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NEWSLETTER

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TABLE OF CONTENTS

AMENDMENTS TO GUIDELINES FOR PREFERENTIAL ISSUE AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED REIT ISSUED ON NOVEMBER 27, 2019 ("REIT GUIDELINES 2019")

SEBI vide circular dated July 5, 2023[1] amended the REIT Guidelines 2019. SEBI has provided a new criterial to allot pricing of units whereby institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date. The circular further states that REIT are permitted to offer a discount of not more than 5% (five percent) on the price so calculated, subject to a resolution approval of unitholders as per the REIT Guidelines 2019. The circular states that "relevant date" for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.

The circular came into force with immediate effect, i.e., July 5, 2023.

AMENDMENTS TO GUIDELINES FOR PREFERENTIAL ISSUE AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED INVIT ISSUED ON NOVEMBER 27, 2019 (INVIT GUIDELINES 2019)

SEBI vide circular dated July 5, 2023[2] amended the InvIT Guidelines 2019. SEBI has provided a new criterial to allot pricing of units whereby institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date. InvITs are permitted to offer a discount of not more than 5% (five percent) on the price so calculated, subject to a resolution approval of unitholders as per the InvIT Guidelines 2019. It is further provided that "relevant date" for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.

The circular came into force with immediate effect, i.e., July 5, 2023.

ROLES AND RESPONSIBILITIES OF TRUSTEES AND BOARD OF DIRECTORS ("BOD") OF ASSET MANAGEMENT COMPANIES ("AMCS") OF MUTUAL FUNDS ("MFS")

SEBI vide circular dated July 7, 2023[3] specified the "core responsibilities" for the Trustees of a Mutual Fund. Following are the highlights of the circular:

A. Core Responsibilities

- In terms of Regulation 18(25)(C) of Securities and Exchange Board of India (Mutual Funds) Regulations 1996 **("MF Regulations")**, trustees are directed to exercise independent due diligence on the following "core responsibilities" with respect to AMCs:
    - ensuring that fair fees and expenses are charged;
    - reviewing the performance of AMC in its schemes vis-à-vis performance of peers or appropriate benchmarks;
    - ensuring that they have adequate systems to prevent mis-selling to increase assets under their management and valuation of the AMCs;
    - ensuring that their operations are not unduly influenced by its Sponsor, associates or other stakeholders;

[1] SEBI/HO/DDHS-PoD-2/P/CIR/2023/114
[2] SEBI/HO/DDHS-PoD-2/P/CIR/2023/113
[3] SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/117

- ensuring that undue/unfair advantage is not given to any of its associates/group entities;
- address conflicts of interest between the shareholders/stakeholders/associates of the AMCs and unitholders;
- ensure that adequate systems exist to prevent misconduct including misuse of information by the employees.

- Trustees shall also:
  - ensure that AMCs' have system level checks to prevent fraudulent transactions and must review the same periodically.
  - independently evaluate the compliance by AMCs vis-à-vis the identified key areas.
  - the suitable mechanisms/systems are put in place by the AMCs to generate system-based information/data/reports for evaluation and effective due diligence, and that the AMCs periodically review such systems.
  - require the AMCs to furnish, in a true and fair manner, reports and alerts based on pre-decided parameters, for taking appropriate action.
  - periodically review the steps taken by AMCs for folios which do not contain all the Know Your Client **("KYC")** attributes and ensure that the AMCs take remedial steps necessary for updating the KYC attributes especially pertaining to bank details, PAN, mobile phone number.

- AMCs shall submit exception reports/analytical information to the Trustees, that add value to the process of exercising their oversight role. The Trustees shall evaluate the nature and adequacy of the alerts and the manner of dealing with such alerts by AMCs.

B. Third Party Assurances

- For responsibilities other than core responsibilities mentioned above, the Trustees may rely on the due diligence carried out by professional firms such as audit firms, law firms enabling them to focus on core responsibilities. These responsibilities, other than "core responsibilities" include overseeing that AMCs manage the operations of MF schemes independently from other activities; discharging their role as a custodian of assets on behalf of unitholders in accordance with MF Regulations and the trust deed; reviewing the net worth of AMC for compliance purposes; and ensuring that MFs transactions are in accordance with the trust deed.

C. Provisions related to Unit Holder Protection Committee ("UHPC")

- The UHPC as constituted under Regulation 25(24) of MF Regulations shall be responsible for protecting the interest of unit holders of MF schemes vis-a-vis all products and services provided by AMCs; ensuring adoption of sound and healthy market practices in terms of investments, sales, marketing, advertisement, management of conflict of interests, redressal of unit holder's grievances, investor awareness; and compliance with laws and regulations.
- The UHPC has been given the mandate to review various compliance issues relating to protect the interests of the unit holders and to keep the unit holders well informed about mutual fund products, investor charter and compliant handling procedures.
- The UHPC shall report its findings to the BoD of the AMC and recommend actions for adequate investor protection and its monitoring. The detailed guidelines regarding UHPC are specified at Annexure 1 of the circular.

D. Provisions related to Trustee Company

- In case a company is appointed as the Trustee of a MF as per Regulation 16(7) of the MF Regulations, the Chairperson of the BoD of that Trustee company shall be an independent director. Trustee company that has already been appointed as the Trustee of a MF, it shall ensure compliance with this requirement within 6 (six) months from the date of this circular coming into force.
- As per Regulation 25A of the MF Regulations, the BoD of the Trustee Company shall meet at least once a year to discuss the issues concerning the MF, if any, and future course of action, wherever required.

This Circular shall come into force with effect from January 1, 2024.

BRSR CORE – FRAMEWORK FOR ASSURANCE AND ESG DISCLOSURES FOR VALUE CHAIN

SEBI vide circular dated July 12, 2023[4] has introduced Business Responsibility and Sustainability Report Core ("BRSR Core") for assurance by listed entities and disclosures and assurances for the value chain of listed entities as per the BRSR Core.

Format of the BRSR Core for reasonable assurance is specified in Annexure II to the circular. Accordingly, the circular brings in a new BRSR format as specified in Annexure II to the circular which results in the amendment of Annexure

[4] SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122

16 of the master circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023.

It has been decided that from FY 2023 – 2024, the top 1000 listed entities (by market capitalisation) shall make disclosures as per the updated BRSR format, as part of their Annual Reports. Further, from FY 2023 – 2024 top 150 listed entities shall mandatorily undertake reasonable assurance of the BRSR Core. This obligation will exist on top 250 listed entities from 2024-25, top 500 listed entities from 2025-26, and on top 1000 listed entities from 2026-2027.

For the purpose of disclosures for value chain, value chain shall encompass the top upstream and downstream partners of a listed entity, cumulatively comprising 75% of its purchases / sales (by value) respectively. Listed entities shall report the Key Performance Indicators in the BRSR Core for their value chain to the extent it is attributable to their business with that value chain partner. ESG disclosures for the value chain shall be applicable to the top 250 listed entities by market capitalization, on a comply-or-explain basis from FY 2024-25. The limited assurance of the above shall be applicable on a comply-or-explain basis from FY 2025 - 26.

The Board of the listed entity shall ensure that the assurance provider of the BRSR Core has the necessary expertise, and that there is no conflict of interest with the assurance provider.

DISCLOSURE OF MATERIAL EVENTS / INFORMATION BY LISTED ENTITIES UNDER REGULATIONS 30 AND 30A OF SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI vide circular dated July 13, 2023 **("LODR Circular")**[5] has specified disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 **("LODR Regulations")**. The LODR Circular consists of four annexures with respect to disclosure requirements under regulations 30 and 30A of the LODR Regulations. Annexure I mentions the details that need to be provided while disclosing events given in Part A of Schedule III (Annexure 18 to the Master Circular dated July 11, 2023). Annexure II specifies the timeline for disclosing events given in Part A of Schedule III. Annexure III provides guidance on when an event / information can be said to have occurred (Annexure 19 to the Master Circular dated July 11, 2023). Annexure IV provides guidance on the criteria for determination of materiality of events / information.

The master circular no. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023 gets partially modified by the LODR Circular. The LODR Circular came into force from July 15, 2023.

TRADING WINDOW CLOSURE PERIOD UNDER CLAUSE 4 OF SCHEDULE B READ WITH REGULATION 9 OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 ("PIT REGULATIONS") – EXTENDING FRAMEWORK FOR RESTRICTING TRADING BY DESIGNATED PERSONS ("DPS") BY FREEZING PAN AT SECURITY LEVEL TO ALL LISTED COMPANIES IN A PHASED MANNER

SEBI vide circular dated July 19, 2023[6] has extended the framework for restricting trading by Designated Persons by freezing PAN at security level.

To rationalize the compliance requirement of DPs under Clause 4 of Schedule B read with Regulation 9 of PIT Regulations and improve ease of doing business and to prevent non-compliances, SEBI had laid down a framework for to restrict the trading by DPs by way of freezing the PAN at security level during Trading Window closure period. Accordingly, a system has been developed and framework put in place by the Depositories and the Stock Exchanges. The framework was initially made applicable for those listed companies that were part of benchmark indices. The aforesaid circular was rescinded and superseded by Master Circular on Surveillance of Securities Market. Considering the satisfactory implementation of the framework for the listed companies forming part of benchmark indices and the consultations held with the Stock Exchanges and Depositories, SEBI has decided to extend the above framework to all the listed companies. The framework shall come into force as per the glide path prescribed in the circular.

The circular mandates the Depositories and Stock Exchanges to (i) take necessary steps for effective implementation (ii) bring the provisions of this circular to the notice of the listed companies enabling them to disseminate the same on their websites.

The Annexure – A of the circular provides the process for implementation of the system. Quarterly reports are to be submitted by the Depositories to the SEBI as per Annexure – C attached to the circular.

[5] SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123

[6] SEBI/HO/ISD/ISD-PoD-2/P/CIR/2023/124

NEW CATEGORY OF MUTUAL FUND SCHEMES FOR ENVIRONMENTAL, SOCIAL AND GOVERNANCE ("ESG") INVESTING AND RELATED DISCLOSURES BY MUTUAL FUNDS

SEBI vide circular dated July 20, 2023[7] has permitted launching of multiple ESG schemes with different strategies by Mutual Funds **("MFs")**, and the following measures have been implemented to facilitate green financing, enhanced disclosures and mitigation of green washing risk.

- Mutual Funds can launch ESG schemes under various sub-categories of the thematic category of equity scheme. Strategies such as Exclusion, Integration, Best-in-class & Positive Screening, Impact investing, Sustainable objectives, Transition or transition related investments are specified.

- Minimum 80% of the total assets under management **("AUM")** of ESG schemes should be invested in equity and the remaining portion should not be in contrast with the chosen strategy.

- ESG schemes must invest at least 65% of its AUM in companies with comprehensive Business Responsibility and Sustainability Reporting **("BRSR")** and also providing assurance on BRSR Core disclosures. The balance can be invested in companies with BRSR disclosures.

- ESG schemes not in compliance with the mentioned investment criteria as on October 01, 2024 shall ensure compliance of the same by September 30, 2025.

- MFs are required to disclose (i) the name of ESG strategy in the name of the concerned ESG fund/scheme; (ii) security wise BRSR Core scores as provided by SEBI registered ESG Rating Provider **("ERP")**; along with the name of the ERPs providing ESG scores and; (iv) the voting details and rationale for votes cast on behalf of ESG schemes and non-ESG schemes wherein the voting approach for ESG and non-ESG schemes of any MF is not same.

- Under the rationale for voting decisions, Asset Management Companies **("AMCs")** must disclose whether the resolution has or has not been supported due to any environmental, social or governance reasons.

- Annual report of the ESG scheme must mention the Fund Manager Commentary along with other disclosures undertaken by MFs for ESG schemes and it shall include (i) examples on how ESG strategy was applied on the fund, how and the number of engagements carried out, case studies where they have engaged with portfolio companies, etc. (ii) percentage of AUM invested in companies where there is no BRSR disclosures and its impact on the Fund score and; (iii) reason(s) for change of ERP by an AMC if any. Disclosures concerning case studies and engagement details shall be applicable from FY 2024-25 and FY 2025-26 respectively.

- The AMCs shall obtain an annual independent reasonable assurance by an assurance provider on their ESG scheme's portfolio being in compliance with the strategy and objective of the ESG scheme. This shall be on a "comply or explain basis" for all ESG schemes for FY 2022-23 by December 31, 2023. Thereafter, disclosure of assurance shall mandatorily be made in the scheme's annual report. The Board of AMC shall ensure that assurance provider has the necessary expertise without any conflict of interest.

MANDATING LEGAL ENTITY IDENTIFIER (LEI) FOR ALL NON-INDIVIDUAL FOREIGN PORTFOLIO INVESTORS (FPIS)

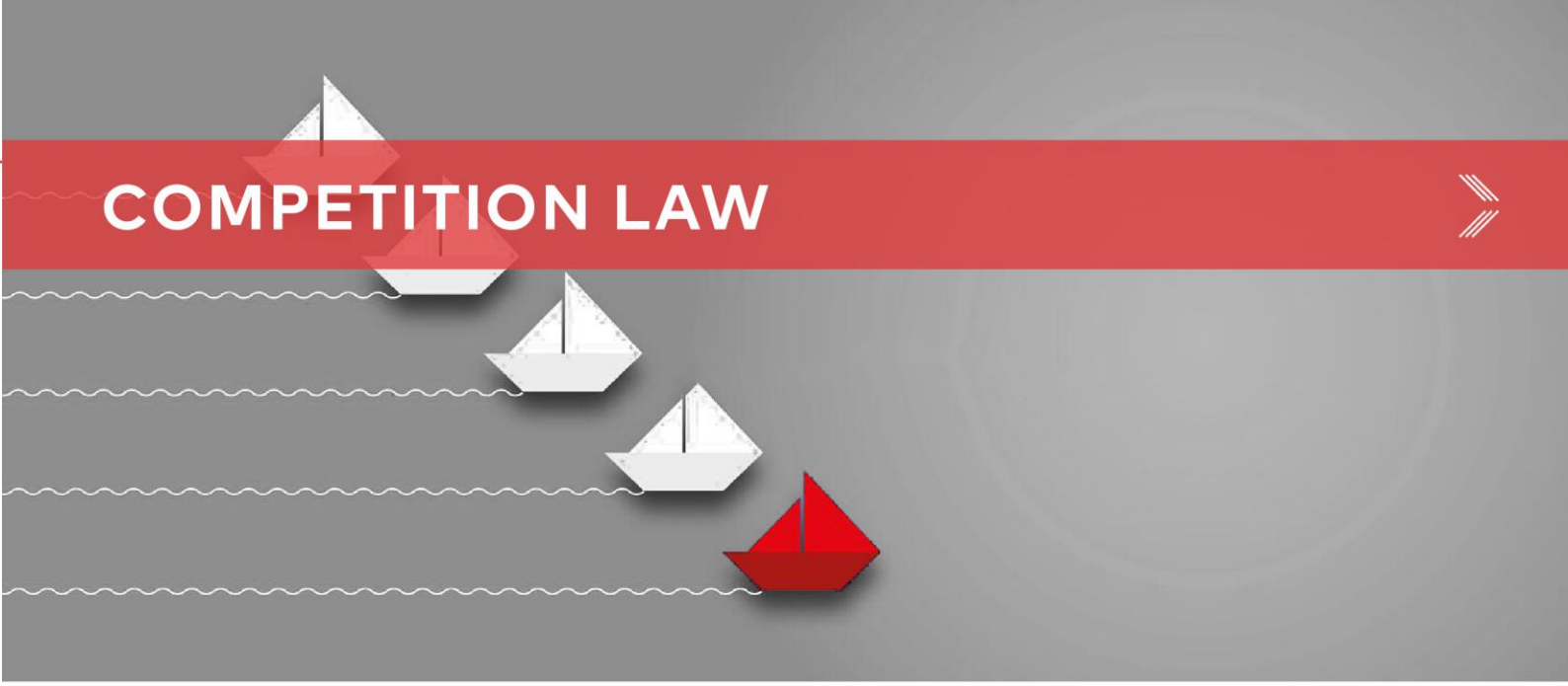
SEBI vide circular dated July 27, 2023[8] has mandated all non-individual FPIs to provide their LEIs in the Common Application Form. The circular further mandates that all existing FPIs (including those applying for renewal), that have not already provided their LEIs to their Designated Depository Participants ("DDPs"), must provide the same to their DDPS within 180 days from the date of the circular failing which their account can be blocked for further purchases.

LEI will be mandatory for all fresh FPI registration. The FPIs are required to ensure that their LEI is always active, as accounts with expired/lapsed LEI code will be blocked for further purchases in the securities market till the time the LEI code is renewed by such FPIs.

The circular came into force with immediate effect, i.e., July 27, 2023.

[7] SEBI/HO/IMD/IMD-I –PoD1/P/CIR/2023/125

[8] SEBI/ HO/ AFD/ AFD– PoD–2/ CIR/ P/ 2023/ 0127



It's been a busy July for the Competition Commission of India. The main highlights are as follows:

SUPREME COURT EXTENDED THE STAY ON THE RECOVERY OF THE RS. 202 CRORE PENALTY IMPOSED ON AMAZON

The Hon'ble Supreme Court has via an order dated 17 July 2023, extended the stay on the recovery of the Rs. 202-crore penalty as imposed by the Competition Commission of India (**CCI**) on Amazon.Com NV Holdings for its 2019 purchase of a 49% stake in a Future Group entity. The Hon'ble Court stated that the protection granted to Amazon on 08 May 2023 will continue till the next hearing on 20 September 2023.

CCI CLOSES COMPLAINT AGAINST KARAGIRI STUDIO

The CCI via its order dated 06 June 2023 in *In re: Shri Sanjay Kumar vs M/s Karagiri Studio Case No. 04 of 2023,* closed a complaint against Karagiri Studio for the contravention of the provisions of Section 4 of the Competition Act, 2002 (**Competition Act**). The CCI held that the complaint had no competition law concern and the matter appeared to be a consumer issue therefore the CCI was not the proper authority to adjudicate the matter.

The Informant was a customer of Karagiri Studio, which is an e-commerce business that sells ethnic wear such as silk sarees such as Kanjeevaram and Paithani, which are labeled with a Geographical Indication (**GI**) tag. The Informant has placed two pre-paid orders on Karagiri Studio's website. The Informant accused that they were defrauded as they were provided with two counterfeit (polyester) sarees instead of genuine silk sarees with GI tags. Further, the Informant alleged that Karagiri Studio is charging predatory prices for their products and was thus abusing its dominant position under Section 4 of the Competition Act.

The CCI observed that the Informant had made only unsubstantial allegations of unfair trade practices and abuse of dominant position without providing any specific details about the relevant market or specific conduct of Karigari Studio that would fall under the scope of Section 4 of the Competition Act. Additionally, the allegation of predatory pricing was not supported by any evidence.

The CCI came to the conclusion that the dispute between the Informant and Karagiri Studio seems to be more of a consumer issue rather than a competition concern. The CCI also highlighted that the Informant's reference to Section 3(5)(d) of the Competition Act was also irrelevant and did not require any intervention.

HON'BLE HIGH COURT OF DELHI HOLDS THAT CCI CANNOT INVESTIGATE WHETHER A COMPANY HAS ABUSED ITS DOMINANT POSITION WHILE EXERCISING PATENT RIGHTS

The division bench of Justice Najmi Waziri and Justice Vikas Mahajan of the Hon'ble High Court of Delhi has ruled in the matter of *Telefonaktiebolaget LM Ericsson (PUBL) vs Competition Commission of India and Another*, that the Patents Act, 1970 (**Patents Act**) must prevail over the Competition Act on the issue of the exercise of rights of a patentee.

The Hon'ble Court made these observations while dealing with a bunch of appeals moved by multinational entities, Ericsson and Monsanto challenging the proceedings initiated against them by CCI. The CCI has ordered separate investigations against Ericsson (in 2014) and Monsanto (in 2016). The orders emanated from the allegations of unfair terms and conditions imposed by the two entities in licensing their patents, which as per CCI amounted to abuse of dominance under the provisions of the Competition Act.

The division bench compared the provisions, purpose, and remedies available under the Patents Act and the

Competition Act along with the power and duties of the Controller of Patents and CCI. The Hon'ble Court reached the conclusion that the matter in relation to licensing of patents are within the exclusive jurisdiction of the Controller of Patent which ousts the jurisdiction of the CCI.

As per the Hon'ble Court, the Patents Act is a special statute law dealing with patents, and issues of imposition of conditions for licensing patents are provided for under Chapter XVI which also includes anti-competitive agreements and abuse of dominant position. In particular, the Court held that Section 84 of the Patents Act grants the power to the Controller of Patents to grant compulsory license of a patent if (i) the reasonable requirements of the public are not satisfied, or (ii) the patented invention is not available to the public at a reasonable price, or (iii) that the patented invention has not worked in India.

The Division Bench also relied on Section 3(5)(i)(b) of the Competition Act which exempts 'reasonable conditions' in the licensing of a patent to be exempt from scrutiny under Section 3 of the Competition Act, to be indicative of the legislative intention as to the exclusive domain of the Patents Act regarding reasonableness of conditions.

Similarly, the Court found Section 83(f) of the Patents Act (which provides for patent rights to not be abused by the patentee and the patentee not to indulge in practices leading to unreasonable restrictions as general conditions for the working of patents) to be similar to Section 4 of the Competition Act (which prohibits the abuse of dominant position).

Furthermore, it was observed by the Hon'ble Court that there is a clear legislative intent that the Patent Act will override the Competition Act and the same cannot be saved by the provisions of Section 21A of the Competition Act which deals with reference by CCI to the statutory authority.

HON'BLE MADRAS HIGH COURT VACATES THE INTERIM ORDER TO LET CCI TAKE UP THE MINDA-PRICOL STAKE TUSSLE

The Hon'ble Madras High Court via its order dated 11 July 2023, vacated the interim injunction in relation to the adjudication of auto parts maker Minda Corporation Ltd (**Minda**) application by the CCI for acquiring up to 24.5 percent stake in Coimbatore-based Pricol, a manufacturer of auto parts and precision-engineered products.

In May 2023, Pricol moved the Hon'ble Madras High Court challenging the validity of Minda's application to buy up to 24.5 percent stake in the company. Minda decided to approach the CCI to move forward with its plan of increasing its stakes in Pricol to up to 24.5 percent, following the acquisition of a 15.7 percent stake, by purchasing 1.91 crore shares of Pricol from the open market on 17 February 2023.

Minda had described the deal as a mere financial investment. However, Pricol has indicated that it had no intention to sell any stakes to Minda. With the said order, CCI may now take up Minda's application to increase its stake in Pricol.

CCI DISMISSES COMPLAINT AGAINST CGHS FOR ALLEGED VIOLATION OF COMPETITION ACT

The CCI closed a complaint against Central Government Health Scheme (**CGHS**) which alleged a violation of Section 3 and 4 of the Competition Act.

The CGHS is responsible for providing medical care facilities to Central Government employees, pensioners, and other beneficiaries. CGHS conducted an e-tender to appoint Authorized Local Chemists (ALCs) for supplying allopathic medications to CGHS wellness centers in Dehradun. The Informant in the said matter had alleged that there were several irregularities in the tendering process which contravened Section 3 and Section 4 of the Competition Act.

The CCI reviewed the complaint submitted against CGHS and determined that the provisions of Section 3(1) and Section 3(3) of the Competition Act do not apply in this case. Section 3(3) requires an agreement between two or more firms engaged in the same or similar trade of goods or services, which was not proven in this case. Furthermore, no claims of bid rigging were made, nor did the evidence suggest any collaboration among bidders in response to the E-tender.

Concerning the investigation of abuse of dominant position under Section 4 of the Competition Act, the CCI stated that defining the relevant market and showing CGHS's dominance in that market would be necessary. However, given the facts of the case and the alleged conduct of CGHS, defining the relevant market would be pointless. The Commission determined that CGHS's selection of one bidder and rejection of the informant's bid did not violate Section 4 of the Competition Act. Thus, the CCI found no evidence of a violation of the Competition Act.

As a result, the CCI decided to close the complaint as there was no prima facie case of violation of the provisions of the Competition Act.

REVIEW OF SECTION 11 APPLICATION ORDER CAN NOT BE SOUGHT/ALLOWED ON SUBSEQUENT DECISION OF SUPREME COURT IN N.N. GLOBAL MERCANTILE (P) LTD. V. INDO UNIQUE FLAME LTD

The Hon'ble High Court of Delhi in ***Ambience Developers Infrastructure Pvt. Ltd. vs. Zesty Foods***[9], has held that review of an Order passed under Section 11 of the Arbitration and Conciliation Act 1996 **("Act")**, cannot be sought/allowed on the ground of subsequent decision of Supreme Court in *N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd*. In the said case, the Petitioner filed a review petition seeking a review of the Order dated 20.03.2023, wherein the Hon'ble High Court had allowed an application under Section 11 of the Act. The review petition was premised on the fact that the agreement dated 02.02.2019 which has been executed between the parties contains an arbitration clause that is unstamped and thus, after the judgment of *N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.*, the same is invalid and cannot be acted upon.

The Hon'ble High Court having heard the review petitioner, dismissed the review petition on the following grounds: **(i)** Firstly, a stamp duty of Rs. 100/- has been paid on the agreement dated 02.02.2019, and thus the contention of the review petitioner that agreement dated 02.02.2019 is unstamped is factually incorrect; **(ii)** Secondly, Order dated 20.03.2023 was consistent with the judgment of the Supreme Court in *Intercontinental Hotels Group (India) (P) Ltd. v. Waterline Hotels (P) Ltd.*; **(iii)** Thirdly, N.N. Global (supra) itself contemplates that in certain situations, it may be expedient to leave it to the arbitrator to determine the issue as to whether stamping is insufficient, and if so, the arbitrator would take recourse to Section 33 of the Stamp Act and since arbitrator has been appointed, the plea of insufficient stamp duty may be taken before the arbitrator and; **(iv)** Lastly, on the settled principle of law i.e., where any question of law on which the judgment of the Court is based, has been reversed or modified by a subsequent decision of a superior Court in any other case, the same shall not be a ground for the review of such judgment. Thus, the Hon'ble High Court of Delhi dismissed the review petition against Order dated 20.03.2023 as no ground for review has been made out.

COURTS CAN EXTEND THE MANDATE OF THE ARBITRAL TRIBUNAL UNDER SECTION 29A OF THE ARBITRATION AND CONCILIATION ACT 1996 WITHOUT THE CONSENT OF THE PARTIES

The Hon'ble High Court of Kerala in Hiran ***Valiiyakkil Lal & Ors. vs. Vineeth M.V & Ors***.[10] has held that courts have the power to extend the mandate of the Arbitral Tribunal under Section 29A of the Arbitration and Conciliation Act 1996 **("Act")** without the consent of the parties. In the said case, after the evidence was closed, the Hon'ble Arbitrator informed the parties that the mandate of the arbitral tribunal had expired by lapse of time and directed the parties to file a joint petition before the concerned court of law in order to continue the arbitral proceedings as more time would be required to make an award. Upon the application under Section 29A of the Act being filed, the Respondent opposed the said application on the ground that the application under Section 29A of the Act is not maintainable as compliance under Section 29A (3) of the Act has not taken place i.e., the parties by consent have not extended the period of arbitration by 6 months. The Hon'ble High Court of Kerala rejected the contention of the Respondent and observed that sub-section (4) of Section 29A of the Act deals with cases where the award is not made within a period of twelve months from the date of the completion of the pleadings and it provides that, if the award is not made within the period specified in sub-section (1), the mandate of the Arbitrator shall terminate unless the Court has, either

[9] Review Petition No. 161/2023 in Arb P. 549/2022

[10] OP (ATE) No. 11 of 2023

prior to or after the expiry of the period so specified, extended the period. It further observed that the said sub-section with the use of the conjunction *'or'* also applies in cases where the award is not made within the extended period not exceeding six months specified in sub-section (3) and it is not as if it applies only to cases where the period is extended under sub-section (3). Thus, the Hon'ble High Court of Kerala extended the arbitral tribunal's mandate without compliance with Section 29A (3) of the Act and directed the parties to cooperate with the learned arbitrator to complete the arbitral proceedings.

APPLICABILITY OF RAINBOW PAPERS JUDGEMENT CONFINED - SECURED CREDITORS' DUES ARE TO BE PLACED A HIGHER PRIORITY THAN THE GOVERNMENT DUES: SUPREME COURT

The Hon'ble Supreme Court in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd vs. Raman Ispat Private Limited***[11] held that the provisions Insolvency and Bankruptcy Code ("**Code**") override the provisions of the Electricity Act, 2003, and confined the Applicability of *State Tax Officer (1) vs Rainbow Paper Limited*[12] ("**Rainbow Paper**") as Hon'ble Apex Court observed that the Hon'ble Bench in the Rainbow Paper's Case didn't consider the waterfall mechanism envisaged under Section 53 of the Code.

In the present case, Hon'ble National Company Law Tribunal ("**NCLT**") set aside the attachment of property of Raman Ispat Private Limited ("**Corporate Debtor**") in favour of Paschimanchal Vidyut Vitran Nigam Limited ("**PVVNL**") in view of the ongoing liquidation of the Corporate Debtor. The aforementioned attachment was made due to unpaid energy charges by Corporate Debtor. Hon'ble NCLT observed that PVVNL can realise its dues by participating in the liquidation process as per the Code. This view was subsequently affirmed by the Hon'ble National Company Law Appellate Tribunal in the Appeal filed against the order of the Hon'ble NCLT.

Aggrieved by the order of Hon'ble NCLAT, PVVNL filed an appeal before the Hon'ble Supreme Court. In their Appeal, PVVNL contended that the Electricity Act, 2003, being a special enactment, would prevail over the Code, which is a later general law dealing with insolvency. Counsel for the Liquidator of the Corporate Debtor contended that the provisions of the Code would prevail and have an overriding effect over the provisions of the Electricity Act, 2003 as per Section 238 of the Code. The Hon'ble Supreme Court affirmed the view taken by the Liquidator and held that provisions of the Code override the provisions of Electricity Act, 2003. Further, the Hon'ble bench confined the applicability of Rainbow Papers' judgment as the Hon'ble Court observed that the Hon'ble bench, in that case, did not consider the 'waterfall mechanism' prescribed under Section 53 of the Code. Hon'ble Supreme Court further held that in the presence of a specific enumeration of government dues i.e. Section 53(1)(e) of the Code, the State can't be treated as a 'secured creditor' since there is a separate and distinct treatment of amounts payable to a secured creditor on the one hand, and dues payable to the government on the other. It was further held that such specific enumeration signifies Parliament's intention to treat the latter differently i.e. having lower priority. In view of the aforesaid, the Hon'ble Supreme Court dismissed the appeal.

SINGLE OPERATIONAL CREDITOR CAN NOT CONSTITUTE COC UNDER THE CODE: NCLAT CHENNAI

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), Chennai bench in the case of ***V. Duraisamy vs. Jeyapriya Fruits and Vegetables Commission Agent***[13], held that the Insolvency and Bankruptcy Code, 2016 ("**Code**") does not envisage constitution of the Committee of Creditors ("**CoC**") with a single Operational Creditor when no claims are received from the Financial Creditors by the Interim Resolution Professional ("**IRP**") upon the public announcement.

In the aforesaid case, HGS Dairies and Agro Limited's ("**Corporate Debtor**") name was struck off by the Registrar of Companies ("**RoC**") as per the provisions of the Companies Act, 2013 for the non-filling of financial statements. Subsequently, an operational creditor filed a Section 9 Company Petition seeking to initiate CIRP against the Corporate Debtor. The company petition of the operational creditor was allowed on 20.01.2020 by the Ld. National Company Law Tribunal ("**NCLT**") and Corporate Insolvency Resolution Process ("**CIRP**") was initiated qua the Corporate Debtor. Subsequently, as per provisions of the Code, the IRP made a public announcement inviting claims of Creditors against the Corporate Debtor. However, IRP received claims from only one Operational Creditor. Ld. NCLT, therefore, directed the IRP to constitute CoC with just one Operational Creditor and further directed the IRP to file an application for restoration of the name of the Corporate Debtor under Section 252 of the Companies Act.

The IRP appealed against the Order dated 06.12.2021 of the Ld. NCLT, before Hon'ble NCLAT Chennai Bench wherein it was held that the Code does not envisage the constitution of CoC with a single Operational Creditor when no claims are received from the Financial Creditors. Further, the Hon'ble bench noted that Corporate Debtor's name was already struck off from the RoC. In light of the aforementioned, Hon'ble NCLAT held that CIRP initiated against the company shall be terminated. Hence, the appeal was allowed and the

[11] Civil Appeal Nos. 7976 of 2019: 2023 (SC) 534.
[12] Civil Appeal No. 1661 of 2020
[13] Company Appeal (AT)(CH)(Ins) No.25/2022.

order dated 06.12.2021 of the Ld. Adjudicating Authority was set aside.

THE GOVERNMENT OF MAHARASHTRA AMENDS THE ELIGIBILITY CRITERIA FOR THE APPOINTMENT OF WELFARE COMMISSIONER

The Industries, Energy and Labour Department, Maharashtra, vide notification dated July 5, 2023, amended the Maharashtra Labour Welfare Fund Rules, 1953. As per the amendment, Rule 18-A (1)(c)of the Maharashtra Labour Welfare Fund Rules,1953, has been modified, and the words "by deputation of officers from the cadre of Deputy Commissioner of Labour or of Assistant Commissioner of Labour" were changed to "by deputation of officers from the cadre not below the rank of Deputy Commissioner of Labour".

The Maharashtra Labour Welfare Fund Rules, 1953 enumerate the recruitment and conditions of service of the Welfare Commissioner by providing eligibility requirements for the post of a welfare commissioner. Through this amendment, appointment to the post may be made by the deputation of officers from the cadre not below the rank of Deputy Commissioner of Labour, provided they satisfy the relevant educational qualifications and have been in continuous service of 5 (Five) years in any capacity, not lower in rank than that of an Assistant Commissioner of Labour.

THE GOVERNMENT OF ANDHRA PRADESH ISSUES GUIDELINES FOR THE FACILITATION OF SAFETY OF WORKERS AT "CONFINED SPACES" IN FACTORIES

The Labour Factories Boilers and Insurance Medical Services Department of Andhra Pradesh, on July 6, 2023, issued detailed guidelines for the safety arrangements of production-related operations in factories.

Under the provisions of the Factories Act, 1948 and the Andhra Pradesh Factory Rules, 1950, certain obligations are prescribed to the managers and the occupiers towards the safety of workers that are required to work in "confined spaces". The Labour Factories Boilers and Insurance Medical Services Department of Andhra Pradesh prescribed a set of detailed guidelines, applicable to all factories covered under the Factories Act, 1948, in order to prevent any accidents and facilitate safety measures in such spaces. These guidelines are issued in addition to the general responsibility under Section 7-A, and Section 36 of the Factories Act, 1948.

These guidelines propose a standard operating procedure called the "Work Permit System" to create a minimum compliance baseline for effective safety management. This system will enable only specific workers to enter the "Confined spaces", provided the following guidelines are followed:

- The persons engaged in confined spaces should be medically fit.
- A Risk assessment should be carried out jointly by the permit initiator and executor and shall be documented as Job Hazard Analysis.
- Any such confined spaces should be physically verified by the Permit initiator, Executor and Authorizer.
- The permit shall specify the length, duration, and effect of the work, which can be extended after reassessing the conditions of such spaces. After the completion of the work, appropriate actions should be taken to ensure that the safety conditions are intact. The executor also has to ensure that all workers who entered the space are physically present after the completion.
- A permit can be cancelled if there is a change in the work location, type of work, discovery of new hazards, expiry of the validity, inability to perform the work, or any other emergency situation.
- A log of entry into the confined space shall be kept with all details of the persons assigned the work, along with the location of the work and any other such detail.

These guidelines will help the appropriate authorities to ensure proper safety mechanisms for workers working under extreme conditions, and maintenance of proper safety protocols and hygiene during the performance of such work.

THE GOVERNMENT OF HIMACHAL PRADESH REVISED THE MINIMUM WAGES OF UNSKILLED WORKERS IN AGRICULTURE

The Department of Labour and Employment, Himachal Pradesh vide notification dated July 7, 2023, revised the minimum wages of unskilled category workers in the scheduled employment of Agriculture.

A Minimum Wages Advisory Committee was constituted vide notification dated April 24, 2023. The Governor, Himachal Pradesh thereof revised the rate of unskilled workers in the scheduled employment to INR 375 (Three Hundred and Seventy Five) per day or INR 11, 250 (Eleven Thousand Two Hundred and Fifty) per month, with effect from April 1, 2023.

The notification dated July 7, 2023, also defined an unskilled worker as a worker "who does operations that involve the performance of simple duties, which require the experience of little or no independent judgement or previous experience although familiarity with the occupational environment is necessary. His work may thus require in addition to physical exertion familiarity with variety of articles or goods".

THE GOVERNMENT OF TAMIL NADU INCREASES COMPENSATION OF PERSONAL ACCIDENT FOR MATCH AND FIRE WORKERS

The Labour Welfare and Skill Development Department, Tamil Nadu amended the Tamil Nadu Fire and Match Workers' Social Security and Welfare Scheme, 2021. Under Clause 17 (2)(a), the amount of INR 1,25,000 (One Lakh Twenty-Five Thousand) was increased to INR 2,00,000 (Two Lakh).

THE KERALA HEADLOAD WORKERS (REGULATION OF EMPLOYMENT AND WELFARE) AMENDMENT SCHEME, 2023

The Labour and Skills (H) Department, Kerela, vide notification dated July 8, 2023, decided to extend the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 framed as per Section 13 (1) of the Kerala Headload Workers Act, 1978, to the entire area of Thrissur and Malappuram district, including the areas where the scheme was already extended.

DECLARATION OF RATE OF INTEREST UNDER EMPLOYEE PROVIDENT FUND SCHEME

The Employees Provident Fund Organisation, vide notification dated July 24, 2023, has declared interest at the rate of 8.15% (Eight Point One Five Percent) for the year 2022-23 to be credited to the account of each member of the Employee Provident Fund Scheme.

EMPLOYEES' STATE INSURANCE CORPORATION CIRCULAR ON CORRECTIONS IN DATE OF BIRTH OF INSURED PERSON

The Employees' State Insurance Corporation vide circular dated July 24, 2023 has directed all regional directors/ joint director, in-charge's to issue direction to all field offices under their jurisdiction for strict compliance in disposal off all online requests to edit/update particulars of insured persons and their family as per the circular dated July 24, 2023 within 3 (Three) days' time to mitigate the hardship faced by the insured persons and their family members.

THE EMPLOYEES STATE INSURANCE (CENTRAL) AMENDMENT RULES, 2023

The Ministry of Labour and Employment vide notification dated July 25, 2023, amended and incorporated the provision for claiming sickness and maternity benefits from January 1, 2021 till June 30, 2021.

ELIGIBILITY CONDITIONS FOR AVAILING BENEFITS UNDER THE BUILDING AND OTHER CONSTRUCTION WORKERS' SCHEME

The Ministry of Labour and Employment, vide press release dated July 27, 2023, has issued eligibility conditions for availing benefits under the Building and Other Construction Workers scheme. As per the extant provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 ("**BOCW Act**"), every building worker who has completed 18 (Eighteen) years of age, but has not completed 60 (Sixty) years of age, and who has been engaged in any building or other construction for not less than 90 (Ninety) days during the preceding 12 (Twelve) months shall be eligible for registration as a beneficiary in the State Welfare Boards under the BOCW Act and the same provisions for the BOCW Act continue.

It was further advised that in order to facilitate the registration of building and other construction migrant workers under the BOCW Act, creation of facilitation centers/help desks should be there to help building and other construction workers, conducting special drives with a focus on migrant building and other construction workers and to ensure no discrimination be faced by them in terms of registration and delivery of benefits. Further, it was also stated that every building and other construction worker must fulfil the extant conditions to register as building and

other construction Workers as well as renewal of registration to continue as a beneficiary without any differentiation.

INSURER IS NOT LIABLE TO INDEMNIFY THE EMPLOYER FOR INTEREST ON DELAYED PAYMENT OF COMPENSATION

The High Court of Jammu and Kashmir, vide order dated July 11, 2023, in the case of *Mohd. Abdullah vs. Manager, Trumboo Cement Industry Limited and another*, ruled that an insurance company cannot indemnify an employer for the penalty and interest payable for delayed payment of compensation under the Employee's Compensation Act, 1923 ("**ESA**").

In this specific instance, a plea was filed by 4 (Four) workers who sustained severe injuries during blasting operations in 2004, resulting in permanent injuries. The workers filed separate claims under Section 3 of the ESA. The Commissioner of Workmen's Compensation, Ramban awarded compensation to be paid by the employer, however, the issue of interest was not addressed and penalty was envisaged under Section 4-A of the ESA. The United India Insurance Company Limited was directed to deposit the awarded compensation as indemnification.

The High Court of Jammu and Kashmir, in the present matter, noted that the Commissioner of Workmen's Compensation did not provide an explanation for not awarding any interest and penalty, failing which, the workers are also entitled to receive interest. This, however, was not the responsibility of the insurance company unless there is a specific agreement between the employer and the insurance company as observed by the High Court of Jammu and Kashmir. Thus, even if there is an error in following the obligations under Section 4-A(a) of the ESA, the responsibility will be solely on the employer and not on the insurance company.

BOMBAY HIGH COURT HOLDS BUSINESS MANAGER NOT 'WORKMAN' UNDER INDUSTRIAL DISPUTES ACT, 1947

The High Court of Bombay (Nagpur Bench), in the case of *Abbott India Limited vs. Dipak s/o Arun Rao Deshmukh*, dated July 13, 2023, recently held that a "therapy business manager" is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 ("**IDA"**). The said High Court was dealing with a writ petition against the Labour Court's finding that Mr. Dipak Deshmukh, employed as a therapy business manager, was a workman under the IDA. The Labour Court held that Mr. Deshmukh would come under the definition of a 'workman' since he was not assigned any managerial or supervisory work. On a revision application, the Labour Court upheld the order, resulting in the present writ petition with the High Court of Bombay.

The High Court of Bombay, while discussing the definition of a workman under Section 2(s) of the IDA, noted that a perusal of the responsibilities of a workman would show that Mr. Deshmukh does not satisfy the definition of a workman, which should include any kind of manual, unskilled, skilled, technical, operation, clerical or supervisory work. The High Court of Bombay also noted that the Industrial Court failed to recognize the changing organization structure on account of passage of time, as enumerated in the case of *Standard Chartered Bank vs. Vandana Joshi*. The High Court of Bombay in this case noted that the fact that the decisions of an employee are subject to control or verification, does not itself establish that he/she is a workman under section 2(s)of the IDA and the decision must depend on the dominant nature of the duties and the responsibilities.

The High Court of Bombay, while setting aside the order of the Industrial Court, concluded that a mere lack of power to recommend and assign work to the subordinate staff or supervise the work of employees would not render a person workman under the definition.

SETTLEMENT BETWEEN EMPLOYEE UNION AND EMPLOYER WOULD NOT OVERRIDE THE MODEL STANDING ORDER

The Supreme Court of India in the case of *Bhartiya Kamgar Karmachari Mahasangh vs. Jet Airways Ltd*, vide judgement dated July 25, 2023, noted that the employer and workmen cannot enter into a contract that overrides the Model Standing Orders. The Central Government Industrial Tribunal passed an award earlier, rejecting the demand of the union workers to reinstate them with full back wages. The High Court of Bombay confirmed the order of the tribunal, which lead to filing of the present appeal.

The Supreme Court noted that it is a well-settled principal position, that certified standing orders have a statutory force and it implies a contract between the workmen and the employer, which cannot be overridden unless the contract is beneficial to the employee. A Standing Order is an important certificate laying down the rights and liabilities of both parties to the agreement. Any certified Standing Order should confirm with the Model Standing Order prepared by the Central Government under Section 29(1) of the Industrial Relations Code, 2020.

The pronouncement is in line with various precedents set including *Western India Match Co. Ltd. vs. Workman*, where the Supreme Court of India had held that Standing Orders have a force of law, and if there is any contradiction between the two, the Standing Order would prevail.

ENERGY & INFRASTRUCTURE

ENERGY

THE MINISTRY OF POWER VIDE PRESS RELEASE DATED JULY 3, 2023, AMENDED ITS EARLIER ORDER ON THE SUBJECT OF 'PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA) TO PROVIDE FOR PURCHASE PREFERENCE (LINKED WITH LOCAL CONTENT) IN RESPECT OF POWER SECTOR' DATED NOVEMBER 16, 2021, TO THE EXTENT OF INCLUSION OF SMART METERS – 50 (MLC) IN THE ENERGY METERS CATEGORY

This amendment to Order No. A-1/2021-FSC-Part (5) dated November 16, 2021, issued by Ministry of Power (MoP Order), is carried out in serial number 43 of Annexure I of the said order, which provides for Energy Meters under common items for Transmission, Distribution and Generation Sector under Electrical Equipment for Generation, Transmission and Distribution sectors with sufficient local capacity and competition. The MoP Order which excluded the Smart Meters – 50 (MLC), has now included the aforesaid Smart Meters 50 (MLC) as a result of this amendment to the said MoP Order, vide press release dated July 3, 2023.

THE MINISTRY OF POWER VIDE PRESS RELEASE DATED JULY 10, 2023, RELEASED A TENDER DOCUMENT FOR SELECTION OF BIDDER AS TRANSMISSION SERVICE PROVIDER THROUGH TARIFF BASED COMPETITIVE BIDDING PROCESS TO ESTABLISH INTER-STATE TRANSMISSION SYSTEM FOR EASTERN REGION EXPANSION SCHEME -XXXIV (ERES-XXXIV) ISSUED BY PFC CONSULTING LTD.

The Government of India, Ministry of Power ("Authority") released a bid document on July 10, 2023, for the purpose of selection of bidder in the capacity of a transmission service provider for the establishment of an Inter-State Transmission System for Eastern Region Expansion Scheme-XXXIV (ERES- XXXIV) through a tariff based competitive bidding process. The Authority, vide its gazette notification no. CG-DL-E13052023-245856 dated May 12, 2023, notified PFC Consulting Limited (PFCCL) to be the Bid Process Coordinator (BPC) for the purpose of selection of Bidder as Transmission Service Provider (TSP) for the purpose/scope of this released tender. PFC Consulting Limited (PFCCL) (hereinafter referred to as BPC), owing to its granted role, invites all prospective Bidders vide this tender [Request for Proposal (RFP)], to bid for the selection as Transmission Service Provider (TSP) on the basis of international competitive bidding in accordance with the "Tariff Based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for Encouraging Competition in Development of Transmission Projects" issued by the Authority under section – 63 of The Electricity Act, 2003 and as amended from time to time. The tender document lays down the responsibility of the TSP which includes establishment of the following Inter-State Transmission System – "Eastern Region Expansion Scheme-XXXIV (ERES-XXXIV) on build, own, operate & transfer basis and providing transmission service. Vide the terms of this tender, the TSP shall be dutybound to ensure that design; construction and testing of all equipment, facilities, components, and systems of the Project shall be in accordance with the provisions of the Transmission Service Agreement and applicable Rules/ Regulations, Orders and Guidelines issued by the Central Government. Further, as per the tender document, the TSP shall be required to obtain the Transmission License from the Commission. The bid submission (online through the electronic bidding platform) shall remain open and valid till on or before 15:00 hours (IST) on August 25, 2023.

THE MNRE VIDE D.O. NO. I-1 1101/115/2016-DBT DATED JULY 7, 2023, SHARED 'REVISED DOCUMENT' AND A LIST OF 'SANITY CHECKS' WITH ALL DBT MINISTRIES/ DEPARTMENTS EXPLAINING THE REVISED APPROACH TO SHARE THE DBT SCHEMES-RELATED DATA WITH DBT BHARAT PORTAL

To revamp the DBT Bharat Portal ("Portal"), the Ministry of New and Renewable Energy vide D.O. No. I-1 1101/115/2016-DBT dated July 7, 2023, shared 'Revised Document' and a list of 'sanity checks' with all DBT Ministries/ Departments thereby explaining the revised approach to henceforth share the DBT Schemes-related data with Portal. The Revised Document also includes the technical details for the integration of the Ministry/Departments web service with the Portal. Further, the Ministry/Department has, by way of instruction vide the said order, requested the concerned officers to share the DBT Scheme data for the period starting from April 2023 to June 2023 with the Portal by July 12, 2023. The Salient Features of the Revised Document prescribe the following: (a) The data sharing model from April, 2023 has been modified from 'Pull' to 'push' concept, where the Scheme MIS of the Ministry /Department will push the data on DBT Bharat Portal for a given month as per scheduled date (which must not be later than 20th of the succeeding month) to be decided by the concerned Ministry/Department; (b) Ministry / Department will have to share information using the location code (up to District level granularity). To make it standardized in all schemes across all Ministries / Departments, it is recommended to use the version of Local Government Directory of Ministry of Panchayati Raj, as decided by DBT Mission for the purpose for a given financial year; (c) Ministry / Department shall provide data in respect of all States / UTs / Districts in which the concerned scheme is applicable. States / UTs / Districts for which data is not available at the time when the Ministry / Department pushes the data to DBT Bharat Portal should be reported as 0 (numerical value zero). Ministry / Department shall have the option to update the data so provided later with the permission of Nodal Officer in DBT Mission. Ministry / Department needs to ensure that no field which is applicable in the scheme is left blank while data is provided to DBT Bharat Portal, to avoid challenges in uploading data for a later month; (d) DBT Mission shall undertake sanity checks for the data reported by the Ministry / Department (list circulated to Ministries / Departments vide email dated July 4,2023); (e) Ministry / Department need to share monthly incremental data (except for fields related to beneficiaries which should be unique cumulative starting from April month for each Financial Year); (f) Data ownership lies with Ministry / Department, DBT Bharat Portal is just an aggregator; (g) Data should be prepared in prescribed JSON format before pushing it to DBT Bharat Portal. Thereafter, Ministry/Department MIS will call a Web service exposed by DBT Bharat Portal by passing DBT Scheme Code with encrypted data; (h) Once data is updated successfully on DBT Bharat Portal, Ministry/Department will receive a success message as HTTP Response in JSON Format. The Ministry /Department should visit the Scheme Drilldown Report (https://dbtbharat.gov.in/csreporUscheme) and crosscheck that the same data is uploaded on DBT Bharat Portal as pushed by the Ministry/Department; (i) In case of any discrepancy, the Ministry/Department should contact the Nodal Officer in DBT Mission immediately; (j) In case, the data is not updated successfully on DBT Bharat Portal, Ministry/Department will receive a detailed error message as HTTP Response in JSON Format. It will be the responsibility of Ministry/Department to resolve the error and push the data again till the data is successfully updated on DBT Bharat Portal.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (BIOGAS DIVISION) VIDE AN OFFICE MEMORANDUM BEARING E-FILE NO. 259/1/2022-BIOGAS DATED JULY 19, 2023, APPROVED THE JOINT PROPOSAL OF M/S BAIF DEVELOPMENT AND RESEARCH FOUNDATION, WARJE, PUNE (MAHARASHTRA) AND M/S SANKALP MEDI EDUCATION SOCIETY, PUNE (MAHARASHTRA) FOR INSTALLATION OF BIOGAS DIGESTED SLURRY FILTER UNIT AND ITS ELIGIBILITY UNDER THE MNRE BIAGAS PROGRAMME

The Ministry of New and Renewable Energy (Biogas Division) on July 19, 2023, approved the joint proposal made by M/s BAIF Development and Research Foundation, Warje, Pune (Maharashtra) and M/s Sankalp Medi Education Society, Pune (Maharashtra), for the installation of a Biogas Digested Slurry Filter Unit vide the abovementioned Office Memorandum. Further, the Ministry approved the eligibility of this Biogas Digested Slurry Filter Unit under the umbrella of MNRE Biogas Programme, giving it government backed recognition. The Ministry sent an instruction with request to the PI's of all 8 Biogas Development and Training Centres (BDTC's) to carry out the monitoring and supervision of small biogas plants at the time of field inspection. The annexure to this order mentions the technical specifications and operating procedure for the installation of the Biogas Digested Slurry Filter Unit. While the Ministry approved the installation of the unit, it also served caution to the selected companies stating that, it reserves the right to cancel the approval at any time in future based on the feedback received from the end users, beneficiaries, and Programme Implementing Agencies.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (GRID SOLAR POWER DIVISION) VIDE AN OFFICE MEMORANDUM DATED JULY 26, 2023, UPDATED LIST I (MANUFACTURERS AND MODELS OF SOLAR PV MODULES) FORMING PART OF ALMM ORDER, 2019

The Ministry of New and Renewable Energy vide Office Memorandum dated July 26, 2023 ("Memo"), updated the List - I (Manufacturers and Models of Solar PV Modules) of ALMM Order, 2019, in conjunction to several O.M's earlier

issued by the Ministry. This Memo refers to the Ministry's O.M. dated March 10, 2021, for implementation of Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement of Compulsory Registration) Order, 2019 and publishing List-1 (Manufacturers and Models of Solar PV Modules) of ALMM Order, 2019.

This Ministry vide its Office Memorandum No. 28312212023-GRID SOLAR/PI dated 10.05.2023, issued major reforms in the Approved List of Models and Manufactures for Solar Photovoltaic Modules which inter-alia include enlistment of only such models of Solar PV Module Manufacturers, under ALMM, which comply with the BIS Standards and have the minimum module efficiency, as listed in the Memo. Post May 10, 2023, only such models of Solar PV Modules have been considered for enlistment under ALMM List - I, whose module efficiency is equal to or greater than 19.00%. Solar PV Module Manufacturers, whose models' validity expired on March 9, 2023, and had not applied for renewal on or before March 9, 2023, have been delisted from the ALMM List-I.

Owing to the above details as published vide this Memo, the List – I (Manufacturers and Models of Solar PV Modules) of ALMM Order, 2019 (Annexure- 1 to the Memo) stands revised and updated.

THE CENTRAL ELECTRICITY AUTHORITY, MINISTRY OF POWER ON JULY 27, 2023, RELEASED GUIDELINES FOR MEDIUM AND LONG TERM POWER DEMAND FORECAST

The Central Electricity Authority (CEA), Ministry of Power issued the guidelines for state utilities to create medium and long-term projections to evaluate the electricity demand of India. The guidelines aim at providing a basic framework of medium term and long-term power demand forecast for a DISCOM/State/Union Territory. As per the guidelines, the forecast will cover both medium term (for a term more than 1 year up to 5 years) and long-term periods (for a term of at least ten years). This exercise of detailed power demand forecasting shall be carried out every 5 years, however the review shall be undertaken on a yearly basis and updated thereafter, if required. Annexure 1 of the guidelines prescribes a suggested timeline for the yearly review of the forecasts. The guidelines provide for Spatial Granularity and time granularity, as the basis on which the forecasts should be prepared.

The guidelines further recommend that the forecasting process enclose three scenarios which are: (a) optimistic scenario; (b) a business-as-usual scenario; and (c) pessimistic scenario. The guidelines further recommend a forecast methodology, impact of emerging factors on government targets, calculation of the energy requirement of a DISCOM, determination of energy requirement of a state, determination of peak demand forecast for a DISCOM and other factors.

THE CENTRAL ELECTRICITY REGULATORY COMMISSION (CERC) VIDE PUBLIC NOTICE NO. ECO-12/2/2023 ISSUED ON JULY 27, 2023, DECIDED TO HOLD A PUBLIC HEARING ON AUGUST 10, 2023 REGARDING "REVIEW OF COMPOSITE INDEX USED FOR COMPUTING THE ESCALATION RATE FOR IMPORTED COAL FOR BID EVALUATION AND PAYMENT"

The Central Electricity Regulatory Commission issued a Staff Paper on the "Review of Composite Index used for Computing the Escalation Rate for Imported Coal for Bid Evaluation and Payment" which was uploaded on the website of the Commission, i.e., www.cercind.gov.in on June 9, 2023. The Staff Paper is currently on the draft stage therefore, views and suggestions of stakeholders are awaited.

This public notice purports to declare that a public hearing on the aforesaid subject shall be held on August 10, 2023, at 3.30 PM via online video conferencing inviting representatives of Central/ State Governments / Load Despatch Centers / State Utilities / CPSUs / CTUs /STUs / Transmission Licensees / Trading Licensees / Power Exchanges / Individual Experts / NGOs / IPPs / Financial Institutions /Consultancy Firms/ any other Organizations. This public hearing is held to address, discuss, and conclude the changes in Composite Index used for computing the Escalation Rate for Imported Coal for Bid Evaluation and Payment proposed in the Staff Paper.

INFRASTRUCTURE

STANDARD OPERATING PROCEDURE FOR ONE TIME SETTLEMENT THROUGH THE VIVAD SE VISHWAS II (CONTRACTUAL DISPUTES) SCHEME TO SETTLE PENDING DISPUTES

The National Highways Authority of India ("**NHAI**") vide circular bearing number 2.1.60/2023 dated July 04, 2023 ("**SOP Circular**"), issued a standard operating procedure ("**SOP**") for the smooth implementation of the one-time settlement scheme titled 'Vivad se Vishwas II (Contractual Disputes)' issued by the Ministry of Finance for the effective settlement of pending disputes.

The SOP to be followed is provided hereinbelow:

i. A link shall be provided on the Government e-Market Place ("**GeM**") portal for implementing the scheme. Contractors, (through their authorized personnel) shall register on the portal. The general manager (legal), NHAI ("**GM legal**") shall advise the National Highways Builders Federation to register on the GeM portal.

ii. The registered contractors shall be required to submit their disputes on the GeM portal.

iii. NHAI shall be notified of the submission of the contractor by GeM portal. GM legal shall be the nodal officer for receiving the intimation from the portal and forward the same to the concerned general manager (tech.).

iv. It is to be noted that only disputes wherein the award by the court/arbitral tribunal is of monetary value, shall be eligible for settlement under the scheme. Any award specifying specific performance of the contract, either fully or partially shall not be eligible for settlement under the scheme.

v. For claims by the contractor upto INR 500,00,00,000 (Rupees Five Hundred Crore), the following procedure shall be adopted:

   a. The respective technical division shall assess the settlement amount within one week and forward it to the general manager (finance) ("**GM finance**") for concurrence.

   b. The GM finance shall scrutinize the evaluation made by the technical division within 3 (three) days. Post that, the same shall be forwarded to the concerned member.

   c. The settlement award shall be approved by the concerned member.

   d. If there is any discrepancy in relation to the interpretation of the award, the technical division shall without any delay, consult the advocate of NHAI who defended NHAI before the appropriate forum (the arbitral tribunal/the court). In furtherance of the same, the GM legal shall help the technical division in getting a timely response from the advocate.

   e. Every fifteen days, GM legal shall collect, consolidate and circulate the opinion of NHAI on the interpretation of the issue with the approval of the chief general manager (legal) for the technical divisions.

vi. If the settlement amount is greater than INR 500,00,00,000 (Rupees Five Hundred Crore), the technical division shall be at liberty to accept or reject the request for settlement made by the contractor. However, the same may only be done with the prior approval of the executive committee (EC), NHAI.

vii. After the technical division receives approval regarding the settlement amount, the same shall be offered to the contractor for acceptance via the GeM portal through the nodal officer i.e. GM legal. The same should be done within 2 (two) weeks of the receipt of the claim on the portal from the contractor.

viii. On the GeM portal, the contractor shall accept or reject the offer within 30 (thirty) days. On acceptance of the offer by the contractor, an automated acknowledgement shall be generated and e-mailed to both the parties. NHAI has the option to amend the offer before the same is accepted by the contractor and the e-mail is generated. However, NHAI cannot withdraw/amend the offer post the acceptance and generation of the e-mail.

If the contractor rejects the offer, the ongoing litigation shall continue.

ix. On generation of the acknowledgement e-mail, the technical division shall write to the contractor to withdraw the ongoing case/litigation, (if any).

x. On similar lines, if NHAI had filed a case, it shall apply to the court for withdrawal of the case.

xi. Within 45 (forty five) days of the generation of the e-mail, the contractor shall submit the document indicating the permission to withdraw the case. The settlement agreement shall be signed within 30 (thirty) days within submission of the same.

xii. If, however, the application for withdrawal is filed by NHAI, it shall not be required to wait for the permission of the court and the settlement agreement shall be signed within 30 (thirty) days, thereafter. A model settlement agreement has been appended to the SOP Circular.

xiii. The technical divisions shall supply a copy of the settlement agreement to the GM legal.

xiv. The contractor, while submitting the dispute for settlement on the GeM portal, may reduce the amount claimed under the extant scheme from the award amount.

xv. The scheme shall not apply to cases wherein the parties have reached a settlement via the conciliation agreement.

The scheme shall commence from July 15, 2023, and claims may be submitted up to October 31, 2023.

INTEREST RATE APPLICABLE FOR HYBRID ANNUITY PROJECTS

NHAI vide policy circular number 8.4.41/2023 dated July 10, 2023, has notified the following interest rates under Clause 23.6.4 of the model concession agreement for hybrid annuity ("**HAM**") model projects ("**Model HAM Agreement**"), payable in relation to the reducing balance of completion cost towards the project:

Sr. No.	Bank's Name	One year MCLR % (as on July 01, 2023)	Average rate applicable for the period from July 01, 2023, to September 30, 2023
1.	State Bank of India	8.50	8.73 % per annum plus 1.25%
2.	HDFC Bank	9.05	
3.	ICICI Bank	8.85	
4.	Bank of Baroda	8.65	
5.	PNB	8.60	

In terms of Clause 23.6.4 of the Model HAM Agreement, the next review of such interest rate will be conducted on September 01, 2023, and the rates will be published for 1st day of every quarter.

NATIONAL PAYMENT CORPORATION OF INDIA ("NPCI") RELEASES MANDATORY GUIDELINES TO BE IMPLEMENTED BY BANKS, PAYMENT SYSTEM PROVIDERS AND THIRD-PARTY APPLICATION PROVIDERS FOR UPI

The NPCI, through a circular dated July 04, 2023, has laid down guidelines that require compliance by all the banks, payment service providers and third-party application providers, licensed to operate in the UPI ecosystem ("*authorized entities*"). The NPCI has released the circular with the intent of maintaining "enhanced controls and hygiene limits" to ensure that the authorized entities do not partake any kind of activity that may prove to be harmful to consumer data or cyber-security.

The NPCI has mandated that:

a. all authorized entities maintain different UPI IDs for their software applications that are on different operating systems to ensure clear identification of the actions that have to be undertaken based on specific operating systems; and

b. all UPI transactions that are initiated using UPI number, UPI ID, bank account number and the IFSC Code, must contain name of the beneficiary in an effort to reduce complaints regarding unintended credit recipient.

DSK View: *The NPCI has been taking active steps for better regulation and organization of the FinTech infrastructure in India. Ensuring that separate UPI IDs are used for transactions occurring from applications on different operating systems enables effective categorization of consumer data and helps in tracing the source and default point in the event of wrong credit transaction or any other contingency. Therefore, this circular, in whose non-compliance the NPCI may trigger enforcement actions, is a welcome measure that will essentially aid in tracking of payments made by the customers in the event of action.*

Source

RBI AND THE CENTRAL BANK OF THE UNITED ARAB EMIRATES ("UAE") SIGN TWO MOUS

The RBI and the Central Bank of the UAE signed two MoUs on July 15, 2023, for the use of respective local currencies for cross-border transactions. This MoU will allow importers and exporters from both India and the UAE to raise invoices and make payments in their own respective currencies. This is intended to enhance bilateral trade, investments and remittances between the two nations. A Local Currency Settlement System is aimed to be put in place to develop an INR-AED foreign exchange-marked market. This MoU will enable:

i. the linking of Fast Payment Systems, i.e., UPI and Instant Payment Platform of both the countries for safe, fast and affordable exchange of funds;

ii. the linking of the card switches of both the countries, i.e., RuPay Switch and UAESWITCH, for mutual acceptance of each other's domestic cards;

iii. the linking of payment messaging systems of both the countries, i.e., Structured Financial Messaging System of India with the messaging system in the UAE for easy financial messaging between India and the UAE.

DSK View: *These MoUs are a significant development towards reducing the high cost of transactions and tedious procedures involved in cross-border remittance of funds. While facilities such as interlinking of payment and messaging systems may prove to be extremely beneficial for the non-resident Indians residing in the United Arab*

Emirates, this MoU envisions to significantly improve the ease of doing business between the two nations with the help of the Fast Payment System.

Source

RBI CANCELS NBFC REGISTRATIONS IN A SLEW OF MEASURES

As per RBI's press release dated July 13, 2023, 11 NBFCs have surrendered/lost their certificates of registration. The reasons cited by the NBFC are as follows:

i. **Exit from the NBFI Business:** Sanapala Holdings Private Limited (Andhra Pradesh), Samrudhi Finance and Investments Private Limited (Telengana), S C Dani Research Foundation Private Limited (Maharashtra) and De Lage Landen Financial Services Private Limited (Maharashtra).

ii. **Passed criteria to be classified as an Unregistered Core Investment Company (CIC):** Jamshedpur Securities Limited (Jharkhand), Azorius Holdings Private Limited (Tamil Nadu), Serendipity Investments Private Limited (Tamil Nadu) and Higain Investments Private Limited (Haryana).

iii. **No longer a Legal Entity:** Unistar Resources and Trades Private Limited (Kolkata), Skyline Tracom Private Limited (Kolkata), Rector Investments Private Limited (Delhi).

iv. **Defaulting/Non-Compliance with obligations of lending and collecting/recovery as per law:** Nanma Chits and Financiers Limited (Kottayam, Kerala), Chidrupi Financial Services Limited (Rangareddy, Telangana), Goldline Financial Services Ltd. (Hyderabad, Telangana), Kailash Auto Finance Limited (Kanpur, Uttar Pradesh).

DSK View: *Section 45-IA(6) of the Reserve Bank of India Act, 1934 empowers the RBI to cancel the certificate of registration granted to an NBFC as per the provisions laid down therein.*

Source 1
Source 2

RBI PENALIZES KHATRA PEOPLE'S COOPERATIVE BANK LIMITED

The RBI has imposed a monetary penalty amounting to INR 5,000 (Indian Rupees Five Thousand only) on the Bengal-based bank, Khatra People's Co-operative Bank Limited for violation of the Know Your Customer (KYC) Directions, 2016, as laid down by the RBI. An order was passed on June 30, 2023, by the RBI under Section 47A(1)(c), read with Section 46(4)(i) and Section 56 of the Banking Regulation Act, 1949, for the deficiency in regulatory compliance. The defaulter bank had not been carrying the necessary periodic review of the risk categorization of its accounts as provided in the Know Your Customer (KYC) Directions, 2016.

DSK View: *The RBI had released the Know Your Customer (KYC) Directions in 2016, to ensure the authenticity of their customers as well as analyze and assess the risks involved with their accounts. These directions are applicable to all regulated entities of the RBI and require that the regulated entities conduct periodic review of the risk categorization of its accounts on a regular basis.*

Source

PUBLIC COMMENTS INVITED ON DRAFT CIRCULAR ON ARRANGEMENTS WITH CARD NETWORKS FOR ISSUE OF CARDS

On July 05, 2023, the RBI invited comments or feedback from authorised payment system providers/participants (banks and non-banks) on the draft circular titled the 'Arrangements with Card Networks for issue of Debit, Credit and Prepaid Cards' ("*draft circular*"). This draft circular's purpose is primarily to prohibit those exclusive arrangements entered into by and between the card networks and card issuers that restrain the card issuers from issuing cards for another card network. It will ultimately enable the customers to choose any one among the multiple card networks. Comments and feedback in response to the same can be sent until August 04, 2023.

DSK View: *The draft proposal by RBI is a significant move as it will bring wider choice to consumers, while also ending exclusive issuance arrangements that card networks have with leading issuers. However, presently the banks have to pay an annual fee to card networks and if the banks have to enter into an arrangement with multiple networks on the same card, the banks will have to pay additional annual fee which may lead to a rise in their operational costs.*

Source

EUROPEAN UNION'S FOREIGN SUBSIDIES REGULATION

The European Union's ('**EU**') Foreign Subsidies Regulation ('**FSR**') (available here), which was adopted on 23 December 2022 by the European Parliament and Council, came into effect vide Regulation (EU) 2023/1441 dated 10 July 2023.
The main objective of the FSR is to address distortions in the EU's domestic market on account of foreign subsidies granted by non-EU countries. The FSR is applicable to foreign entities engaged in economic activities within the EU as well as entities receiving foreign subsidies from non-EU countries. Action may be taken under the FSR against such entities if the foreign subsidies received by them are found to cause distortions in the EU market.

Notably, a foreign subsidy has been defined as a financial contribution provided directly or indirectly by a third country, conferring a benefit, and which is limited to one or more undertakings or industries. The ambit of such foreign subsidies is inclusive of financial contributions received from non-EU governments, public entities as well as private entities, if the actions of that private entity can be attributed to the third country.

Additionally, the concept of financial contribution also includes a broad range of support measures which are not limited to monetary transfers, for instance, granting special or exclusive rights to an undertaking without receiving adequate remuneration in line with normal market conditions.

The European Commission ('**EC**') has been conferred with the jurisdiction under the FSR to undertake an investigation to determine the trade-distortive foreign subsidies. More specifically, the EC is empowered to investigate issues relation to grant of foreign subsidies to an EU-based entity by a non-EU country, impact of foreign subsidies on EU's internal market etc.

In addition to the above, the entities engaging in mergers, acquisitions ('**M&A**') or public procurement are required to mandatorily notify foreign subsidies received from non-EU countries in the last three years if they meet certain prescribed thresholds, in terms of turnover and foreign financial contribution. Even if such thresholds are not met, the EC has been conferred with powers to demand for a notice ('**Notifications**') of foreign subsidies received by the entities on a case-to-case basis. Upon receiving such notification, the EC has been conferred with the jurisdiction to *ex-ante* investigate the said foreign subsidies.

Upon finding that foreign subsidies indeed exist and distort the EU's internal market, the EC may impose certain redressive measures, unless any other commitments offered by the entity in question are accepted by the EC. Such measures/commitments, inter alia, include:

i. Reducing market presence, by way of a temporary restriction on commercial activity.
ii. Restricting certain investments.
iii. Publication of results of research and development.
iv. Divestment of certain assets.
v. Dissolution of the concerned M&A.
vi. Repayment of the foreign subsidy on an appropriate interest rate.
vii. Blocking M&A deals/awards.

Additional fines or periodic penalty payments may also be imposed if the entity intentionally or negligently provides incomplete, incorrect, or misleading information or does not comply with the decisions of the EC.

The FSR is operative from 12 July 2023. In other words, the EC can now initiate investigations on trade-distortive foreign subsidies. In addition to this, all entities must begin notifying the details of their relevant transactions involving foreign subsidies starting from 12 October 2023. The EC is expected

to publish detailed operational guidelines on the application of the FSR on 31 December 2023, and also plans to release an annual report on the FSR's implementation by 30 June 2024.

DSK View: *Since India's exports to EU in the last financial years were worth nearly $75 billion, minimizing the impact of the FSR is crucial for India. It is anticipated that the flagship production linked incentive scheme ('PLI') could attract a higher degree of scrutiny, owing to incentives offered by the Government of India to foreign as well as domestic companies in order to encourage production and employment.*

The EC may investigate products if they have received any incentives under the PLI or FAME India (Faster Adoption and Manufacturing of Electric Vehicles) or any other export benefits from India. Given India's involvement in exporting IT goods and services and metals, the most vulnerable sectors include smartphones and other IT-related export, steel, aluminium ingots, turbochargers, aviation fuels etc.

In case the EC investigates the schemes implemented by India, it could impose heavy sanctions and fines. Therefore, Indian entities engaging in economic activities in the EU must identify any subsidies they receive from governments, state-owned enterprises, and other public bodies and subsequently, consider assessing whether their operations are in any manner affected by the FSR.

MEDIA & ENTERTAINMENT

MADRAS HIGH COURT QUASHES A COMPLAINT FILED AGAINST THE ACTOR AND DIRECTOR OF THE FILM "VELAIVILLA PATTATHARI"

In the criminal proceedings filed by Cyril Alexander ("Plaintiff") against the actor Dhanush and the director Aishwarya Rajnikanth ("Defendants") for showing the actor smoking a cigarette on the posters of the film "Velaiyilla Pattathari", the Madras High Court ("Court") quashed the proceedings stating that any continuation of the proceedings against the Defendants will amount to an abuse of the process of the Court. The Plaintiff has alleged that the Defendants are in violation of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, which prohibits the direct and indirect promotion of the use or consumption of cigarettes or any other tobacco products through advertisements via any medium. However, the Court held "The main thrust of the provision is to prohibit persons who are engaged in the production, supply or distribution of cigarettes or any other tobacco products from advertising the same. All the other prohibitions that are prescribed under Section 5 of the COTPA revolve around only those persons engaged in those activities. Hence, the act of advertisement is directly relatable to those who are engaged in the production, supply or distribution of cigarettes or any other tobacco products". The Additional Public Prosecutor appearing for the Plaintiff further relied on the notifications issued by the Ministry of Health and Family Welfare in 2004 and 2011 and the rules barring the depiction of tobacco products or their usage in any form of promotional materials and posters of films and television programs. However, the Court noted that the complaint was filed specifically for violation of Section 5 of COTPA and not for violation of the rules.

ALLAHABAD HIGH COURT GRANTS 4 WEEKS' TIME TO THE CENTRAL GOVERNMENT AND CBFC TO FILE THEIR REPLY IN A PIL FILED AGAINST THE DOCUMENTARY "INDIA … WHO LIT THE FUSE?"

In the Public Interest Litigation (PIL) filed by a social activist Sudhir Kumar ("Petitioner") against the broadcast/release of the documentary film "India … Who lit the Fuse?" in India, the Allahabad High Court ("Court") has granted an additional time of 4 weeks to the Union of India (UOI), Ministry of Information and Broadcasting (MIB), Central Board of Film Certification (CBFC) and Al Jazeera Media Network Private Limited (Producer) to file their counter affidavit in the PIL. The PIL has been filed by the Petitioner on the grounds that the telecast of the said documentary may cause disharmony amongst the citizens and threaten the integrity of the nation. The Court on June 14 had restrained the producer from telecasting/ broadcasting/ releasing the said film in India in view of the consequences that may occur if the film is allowed to be telecast/ broadcast. The Petitioner had stated that the film purposefully seeks to create a rift between India's largest religious communities through its disruptive narrative and creates a sense of public hatred. The film also proposes to publicize distorted versions of the facts to create disharmony amongst the citizens. The High Court has directed the Central Government and MIB to take appropriate measures to ensure that the film is not allowed to be telecasted/ broadcast till the contents of the same are examined by the authorities and necessary certification/authorisations are obtained.

DELHI HIGH COURT REFUSES TO STAY THE RELEASE OF THE FILM "NYAY: THE JUSTICE", WHICH IS ALLEGED TO BE BASED ON THE REAL-LIFE STORY OF THE ACTOR SUSHANT SINGH RAJPUT

In a suit filed by the father of actor Sushant Singh Rajput ("Plaintiff") against the film "Nyay: The Justice", alleged to be based on the life of the actor, the Delhi high Court ("Court") opined that the film cannot be injuncted at this point of time, when it has already been released on the OTT

platform "Lapalap". The Plaintiff had filed the suit on the information received by him that the defendants are in the process of producing a film based on the actor's life story without obtaining any permission from his legal representatives. The Plaintiff sought a decree of permanent injunction from the Court, restraining the defendants and all others from using the actor's name, caricature or lifestyle in any projects or films without prior permission of the Plaintiff. The Court, after seeing the film "Nyay: The Justice", observed that "there remained no doubt whatsoever, that the impugned movie was an overt re-enactment of Sushant Singh Rajput's life and times, concentrating largely on the circumstances leading to his death and the investigation that had followed". The Court further opined that "the rights ventilated in the plaint, that is, the right to privacy, the right to publicity and the personal rights which vested in Sushant Singh Rajput, were not heritable. They died with his death. The said rights, therefore, did not survive because of espousal by the plaintiff". The Court observed that the information contained and/or shown in the film was entirely derived from the items featured in the media and therefore would constitute part of publicly available information.

DPIIT RECENTLY ISSUED A PUBLIC NOTICE CLARIFYING THAT RELIGIOUS AND GOVERNMENT EVENTS ARE EXEMPTED FROM PAYING ROYALTY TO COLLECTION SOCIETIES

Amidst several complaints and concerns raised by the general public and various stakeholders regarding the alleged collection of royalties by copyright societies during marriage functions, the Department of Promotion of Industry and Internal Trade (DPIIT) in the Government of India took action. On July 24, 2023, they issued a public notice to remind everyone about the provisions outlined in Section 52(1)(za) of the Copyright Act, 1957. According to this section, the performance or communication of any literary, dramatic, musical, or sound recording work during religious ceremonies, including marriage ceremonies and related social festivities, will not be considered a copyright infringement. To ensure compliance with the law, the DPIIT directed copyright societies to strictly adhere to these provisions and refrain from any actions that contradict them. Moreover, the general public was cautioned against acceding to any undue demands made by copyright societies, individuals, or organizations that defy Section 52(1)(za) of the Act. It's important to note that a recent ruling by the Delhi High Court in the case of *Ten Events and Entertainment v. Novex Communications Pvt. Ltd.* clarified that the determination of what events qualify as 'social festivities associated with the marriage' is a matter to be decided on a case-by-case basis, considering the specific facts and circumstances surrounding each event.

ASCI INTRODUCES NEW GUIDELINES FOR ADVERTISEMENTS FOR CHARITABLE CAUSES

The Advertising Standards Council of India (ASCI) recently issued new guidelines specifically targeting advertisements promoting charitable causes. The focus of these guidelines is on crowdsourcing platforms that facilitate fundraising campaigns for various charitable initiatives. According to the new guidelines, all crowdsourcing platforms will now be obligated to disclose the fees they charge from the funds raised through their platform. This requirement aims to bring greater transparency to the process and ensure that donors and the public are aware of any charges or deductions that occur during the fundraising process. The introduction of these guidelines comes as a significant step towards promoting ethical practices in the realm of charitable advertising. By making fee disclosures mandatory, ASCI seeks to foster a culture of trust and accountability between donors, fundraisers, and the platforms facilitating these initiatives. It also empowers donors to make informed decisions while contributing to charitable causes through crowdsourcing platforms in India.

FOLLOWING THE PREVIOUS RESTRAINT, THE BENGALURU COURT HAS PERMITTED THE CREATORS OF THE FILM 'HUDUGARU BEKAGIDDARE' TO RELEASE THE MOVIE AFTER DEPOSITING ₹50 LAKH

In a sudden twist of events, a commercial court in Bengaluru has permitted the release of the film 'Hudugaru Bekagiddare' on Friday, on the condition that the producers deposit Rs. 50 Lakh. This decision follows a previous order by the same court, issued just a day before, which had restrained the film's release due to a potential breach of contract between the producers and actress Divya Spandana. Initially, the court had granted an *ex-parte* order in favor of the actress, acknowledging the filmmakers' right to use clips of her in the film but subject to her consent. The court expressed concerns that releasing the movie without her consent and leaving the trailers online could infringe upon her moral and performer's rights under the Copyright Act. However, on Thursday, Additional City Civil Judge Ravindra Hegde ruled that while there appeared to be a prima facie case of breach of contract, the balance of convenience was not in favor of continuing the interim order. The court recognized that the breach could be remedied by monetary compensation. Moreover, considering that the trailer had already been viewed 42 lakh times and the film was scheduled for release on Friday, preventing the release could cause irreparable harm to the filmmakers and create inconvenience for theaters, potentially leading to further legal complexities. In light of these factors, the court decided to allow the film's release with the condition of a deposit, providing a resolution that balances the interests of all parties involved.

THE SUPREME COURT OF INDIA PUTS A HALT TO THE PROCEEDINGS IN VARIOUS HIGH COURTS AGAINST THE FILM "ADIPURUSH", WHILE REJECTING THE PIL SEEKING CERTIFICATION CANCELLATION

On Friday, the Supreme Court took action by staying the proceedings against the film 'Adipurush' in both the Allahabad and Calcutta High Courts. Earlier, the Allahabad High Court had summoned the film's makers to appear before it on 27th July in response to widespread backlash against the film. A bench comprising Justices S. K. Kaul and Sudhanshu Dhulia dismissed a Public Interest Litigation (PIL) challenging the certification granted to the film by the Central Board of Film Certification (CBFC). Justice Kaul remarked that interference under Article 32 was unnecessary, and there seems to be a growing sensitivity to various issues in society. The Court emphasized that tolerating artistic expressions, such as films and books, is crucial and should not be subjected to excessive scrutiny. Furthermore, the Court made it clear that cinematographic depictions involve creative interpretations of original material, and there are limits to what extent such depictions can be restricted. The Court stated that it is not within its jurisdiction to address individual sensibilities under Article 32. Matters related to film certification and grievances against it should be pursued through the appropriate legal remedies and appellate authorities. With these decisions, the Supreme Court has put an end to the ongoing legal challenges faced by 'Adipurush' in the Allahabad and Calcutta High Courts, and it upholds the CBFC certification for the film. The film can now proceed with its release plans without further hindrance.

OTT APPS APPROACH CCI AFTER MADRAS HIGH COURT RESTRAINED GOOGLE FROM DELISTING DISNEY+ HOTSTAR BUT MANDATING A 4% COMMISSION ON APP DOWNLOADS

Novi Digital, a subsidiary of Star India and owned by Disney, has obtained interim relief from the Madras High Court in its plea against Google Play Store's new billing system. The court's ruling, issued on Tuesday, prevents Google from delisting Disney+ Hotstar and requires Novi Digital to pay a 4% commission on app downloads through the Play Store. Novi Digital argues that the recent billing policy lacks flexibility for app developers, as they are forced to include Google Pay as a payment option, regardless of whether they use a third-party payment gateway. Previously, fifteen other companies, including Matrimony.com, People Interactive, Info Edge India, and more, had also challenged the policy. In response to Google's app store billing policy, OTT players like Disney+ Hotstar, Zee5, Voot, and others, represented by the Indian Digital Media Industry Foundation (IDMIF), have moved the Competition Commission of India in a disruptive move.

RAJYA SABHA PASSES THE CINEMATOGRAPH (AMENDMENT) BILL, 2023

The Cinematograph (Amendment) Bill, 2023 is a significant legislative step taken to address some of the crucial challenges faced by the Indian film industry. One of the primary focuses of the bill is to tackle piracy, which has been a persistent issue impacting the revenue and creative efforts of filmmakers. The new provisions empower authorities to take more stringent actions against piracy, deterring illegal distribution and viewing of copyrighted content. This move is expected to provide greater protection to content creators and encourage investment in the film industry. In addition to piracy, the bill also introduces reforms to the film certification process. It aims to make the certification procedure more transparent, efficient, and less prone to delays. By streamlining the certification process, filmmakers can expect a quicker turnaround in obtaining the necessary approvals, enabling timely releases and reducing bureaucratic hurdles. The passing of the Cinematograph (Amendment) Bill in the Rajya Sabha reflects the government's commitment to supporting the film industry and promoting a conducive environment for creativity and innovation. It represents a positive step towards safeguarding the interests of filmmakers and content creators, while also fostering a vibrant and thriving cinema ecosystem in India.

ANDHRA PRADESH HIGH COURT ISSUES NOTICE TO MAKERS, AGENCIES AND HOST OF THE TV-SHOW "BIG BOSS TELUGU (SEASON7)"

The Andhra Pradesh High Court has issued notices to various parties, including Star Maa Television, Endemol India, CBFC, the state and central governments, and actor Nagarjuna, in response to PIL petitions concerning obscenity in the reality show "Big Boss." The court has expressed concern over the lack of pre-telecast censorship on TV shows and called for the upcoming season of "Big Boss" to be stopped. It stressed the need for accountability in regulating content and highlighted the potential threat to societal moral values if TV channels broadcast indecent content under the guise of freedom of expression. The PIL petitions were filed by Ketireddy Jagadeeswar Reddy, president of Telugu Yuva Shakti and a film producer, who contended that "Big Boss" was being aired without any censorship, making it unsuitable for children. The petitioner's counsel argued that shows with adult content should only be broadcast between 11 pm and 5 am. In response, the channel's counsel clarified that pre-telecast censorship is not mandated by any provision and urged viewers to register complaints if they have concerns. The counsel highlighted the Cable Network Act's three-tier grievance redressal mechanism for addressing such issues. He suggested that if pre-telecast censorship is deemed necessary, the Union government should introduce appropriate legislation. The counsel also emphasized viewers' right to switch to a different channel if they find the

content objectionable, citing the protection of freedom of expression under Article 19 of the Constitution, which also applies to television programs.

MINISTER OF INFORMATION & BROADCASTING DEMANDS ACCOUNTABILITY FROM CBFC OVER THE BHAGVAD GITA CONTROVERSY IN RELATION TO THE FILM "OPPENHEIMER"

The release of Christopher Nolan's film "Oppenheimer" has sparked controversy in India due to a scene featuring the Bhagavad Gita in an intimate context. In the scene, the lead character, Murphy, is seen with his love interest, discovering the scripture on Oppenheimer's bookshelf. This has led to outrage from some religious groups, despite the use of CGI dress to censor visible nudity and blurring the scripture's cover in the Indian version of the film. In response to the public outcry, Information and Broadcasting Minister Anurag Thakur has publicly called for accountability from the Central Board of Film Certification (CBFC). He has expressed his concern over the approval of the film and has vowed to take strict action against those responsible for allowing the scene to be included in the Indian version of the movie. The controversy around the film "Oppenheimer" has raised important discussions about artistic expression, cultural sensitivity, and the role of film certification in upholding societal values. The Minister's demand for accountability from the CBFC reflects the government's commitment to addressing public concerns and ensuring that responsible decisions are made regarding films' content before their release in Indian theaters.

FAMOUS COMEDIAN SARAH SILVERMAN FILES A LAWSUIT AGAINST OPENAI AND META OVER COPYRIGHT INFRINGEMENT

A lawsuit has been filed by the US comedian and author Sarah Silverman against ChatGPT developer OpenAI and Mark Zuckerberg's Meta for copyright infringement, alleging that the AI models were trained on her work without permission. She further alleged that the AI models have used her work as part of their training data. The lawsuit has been filed by Sarah along with two other authors, Christopher Golden and Richard Kadrey. In relation to the claims against Meta, the authors alleged that "many" of the authors' copyrighted books appear in the dataset used by the company to train LLaMA, a group of Meta-owned AI models. Further, it was alleged that the works were illegally obtained from "shadow library" websites. The AI tool's "uncanny" ability to generate texts similar to copyrighted works has been a point of concern for writers, authors and publishers.

CREATORS AND PERFORMERS DEMAND CREATIVE RIGHTS IN AI PROLIFERATION GLOBALLY

In an open letter, prominent global organizations representing artists and creators, including CISAC, ALCAM, APMA, AMA, CIAM, and others, have joined forces to demand responsible compensation for creators whose works are utilized by Artificial Intelligence (AI) companies. The letter calls for global solutions that regulate generative AI technologies and safeguard musicians' copyrights against unauthorized use by AI systems. The letter emphasizes seven essential principles that aim to ensure the ethical implementation of AI, particularly generative AI, to protect the rights and interests of creators worldwide. This united call highlights the need for AI companies to be held accountable for compensating artists and creators fairly and responsibly when their works are exploited by AI systems. A lawsuit has been filed by the US comedian and author Sarah Silverman against ChatGPT developer OpenAI and Mark Zuckerberg's Meta for copyright infringement, alleging that the AI models were trained on her work without permission. She further alleged that the AI models have used her work as part of their training data. The lawsuit has been filed by Sarah along with two other authors, Christopher Golden and Richard Kadrey. In relation to the claims against Meta, the authors alleged that "many" of the authors' copyrighted books appear in the dataset used by the company to train LLaMA, a group of Meta-owned AI models. Further, it was alleged that the works were illegally obtained from "shadow library" websites. The AI tool's "uncanny" ability to generate texts similar to copyrighted works has been a point of concern for writers, authors and publishers.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

MERGER OF MULTIPLE USERS OF MCA'S V2 PORTAL

The MCA issued the general circular dated July 12, 2023 (accessible *here*), addressed to the presidents of Institute of Cost Accountants of India ("**ICMAI**"), the Institute of Chartered Accountants of India ("**ICAI**") and the Institute of Company Secretaries of India ("**ICSI**") in respect of the subject of users having multiple user IDs on the MCA21 portal.

The general circular highlighted that multiple members from the ICMAI, ICAI and ICSU had numerous user IDs for their transactions on the current Version 2 (V2) of the MCA21 portal. The MCA further stated that many users were unable to create new user IDs on MCA21 Version 3 (V3) as they have old user IDs on V2 that were no longer in use.

In relation to the above, MCA has directed any such member having multiple IDs to approach and inform their respective institutes. The institutes (i.e., ICMAI, ICAI and ICSI) were in turn directed to compile a list of members with multiple user IDs and submit the same to the MCA for either deactivation of extra user IDs or merging the existing IDs into the current V3 ID.

RBI & FEMA

THE SECURITIES AND EXCHANGE BOARD OF INDIA (CREDIT RATING AGENCIES) (AMENDMENT) REGULATIONS, 2023

The Securities and Exchange Board of India ("SEBI") has, vide notification number SEBI/LAD-NRO/GN/2023/136 dated July 03, 2023, notified the Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2023 ("CRA Amendment Regulations"), thereby amending certain provisions of the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999. The CRA Amendment Regulations introduced a new chapter to govern 'ESG Service Providers.' Some key provisions that will govern ESG Service Providers are highlighted below:

i. Introduction of the definition of environmental social governance ("ESG") ratings and ESG rating provider. As per the CRA Amendment Regulations, an ESG rating provider has been defined as a person who is engaged in or proposes to engage in the business of issuing ESG ratings.

ii. ESG rating providers are required to obtain a certificate from SEBI. The CRA Amendment Regulations lay down the process for application as an ESG rating provider, the eligibity criteria, conditions on which the certificate will be issued by the SEBI, corporate governance norms, rating process and monitoring of an ESG rating provider.

iii. The CRA Amendment Regulations also introduce certain restrictions such as Restriction on shareholding in an ESG rating provider and also certain other provisions including best practices, appointment of compliance requirements, confidentiality requirements, etc.

DSK View: *The last few years have highlighted the need for entities to have a robust ESG mechanism. ESG's significance in regulatory policies, investments, and disclosures has led to increased demand for ESG ratings. Much like credit rating providers, the CRA Amendment Regulations aim to provide a guiding framework for ESG rating providers to work within and will also help lenders and other stakeholders to access the credibility of the ESG ratings accorded to an entity.*

SEBI CIRCULAR ON DEBENTURE TRUSTEE'S NOMINEE DIRECTOR ON ISSUER BOARDS

Regulation 23(6) of the NCS Regulations obligates an issuer which is a company under the Companies Act, 2013, to ensure that its articles of association require its Board of Directors to appoint as director, such person nominated by the debenture trustee in terms of the SEBI (Debenture Trustees) Regulations, 1993.

However, there was no such provision for issuers who were not companies under the Companies Act, 2013. Several issuers who are not companies under the Companies Act, 2013, face challenges for appointment of a nominee director where they are governed by different statutes or require prior government approval or their charter documents do not provide for the same.

In this regard, following representations received from debenture trustees and other market participants, SEBI vide circular dated July 04, 2023, bearing reference number SEBI/HO/DDHS/POD1/P/CIR/2023/112 ("**ND Circular**") has clarified as follows:

i. The appointment of a director including nominee director is driven by the provisions of the constitutional / charter documents of the entity.

ii. Nominee director is a director, and therefore, except for specific provisions of law, articles, or the terms of the agreement under which the right of nomination comes, the position, appointment process, responsibilities, etc.,

of the nominee director are the same as that of any other director on the board of the entity.

iii. Issuers that fall in any of the categories mentioned under the ND Circular and that are unable to appoint a nominee director, are required to submit an undertaking to their debenture trustees that in case of events specified under Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993, a non-executive / independent director / trustee / member of its governing body shall be designated as nominee director for the purposes of Regulation 23(6) of NCS Regulations, in consultation with the debenture trustee, or, in case of multiple debenture trustees, in consultation with all the debenture trustees.

***DSK View**: Debenture trustees have a regulatory obligation to ensure that the rights of the holders are protected. Furthermore, debenture trustees were facing an issue with respect to enforcing the relevant provisions of the law which required appointment of a nominee director. After receiving several representations from market participants in the matter, the SEBI has issued the ND Circular which provides much needed clarity on the issue of nominee director appointment.*

RBI INVITES COMMENTS ON DRAFT CIRCULAR ON ARRANGEMENTS WITH CARD NETWORKS FOR ISSUE OF DEBIT, CREDIT AND PREPAID CARDS

The Reserve Bank of India ("**RBI**") has, issued a draft circular for arrangements with card networks for issue of debit, credit and prepaid card vide circular bearing reference number CO.DPSS.POLC.No. S-**** /02-14-003/2023-24 dated July 05, 2023 ("**Draft Circular**").

Key provisions of the Draft Circular have been reproduced hereinbelow:

i. Exclusive arrangements between banks and card networks have been curtailed. Card issuers are also not permitted from entering into agreements which may limit their ability to tie-up with other card-networks.

ii. Customers are required to provide the facility to choose any card from amongst multiple card networks.

iii. Banks are required to issue cards across more than one card network, allowing customers access to a broader range of choices.

Card issuers and card networks are required to adhere to the above requirements in existing agreements at the time of amendment or renewal thereof and in fresh agreements executed after the date of the Draft Circular (once in force).

The RBI has sought comments on the Draft Circular on or before August 04, 2023.

***DSK View**: The Draft Circular has suggested a few key changes which include restricting exclusive relationships between card issuers and card networks. The Draft Circular, as and when notified, will not only boost competition in the card network industry, but also give customers the choice to decide between card networks.*

AMENDMENTS TO THE SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) REGULATIONS, 2021

The Securities and Exchange Board of India ("**SEBI**") has amended the NCS Regulations vide notification bearing number SEBI/LAD-NRO/GN/2023/135 and issued the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023 ("**Amended NCS Regulations**") on July 06, 2023.

The Amended NCS Regulations have introduced crucial amendments to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"). Some of the other salient features of the Amended NCS Regulations have been highlighted below:

i. An improved shelf placement memoranda for private placement of listed non-convertible securities in the form of general information document ("**GID**") and key information document ("**KID**").

ii. A unified and streamlined disclosure regime for both private placement and public issue of non-convertible securities ("**NCSs**"), which requires all disclosures to be in accordance with a common Schedule I (Disclosures for Issue of Securities), a comprehensive list of disclosures applicable for both public debt issuances and privately placed listed NCSs.

iii. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**SEBI (ICDR) Regulations**") requires issuers of specified securities to disclose the total cost of the public issuance. Similarly, the Amended NCS Regulations require issuers to disclose the cost (including fees and commissions paid to lead managers, underwriters, brokers, registrars, legal advisors, regulators, stock exchanges, advertisement cost, etc.) of both privately placed and publicly issued NCSs.

iv. The Amended NCS Regulations, defined both 'Key management person' and 'senior management', in line with the definitions included in SEBI (ICDR) Regulations and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

DSK View: *While one of the key takeaways of the amendment to the NCS Regulations is definitely the fact that SEBI has taken a hard step to streamline the disclosure process for both public and private debt issuances, it will also result in a lot more disclosures to be given by issuers. Privately placed issuances will now go through a comprehensive disclosure process, and this could deter parties from listing their private placement issuances. Having said that, it will hopefully, also bring about transparency and boost investor confidence.*

CIRCULAR FOR DISCLOSURE OF MATERIAL EVENTS / INFORMATION BY LISTED ENTITIES UNDER REGULATIONS 30 AND 30A OF SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI has, vide circular bearing number SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated July 13, 2023 ("**LODR Circular**"), released disclosure requirements for listed entities under Regulations 30 and 30 A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").

The LODR Circular seems to be a follow-on to SEBI's previous circular in the matter (issued on September 09, 2015), whereby SEBI had listed the details that needed to be provided while giving disclosures under Part A of Schedule III of LODR Regulations while also guiding on how to determine when an event of information can be deemed to have occurred.

The disclosure requirements given under the LODR Circular, have been listed under four annexures as briefly listed below:

i. Annexure I: Enumerates the details that need to be provided while disclosing events stated under Paragraphs A and B of Part A of Schedule III of the LODR Regulations. These details *inter-alia,* include events of acquisitions, amalgamations, de-mergers, filing of winding-up petition, loan agreements, giving guarantee/indemnity to a third party, etc.

ii. Annexure II: Contains the timelines for disclosing the events stated under Part A of Schedule III of the LODR Regulations.

iii. Annexure III: provides guidance on when an event or information can be said to have occurred for disclosures under Regulation 30 of the LODR Regulations.

iv. Annexure IV: lists down criteria for determining the materiality of events as well as information under Regulation 30(4) of the LODR Regulations.

DSK View: *The LODR Circular is a step towards bringing about more transparency and also helping listed entities to ensure timely disclosure of material events or information.*

SEBI CIRCULAR MANDATING LEGAL ENTITY IDENTIFIER (LEI) FOR ALL NON – INDIVIDUAL FOREIGN PORTFOLIO INVESTORS

The Securities and Exchange Board of India ("**SEBI**") vide circular dated July 27, 2023, bearing reference number SEBI/HO/AFD/AFD– PoD–2/CIR/P/2023/0127 ("**LEI Circular**") mandated all foreign portfolio investors ("**FPIs**") to declare their Legal Entity Identifier ("**LEI**").

LEI was introduced by the RBI as a measure to improve the quality and accuracy of financial data systems for better risk management. RBI directions, *inter alia*, mandate non-individual borrowers having aggregate exposure of above Rs. 25 (twenty-five) Crores, to obtain an LEI.

In order to avoid having their account restricted from future purchases until their LEIs are delivered to their Designated Depository Participants ("**DDPs**"), all current FPIs (including those asking for renewal) have been instructed to furnish their DDPs with their LEIs within 180 (one hundred and eighty) days from the date of the LEI Circular. Additionally, any new registration made after the publication of the LEI Circular must be completed after receiving the relevant LEI information from the FPIs.

DSK View: *Prior to the issuance of the LEI Circular, FPIs were required to provide their LEI details in the Common Application Form used for registration, KYC and account opening requirements of FPIs. The LEI is a 20 (twenty) character worldwide unique identifier which is used to distinguish legally separate businesses that conduct financial transactions. Mandating the requirement of obtaining LEI for non-individual FPIs is an important step that may lead to an improvement in financial data quality, help to reduce risks and also improve transparency and security in the financial sector.*

SEBI ISSUES CIRCULAR REVEALING FRAMEWORK TO SET UP CORPORATE DEBT MARKET DEVELOPMENT FUND

The Securities and Exchange Board of India ("**SEBI**") vide circular dated July 27, 2023, bearing reference number SEBI/HO/IMD/PoD2/P/CIR/2023/128 has issued a draft framework to set up Corporate Debt Market Development Fund ("**CDMDF Circular**").

The Corporate Debt Market Development Fund ("**CDMDF**"), an alternative investment fund, will be established in accordance with the CDMFD Circular.

The CDMDF is intended to act as a "backstop facility" for the acquisition of investment-grade corporate debt instruments in order to foster participant trust under challenging market conditions. The goal of the Guarantee Scheme for Corporate Debt ("**GSCD**") is to offer guarantee protection against the debt that CDMDF has raised or plans to borrow. This fund aims to give the market stability during periods of market instability.

Representatives from several mutual funds, the Clearing Corporation of India Limited (CCIL), and the Association of Mutual Funds in India (AMFI) participated in the working group that SEBI set up for this purpose.

The CDMDF will purchase "listed corporate debt securities from the specified debt-oriented MF schemes," for which SEBI will decide the trigger and the time frame for such action. The CDMDF was established to give security in the unstable market.

In times of market instability, CDMDF will purchase assets from the secondary market that are investment grade and have a remaining maturity of no more than 5 (five) years. In this instance, the seller will receive 90% (ninety percent) in cash and 10% (ten percent) in the form of CDMDF units.

RESERVE BANK OF INDIA AND CENTRAL BANK OF THE UAE SIGN TWO MOUS TO (I) ESTABLISH A FRAMEWORK TO PROMOTE THE USE OF LOCAL CURRENCIES FOR CROSS-BORDER TRANSACTIONS AND (II) COOPERATION FOR INTERLINKING THEIR PAYMENT AND MESSAGING SYSTEMS

The Reserve Bank of India ("**RBI**") has, vide press release bearing 2023-2024/604 dated July 15, 2023 ("**Press Release**"), notified the signing of two Memorandums of Understanding ("**MoUs**") in Abu Dhabi between the RBI and the Central Bank of UAE ("**CBUAE**") aiming to foster smoother financial interactions.

i. The first MoU establishes a framework to encourage the use of the Indian Rupee ("**INR**") and the UAE Dirham ("**AED**"), for cross-border transactions. This initiative, named the Local Currency Settlement System ("**LCSS**"), covers all current account transactions and permitted capital account transactions.

ii. The second MoU on 'Payments and Messaging Systems,' is an agreement between RBI and CBUAE to collaborate on multiple levels, including linking their respective Fast Payment Systems, Unified Payments Interface ("**UPI**") of India and the Instant Payment Platform ("**IPP**") of the UAE. Additionally, the MoU aims to connect the Card Switches, RuPay switch, and UAESWITCH, facilitating the acceptance of domestic cards and the processing of card transactions between India and the UAE.

iii. The two central banks will also explore linking of payments messaging systems, i.e., Structured Financial Messaging System ("**SFMS**") of India with the messaging system in the UAE.

DSK View: *The overall goal of these MoUs is to promote seamless cross-border trade and payments, hence deepening India and the UAE's economic ties and collaboration. These changes represent a substantial improvement in international financial transactions. The UPI-IPP linkage will enable users in both nations to send money across borders quickly and safely. Domestic card transactions may also be more smooth post linking of card switches.*

THE CENTRAL ADVISORY COMMITTEE IS CONSIDERING PROPOSING AN AMENDMENT TO THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 TO GRANT MORE POWER TO HOMEBUYERS

The Central Advisory Committee ("**CAC**") is currently undertaking a thorough examination of potential amendments to the Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**") with the primary objective of streamlining the process for enforcing recovery warrants against developers who have failed to deliver homes to the homebuyers within the stipulated timelines. The proposed amendment seeks to expedite the compensation process for homebuyers who have been adversely affected by such delays.

Under the proposed amendment, one of the key measures to be implemented is the attachment and auctioning of properties belonging to non-compliant developers. By doing so, the regulatory authorities aim to recover the outstanding dues owed to the aggrieved homebuyers and provide them with due compensation for the delays and inconveniences they have endured.

The CAC is actively working on a comprehensive proposal that will be subsequently presented to the central government, which aims to bring about necessary amendments to the current provisions of RERA, thereby reinforcing and enhancing the authority's capabilities in enforcing recovery warrants.

This critical matter was brought to the forefront during a meeting convened by a sub-committee appointed by the Central Advisory Council led by the Secretary of the Ministry of Housing and Urban Affairs, the meeting served as a platform to discuss and address the urgent need for a more effective mechanism to execute recovery warrants. By actively engaging with relevant stakeholders and authorities, the CAC seeks to devise a robust and viable solution that will empower RERA to safeguard the rights of homebuyers and ensure the timely completion of projects in the real estate sector.

THE MADHYA PRADESH REAL ESTATE REGULATORY AUTHORITY FOCUSES TO BRING PENDING PROJECTS ON TRACK

The Madhya Pradesh Real Estate Regulatory Authority ("**MP RERA**") is proactively working towards resolving the issue of incomplete projects within the state. To achieve this, the authority is fostering collaboration with government agencies, with a special focus on the MP Housing & Infrastructure Development Board. In a recent meeting attended by local authorities and divisional commissioners, the MP RERA engaged in extensive discussions concerning the necessary actions to be taken against developers who have breached contract terms and misled homebuyers.

As part of its enforcement efforts, the Commission issued directives to the developers involved in such incomplete projects, instructing them to promptly refund the money owed to the affected buyers. Additionally, the regulatory authority has also requested comprehensive information about the investors and buyers associated with these projects to facilitate further investigations and ensure that the interests of the buyers are protected.

Currently, the MP RERA is actively conducting hearings to address the grievances and concerns raised by the buyers affected by these incomplete projects. By doing so, the regulatory authority aims to safeguard the rights and investments of homebuyers while working diligently to complete the pending construction work. Throughout this process, the support and cooperation of the MP Housing & Infrastructure Development Board are anticipated to play a crucial role in expediting the resolution of these projects and providing relief to the affected stakeholders.

THE ASSAM REAL ESTATE REGULATORY AUTHORITY IS CONSIDERING THE INTRODUCTION OF A GRADING SYSTEM FOR REAL ESTATE PROJECTS

The Assam Real Estate Regulatory Authority is gearing up to implement a grading system for housing projects, following the example from the successful model established by the Maharashtra Real Estate Regulatory Authority. This new system is envisioned to empower homebuyers by offering them a user-friendly tool to assess and identify reliable developers while gaining comprehensive insights into different real estate projects.

The proposed grading system will entail a thorough and exhaustive evaluation of various aspects of each housing project. This comprehensive assessment will cover essential components such as project overview, technical evaluation, financial details, and legal examination. By providing such in-depth information, the grading system seeks to bridge the information gap between developers and buyers, ensuring that potential homebuyers are well-informed before making a crucial investment decision.

Notably, the grading system goes beyond the usual parameters available to buyers. It delves into the promoter's compliance history, ongoing legal disputes (if any), the quality of project financing, available amenities, approval status, booking percentage, and any financial and legal encumbrances associated with the project. Additionally, the grading system will also consider the presence of an audit certification, further enhancing the reliability and credibility of the information provided.

THE REAL ESTATE REGULATORY AUTHORITY OF NATIONAL CAPITAL TERRITORY OF DELHI MAKES COMMERCIAL ADDRESS MANDATORY FOR REAL ESTATE AGENT REGISTRATION, PROHIBITS HOME OPERATIONS

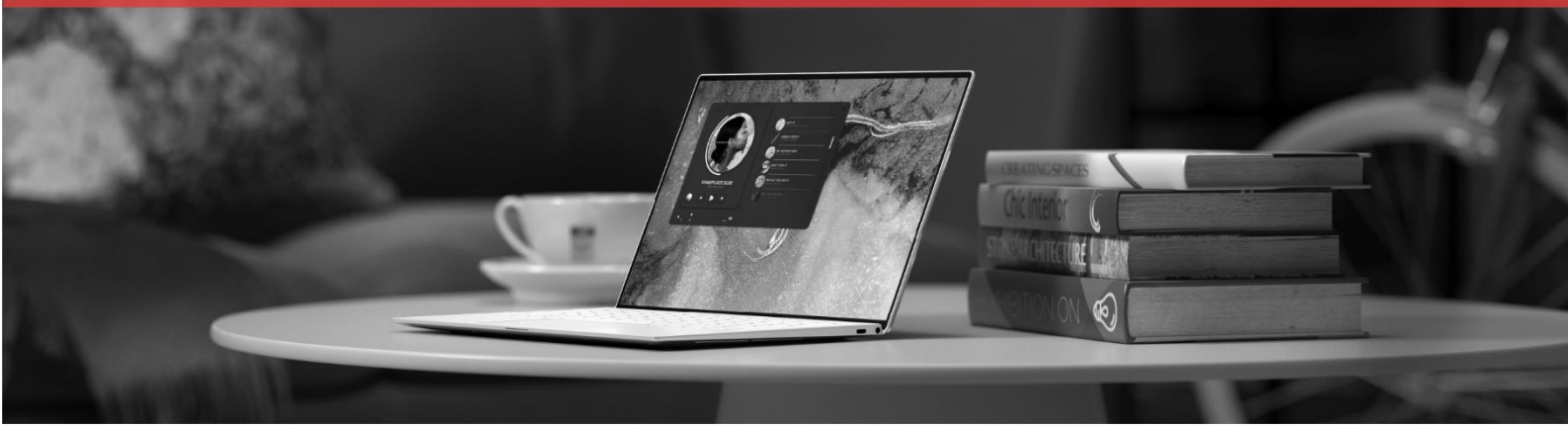
During a real estate conference organized by the Associated Chambers of Commerce and Industry of India ('**ASSOCHAM**') in Delhi, the chairman of Real Estate Regulatory Authority of National Capital Territory of Delhi, highlighted the mandate for both planned and unplanned areas to register projects under Real Estate (Regulation and Development) Act, 2016.

He further emphasized that real estate brokers cannot register their businesses at residential addresses and have to operate from the commercial offices and submit certificates of paid commercial tax at the time of registration. The Chairman also advised potential buyers to verify the registration status of properties on the official website of the authority to ensure its authenticity.

THE REAL ESTATE REGULATORY AUTHORITY OF BIHAR HAS PUBLISHED A HANDBOOK TO PROVIDE CONVENIENCE TO HOMEBUYERS

In an effort to educate homebuyers about the significant aspects of the Real Estate (Regulation and Development) Act, 2016, along with the rules and regulations, the Real Estate Regulatory Authority of Bihar ("**RERA, Bihar**") has released a handbook specifically designed for the allottees.

This handbook serves as a valuable resource by providing essential information, including details about projects that are either registered with RERA, Bihar or are required to be registered. It also outlines the information that promoters must upload on the dedicated webpage of a registered project, which can be accessed through the website maintained by the authority. Moreover, the handbook extensively covers the rights and responsibilities of allottees, guiding them on how to utilize the relevant provisions should they encounter any grievances or feel deceived after booking or purchasing a flat or plot from a developer. Additionally, the handbook includes an annexure that outlines the obligations of promoters, providing a comprehensive reference for all stakeholders involved in the real estate sector.



PARLIAMENTARY PANEL PROPOSES ESTABLISHING CYBER PROTECTION AUTHORITY

In the wake of rising cybercrimes, the parliamentary standing committee on finance ("**Parliamentary Committee**") in its report titled "Cyber Security and Rising Incidence of Cyber/White Collar Crimes" (*accessible here*) presented to the parliament recommended the establishment of a Cyber Protection Authority ("**CPA**"), a centralized overarching regulatory authority specifically focused on cyber security. The CPA would act as a primary point of contact for cyber security information sharing and incident response coordination including effective enforcement at the ground level. Further, the Parliamentary Committee proposed that the CPA spearheads the establishment of a whitelisting framework by the Consumer Protection Authority for Digital Lending Agencies (DLAs) and other intermediaries as a measure to combat illegal lending practices, specific guidelines for app stores, such as Apple Store or Google Play Store amongst other proposed measures.

PAYPAL IS A PAYMENT SYSTEM OPERATOR UNDER PREVENTION OF MONEY LAUNDERING ACT (PMLA)

The Delhi High Court has held that online payment platform PayPal is a 'payment system operator' within the framework of Prevention of Money Laundering Act, 2002 ("**PMLA**") in the case of PayPal Payments Private Limited vs. Financial Intelligence Unit India & Anr. (*accessible here*). The Court was dealing with a plea filed by PayPal challenging the penalty of ₹96 lakh imposed on it by the Financial Intelligence Unit ("**FIU**") for not registering itself as a 'reporting entity'. As per the company's claims, it is a payment intermediary and online payment gateway service provider to its customers, and does not provide clearing, payment, money transfer or settlement services. The Court concluded that PayPal is a 'payment system operator but it ruled that FIU's order imposing penalty on PayPal was unjustified. The Court held that PayPal is liable to be viewed as a "payment system operator" and consequently obliged to comply with reporting entity obligations as placed under the PMLA.

TRAI RELEASES CONSULTATION PAPER ON CALLING AND MESSAGING APP REGULATION

The Telecom Regulatory Authority of India ("**TRAI**") released a consultation paper (*accessible here)* discussing regulatory mechanisms for Over-The-Top ("**OTT**") communication services and the selective banning of OTT services. Through this paper, the TRAI aims at regulating these services which dates back to query of Department of Telecommunications ("**DoT**") from the year 2022 which asked TRAI to reconsider the lack of regulation for messaging and calling applications. In its consultation paper, TRAI defines OTT as an "application accessed and delivered over the public Internet that may be a direct technical/ functional substitute for traditional international telecommunication services." Reference has also been made DoT Committee Report on Net Neutrality (May, 2015) (*accessible here*), which talks about classifying the OTT services.

In this regard, TRAI has invited comments from the public stakeholders which can be submitted till August 4, 2023, and counter-comments which can be submitted till August 18, 2023.

CERT-IN'S CYBERSECURITY GUIDELINES FOR GOVERNMENT ENTITIES

The Indian Computer Emergency Response Team ("**CERT-In**"), which is the government's nodal agency for cybersecurity-related matters, released the guidelines on Information Security Practices for Government Entities (*accessible here*). These new guidelines are in addition to CERT-In's cybersecurity guidelines issued in April, 2022 (*accessible here*), which apply to all entities (private and public) and cover aspects related to the maintenance of KYC

and transaction information for crypto exchanges, and maintenance of detailed customer information for VPN, cloud service, data center providers and timeframe for reporting cybersecurity incidents, synchronization of system clocks, maintenance of logs.

UNIFORM LEVY OF 28% GST ON ONLINE GAMING, CASINOS AND HORSE-RACING

The Goods and Services Tax ("**GST**") Council in its 50th meeting dated July 11, 2023, in exercise of its powers conferred under Article 279A(4) of the Constitution of India has, *inter alia*, recommended levying a uniform 28% tax on full face value for online gaming, casinos and horse-racing. This recommendation comes in the backdrop of the deliberations of the GST Council in its 47th meeting (*minutes of the meeting available here*) dated June 28 & 29, 2022 and the report submitted by the Group of Ministers on Casinos, Race Courses and Online Gaming ("**GoM**") constituted by the GST Council. While there were deliberations on whether online gaming should be taxed on the full-face value of bets placed or on the gross gaming revenue, the GST Council has recommended that GST at the rate of 28% should apply on the full value of the bets placed in case of online gaming. Presently, the GST regime differentiates between a game of chance and a game of skill. While games of chance are taxed at 28%, games of skill are taxed at 18%. The recommendation will be brought into effect by amendments to Schedule III (*Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Services*) and other provisions of the Central Goods and Services Tax Act, 2017, whereby online gaming, casinos and horse racing would be included as taxable actionable claims.

IN CASE OF PROLONGED INCARCERATION, THE CONDITIONAL LIBERTY OVERRIDES THE STATUTORY EMBARGO CREATED UNDER SECTION 37(1)(B)(II) OF THE NDPS ACT

The Supreme Court in the case of ***Rabi Prakash Vs. State of Orissa***, [Special Leave to Appeal (Crl.) No(s). 4169/2023] has held that in case of prolonged incarceration which generally militates against the most precious fundamental right of personal liberty guaranteed under Article 21 of the Constitution, conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("**NDPS Act**"). The facts in the present Special Leave to Appeal ("**Appeal**") were that a police case was registered under Section 20(b)(ii)(C) of the NDPS Act against the petitioner as 247 kg of ganja was recovered from him during a police patrolling operation after which the Appellant was arrested. Through this Appeal the Appellant has sought for grant of bail. The Supreme Court observed that although the trial had commenced, but only one witness out of the total 19 had been examined, thus completion of trial would take time. Recognizing that the Appellant had already spent over three and a half years in custody, the Court acknowledged that this extended detention could infringe upon the Appellant's fundamental right under Article 21 of the Constitution. The Court thus held that prolonged incarceration affects the fundamental rights guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Although, the Court found merit in granting bail, but considering that the Appellant was not a resident of Orissa the place from where the Appellant was arrested, the Court directed the trial Court to impose stringent bail conditions.

DSK View: *In this case, the Supreme Court has rightly upheld the fundamental right of personal liberty of an individual by observing that such a right overrides the statutory embargo under the NDPS Act. Such a precedent is a positive step towards untoward pre-trial incarceration.*

INTERIM COMPENSATION UNDER NEGOTIABLE INSTRUMENTS ACT CANNOT BE GRANTED BEFORE THE ACCUSED PLEADS NOT GUILTY

The Supreme Court in the case of ***Pawan Bhasin vs. State of U.P. & Anr***., [Criminal Appeal No. 1807 /2023] has held that the interim compensation under section 143A of the Negotiable Instruments Act, 1881 ("**NI Act**") cannot be granted before the accused pleads not guilty. In the present case the Appellant (original accused) questioned the validity of the trial court's order directing him to deposit 10% of the dishonoured cheque amount under Section 143A of the NI Act at a stage prior to when notice under Section 251 of the Code of Criminal Procedure, 1973 ("**CrPC**") was sent to him. The Appellant argued that the order was made before the plea was recorded, of pleading "not guilty" to the accusation in the complaint. The Respondent supported the lower court's order, stating that the trial had reached its final stage, and no prejudice would be caused to the Appellant. However, the Supreme Court held that Section 143A allows for interim compensation only when the accused pleads "not guilty". In the present case as the order for interim compensation was issued before the Appellant recorded his plea, the trial court's order was quashed.

DSK View: *In this case the Supreme Court has taken technical view but has rightly observed considering the provisions of the NI Act that the interim compensation could not be granted before recording of plea.*

SECTION 52A OF THE NDPS ACT IS A MANDATORY RULE AND SHOULD BE FOLLOWED BEFORE ANY PROPOSED DESTRUCTION/DISPOSAL OF NARCOTIC SUBSTANCES

In the case of ***Mangilal vs. State of Madhya Pradesh***, [Criminal Appeal No. 1651 Of 2023] the Supreme Court emphasized the mandatory requirement of complying with

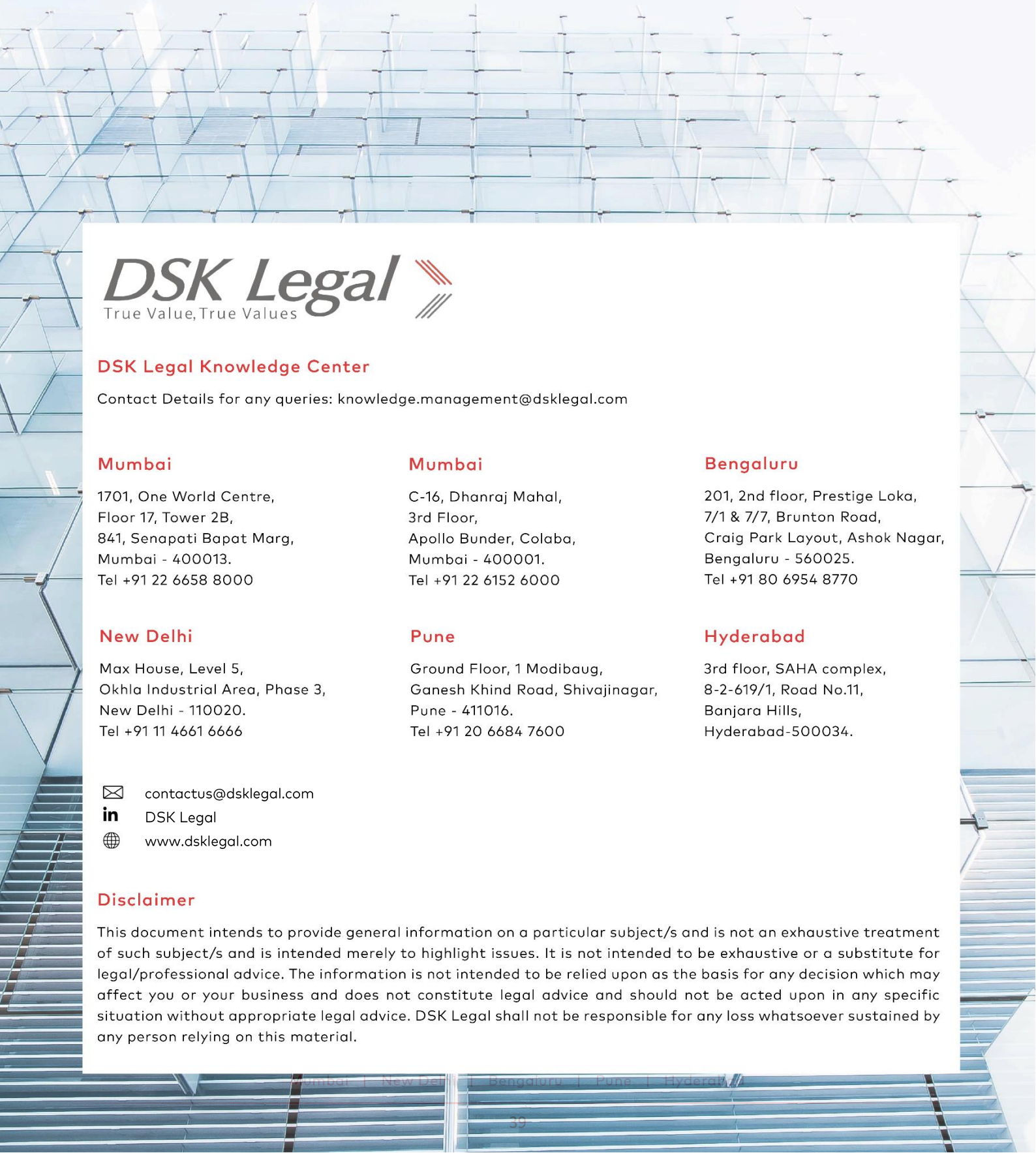
Section 52A of NDPS Act before disposing or destroying seized narcotic substances. The Appellant in this case was charged and convicted under Section 8(b) read with Section 15(c) of the NDPS Act, resulting in 10 years rigorous imprisonment sentence by the trial court, which was upheld by the Madhya Pradesh High Court. However, the Supreme Court, upon hearing the appeal, identified several irregularities in the evidence adduced by the prosecution, one of them being non-compliance of the procedure outlined in Section 52A. The Court held that according to Sub-section (2) of Section 52A, a competent officer must prepare an inventory of the seized narcotic drugs with detailed particulars. This inventory should be submitted to the Magistrate along with relevant photographs, duly certified by the Magistrate as true, or samples drawn in the Magistrate's presence with proper certification. The Court emphasized that the objective behind this provision was to ensure Magistrate's supervision over the disposal of seized contraband. Inventories, photographs, and lists of samples with Magistrate's certification are considered primary evidence. Hence, on failure to comply with Section 52A, the inventories, photographs, or sample lists in absence of a Magistrate's certification cannot be considered as primary evidence. Thus, as a result of the non-compliance of Section 52A and various other irregularities in the testimonies of the prosecution witnesses, the Supreme Court set aside the Appellant's conviction.

DSK View: *In this case the Supreme Court has reiterated that the requirement to follow the procedural mandate under section 52A of the NDPS Act is essential to ensure fair play in the process of investigation.*

GRAVITY OF AN OFFENCE ALONE SHOULD NOT BE THE REASON FOR PRE-TRIAL INCARCERATION

The Delhi High Court in the case of ***Suman Chadha Vs. Serious Fraud Investigation Office***, [Bail Application No. 1741/2022 & Crl.M.A.14727/2022] held that gravity of an offence alone should not be the reason for pre-trial incarceration. In the present bail application, the essential imputation against the Applicant was that he was the director of M/s. Parul Polymers Pvt Ltd. (Accused No. 1) ("**Company**") in Complaint Case No. 245 of 2021 filed by Serious Fraud Investigation Office ("**SFIO**") when the certain offences were alleged to have been committed. The Company was engaged in the trade of plastic granules. Allegedly, the Company indulged in cash sales, fictitious sale of food grain and in creation of accommodation/adjustment accounting entries, apart from misuse of cheque discounting facilities. It was alleged that the Company indulged in fraudulent diversion of funds to sister concerns instead of applying the monies towards the business activities. The Applicant was implicated for his role as an "officer who is in default" within the meaning of Section 2(60) of the Companies Act, 2013. The High Court acknowledging the severity of economic offences, emphasized that gravity alone should not be the reason for pre-trial incarceration. Relying on the judgment of *Sanjay Chandra vs. Central Bureau of Investigation [(2012) 1 SCC 40]* and *P. Chidambaram vs. Directorate of Enforcement [(2020) 13 SCC 791],* the High Court granted bail to the Applicant observing that the allegations must be proven in the trial and that the punishment should follow conviction rather than keeping the accused in custody before trial.

DSK View: *The Delhi High Court in this case has taken a just and equitable stance that only because the gravity of offence is serious, the same cannot be a ground for pre-trial incarceration, which can be proven at the stage of trial.*



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