterly standalone financial results for banks and NBFCs and for entities other than Banks and NBFCs. Chapter III discloses

the impact of Audit Qualifications by Listed Entities where these entities should disseminate the cumulative impact of all the audit qualifications in a separate format with the annual audited financial results to the Stock Exchange. For audit reports with modified opinion, a statement showing the act of audit qualifications shall be filed with the Stock Exchange in a format as specified in Annex – III-A.

Chapter IV contains the format for submission of the statement. The Audit Committee will review the statement indicating deviation/ variation on a quarterly basis and submit the reports to the Stock Exchange. 'Board of Directors' will replace the Audit Committee where a listed entity, under the provisions of Listing Regulations or the [Companies Act, 2013](#), is not required to have an Audit Committee. Chapter V contains Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks/ financial institutions and unlisted debt securities shall be made to the Stock Exchange. Chapter VI contains the Schemes of Arrangement involving Non-Convertible Debentures and Non- Convertible

Redeemable Preference Shares issued in lieu of specified securities.

Chapter VII contains the Formats specifying disclosure of Corporate Governance by 'high value debt listed entities' in Part C of Schedule V of the Listing Regulations. Chapter VIII contains the Disclosure obligations of listed entities in relation to its Related Party Transactions, their manner of dealing, approval by the Audit Committee, disclosure of the same to the Stock Exchange, and publication on the entity's website. Chapter IX specifies the conditions when the issuers do not comply with the uniform structure prescribed for levying fines and the actions by the Stock Exchange.

Chapter X contains provisions applicable to the issue of Securitized Debt Instruments under the SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008. Chapter XI has been inserted containing a format for review of the rating obtained by the listed entity with respect to its non-convertible securities from the Credit Rating Agency registered with SEBI.



## COMPETITION COMMISSION OF INDIA ISSUES CEASE AND DESIST ORDER AGAINST TRAILER OWNER ASSOCIATIONS

By an order dated July 21, 2022, the Competition Commission of India (“CCI”) has issued cease and desist order against ten Trailer Owner Associations (“TOAs”) for indulging in anti-competitive conduct in violation of Section 3 of the Competition Act, 2002 (“Act”). The case was initiated based on information filed by the National Association of Container Freight Station (“NACFS”). As per the information, TOAs had interfered in the fixation of tariffs for trailers and restricted the members of NACFS and their sister concerns, with regard to plying their trailers for the movement of containers. NACFS also alleged that these decisions were taken in trade association meetings, wherein these conditions were made to be agreed upon by the members of the Informant on alleged threats of strikes

While dealing with the issues involved, CCI held that TOAs did not deny their participation in the meetings where decisions of anti-competitive nature took place, thus, establishing the existence of arrangement amongst them under Section 3 of the Act, which is presumed to have an appreciable adverse effect on competition.

Based on the evidence presented, findings in the Director General’s Report, and submissions made during the oral arguments, CCI observed that the TOAs have transgressed their legal contours and facilitated collusive decision-making by allowing fixation of prices and restricting the provision of services under their aegis. The TOAs were found to have manipulated the market forces and narrowed the scope of competition through the aforesaid collective collusive action and CCI has directed TOAs to cease and desist from such conduct in the future.

**DSK View:** While arriving at the decision CCI examined the role of trade associations and the legitimacy of actions taken by them under the Act in detail. The order itself is consistent

with past orders of CCI involving anti-competitive and restrictive conduct by trade associations.

## COMBINATIONS APPROVED

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

- **July 05, 2022** – Acquisition of **Citrix Systems, Inc.** by funds managed by **Vista Equity Partners Management, LLC** and funds and investment vehicles managed by **Elliott Investment Management L.P.**
- **July 11, 2022** – Acquisition of **Solenergi Power Private Limited** by **Shell Overseas Investments B.V.** from Actis Solenergi Limited.
- **July 11, 2022** – Acquisition of equity in ten road infrastructure projects from **Dilip Buildcon Limited** and its associates by **Shrem InvIT.**
- **July 15, 2022** – Indirect subscription of over 30% of the total number of issued shares of **CitiusTech** by **Bain Capital** and **Bain Credit**, which represents approximately half the economic interest in CitiusTech.
- **July 15, 2022** – Increase in proportion of voting rights held by **Canada Pension Plan Investment Board** in **ReNew Energy Global.**
- **July 15, 2022** – Acquisition of **Ageas Federal Life Insurance Company Limited** by **Ageas Insurance International NV.**
- **July 26, 2022** – Acquisition of 11.43% of the equity share capital of **Tata Power Renewable Energy Limited** by **Greenforest New Energies Bidco Limited.** Greenforest New Energies Bidco Limited is an

investment vehicle indirectly incorporated by **BlackRock Alternatives Management, LLC.** and **Mubadala Investment Company PJSC** for undertaking the proposed combination.

- **July 26, 2022** – Acquisition of **Citibank, N.A.’s**, and **Citicorp Finance (India) Limited’s** undertakings comprising of their consumer banking activities by Axis Bank.

**DSK View:** Transactions beyond a certain threshold requires CCI’s approval. The CCI has introduced an automatic system of approval for combinations under 'Green Channel'. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. This system would significantly reduce the time and cost of transactions and thereby contributing to ease of doing business in India.



HEINZER M. KNEIP C.  
SUI + GER  
13:0:11 11



## **POWER TO CONDONE THE DELAY IN FILING OF WRITTEN STATEMENT IN COMMERCIAL SUIT IS SUBSTANTIALLY DIFFERENT FROM CODE OF CIVIL PROCEDURE**

Recently, a single judge bench comprising of Hon'ble Mr. Justice Vibhu Bakhru of the Hon'ble Delhi High in *3M Company v. Vikas Sinha and Anr.*, 2022 SCC OnLine Del 1921, held that the provision related to the period of filing written statements and the power of the court in condoning the delay in filing such written statements for commercial suits under the Commercial Suits Act has been significantly amended. Where Order VIII Rule 1 of the CPC empowers the court to only condone a delay of not more than 30 days in filing the written statements, Section 16 of the Commercial Suits Act allows for a delay of not more than 120 days. The Hon'ble Court further held that the object of the Commercial Suits Act is to dispose of commercial suits expeditiously and fairly. Therefore, no written statements could be taken on record after the lapse of 120-days from date of service of summons.

Lastly, Hon'ble Court remarked that a delay could only be condoned on reasons presented by the defendant and recorded by the court in writing and such reasons cannot be presumed by the court under any circumstance.

**DSK View:** *The view of the Hon'ble Delhi High Court is a step forward in making the Commercial Court Act, 2015 more effective for disposal of the commercial suits expeditiously and fairly. This will further discourage the conniving party from delaying the proceedings.*

## **ARBITRATION CLAUSE WOULD SURVIVE EVEN IF THE CONTRACT CONTAINING THE CLAUSE IS TERMINATED**

The Hon'ble Delhi High Court in *National Research Development Corporation and Anr. v. Mak Controls and Systems Private Limited*, 2022 SCC OnLine Del 2018 reiterated that even if the main agreement is non-existent,

the arbitration clause would still survive. In the given case, the Respondent contended that the arbitration clause would become inoperable since the principal agreement containing the arbitration clause had expired and was not existing anymore. Relying on the landmark judgment of the Hon'ble Supreme Court in *Reva Electric Car Company P. Ltd. v. Green Mobil* (2012) 2 SCC 93, the Hon'ble Court followed that the arbitration clause would survive even if the contract containing the clause is terminated.

## **REJECTION OF AN APPLICATION MADE UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 WILL NOT MEAN THAT THE COURT HAS CONCURRED WITH THE OPINION OF THE ARBITRATOR GIVEN IN THE AWARD**

Recently a single bench of Hon'ble Delhi High Court comprising of Justice Vibhu Bakhru, in *Glitter Overseas and Ors. v. MMTC Ltd.*, 2022 SCC OnLine Del 2058 held that rejection of an application under Section 34 of the A&C Act cannot be construed to mean that the court has concurred with the view of the arbitral tribunal. The Hon'ble Court further held that merely because the award in challenge is contrary to the arbitral awards rendered in other cases, the same does not render it amenable to challenge under Section 34 of the A&C Act. Lastly the Hon'ble Court reiterated that where there are two plausible views, the decision of the arbitral tribunal is found to be plausible one the same would warrant no interference in proceedings under Section 34 of the A&C Act.

**DSK View:** *The above decision of the Delhi High Court reaffirms the that even if the court is not in agreement with the views of the arbitrator expressed in the award, a Section 34 Application can only be entertained if the grounds mentioned therein are fulfilled by the party in appeal.*

## **WHETHER THE SALE OF THE CORPORATE DEBTOR AS A GOING CONCERN UNDER THE IBC AND THE REGULATIONS**

## INCLUDES BOTH ASSETS AND LIABILITIES OR ASSETS ALONE WITHOUT ANY LIABILITIES?

The National Company Law Tribunal, Mumbai Bench, comprising of Shri H.V. Subba Rao and Shri Chandra Bhan Singh, while adjudicating an interim application filed in Harsh Vinimay Pvt. Ltd. v Gajanan Industries Ltd<sup>1</sup>. has ruled that when a corporate debtor is sold as a "going concern," both assets and liabilities must be included in the sale and not only assets.

On November 6, 2019, the NCLT Mumbai Bench (the "Adjudicating Authority") issued a liquidation order against Gajanan Industries Ltd. (the "Corporate Debtor"). C.A. Devang P Sampat was chosen to serve as the liquidator. On March 3, 2021, the Corporate Debtor's assets were to be put up for e-auction, and Mr. Gaurav Agarwal ("Applicant") had sent in an earnest money deposit of Rs. 50,000 to take part. The Liquidator issued the Applicant a letter of intent dated 19.05.2021 after announcing that the Applicant was the Corporate Debtor's Successful Bidder as a Going Concern with a bid sum of Rs. 4,65,00,000/-. The liquidator accepted the applicant's payment of the total balance due amounting to Rs. 4,15,00,000—along with interest of Rs. 10,09,000—on May 31, 2021. This payment was made in relation to the auction purchase. The fundamental argument put forth by the applicant was that an auction buyer who bought the corporate debtor as a going concern is not obligated by any of its obligations. The liquidator said that the applicant was asking for a revision of the e-auction terms in an effort to go beyond them.

The Adjudicating Authority placed reliance on the NCLAT judgment in M/s Visisth Services Limited v S.V. Ramani, Company Appeal (At) (Ins) No. 896 of 2020, wherein it was held that: "It can be seen from the afore-noted discussion as well as Regulation 32 A of the IBBI (Liquidation Process) Regulations, 2016 that Sale as a 'Going Concern' means sale of assets as well as liabilities and not assets sans liabilities.....sale of a Company as a 'Going Concern' means sale of both assets and liabilities, if it is stated on 'as is where is' basis..."

The Bench additionally noted that the bid materials had made it clear that the liquidator would not be responsible for any company debts that would prevent the successful bidder from receiving liquidation assets. Instead, the successful bidder would be responsible for bearing and paying any such debts. The Liquidator had also informed the Applicant that the bidders should independently research any

encumbrances, title issues, or obligations impacting the property before placing a bid. They should also inspect the property at their own expense and satisfy themselves since the stakeholders committee and the liquidator are required by Liquidation Regulations Section 32A(3) to ascertain the obligations of the Corporate Debtor. Accordingly, the Bench held that the sale of the Corporate Debtor as going concern includes both assets and liabilities not assets sans liabilities.

## NCLT HAS DISCRETION TO NOT ADMIT FINANCIAL CREDITOR'S CIRP APPLICATION EVEN IF CORPORATE DEBTOR IS IN DEFAULT : SUPREME COURT

The Supreme Court in *Vidarbha Industries Power Ltd. vs Axis Bank Limited*<sup>2</sup> has held that even if there was a debt and the corporate debtor was in default, the adjudicating authority is not mandated to accept an application pertaining to the corporate insolvency resolution process. The court noted that, customarily, the Adjudicating Authority (NCLT) would have to use its discretion to admit and initiate CIRP on satisfaction of the existence of a financial debt and failure on the part of the Corporate Debtor to make payments on the debt, unless there are good reasons not to admit the petition. Further, **the bench of Justices Indira Banerjee and JK Maheshwari emphasised that such discretionary power may not be used in an arbitrary or capricious manner.**

The legislative intent behind a conscious distinction effectuate between operational and financial creditors was discussed. It was noted that since operational creditors are in the business of supplying goods and services, whilst financial creditors are in the industry of investing and financing. Financial credit often has a considerably longer term and is secured. Operational debts, which are typically unsecured, of shorter duration and lower amount, cannot be compared to such credits, which are frequently long term credits, on which the operation of the Corporate Debtor depends. Therein, the Operational Creditor's application for the initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted provided the application is made in accordance with Section 28. However, in respect of Section 7, the word "may" is commonly used in a directory. **The word "may admit" denotes a degree of admission discretion.** The word "shall," used in Section 9 in contrast, implies a mandate that must be followed. **It is assumed that a provision is mandatory when the word "shall" is used.** Therein, it was noted that the act addresses or deals with bankruptcy and insolvency. The IBC does not intend to penalise solvent businesses that temporarily renege on their financial obligations by initiating CIRP.

<sup>1</sup> Harsh Vinimay Pvt. Ltd. v Gajanan Industries Ltd., C.P. No. (IB) 2521/MB/2018.

<sup>2</sup> Vidarbha Industries Power Ltd. vs Axis Bank Limited CA 4633 OF 2021.

# EMPLOYMENT LAW

## **NOTIFICATION OF THE NEW PORTAL FOR ACCEPTING ONLINE CONTRIBUTIONS FROM EMPLOYERS/EMPLOYEES BY THE DELHI LABOUR WELFARE BOARD**

The Delhi Labour Welfare Board, vide its office order dated July 1, 2022, has notified a new portal (<https://dlabourwelfareboard.delhi.gov.in/index.php>), for providing services including registration of establishment, amendment/update of the employer's establishment including details of the number of employees, deposit/submission of contributions from employers and employees, closure of employer establishment and entry/uploading details of employees employed by an employer contributing under the Delhi Labour Welfare Board.

The service is hosted on the URL <https://dlabourwelfareboard.delhi.gov.in/> for taking contributions from employers/employees with effect from July 1, 2022. Therefore, all employers/establishments covered under the Bombay Labour Welfare Fund Act, 1953, as extended to the Union Territory of Delhi, are directed to henceforth utilize the portal for the above services.

## **DBT SCHEME LAUNCHED BY MINISTRY OF SKILL DEVELOPMENT AND ENTREPRENEURSHIP TO EXTEND DIRECT MONETARY SUPPORT TO APPRENTICES**

The Ministry of Skill Development and Entrepreneurship, vide its press release dated July 2, 2022, has announced the National Apprenticeship Promotion Scheme which will be a part of the Direct Beneficiary Transfer ("DBT") scheme, providing direct government benefits to all apprentices.

Earlier, companies were required to pay apprentices the entire amount and then seek reimbursement from the government. With the launch of the DBT Scheme, the government will directly transfer its contribution to the bank accounts of apprentices through the National Skill

Development Corporation, 25% (Twenty Five percent) of the stipend payable up to INR 1,500 (Rupees One Thousand Five Hundred) per month.

## **SPECIAL ECONOMIC ZONES (THIRD AMENDMENT) RULES, 2022**

The Ministry of Commerce and Industry, vide its notification dated July 14, 2022, has published the Special Economic Zones (Third Amendment) Rules, 2022 ("SEZ Amendment Rules 2022") to further amend the Special Economic Zones Rules, 2006 ("SEZ Rules 2006"). The SEZ Amendment Rules 2022 have come into force with effect from the date of their publication, i.e., July 14, 2022. The SEZ Rules 2006 have been amended to include Rule 43A, which provides for rules pertaining to working from home and the following provisions have been laid down:

- A unit may permit its employees, including contractual employees, to work from home or from any place outside the Special Economic Zone in accordance with this rule.
- The following employees of a unit are covered under Rule 43A(21) of the SEZ Rules 2006: (i) employees of the Information Technology and Information Technology enabled Services Special Economic Zone units; (ii) employees, who are temporarily incapacitated; (iii) employees, who are travelling; and (iv) employees, who are working offsite.
- The unit shall submit its proposal for work from home to the Development Commissioner through email or physical application, which shall contain the terms and conditions of work from home, including the date from which the permission for work from home shall be utilised and the details of the employees to be covered by such permission for work from home.

- The Development Commissioner, on receipt of the proposal under sub-rule (3), if satisfied that the proposal complies with this rule, may grant permission to the proposal of the unit which shall be valid for a period of 1 (One) year from the date of such permission.
- The Development Commissioner may, on receipt of an application for extension of the permission, if he is satisfied with the proposal and that the unit and its employees have complied with this rule, extend the permission for such period, not exceeding 1 (One) year at a time.
- Every proposal for permission to work from home or an application for extension of the permission shall be submitted, at least 15 (Fifteen) days in advance, to the Development Commissioner, except in case of the employees who are temporarily incapacitated or travelling.
- The proposal for work from home shall cover a maximum of 50% (Fifty percent) of the total employees, including contractual employees, of the unit and the unit shall maintain an accurate attendance record for the entire period of permission for work from home and shall submit to the Development Commissioner, from time to time.
- The Development Commissioner may approve a higher number of employees to work from home for any bonafide reason to be recorded in writing.
- A unit, where its employees are working from home or from any place outside the Special Economic Zone on the date of commencement of the SEZ Amendment Rules 2022, shall submit its proposal for permission to the Development Commissioner within 90 (Ninety) days from the date of such commencement.
- The work to be performed by the employee permitted to work from home under this rule shall be as per the services approved for the unit, and the work is related to a project of the unit.
- The unit shall ensure export revenue of the resultant products or services to be accounted for by the unit to which the employee is tagged.
- Where an employee ceases to be part of the project of the unit, the employee shall be un-tagged from the unit and the unit shall surrender the identity card as per Rule 70(2) of the SEZ Rules 2006.
- The unit may provide to an employee such goods, including a laptop, computer, video projection system,

other electronic equipment and secured connectivity (for virtual private network, virtual desktop infrastructure) to establish a connection between the employee and work related to the project of the unit with the prior permission of the Specified Officer to temporarily remove such goods to the Domestic Tariff Area without payment of duty or integrated goods and services tax.

- Notwithstanding anything in Rule 50(1) of the SEZ Rules 2006, the specified officer may approve the removal of goods mentioned in Rule 43A(13) of the SEZ Rules 2006, required by an employee permitted to work from home and shall be valid up to such period the permission for work from home under this rule is valid.

#### **ESIC TO ISSUE REGULATION CERTIFICATES FOR CASH BENEFITS TO INSURED PERSONS (“IPS”) THROUGH AN ONLINE PORTAL**

The ESIC, vide its notification dated July 22, 2022, has notified that with effect from August 1, 2022, no regulation certificate for any cash benefit will be issued by the ESIC or the Employees State Insurance Scheme (“**ESIS**”) dispensaries in physical form. All ESIC dispensaries will use the “Dhanwantari” module of Project Panchdeep to issue the regulation certificates.

In case of any reason the regulation certificate cannot be issued online, then the scanned copy of the same shall be forwarded to the branch office through e-mail by the dispensary and a physical copy will be issued to the IPs immediately. The IPs will also have a choice to receive the medical/fitness certificate either in physical form or in soft copy in his/her e-mail, if he/she has one.

#### **EMPLOYERS TO LINK THE UAN NUMBER OF THEIR EMPLOYEES REGISTERED UNDER EPFO VIA THE ESIC PORTAL**

The ESIC, vide its notice dated July 21, 2022, informed employers covered under ESIC to link the Universal Account Number (“**UAN**”) of the employees who are registered under EPFO via ESIC Portal latest by July 31, 2022. For the synchronization between Employees’ State Insurance (“**ESI**”) and Employees’ Provident Fund (“**EPF**”), a provision has been made in the insurance module by ESIC wherein the employers can enter the UAN of the IPs through the module to link with the insurance number of ESI beneficiaries. The link for seeding the UAN is available on the employer portal ([www.esic.in](http://www.esic.in)).

#### **MINISTRY OF WOMEN AND CHILD DEVELOPMENT NOTIFIES SCHEMES FOR THE WELFARE OF WOMEN**

The Ministry of Women and Child Development, vide its press release dated July 22, 2022, has notified various

schemes/programmes implemented by the Government for the welfare, rehabilitation, empowerment, education, and providing employment to destitute women including, but not limited to, the following schemes:

- (i) **Swadhar Greh Scheme:** The Swadhar Greh Scheme caters to the primary needs of women in difficult circumstances – women and girls rendered homeless due to family discord, crime, violence, mental stress, social ostracism, or are being forced into prostitution and are in mortal danger. The said scheme through the provisions of shelter, food, clothing, counselling, training, and clinical and legal aid aims to rehabilitate such women in difficult circumstances economically and emotionally. Under Swadhar Greh Scheme vocational and skill upgradation training is provided for the economic rehabilitation of women.
- (ii) **Hub for Empowerment of Women (“HEW”):** For increasing awareness about schemes of the ministry and other measures undertaken by the government for the welfare and development of women, national, state, and district level HEW have been approved under the new Mission Shakti, with the aim to facilitate inter-sectoral convergence of schemes and programs meant for women at different levels with the mandate to create an environment in which women realize their full potential. The support under the HEW component is available for guiding, linking, and hand-holding women to various institutional and schematic set-ups for their empowerment and development including equal access to healthcare, quality education, career, and vocational counselling/training, financial inclusion, entrepreneurship, backward and forward linkages, health and safety for workers, social security and digital literacy at various levels across the country.
- (iii) **Stand Up India Scheme:** The Government of India launched the Stand Up India Scheme on April 5, 2016, to promote entrepreneurship amongst women, Scheduled Caste (“SC”) and Scheduled Tribe categories (“ST”), i.e., those sections of the population understood to be facing significant hurdles due to lack of advice/mentorship as well as inadequate and delayed credit. The Stand Up India Scheme facilitates bank loans between INR 10 Lakhs (Rupees Ten Lakhs) to INR 1 (One) Crore to at least 1 (One) SC/ST borrower and at least 1 (One) woman borrower per bank branch of Scheduled Commercial Banks for setting up Greenfield enterprises in trading, manufacturing and services sector.
- (iv) **Pradhan Mantri Kaushal Kendras:** Government has set up the Pradhan Mantri Kaushal Kendras under the Pradhan Mantri Kaushal Vikas Yojana across the country. Emphasis has been laid on creating additional infrastructure both for training and apprenticeship for women, flexible training delivery mechanisms such as mobile training units, flexible afternoon batches along with local need-based training to accommodate women and ensuring safe and gender-sensitive training environment for women trainers, equity in remuneration and complaint redressal mechanism.
- (v) **The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (“MGNREGA”):** The MGNREGA seeks to ensure employment in rural households, mandating that at least 1/3<sup>rd</sup> (One Third) of the jobs generated should be given to women. The MGNREGA Guidelines have also made special provisions to encourage the participation of women, including giving preference to women (especially single women) and older persons for work on worksites nearer to their residences, child care facilities at the worksite in case of more than 5 (Five) children under 6 (Six) years of age are present, adequate representation of women in the Mahatma Gandhi National Rural Employment Guarantee Scheme (“MGNREGS”) staff, ensuring that widows, deserted women and destitute women are provided 100 (One Hundred) days of work, awareness and outreach activities to ensure that all wage seekers (including women) are able to handle bank procedures, treating pregnant and lactating mothers as a special category and provision of suitable work for them, etc.
- (vi) **Pradhan Mantri Shram Yogi Maan-dhan (“PM-SYM”):** The PM-SYM has been launched to ensure old age protection for unorganised workers who are not covered by any other pension scheme. The unorganized workers including women, are ones engaged as home-based workers, street vendors, mid-day meal workers, head loaders, brick kiln workers, cobblers, rag pickers, domestic workers, washer men, rickshaw pullers, landless labourers, agricultural workers, construction workers, beedi workers, handloom workers, leather workers, audio-visual workers and similar other occupation whose monthly income is INR 15,000 (Indian Rupees Fifteen Thousand) per month or less and belong to the entry age group of 18 (Eighteen) to 40 (Forty) years.
- (vii) **Pradhan Mantri Mudra Yojana (“PMMVY”):** The PMMVY has been initiated by the government, inter alia, for the facilitation of self-employment. Under PMMVY, collateral-free loans up to INR 10 Lakhs (Indian Rupees Ten Lakhs) are extended to micro/small business enterprises and to individuals to enable them to set up or expand their business activities. The majority of the beneficiaries under PMMVY are women.
- (viii) **Deendayal Antyodaya Yojana- National Urban Livelihood Mission (“DAY-NULM”):** DAY-NULM is implemented in statutory towns to reduce the poverty

and vulnerability of urban poor households, for improvement in their livelihoods on a sustainable basis. The mission provides for broadening of coverage to include families of disadvantaged groups like SCs, STs, women, minorities, disabled, etc., subject to a maximum of 25% (Twenty Five percent) of the above urban poor population.

- (ix) Atal Pension Yojana (“APY”): The APY scheme is implemented with the objective to create a universal social security system for all Indians, especially the poor, the underprivileged, and workers in the unorganized sector. The APY scheme is open to all citizens of India between 18 (Eighteen) to 40 (Forty) years of age having a savings bank account in a bank or post office.
- (x) Nari Arthik Sashaktikaran Yojana: The Ministry of Social Justice and Empowerment implements Nari Arthik Sashaktikaran Yojana to support SCs, single women/widows to take up income-generating activities.

#### **MINISTRY OF LABOUR AND EMPLOYMENT PROHIBITS CHILDREN AND ADOLESCENTS TO WORK AND HELP IN MINES**

The Ministry of Labour & Employment, vide its written reply to Lok Sabha dated July 25, 2022, has mentioned about implementing MGNREGS to enhance the livelihood and security of people in rural areas by guaranteeing 100 (One Hundred) days of wage employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work.

The government has enacted the Child Labour (Prohibition & Regulation) Amendment Act, 2016, which came into force with effect from September 1, 2016. The said act provides for complete prohibition of work or employment of children below 14 (Fourteen) years in any occupation and process and adolescents in the age group of 14 (Fourteen) to 18 (Eighteen) years in hazardous occupations and processes.

The said act also provides for stricter punishment of employers for violation of its provisions and made the offence cognizable. Also, mines and collieries have been included in Schedule – Part A, of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, wherein adolescents are prohibited to work and children are prohibited to help in mines including mica mines in all states.

#### **MSME NOTIFIES INITIATIVES UNDER THE ATMANIRBHAR BHARAT PACKAGE**

The Ministry of Micro, Small & Medium Enterprises, vide its written reply dated July 25, 2022, to the Rajya Sabha, has notified various initiatives under the Aatmanirbhar Bharat

Abhiyan to mitigate the negative impact of Covid-19 on small businesses including the revival of demand for products and services in the country.

The initiatives under the Atmanirbhar Bharat Package are as follows:

- (i) Credit Guarantee Scheme Subordinate Debt (“CGSSD”) for stressed Micro, Small & Medium Enterprises (“MSMEs”). As on July 19, 2022, INR 90.47 Crore (Rupees Ninety Crores and Forty Seven Lakhs) has been extended to 782 (Seven Hundred and Eighty Two) accounts under CGSSD.
- (ii) Guaranteed Emergency Credit Line / Emergency Credit Line Guarantee Scheme (“ECLGS”) for businesses, including MSMEs. As on June 30, 2022, around 1.19 crore (One Crore and Nineteen Lakhs) businesses, including 1.13 crore (One Crore and Thirteen Lakhs) MSMEs have been provided collateral-free loans amounting to INR 3.48 Lakhs crore (Rupees Three Crores and Forty Eight Lakhs), including INR 2.32 Lakhs crore (Rupees Two Crores and Three Two Lakhs) to MSMEs under ECLGS scheme.
- (iii) Equity infusion through Self-Reliant India (“SRI”) Fund. SRI Fund has been operationalised, daughter funds are being empanelled and through them, MSMEs are benefitting.
- (iv) New revised criteria of classification of MSMEs.
- (v) New registration of MSMEs through ‘Udyam Registration’ for ease of doing business. As many as 98,00,560 (Ninety Eight Lakhs Five Hundred and Sixty) MSMEs with an Employment of 7.46 crore (Seven Crores and Forty Six Lakhs) have registered on the Udyam Portal.
- (vi) No global tenders for procurement up to INR 200,00,00,000 (Rupees Two Hundred Crores).

#### **REVISED RATES OF MINIMUM WAGES FOR THE STATE OF WEST BENGAL**

The Government of West Bengal, vide its circular dated July 6, 2022, has issued revised minimum rates of wages for the period from July 1, 2022, to December 31, 2022, applicable to employees in the state of West Bengal listed in the said circular. The revised minimum wages shall be applicable subject to the following conditions:

- (i) To arrive at the daily rate, the monthly rate shall have to be divided by 26 (Twenty Six) (to be rounded off to the nearest Rupee), and to arrive at the weekly rate, the daily rate shall have to be multiplied by 6 (Six);

- (ii) A normal working day shall consist of 8 (Eight) hours of actual work and not less than half-hour of recess, subject to 48 (Forty Eight) hours of actual work in a week;
- (iii) One day in any period of 7 (Seven) days as may suit the local convenience shall be the day of weekly rest. The minimum rates of wages include the wages for a weekly day of rest. Payment for the work done on the day of weekly rest and for work done beyond the normal working hours shall be double the ordinary rates of wages;
- (iv) Where the existing rates of wages of any employee based on contractor or agreement or otherwise are higher than the rates notified herein, the higher rates shall be protected;
- (v) The minimum rates of wages are applicable to the employees employed by contractors also;
- (vi) The minimum rates of wages for disabled persons shall be the same as payable to the workers of the appropriate category;
- (vii) The men and women employees shall get the same rates of wages for the same work or work of similar nature; and
- (viii) The minimum rates of wages and variable dearness allowance, if any, both together shall constitute the minimum rates of wages to be enforceable under the Minimum Wages Act, 1948.

## ENERGY

### **POWER SYSTEM OPERATION CORPORATION LIMITED NOTIFIED AS THE CENTRAL NODAL AGENCY TO SET UP AND OPERATE A SINGLE WINDOW GREEN ENERGY OPEN ACCESS SYSTEM FOR RENEWABLE ENERGY**

The Ministry of Power (“**MoP**”) vide notification number 23/09/2021 dated July 13, 2022, notified the Power System Operation Corporation Limited as the Central Nodal Agency to set up and operate a single window green energy open access system for renewable energy, in exercise of the powers conferred by Section 176 of the Electricity Act, 2003, read with sub-rule (1) of rule 6 of the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022.

### **STATEMENT OF INTENT SIGNED BETWEEN NTPC AND NITI AAYOG TO DEVELOP NTPC'S NET ZERO GHG EMISSIONS ROADMAP**

NTPC Ltd. (“**NTPC**”) signed a Statement of Intent (“**SoI**”) with NITI Aayog to develop NTPC's Net Zero GHG emissions Roadmap, paving the pathway towards greening the power sector in the country. The SoI seeks to formalise a framework of cooperation between the parties in order to facilitate NTPC's strategies on diversification of its generation mix in order to eventually reduce its carbon footprint and support India's endeavour to achieve net zero by 2070. NTPC meets around 24% of the country's power requirement with its 17% installed generation capacity. With this collaboration, NTPC seeks to utilize NITI Aayog's expertise for:

- Development of Net Zero GHG emissions Roadmap for NTPC to align with Government of India's 'Panchamrit' goals;

- Emissions and energy (portfolio mix) modeling including development of scenarios for 2030, 2037, 2047 and 2070; and
- Assistance in the establishment of the Carbon Management Unit (CMU) in NTPC to integrate all GHG reduction initiatives under one umbrella.

### **STEPS TAKEN BY THE GOVERNMENT TO PROMOTE RENEWABLE ENERGY IN THE COUNTRY**

The Ministry of New and Renewable Energy (“**MNRE**”) vide press release dated July 19, 2022 enumerated the steps taken by the Government of India to promote renewable energy in the country, which include:

- a. Allowing Foreign Direct Investment (“**FDI**”) of up to hundred percent through the automatic route;
- b. Waiver of Inter State Transmission System (ISTS) charges for inter-state sale of solar and wind power for projects to be completed by June 30th, 2025;
- c. Declaration of trajectory for Renewable Purchase Obligation (RPO) up to 2022;
- d. Establishment of Ultra Mega Renewable Energy Parks to provide land and transmission to RE developers on a plug-and-play basis;
- e. Schemes such as Pradhan Mantri Kisan Urja Suraksha evam Utthaan Mahabhiyan (“**PM-KUSUM**”), Solar Rooftop Phase II, 12000 MW CPSU Scheme Phase II, etc.

- f. Laying of new transmission lines and creating new sub-station capacity for evacuation of renewable power;
- g. Setting up of RE parks to provide land and transmission to RE developers on a plug and play basis;
- h. Notification of standards for deployment of solar photovoltaic system/devices,
- i. Setting up of Project Development Cell for attracting and facilitating investments;
- j. Standard Bidding Guidelines for tariff based competitive bidding process for procurement of Power from Grid Connected Solar PV and Wind Projects;
- k. Government has issued orders that power shall be dispatched against Letter of Credit (“LoC”) or advance payment to ensure timely payment by distribution licensees to RE generators.

#### **RENEWABLE PURCHASE OBLIGATIONS AND ENERGY STORAGE OBLIGATION TRAJECTORY**

MNRE vide notification number 24/7/2020 dated July 15, 2022 stated that from F.Y. 2022-2023, the energy from all Hydro Power Projects (HPPs) will be considered as part of RPO. The HPO trajectory, as had been notified earlier would continue to prevail for LHPs commissioned after March 8, 2021. All other HPPs would be considered as part of ‘RPO’ under category of RPO.

Further Wind RPO will be met only by energy produced from wind power projects commissioned after March 31, 2022, Hydro power purchase obligation (HPO) will be met only by energy produced from large hydro power projects (LHP) commissioned after March 8, 2019 and other renewable purchase obligation (RPO) may be met by energy produced from any other RE power project.

The notification stated that RPO will be calculated in energy terms as a percentage of total consumption of electricity and HPO obligations may be met from the power procured from eligible LHPs commissioned on and after March 8, 2019 to March 31, 2030. HPO obligation of the State/DISCOM may be met out of the free power being provided to the State from LHPs, commissioned after March 8, 2019 as per agreement at that point of time excluding the contribution towards Local Area Development, if consumed within the State/DISCOM. Free power (not contributed for Local Area Development) will be eligible for HPO benefit. In case, the

free is insufficient to meet the HPO obligations, then the State would have to buy the additional hydro power to meet its HPO obligations or may have to buy the corresponding amount of Renewable Energy Certificate corresponding to Hydro Power. The Renewable Energy Certificate mechanism corresponding to Hydro Power to be developed by CERC to facilitate compliance of HPO obligation would have a capping price of Rs.5.50/Unit of electrical energy with effect from March 8, 2019 to March 3, 2021 and with an annual escalation @ 5% thereafter for the purposes of ensuring HPO compliance. Hydro power imported from outside India shall not be considered for meeting HPO. Data related to compliance of RPO obligation will be maintained by POSCO.

#### **MINISTRY OF POWER’S REVAMPED DISTRIBUTION SECTOR SCHEME LAUNCHED**

The MoP’s flagship Revamped Distribution Sector Scheme which aims at improving the operational efficiencies and financial sustainability of Distribution Companies was launched. With an outlay of Rs.3,03,758 crore over a period of five years from FY 2021-22 to FY 2025-26, the scheme aims to provide financial assistance to DISCOMs for modernization and strengthening of distribution infrastructure to improve the reliability and quality of supply to end consumers. It is also proposed to provide 25 crore Smart Prepaid meters to consumers all over the country.

The national portal for Rooftop solar was also launched, which will enable online tracking of the process of installation of rooftop solar plants, starting from registering the applications to release of subsidy in residential consumers’ (beneficiaries) bank account after installation and inspection of the plant. The estimated capacity under the national solar rooftop program is 4000 MW.

The following Projects were also launched:

- The Ramagundam project which is India’s largest floating solar PV project with 4.5 lakh ‘Made in India’ solar PV modules,
- The Kayamkulam project which is the second largest floating solar PV project consisting of 3 lakh ‘Made in India’ solar PV panels floating on water,
- The 735 MW Solar PV Project at Nokh, in Jaisalmer, Rajasthan which is India’s largest Domestic Content Requirement based Solar project with 1000 MWp at a single location, deploying high-wattage bifacial PV Modules with a tracker system,
- The Green Hydrogen Mobility Project at Leh, Ladakh which is a pilot project and aims for five Fuel Cell Buses to be run in and around Leh, and

- The Green Hydrogen Blending Pilot Project at NTPC Kawas Township which will be India’s first Green Hydrogen Blending Project helping in reducing the usage of natural gas.

**NTPC REL SIGNS MOU WITH GACL TO COLLABORATE IN RENEWABLE ENERGY AND SYNTHESIZE GREEN CHEMICALS**

NTPC RE Limited (“NTPC REL”) has signed a Memorandum of Understanding (“MoU”) with Gujarat Alkalies and Chemicals Limited (“GACL”) to realize green energy and green hydrogen objectives and the Government of India’s efforts toward the carbon-neutrality economy. The MoU envisages collaborating in the field of Renewable Energy, Green Methanol & Green Ammonia and mutually exploring the

opportunities for the supply of 100 MW RE-RTC (Round the Clock) power and synthesizing 75 TPD Green Methanol and 35 TPD Green Ammonia for captive use for the production of various chemicals by GACL at its Vadodara and Dahej complex in Gujarat.

This development comes in the backdrop of NTPC announcing its green hydrogen initiatives and plans to build the country’s first pilot projects for synthesizing green methanol, setting up green hydrogen filling stations, green hydrogen blending into PNG, and green energy storage project. This would be the first commercial-scale Green ammonia and Green methanol project in the country and would align with Atmanirbhar Bharat initiative.

**INFRASTRUCTURE**

**REVAMPING MANUAL FOR PROCUREMENT OF GOODS, MANUAL FOR PROCUREMENT OF WORKS AND MANUAL FOR PROCUREMENT OF CONSULTANCY AND OTHER SERVICES**

The Manual for Procurement of Goods, Manual for Procurement of Works and Manual for Procurement of Consultancy and other Services (collectively “Manuals”) were revamped in June 2022 by the Department of Expenditure (“DoE”), Ministry of Finance (“MoF”). Some of the key changes to the Manuals are reproduced hereinbelow:

- The criteria related to ‘class-I local supplier’, ‘class-II local supplier’ and ‘local content’ were included in the Manuals. Preference was given to ‘Make in India’ to promote manufacturing and production of goods and services in India to enhance income and employment.
- The Manuals were amended to include that procuring entities shall prescribe criteria whenever Indian Technical specifications and Quality Certifications exist.
- No global tender enquiry (“GTE”) will be required for tenders up to INR 200,00,00,000 (Rupees two hundred crore).
- Performance security may be furnished in the form of an insurance surety bond.
- No provision regarding additional security deposit or bank guarantee in case of abnormally low bids must be included in bid documents. Such a provision must be included only with the permission of the competent authority.

- New criteria related to Government e-Marketplace (“GeM”) portal were introduced.

*These Manuals have been revamped to reflect the amendments and circulars that have been introduced and issued by the DoE in respect of procurement procedure in India.*

**CONSTITUTION OF COMMITTEE FOR DELIBERATION IN RESPECT OF ARBITRAL AWARDS/COURT ORDERS WHERE THE AMOUNT IS BELOW RUPEES ONE HUNDRED CRORE**

The National Highways Authority of India (“NHAI”) vide office memorandum number 2.4.9/2022 dated July 07, 2022 (“NHAI Office Memorandum”) released instructions for the constitution of a committee at NHAI headquarters for deliberation on arbitral awards / court orders wherein the amount involved is below INR 100,00,00,000 (Rupees one hundred crore). Some of the key features are reproduced hereinbelow:

- The NHAI has decided to continue with the existing system to take the decision related to arbitral awards/ court orders wherein the amount involved is up to INR 100,00,00,000 (Rupees one hundred crore). The following competent authorities have been empowered to take decisions in this regard:

Amount of arbitral tribunal award/ court order without interest	Competent authority for accepting/ challenging the arbitral award/ court order
Up to INR 10,00,00,000 (Rupees ten crore)	The concerned member

Above 10,00,00,000 (Rupees ten crore)	INR	Executive committee, headed by the NHA chairperson
---	-----	---

The same is in line with the schedule of powers as provided in the NHA/Policy Guidelines/Delegation of Power/2017 No. 18.24/2017 dated August 21, 2017.

#### APPROVAL FOR GLOBAL TENDER ENQUIRY (“GTE”) BELOW RUPEES TWO HUNDRED CRORE

The Ministry of Railways (“MoR”) vide circular bearing number 2020/RS(L)/779/1 dated July 13, 2022 (“Circular”) reviewed instructions regarding global tender enquire (“GTE.”) Important provisions of the Circular are provided below:

- The Railway Board observed that:
  - As per the decentralized procurement program system followed by Indian Railways, an item requiring GTE at one unit will also be required to issue GTE at other units.
  - Certain spares of assemblies that must be procured through GTE even if the assembly itself is available in India from sufficient class-I local suppliers, the production units (“PUs”) usually procure assemblies and spares are required for maintenance by other railway units.
  - Development of indigenous vendors is pending with vendor approving agencies.
  - Where indigenous sources are available, the procuring agencies have apprehended lack of competition where GTE is not issued.
- Taking into consideration the above observations, the Railway Board decided the following:
  - For items where GTE must be issued, only a centralized nominated agency shall process the case for obtaining permission of the competent authority for issuing GTE (i.e., the Secretary/Coordination, Cabinet Secretariat). All units shall send proposals to the centralized nominated agency (“agency”) according to the prescribed format as per the timelines or scheduled as circulated by the agency.
  - The agency shall also issue GTE and finalise contracts for the combined requirement of all the railway units except production units that procure their own requirements after GTE permission is

given by the competent authority. PUs can only procure quantities permitted by the Secretary/Coordination for it.

- Annexure A of the Circular lists the centralized nominated units.
- Where local sources with local content more than 20% (twenty percent) are available, the MoR shall be required to justify why more indigenous sources could not be developed for requiring the need for GTE.
- Proposals must be sent to the Railway Board with the following:
  - Financial concurrence and approval of the general manager.
  - Comments of principal financial advisors of all units whose proposals are consolidated by the centralized nominated units as mentioned in Annexure A.
  - A temporary 3 (three) or 5 (five) year procurement plan published on the website along with the web link on which the said plan is published.
  - Publication details and minutes of the vendor meeting conducted with firms or representatives of the suppliers for developing the items, details of deliberations with the Department for Promotion of Industry and Internal Trade (“DPIIT”) or other relevant industrial bodies for identifying domestic manufacturers etc.
- The proposal for GTE must reach the Railway Board at least 3 (three) months before the start of the next procurement cycle. The applications and comments must be via the GTE portal and the centralized nominated unit will be required to upload the final proposal on the GTE portal.

#### STATE-OWNED NBFCs TO ISSUE LETTERS OF COMFORT FOR INFRASTRUCTURE PROJECTS

The MoF vide office memorandum dated June 10 (“Office Memorandum”) has modified its earlier order bearing number 12(3)-B(SD)/2022 dated March 31, 2022, to allow state-owned non-banking financial companies (“NBFCs”) to issue letters of comfort (“LOCs”) to banks for money tied-up in infrastructure projects. In an effort to increase budgetary management transparency, the MoF had earlier requested that other ministries and agencies refrain from issuing LOCs to any contracted organisation for carrying out projects on their behalf.

In light of the aforementioned and given that central public sector enterprises-non-banking financial company (“**CPSE-NBFCs**”) are significant players in the infrastructure sector, it has been decided that CPSE NBFCs may issue LOCs, according to the Office Memorandum.

LOCs can be issued under the following conditions:

- LOCs may only be issued if the lender is an NBFC that has been registered with the Reserve Bank of India.
- NBFC should be active in the sector of infrastructure.
- Banks shall only offer LOCs when a line of credit is opened for the delivery of products and services by international vendors.
- Under no circumstances should the Government of India become liable under the LOC.

# INTELLECTUAL PROPERTY RIGHTS



## **DELHI HIGH COURT DIRECTS TRADEMARK REGISTRY TO ADVERTISE AN APPLICATION, WHICH WAS REFUSED ON THE GROUND THAT INTERNET PRESENCE DOES NOT AMOUNT TO 'USE OF THE MARK'**

Reaffirming the law pertaining to admissibility of electronic records in legal proceedings, the Delhi High Court directed the Trademarks Registry to accept and advertise a trademark application, which was refused registration on the grounds inter alia that the Applicant has relied on internet extracts to claim use of the mark.

In the case of *Excitel Private Limited Vs. Registrar of Trademarks* (2022 SCC Online Del 2097), the Delhi High Court granted relief to the Trademark Applicant, who had appealed the order of Senior Examiner of Trademarks, under which the Appellant's trademark was refused registration. The Trademark was refused on the grounds that the Appellant's trademark was similar to earlier marks and that the Appellant did not file any cogent proof in support of use of the mark in the course of its trade and business.

Specifically in respect to the ground of internet printouts / extracts being inadmissible evidence, the Court observed that rejecting internet extract on the ground that it does not constitute primary evidence, would be an incorrect approach. The Court categorically observed that the Senior Examiner could easily check the genuineness of the internet extract by accessing the internet, during the hearing or may direct the Applicant(s) to file a certificate under Section 65B of the Indian Evidence Act, 1872.

**DSK View:** *Genuine internet extracts are cogent proof of use of a trademark. Brand owner(s) can rely on their online footprint, to prove use / prior use of the trademark(s). Pertinent to note here that while filing trademark application on use claim basis, it is advisable to file along with Section*

*65B Certificate in case internet printouts / extracts are filed in support of such a use claim.*

## **DELHI HIGH COURT AWARDS OVER 25 LACS AS COST AND DAMAGES IN AN EX-PARTE SUIT PROCEEDING**

The Delhi High Court came down heavily on a Defendant in a trademark infringement suit, which was filed in 2005, decreeing the suit, ex-parte and awarding costs and damages to the tune of INR 15.8 Lacs and INR 10 Lacs, respectively, to the Plaintiff.

In the matter *Mondelez India Foods Private Limited Vs. Neeraj Food Products* (2022 SCC Online Del 2199), the Court reaffirmed the test of average intelligence and imperfect recollection, to hold that the Defendant's adoption of a packaging / trade dress similar to Cadbury popular product, GEMS, can easily cause public confusion. The Court took note of the Plaintiff's GEMS family of marks as well as copyright registrations for the artistic work, GEMS BOND, and held that the Defendant's product bearing the mark, JAMES BOND / JAMEY BOND, is infringing upon the Plaintiff's trademark rights and also amounts to passing off.

The Court observed that while the Defendant had entered appearance in the matter in 2006 and then sporadically, until November 2011, when on account of Defendant's non-appearance, the matter was proceeded *ex-parte*. The Court opined the matter is *res Ipsa loquitur*, and hence decided all the issues in favor of the Plaintiff. The Court also awarded damages to the tune of INR 10 Lacs and actual legal costs to the tune of INR 15.8 Lacs, to the Plaintiffs, to be paid by the non-appearing Defendants within three months.

**DSK View:** *General overall impression of the marks/ packaging, plays equally important role in deciding infringement and passing off action, under Indian Trademark laws. The Courts take the approach of average intelligence*

*and imperfect recollection and compares broad and essential features of the marks, to decide a question of similarity between two marks. Adopting similar mark / packaging can give rise to plausible cause of action, resulting in injunctions as well as costs and damages. On procedural aspects, execution of an ex-parte decree can be extremely challenging in respect to of a fly-by-night Defendant.*

**THE OFFICE OF CONTROLLER GENERAL OF PATENT, DESIGNS & TRADEMARKS (CGPDTM) LAUNCHES SPECIAL DRIVE FOR DISPOSAL OF IP DISPUTES (OPPOSITIONS & RECTIFICATIONS), WHERE PARTIES HAVE EITHER SETTLED OR ARE WILLING TO SETTLE THE ISSUES, AMICABLY**

To commemorate 75<sup>th</sup> Anniversary of Indian Independence, the Office of CGPDTM has launched a special drive from August 2, 2022 to October 2, 2022, for disposal of IP disputes, wherein either the parties have already arrived at

settlement or wish to explore settlement possibilities, through alternate dispute resolution mechanism. The parties, who have arrived at settlement can use the [link](#) to upload supporting documents along with settlement request and withdrawal letter, for expeditious disposal of opposition / rectification proceedings.

**DSK View:** Such settlement / recordal drives can significantly reduce the burden on the Office of CGPDTM, also resulting in expeditious disposal of contested opposition / rectification proceedings.

*It is important to note here that the Office of CGPDTM has suggested parties to explore settlement through alternate mechanism. However, in lieu of suggested institutions / certified mediators or arbitrators, the parties may find difficulty in exploring settlement through such mechanism.*



## ARBITRATION PROCEDURE UNDER ARTICLE 25 OF THE DSU | AN ALTERNATIVE TO THE WTO DISPUTE SETTLEMENT PROCESS

The WTO Dispute Settlement process has been serving as a forum for enforcing and adjudicating upon the trade agreements among member nations since its establishment in 1995. Annex 2 of the Marrakesh Agreement Establishing the WTO comprises the Dispute Settlement Understanding ('DSU') which lays down the rules and procedures governing the settlement of disputes.

The process begins with a request for consultations between the parties (Article 4, DSU). If the consultations fail to resolve the dispute, the complainant can request the appointment of a WTO Panel (Article 6, DSU). After considering submissions from the parties, the panel issues its report and recommendations. A member can seek an appellate review of a panel report before the WTO Appellate Body which may uphold, modify or reverse the panel's report. (Article 16 and 17, DSU). The Dispute Settlement Body thereafter adopts the report including any modifications made to it by the Appellate Body.

The respondent Member is thereafter required to implement the necessary recommendations to comply with its WTO obligations. If there is any disagreement concerning implementation parties may resort to a compliance review before a compliance Panel (Article 21.5, DSU). In events of disagreements between parties on the compensation/retaliation proposed, parties may resort to Arbitration (Article 22.6, DSU).

However, the WTO dispute settlement process has been in limbo for the past few years as the US is preventing further appointment of members to the Appellate Body, rendering it non-functional. The US blockade has affected the Appellate Body's ability to function. In such a scenario,

recourse to arbitration under Article 25 of the DSU provides for an alternative means of dispute settlement under the DSU itself.

Article 25 of the DSU allows for expeditious arbitration within the WTO as an alternative means of dispute settlement. Article 25 DSU arbitration can be initiated at any stage of a dispute, including on appeal from a panel decision. The concerned parties mutually agree to follow their own procedures in the arbitration process. Once rendered, the arbitral award is binding on the concerned parties and there is no option to appeal its enforcement.

The parties must also notify all the WTO members about their decision to resort to arbitration. Even the final award is notified to all the other WTO members. Hence, the parties can agree to reach a settlement by way of WTO Appeal Arbitration under Article 25 of the DSU, despite the current paralysis of the WTO Appellate Body.

On 25<sup>th</sup> July 2022, the first WTO appeal arbitration award under Article 25 of the DSU came out in *Turkey — Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products* (DS583). Turkey had notified the WTO dispute settlement body as well as other WTO members about its decision to initiate arbitration under Article 25 against the findings of the WTO Panel which favored EU's stance against the certain measures by Turkey concerning pharmaceutical products. However, Turkey has lost all its claims before the arbitral tribunal as well.

By agreeing on these arbitration procedures, the EU and Turkey made sure that a fully functioning dispute settlement, including an appellate review, could continue at the WTO for this case, despite the paralysis of the Appellate Body.

**DSK View:** *Although the consensual means of arbitration under Article 25 are different from the adjudication process*

*of panel proceedings, Article 25 arbitration can function as an alternative to a panel procedure or the Appellate Body procedure. The procedure for such arbitration is subject to the mutual agreement of the parties concerned. The present findings are a glimmer of hope for Members who seek a fully functional dispute settlement mechanism in international trade.*

#### **FSSAI'S RECENT NOTIFICATION CONCERNING PACKAGING REQUIREMENTS FOR VEGAN FOODS**

The Food Safety and Standards Authority of India ('FSSAI') recently notified the Food Safety and Standards (Vegan Foods) Regulations, 2022 ('**Vegan Food Regulations**') dated 10<sup>th</sup> June, 2022. As per the text of the Notification, no person shall manufacture, pack, sell, offer for sale, market, distribute or import any food as *vegan food* unless they comply with its requirements.

'Vegan' food has been defined to include food or food ingredients that are neither products of animal origin nor have animal testing involved at any stage, including safety evaluation. Further, it must be ensured that no processing aids of animal origin have used at any stage, whether it is production or processing.

The Notification specifically requires all vegan foods to comply with its packaging requirements. Every package of vegan foods, after approval, has to carry the green logo specified in the notification which includes a green tick-mark as well as 'vegan' written underneath it, in addition to the food labelling requirements specified under the Food Safety and Standards (Labelling and Display) Regulations, 2020.

Furthermore, the seller of vegan foods should ensure that vegan food is displayed in a manner distinguishable from non-vegan food, either exclusively or as a part of the retail merchandise.

In addition to the above, it is pertinent to note that as per Regulation 5(3) of the Vegan Food Regulations, no vegan food products can be imported into India without a certificate issued by the recognized authorities of the exporting countries in a format specified by the Authority.

**DSK View:** *These labelling requirements are a welcome move to boost the consumer confidence in the rapidly growing vegan food industry. The move also protects against any concerns of misrepresentation or fraudulent claims with regard to vegan products and help consumers make an informed lifestyle choice.*

# MEDIA & ENTERTAINMENT



## **BOMBAY HIGH COURT GRANTS INTERIM INJUNCTION TO PRODUCERS OF THE SERIES “CRIMINAL JUSTICE” IN COPYRIGHT INFRINGEMENT MATTER**

In the matter filed by Applause Productions against one Krishna Anand, who was pretending to be the casting director of the web-series “Criminal Justice” and was using the Plaintiff’s artistic work, promotional material, creatives and still photographs of the actors, characters from the series (“Materials”), the Court has granted an ad-interim injunction in favour of the Petitioner. The Plaintiff submitted before the court that the Respondent was using the copyrighted Materials of the Plaintiff through his Instagram page and failed to comply with the legal notice issued by the Plaintiff calling out the Respondent to delete the alleged posts and cease-and-desist from using the copyrighted Materials. Further, the Plaintiff submitted that the “defendant committed the wrongful acts deliberately trying to create confusion and deception with malafide intention to lure innocent people”. The Court directed the Respondent to refrain from using or publishing, directly or indirectly, on social media, any Materials from the web-series.

## **BOMBAY HIGH COURT ALLOWS RELEASE OF “KHUDA HAFIZ 2”, AFTER CHANGES AS SUGGESTED BY CBFC WERE MADE TO THE FILM**

Earlier, a petition was filed by 12 Islamic organisations including All India Idarae Tahfuz-e-Husainiyat against the producers of the film “Khuda Hafiz Chapter II”, alleging that the film’s trailer has portrayed the Islamic practice of “Zajeer-ka-Matam (commonly known as Matam)” in a negative light. The Petitioners further sought to remove the audio-video content containing Matam in any form and not use Imam Husain’s name in the film in any manner. The Counsel for CBFC informed the Court that changes including but not limited to the deletion of word “Husain” from the film’s song, deletion of scenes portraying blade used for Zanjeer-ka-Matam is a negative light, etc. were part of the

suggested changes to the film’s producers and the same has already been complied with by them. However, the Court allowed the producers to keep the scene of Zanjeer-ka-Matam on the ground that it is an event happening in the film’s background and in consideration of the changes made by the producers, disposed of the petition and allowed the commercial release of the film as per schedule.

## **THE BILL AS PROPOSED BY THE MINISTRY OF INFORMATION & BROADCASTING, TO REGULATE DIGITAL MEDIA OUTLETS, HAS BEEN LISTED FOR MONSOON SESSION**

The Press and Registration of Periodicals Bill, 2020 has been listed for the upcoming monsoon session of the Lok Sabha. It proposes to regulate digital media outlets, holding them liable for any violations that apply to print media. Currently, the digital media platforms are not regulated by the Union ministry of information & broadcasting (I&B), but they can voluntarily register with the ministry under the IT Rules issued in 2021. However, as per the new Bill, publishers have to register with the Press Registrar General and all entities privy to the matter at hand. This Bill seeks to replace the Press and Registration of Books (PRB) Act, 1867 by decriminalising it, while keeping procedures from the extant Act simplified for medium to small publishers. The new guidelines will require digital platforms to appoint grievance redressal officers for OTT and digital news media platforms. They must also form a inter-ministerial committee as part of a three-tier mechanism for said grievance redressal, and give the I&B ministry authorized power over content presented online. The Bill also proposes to eliminate existing procedure of furnishing declarations by publishers and printers before the District Magistrate with the authentication and enables the central and state governments to frame appropriate rules that regulate the conditions and criteria for issuing government advertisements in newspapers, and other facilities for newspapers.

## **DELHI HIGH COURT CLOSES SUIT BY HOTSTAR AGAINST UNAUTHORIZED TELECASTING OF 'THE BIG BULL'**

Earlier, Novi Digital Entertainment Pvt. Ltd., that runs the streaming platform Hotstar, filed a suit against rogue websites that allegedly telecasted the film 'The Big Bull', of which they had exclusive digital and theatrical rights, even before its release last year. Being the owners of the theatrical, digital, and other ancillary rights, an injunction was sought for blocking these unauthorized websites, and the Ministry of Electronics and Information Technology was invited to issue directions, as deemed appropriate by them, to internet service providers in order to ensure that rogue websites and illegal streaming can be blocked. The Delhi High Court disposed of the suit, opining that the nature of the suit was to protect the Plaintiff's investment in the production and prevent any unauthorised streaming of the same and the purpose has been duly complied with. All the identified rogue websites and their domain names have been blocked and de-activated, respectively.

## **DELHI HIGH COURT HELD THAT THE OWNERS OF A COPYRIGHT IN A CINEMATOGRAPHIC WORK WILL HAVE THE RIGHT TO BOTH SUB-TITLE AND DUB THE WORK**

The Court recently vacated the *ex-parte* injunction order passed against M/s. Sithara Entertainment which barred the Respondents from releasing the Telegu remake "Bheema Nayak", of the original Malayalam film "Ayyappanum Koshiyum", in Hindi language. Earlier, JA Entertainment Pvt. Ltd. had filed a suit against M/s. Sithara Entertainment claiming that they are the exclusive owners of the Hindi Remake Rights, the right to dub the Malayalam film and the Hindi remake in any languages and the right to subtitle the film in any language for any purpose. In lieu of the same, the Court had granted *ex-parte* ad-interim injunction in favour of the Plaintiff. The issues before the Court included whether the dubbing of the Telugu film in Hindi by the Defendants constitutes infringement of Plaintiff's rights under the Copyright Act. The Court opined that a joint reading of the Sections 17, 2(d)(v) and 2(uu) of the Act will hold that the author of a work is the first owner of the copyright and in relation to a cinematograph film, the producer is the author, and the first owner. Further, Section 14(d) provides that the author would have the right to communicate the film to the public. While elaborating upon the phrase 'communication to the public', the Court relied upon the judgement of *Thiagarajan Kumararaja v. Capital Film Works (India) Pvt. Ltd. and Another*, while holding that "dubbing would fall within the ambit of the expression communicating to the public". The Court found merit in the Defendant's contention that the ownership of the copyright in the Telugu film vests in the Defendant and basis the aforesaid reasons the Court vacated the earlier order while holding "...by the operation of law, Defendant No. 1 in its own right as a copyright owner has a right to dub the Telugu film in any language including

*Hindi and Plaintiff cannot assert any right to restrain Defendant No. 1 from dubbing the Telugu film in Hindi".*

## **ADVERTISING CAMPAIGNS CAN BE PROTECTED UNDER INTELLECTUAL PROPERTY IF IT HAS BECOME DISTINCTIVE**

The Delhi High Court in a suit filed by Bright Lifecare Pvt. Ltd. against Vini Cosmetics Pvt. Ltd. & Anr. observed that an advertising campaign can be granted protection in law if "it signifies the source and has become distinctive of the party", however the threshold of distinctiveness would be quite high in such a case. The Plaintiff had claimed that the alleged used of the mark/tagline "Ziddi Perfume" had infringed the trademark right of the Plaintiff along with the copyright involved in the cinematograph works. While deliberating upon the question before the court that "Can an advertising campaign and its various elements be protected under intellectual property law? If so, in what manner?", the Court observed that a mere idea behind the commercial is not protectable however, the elements of the expression incorporated in the commercial can be protected under law. The Court was of the view that the said commercials of the Defendants were indicative and similar to the Plaintiff's campaign and were liable to be restrained. The Court directed the Defendants to pull down the commercials while holding that the Defendants shall be free to modify the said commercials, remove the objectionable frames and re-launch the same as long as the distinction is clear and visible.

## **DELHI HIGH COURT HELD THAT THE ORIGINAL PRODUCER, LYRICIST AND COMPOSER OF A MUSIC ALBUM IS ENTITLED TO A DECREE OF DECLARATION TO THAT EFFECT**

In a suit filed by TV music composer Abhishek Ray against Showtimes Events (India) Pvt. Ltd., the Delhi High Court has granted a decree of permanent injunction in favour of the Plaintiff. The Plaintiff is the original composer, lyricist, producer and author of the album "Kamasutra – Moods of Love". The Defendants had approached the Plaintiff to produce an international musical incorporating music compositions from the Plaintiff's album and agreed to pay a sum of Rs. 30 lakhs for the same. A promotional video was created consisting of the Plaintiff's composition with the understanding that the same would be used to promote the album and the musical as and when it gets ready. Out of the agreed amount, Rs. 10 lakhs were already paid to the Plaintiff. However, the Plaintiff alleged that he had only assigned to the Defendants, "the right to use "the musical compositions for the proposed musical. While deciding the matter, the Court held that "insofar as the promotional video was concerned, partial rights may be owned by Defendants. However, they do not have assignment of rights of the underlying works in the track". The Court directed that the Plaintiff shall be entitled to a decree of declaration and the Defendants shall be restrained from incorporating the composition, underlying works, sound recordings of the Plaintiff in any videos/musicals. Further, the Court directed

that the amount of Rs. 10 lakhs to be forfeited by the Plaintiff.

**COMEDIAN LEWIS BLACK SUES PANDORA FOR \$10.2 MILLION IN COPYRIGHT INFRINGEMENT SUIT**

Pandora, a streaming platform, has been accused of neglecting to obtain appropriate copyright licenses to stream artists' works and Lewis Black has alleged that Pandora failed to comply with their financial filings to the Security and Exchange Commission from 2011 until 2017 and was at a major risk of losing its comedy content due to not obtaining appropriate licenses to stream the works. Black mentions in his complaint that Pandora merely intends to remain competitive even if it demands infringing intellectual

property, and was simply planning to deal with the consequences later. The streaming platform has allegedly illegally streamed 68 of Black's works. This hints at the larger and rather escalating feud between streaming sites and comedians regarding the latter being paid for their writing identical to the way musicians are entitled to royalties for their compositions. Pandora, on the other hand, contends that it need not pay for every copyright individually. There is a consolidation of competing rights that fix the price of the only license available for those rights. Streaming platforms pay for the recording, and not the composition itself, relieving Pandora from that obligation. The trial is ongoing, and further updates shall be issued accordingly.

## EXTENSION OF TIMELINE TO PAYMENT AGGREGATORS

The RBI had issued the 'Guidelines on Regulation of Payment Aggregators and Payment Gateways' vide circulars DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 and CO.DPSS.POLC.No.S33/02-14-008/2020-2021 dated March 31, 2021 as amended and supplemented from time to time ("**PA Guidelines**"). As per the terms of the PA Guidelines, online non-bank Payment Aggregators ("**PAs**"), existing as on March 17, 2020, were required to apply to RBI by September 30, 2021, to obtain authorisation under the Payment and Settlement Systems Act, 2007 ("**PSS Act**").

However, several applications were rejected by the RBI due to non-compliance with the eligibility criteria, including the minimum net worth. Rejection of applications meant that such entities ("**Applicants**") were also required to discontinue their operations within a period of 6 (six) months from the date of return of application. RBI vide circular no. RBI/2022-23/94 CO.DPSS.POLC.No.S-761/02-14-008/2022-23 dated July 28, 2022, has offered another opportunity to Applicants existing as on March 17, 2020 to apply to the RBI by September 30, 2022, provided they have a net worth of INR 15 Crores (rupees fifteen crores) March 31, 2022.

Such entities shall be permitted to continue their operations till they receive communication from the RBI, regarding the fate of their application. The timeline of March 31, 2023, for achieving the net worth of INR 25 Crores (rupees twenty-five crores) continues to remain.

**DSK View:** *Ceasing operations may lead to disruption in payment systems. The payment ecosystems has recently begun to recover post disruption caused due to the COVID-19 pandemic. By extending the timelines and permitting Applicants to continue until the fate of their application is communicated, RBI has recognised the importance of payment aggregators in the payment ecosystem and also taken a step to ensure smooth functioning of the payment ecosystem.*

## RESTRICTION ON STORAGE OF ACTUAL CARD DATA

In terms of the PA Guidelines as well as RBI's circular on 'Tokenisation – Card Transactions: Permitting Card-on-File Tokenisation (CoFT) Services' and other circulars / guidelines issued in relation thereto from time to time, the RBI has, with effect from October 1, 2022, restricted entities operating in the card transaction / payment chain (other than the card issuers and / or card networks), from storing Card-on-file ("**CoF**") data. The RBI has also directed such entities to purge any such data stored previously.

In this connection, in order to smoothen the transition to an alternate system i.e. a system where cardholders decide to enter the card details manually at the time of undertaking the transaction ("**guest checkout transactions**"), the RBI has, vide circular dated July 28, 2022, bearing reference number RBI/2022-23/95 CO.DPSS.POLC.No.S-760/02-14-003/2022-23 ("**CoF Circular**"), permitted the following:

- (i) the merchant or its payment aggregator involved in settlement of such transactions, can save the CoF data for a maximum period of T+4 days (where "T" is transaction date) or till the settlement date, whichever is earlier. *The data is permitted to be used only for settlement of transactions and must be purged thereafter.*
- (ii) acquiring banks can continue to store CoF data until January 31, 2023, required for handling other post-transaction activities.

**DSK View:** *Pursuant to the PA Guidelines, as amended from time to time, the RBI has stipulated guidelines to regulate the activities of payment aggregators and payment gateways. One of the restrictions included barring such entities from storing CoF data, as a security measure to prevent data theft and frauds resulting therefrom. While it is important to take measures to protect the data of cardholders to avoid fraudulent transactions including misappropriation of funds,*

etc. it is also necessary to understand the practical challenges faced by stakeholders to implement the measures stipulated by RBI. The CoF Circular seems to be a move taken by the RBI, in light of the practical issues faced by stakeholders under the extant regulatory requirements stipulated by RBI in this regard. While the RBI has not modified the timeline for compliance, it has issued interim measures to ensure the transition process is not undertaken in a knee-jerk manner and that all industry participants are well prepared to handle post-transaction activities basis guest checkout transactions.

#### **RELAXATIONS ON INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (“FPI”) IN DEBT**

The RBI has, vide circular dated July 07, 2022, bearing reference number RBI/2022-23/77 A.P. (DIR Series) Circular No. 07 (“Circular”), issued directions providing relaxations on debt investments by FPI, some of which are listed below:

- (i) Investments by FPIs in government securities and corporate bonds made between July 08, 2022, and October 31, 2022, (both dates included) are now exempt from the limits on short term investments till maturity or sale of such investments. Currently, such investments cannot exceed 30% (thirty percent) of the total investment of the relevant FPI in any category as per existing circulars issued by the RBI in this regard.
- (ii) During the period July 08, 2022, and October 31, 2022 (both dates included), FPIs may invest in commercial papers and non-convertible debentures whose original maturity is one year. Such investments shall be exempted from the limit on short term investments till maturity or sale of such instruments. Presently, FPIs are permitted to invest in corporate bonds with minimum residual maturity of above 1 (one) year subject to certain limits as per existing circulars issued by the RBI in this connection.

**DSK View:** The Circular is expected to further diversify and expand the sources of forex funding, mitigate volatility, and

dampen global spillovers. However, the real impact of such relaxations will be revealed in due course of time given the prevailing international market conditions which are expected to have a spillover effect in Indian markets as well.

#### **RBI ANNOUNCES COMPLETION OF THE SECOND COHORT UNDER REGULATORY SANDBOX**

In order to encourage and ensure regulated and orderly growth of the FinTech ecosystem in India, the Reserve Bank of India (“RBI”) in August 2019, introduced its own regulatory sandbox ecosystem (“Regulatory Sandbox”).

Vide press release bearing reference number 2022-2023/559 dated July 19, 2022, the RBI announced completion of the ‘test phase’ for the second cohort which consisted of 4 (four) entities providing cross border payment platforms, platform to route inward cross-border remittance and blockchain-based cross-border payment systems. RBI approved their products under the Regulatory Sandbox citing their viability within the boundary conditions defined during testing under the Regulatory Sandbox.

These entities can now provide their cross-border payment solutions to regulated entities such as banks and non-banking financial companies, subject to compliance with applicable regulatory requirements.

**DSK View:** India is one of the few countries that has its own regulatory sandbox ecosystem. Within this Regulatory Sandbox, RBI permits certain eligible entities to live test their innovative products/services in a controlled environment. The goal is to collaborate with innovators, financial service providers and end users (i.e., customers) to ensure that Indian consumers receive the best financial services. The Regulatory Sandbox was established basis the recommendations of the ‘Working Group on FinTech and Digital Banking,’ set up by Financial Stability and Development Council - Sub Committee (FSDC-SC). ‘Retail Payments’ was the theme of the first group of eligible entities.



### MAHARASHTRA RERA INTRODUCES STANDARD ALLOTMENT LETTER TO STREAMLINE THE REGISTRATION PROCESS FOR REAL ESTATE PROJECTS

In order to ensure uniformity as well as minimize buyer-seller disputes, the Maharashtra Real Estate Regulatory Authority (“MahaRERA”) has introduced standardized allotment letters for developers. The model allotment letter prescribes a minimum period during which the booking can be cancelled as well as an upper limit on the percentage of amount to be deducted in case there is a need to cancel the booking. This new prescription iron various hurdles caused due to the previous absence of the cost of a flat in an allotment letter as well as other important requirements which are now mandatory to include therein. Developers will have to upload the amended allotment letter at the time of registration of the real estate projects. Non-compliance with the process will lead to rejection of the registration application along with a fine up to 5% of the project cost on the developers.

### ORAL ARRANGEMENTS TO MODIFY THE TERMS AND CONDITIONS OF A WRITTEN CONTRACT DECLARED INVALID BY ASSAM RERA

While deciding the appeal filed by a builder in the case of *M/s. Arunodoi Apartments Pvt. Ltd. & two others vs. Smt. Lalita Jain*, the Assam Real Estate Appellate Authority (“Authority”) stated that the terms and conditions of a written contract cannot be modified by any oral contract and no evidence can be allowed to substantiate the alleged oral arrangement. Dismissing the appeal, the Authority directed the builder to execute the conveyance/sale deed and to give possession of the flat to the buyer within 6 weeks on the grounds that aggrieved party cannot be left without a legal remedy merely on ground that the contract was not maintainable and barred by the provisions of the Limitation Act, 1963.

The buyer and the builder, in the present case, had signed a written agreement for purchase of a unit in the GNB Complex for Rs. 15,00,000/-. However, the builder demanded Rs. 32,91,600/- for the apartment, alleging an oral understanding with the buyer.

### MAHARASHTRA RERA CLARIFIES THAT DEMONETIZATION DOES NOT FALL WITHIN THE AMBIT OF “FORCE MAJEURE” EVENT

MahaRERA has penalized a city-based developer for delay in handing over possession of a project on the ground that the demonetization scheme could not be considered as a “force majeure” event. Force majeure, under the provisions of the Real Estate (Regulation and Development) Act, 2016 (“RERA Act”), includes a situation where natural disasters such as cyclone, natural fire/wildfire, flood, war, earthquake, tsunami, drought, or any other nature-caused calamity, which affect the regular operation of a real estate project. However, demonetization does not fall within its ambit.

The complainants in the present case stated that the developer had delayed handing over the possession of the flat despite the 6 months’ grace period and claimed demonetization as a cause of delay. The MahaRERA was of the view that the promoters were obligated to hand over the possession of the property after securing completion certificate from the competent planning authority on or before the agreed date. However, the promoters failed to do so as per the agreement and claimed demonetization as a reason of delay, which could not become a rescue to the promoters from legal liabilities.

### DELHI RERA CHIEF CALLS UPON DDA TO REGISTER ALL REAL ESTATE PROJECTS IN COMPLIANCE WITH SECTION 3 OF RERA ACT

The Delhi RERA Chairman, Mr. Anand Kumar, speaking at an interactive session organized by the CII-Delhi State Sub-Committee on Real Estate stated that it is a mandate for the

Delhi Development Authority (“DDA”) to register all its real estate projects with the regulators so as to protect the interest of the buyers. According to the average processing time, a real estate project would be approved by the Delhi RERA within 15 days of submission if the documentation is complete. Non-complying developers may face action under Sections 59 and 61 of the RERA Act which prescribe punishment as well as fine for the same.

### **BIHAR RERA LAUNCHES REWARD SCHEME**

In a bid to check unlawful activities of unscrupulous promoters/builders through active participation of citizens, Bihar RERA is launching a reward scheme under which those providing authentic information about violation of the RERA Act would be rewarded by Bihar RERA. The scheme entails seeking information about those incomplete or ongoing real estate projects which have not been registered with Bihar RERA.

According to the scheme, the informant will have to provide the details of such projects including name of the promoter/builder, address and contact details, details of the site where project is situated along with some photographs of the project site. The scheme has been launched to check unlawful activities under Section 3 of the RERA Act.

### **MAHARERA DIRECTS DEVELOPERS TO UPDATE PROJECT PROGRESS REGULARLY**

In an effort to further bring in more transparency between realtors and the public, the MahaRERA directed real estate developers to update project progress in a timely manner, file updates about their ongoing projects on a quarterly, half-yearly and annual basis. In addition, the regulator plans to introduce the ‘Financial Quarter Based Project Progress Reporting System’ for all real estate projects.

The realtor will be required to provide information on quarterly and annual updates, withdrawals from designated accounts, update on completion of project, occupancy certificate and conveyances. Further, promoters will have to keep project stakeholders informed about incremental changes in building plan approvals, physical progress of the project, and booking status for plots, apartments and units.

### **PROMOTERS GIVEN EXTRA TIME BY UP RERA TO FINISH THE COVID-AFFECTED GHAZIABAD HOUSING PROJECT**

The Uttar Pradesh RERA has extended the completion time till December 2023 of a pandemic-hit group housing project in Ghaziabad which was expected to be ready in 2022. The authorities observed that although the construction on Utopia Estate had begun in April 2016, the promoter, M/s Sai

Adhiraj Land & Promoters Pvt Ltd., was unable to finish it by the deadline of March 28, 2022. Further, as per the site inspection report, the overall physical progress of the project is only 40% at present.

The Uttar Pradesh RERA considered the request of the project’s promoter and the association of allottees and decided to extend its support for the project’s completion in accordance with Section 8 of the RERA Act read with Sections 6, 7 and 37 thereof, and authorized the promoter to undertake the completion of the remaining development and construction work of the project in a time-bound manner and complete it by December 2023.

### **GUJARAT HIGH COURT STAYS 15-DAY CIVIL ARREST OF A BUILDER**

An order by the Gujarat RERA to place a builder in civil detention for 15 days for violating the authority’s instructions to complete a bungalow development without selling any units has been temporarily stayed by the Hon’ble Gujarat High Court. Further, the builder has been ordered to deposit Rs. 50,00,000/- with the regulatory authority.

Rameshwar Developers had introduced a project called Kedarnath Bungalows, and certain homebuyers and other complainants purchased 7 house and paid earnest deposits. The purchasers moved to RERA in 2019 after the scheme remained incomplete. The developers were given a 6-month deadline by the authority to finish the remaining work and turn over ownership of the bungalows to the buyers and further ordered not to sell the remaining units which were sold to some other party. This led RERA to punish the builder for the breach of its order which is now stayed by the Hon’ble Gujarat High Court.

### **HARYANA RERA ASKS 17 BUILDERS TO REFUND RS. 50 CRORE TO HOMEBUYERS**

The Haryana Real Estate Regulatory Authority (“HRERA”) has ordered 17 builders to return a total of Rs. 50 crore to homebuyers of various ongoing projects due to non-delivery of housing units on time. These builders have been ordered by HRERA on numerous occasions to repay the money paid by homebuyers together with interest at a 9.70% rate within 90 days.

After hearing from both parties and finding the builders accountable for failing to deliver units in accordance with builder-buyer agreements, the authority has mandated that deposited funds be returned to homebuyers.



## **NPCI RELEASES GUIDELINES ON CAPTURING CUSTOMER LOCATION ON UPI APPS**

The National Payments Corporation of India (“NPCI”), by way of a circular dated July 5, 2022 (accessible [here](#)), has instructed all United Payment Interface (“UPI”) members to seek consent from users before collecting their location/geographical data. Such instructions are applicable in all instances wherein the user is a person/ individual who is initiating domestic transactions only. The guidelines further clarify that not only would all users have the right to revoke such consent (once given), but also that UPI Apps (such as Google Pay, and PhonePe, amongst others) cannot deny services to users who do not consent (or revoke consent) to such data sharing. All UPI members are required to ensure compliance with the guidelines by or before December 1, 2022.

## **GOVERNMENT ESTABLISHES A COMMITTEE TO DEVELOP FRAMEWORK ON ‘RIGHT TO REPAIR’**

A committee chaired by Smt. Nidhi Khare, Additional Secretary (Ministry of Consumer Affairs) has been set up to develop a framework on ‘right to repair’ in India with the aim to empower consumers and product buyers in the local market, harmonize trade between the original equipment manufacturers and the third-party buyers and sellers, emphasize on developing sustainable consumption of products and reduction in e-waste. The following sectors have been recognized by the committee for implementing the ‘right to repair’ framework: Farming equipment, mobile phones/ tablets, consumer durables and automobiles/automobile equipment.

Read more [here](#).

## **DOT PUBLISHES CONSULTATION PAPER ON NEED FOR NEW LEGAL FRAMEWORK TO GOVERN TELECOM SECTOR**

Keeping in view the advancement in the telecommunication sector, the Department of Telecommunications (DoT), on July 23, 2022, published the consultation paper titled ‘Need for a new legal framework governing Telecommunication in India’ (accessible [here](#)) which emphasizes on introduction of a new regulation to consolidate the existing laws governing telecommunication sector, while keeping in view global best practices. The consultation paper highlights *inter alia* the importance of simplifying the regulatory framework for the telecommunication sector, recommends directives around spectrum utilization, and obtaining of ‘Right of Way’ in a uniform, non-discriminatory manner for establishment of telecommunication infrastructure. The DoT has sought views and comments from relevant stakeholders on the consultation paper.

## **RBI ISSUES CIRCULAR ON RESTRICTION ON STORAGE OF ACTUAL CARD DATA**

On July 28, 2022, the Reserve Bank of India while referring to its previous circulars on “Restriction on Storage of Actual Card Data” clarified that there will be no change in the effective date of implementation of the requirements (notification accessible [here](#)). This essentially means that all entities in the card transaction / payment chain (except card issuers and card networks) are required to purge all ‘Card-on-File’ (CoF) data before October 1, 2022. The RBI has also issued certain interim measures in respect of storage of CoF data for ease of transition to an alternate system in respect of transactions pursuant to which merchants or their payment aggregators can save the CoF data for a maximum period of T+4 days or till the settlement date, whichever is earlier.

## **RBI EXTENDS TIMELINE FOR SUBMISSION OF AUTHORIZATION BY PAYMENT AGGREGATORS**

The RBI vide its notification dated July 28, 2022 (accessible [here](#)), has extended the timelines for seeking authorization by all non-bank payment aggregators till September 30,

2022. However, such non-bank Pas are required to have a net worth of ₹15 crore as on March 31, 2022. The extension has been granted keeping in view the COVID-19 pandemic and to ensure smooth functioning of the payment ecosystem.

# WHITE COLLAR CRIME

## THE RIGOURS OF SECTION 37 OF THE NDPS ACT WILL NOT APPLY IN CASES WHERE APPLICABILITY OF SECTION 27A OF THE NDPS ACT IS QUESTIONABLE

The Supreme Court in the case of **State of West Bengal V. Rakesh Singh @ Rakesh Kumar Singh** (SLP (CrI.) No. 9470 of 2021) observed that the rigours of Section 37 NDPS Act will not apply in a case where the applicability of Section 27A NDPS Act is seriously questioned. In the present case the quantity in question was of intermediate quantity. State of West Bengal had challenged the order of bail granted to the Respondent, by the Calcutta High Court. The Respondent contended that only intermediate quantity of contraband was involved and hence, Section 27A of the NDPS Act was not attracted due to lack of *prima facie* evidence concerning his involvement. It was further stated that he had no antecedents dealing in narcotics and there was no recovery of contraband from his possession. Also, nothing was placed on record by the State to suggest that Respondent was likely to commit an offence under the NDPS Act while he was on bail. Considering the facts of the case and other material evidence, the Supreme Court concluded that the High Court correctly determined that Section 27A of the NDPS Act is not applicable in this case and upheld the order passed by the High Court.

**DSK View:** *The court while upholding the decision of the High Court has reiterated that there should be cogent reasons to cancel a bail.*

## BAIL CONDITIONS SHOULD BE PROPORTIONATE

The Supreme Court in the case of **Mohd. Zubair vs. State of Delhi**, (Writ Petition (Criminal) No 279 of 2022), observed that bail restrictions should strike a balance between the accused's freedom of speech and expression. The Court while granting an interim bail to the Petitioner held that, merely because the complaints filed against the Petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from

tweeting cannot be made and will have to approach the appropriate court for his rights and remedies. The court further clarified that passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession.

**DSK View:** *By this order the court has maintained a balance between accused's freedom of speech and expression and upholding the criminal justice, by observing that there cannot be blanket stay on the Petitioner from posting on social media, considering the profession in which he is.*

## WHILE EXERCISING POWER UNDER SECTION 482 OF THE CRPC, THE HIGH COURT MAY RECALL A JUDGEMENT PASSED WITHOUT HEARING A PERSON WHO HAS BEEN AFFECTED BY IT

The Supreme Court in the case of **Daxaben V. State of Gujarat** (SCC OnLine SC 936) observed that a High Court has inherent power under Section 482 of CrPC to recall a judgment/order which was passed without hearing a person prejudicially affected by it. The Court observed that the Gujarat High Court had quashed the FIR filed under Section 306 of the IPC against the accused, in view of settlement between the accused and the complainant. The deceased's wife filed an application seeking to recall the decision, which was dismissed by the High Court, only on the ground that the original informant/complainant, a cousin brother and an employee of the deceased had been heard. The Court held that, where a victim and offender have compromised matters that are civil and personal in nature, the High Court has authority under Section 482 of the CrPC, to quash the criminal proceedings, whereas the power to quash an FIR/complaint or criminal proceedings upon compromise would depend on the facts and circumstances of each case. The court while allowing the appeals further held that, abetment of suicide is serious crime which falls within the ambit of crime against the society and thus, the FIR under

Section 306 of IPC cannot be quashed on the basis of any financial settlement with the informant.

**DSK View:** *In this case the court reiterated that exercise of power under Section 482 of the CrPC, the Court is not required to examine the correctness of the allegation in the complaint, except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.*

#### **THE APEX COURT EXPRESSED ITS SERIOUS CONCERN FOR ARRESTING A PERSON DESPITE AN INTERIM PROTECTION**

The Supreme Court in the case of **Pandit V. The State of Maharashtra** (SLP (Crl.) No. 3573/2021) noticed that despite a specific interim order was passed in favour of the Petitioner, that he shall not be arrested, the prosecution obtained an order of issuing non-bailable warrants and when he appeared before the Latur Magistrate he was arrested. The court while releasing the petitioner forthwith directed the Magistrate to submit an requisite explanation as to why he ordered to arrest the Petitioner despite an interim protection was granted to him.

#### **PROSECUTION IS ENTITLED TO SEEK FOR FURTHER INVESTIGATION EVEN AFTER COMMENCEMENT OF TRIAL**

In the case of **Ganesan V. SHO and Another** (Crl.R.C. No. 654 of 2022), the Madras High Court observed that Section 173(8) of CrPC does not place any fetters on police to investigate a case, even after even after the commencement of the trial. The court while setting aside the order of judicial magistrate thereby rejecting the application for further investigation observed that, bringing the truth is primordial purpose of investigation and held that the applications filed by prosecution for further investigations are maintainable even after commencement of trial.

**DSK View:** *The High Court while allowing the application for further investigation had rightly relied on the case of Vinubhai Haribhai Malaviya V. the State of Gujarat rightly which held that the purpose of further investigation is that any person who has wrongly been prosecuted cannot suffer the same and any person, who was actually committed the offence, should not escape punishment.*



## DSK Legal Knowledge Center

Contact Details for any queries: [knowledge.management@dsklegal.com](mailto:knowledge.management@dsklegal.com)

### Mumbai

1203, One World Centre, Tower 2B,  
Floor 12B, 841, Senapati Bapat Marg,  
Elphinstone Road,  
Mumbai - 400013.  
Tel +91 22 6658 8000

### Mumbai

C-16, Dhanraj Mahal,  
3rd Floor,  
Apollo Bunder, Colaba,  
Mumbai - 400001.  
Tel +91 22 6152 6000

### Bengaluru

206 & 207, 2nd Floor,  
HM Geneva House,  
14, Cunningham Road,  
Bengaluru - 560052.  
Tel +91 80 6836 1111

### New Delhi

Max House, Level 5,  
Okhla Industrial Area, Phase 3,  
New Delhi - 110020.  
Tel +91 11 4661 6666

### Pune

301, 3rd Floor, Power Point, Lane 6,  
North Main Road, Koregaon Park,  
Pune - 411001.  
Tel +91 20 6763 7900

### Hyderabad

3rd floor, SAHA complex,  
8-2-619/1, Road No.11,  
Banjara Hills,  
Hyderabad-500034.

✉ [contactus@dsklegal.com](mailto:contactus@dsklegal.com)

**in** DSK Legal

🌐 [www.dsklegal.com](http://www.dsklegal.com)

## Disclaimer

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