



# NEWSLETTER

*December 2022*

# TABLE OF CONTENTS

Capital Market	03
05	Competition Law
Dispute Resolution	07
09	Employment Law
Energy & Infrastructure	12
14	Fintech
Intellectual Property Rights	16
18	International Trade / WTO
Media and Entertainment	20
23	Ministry of Corporate Affairs (MCA)
RBI & FEMA	24
26	RERA
Technology Law	28
30	White -Collar Crime



## **MASTER CIRCULAR ON THE REDRESSAL OF INVESTOR GRIEVANCES THROUGH THE SEBI COMPLAINTS REDRESS SYSTEM (“SCORES”) PLATFORM**

SEBI has issued a master circular dated November 7, 2022 on redressal of investor grievances through the SCORES platform (“**SCORES Master Circular**”).

The SCORES Master Circular makes it mandatory for investors to first take up their grievances directly with the entity concerned. In the event the concerned entity fails to redress the investor grievance within the prescribed timelines, the investor may then proceed to file a complaint on the SCORES platform.

## **MASTER CIRCULAR ON ISSUANCE OF NO OBJECTION CERTIFICATE (“NOC”) FOR RELEASE OF 1% ISSUE AMOUNT**

SEBI has issued a master circular dated November 7, 2022 (“**NoC Master Circular**”) for obtaining an NoC from SEBI for release of 1% of the issue size deposited with the designated stock exchange under Regulation 38 (1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”).

As per Regulation 38(1) of the ICDR Regulations, prior to opening the subscription, the issuer is mandated to deposit 1% of the issue size with the designated stock exchange. The NoC Master Circular the process and manner to be followed by the issuer for release of such amounts. It further stipulates that the NoC shall be issued only once SEBI is satisfied that the issue-related complaints received on the SCORES platform have been resolved and requisite Action Taken Reports are submitted by the Issuer.

## **AMENDMENT TO THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 (“SAST REGULATIONS”)**

SEBI *vide* notification dated November 09, 2022 has, *vide* provisos to Regulations 8(2)(d) and 8(3)(e) of the SAST Regulations, clarified that volume-weighted average market price shall not be used to determine offer price of securities in case of a disinvestment from a public sector undertaking by the Central Government or a State Government which leads to a change in control.

## **AMENDMENT TO THE SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) REGULATIONS AND CIRCULAR ON REGISTRATION AND REGULATORY FRAMEWORK FOR ONLINE BOND PLATFORM PROVIDERS (“OBPPS”)**

SEBI *vide* notification dated November 09, 2022 (“**NCS Amendment Regulations**”) has introduced a fresh Chapter VIA in the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, to provide for the registration of OBPPs. Additionally, pursuant to the NCS Amendment Regulations, SEBI has *vide* a circular dated November 14, 2022 provided the framework and mechanism to be followed for such registration.

## **AMENDMENT TO THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 (“LODR”)**

SEBI *vide* notification dated November 14, 2022, has amended certain regulations of the LODR as follows:

- (i) Regulation 25(2A) has been amended to state that if a company is unable to pass a special resolution for appointment of an independent director due to lack of requisite majority, the appointment will be valid if: (a) the votes cast in favour of the appointment exceed the

votes cast against the same; and (b) the votes cast by the public shareholders in favour of the appointment exceed the votes cast against the same.

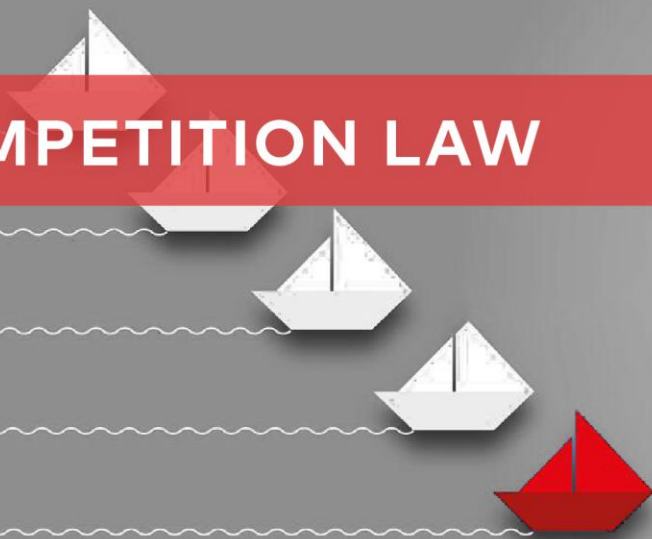
Further, an independent director so appointed shall be removed only if: (a) the votes cast in favour of the removal exceed the votes cast against the same; and (b) the votes cast by the public shareholders in favour of the removal exceed the votes cast against the same.

- (ii) Entities which have listed non-convertible securities are now required to:
- a. submit un-audited or audited standalone and year to date financial results for the last quarter to the recognized stock exchange, within 60 (sixty) days from the end of the quarter;
  - b. submit a statement indicating the utilization of the issue proceeds of such non-convertible securities along with the quarterly financial statements;
  - c. submit along with the quarterly financial statements, a statement indicating material deviations from the use of the issue proceeds till such time the amount has been fully utilized or the purpose has been achieved;
  - d. prior to filing a scheme of arrangement under Sections 230 to 234 of the Companies Act, 2013 or undertaking a reduction in share capital under

Section 66 of the Companies Act, 2013, shall file the draft scheme of arrangement with the stock exchanges for obtaining an NoC, which shall be valid for 6 months.

However, such NoC shall not be required restructuring proposals approved by the National Company Law Tribunal as part of a resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, provided that the details are disclosed to the recognized stock exchange within 1 (one) day of the resolution plan being approved.

- (iii) The process of audit of the issuers by the Comptroller and Auditor General of India (“C&AG”) under Regulation 52(2)(d) has been amended to provide that instead of the erstwhile two-step process, the listed entities must now submit: (a) an un-audited financial results along with the limited review report of C&AG or a practicing chartered accountant, within 60 (sixty) days from the end of the financial year; and (b) the audited financial results within 9 (nine) months from the end of the financial year.
- (iv) If the listed entity has submitted both the consolidated and stand-alone financial results to the stock exchange, it shall publish the consolidated financial results, along with the line items as laid out in Regulation 52(4), in the newspaper.



## CCI APPROVES COMBINATION OF ENTITIES UNDER M&G GROUP AND TRUSTROOT INTERNET PRIVATE LIMITED

CCI has [approved vide its order dated 29.11.2022](#) the combination between Luxembourg Specialist Investment Fund FCP-RAIF – M&G Catalyst Capital Fund, M&G Fund (1) Asia Pacific (Ex Japan) Equity Fund, The Prudential Assurance Company Limited (**the Acquires**) and Trustroot Internet Private Limited (**the Target**).

The Acquirers are solely under the ultimate beneficial ownership of and/or control of M&G plc. The Acquirers are funds that invest in both public and private enterprises around the world across a variety of different sectors. The Target is primarily engaged in providing online business-to-business e-commerce marketplace by the name of 'Udaan' for the facilitation of sale and purchase of goods between sellers and purchasers.

The Acquires collectively proposed to subscribe to certain additional optionally convertible bonds (**OCBs**) and warrants issued by the Target which are convertible into share capital of the Target. Upon conversion, the Acquirers will hold less than 5% of the share capital of the Target on a fully diluted basis.

The proposed transaction is in the nature of acquisition of shares and falls under Section 5(a)(i)(A) of the Competition Act, 2002. Additionally, as per the CCI, the proposed transaction will not cause appreciable adverse effect on the competition as there are no horizontal overlaps, vertical and/or complementary links between the Acquirers and the Target.

The proposed transaction has been notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (as amended).

## CCI APPROVES THE COMBINATION OF 2452991 ONTARIO LIMITED AND MAHINDRA SUSTEN PRIVATE LIMITED

2452991 Ontario Limited (**the Acquirer**) proposed the acquisition of 30% equity shareholding in Mahindra Susten Private Limited (**the Target**). Additionally, under the proposed transaction, the Acquirer shall have the right to acquire additional shareholding of 9.99% in the Target by 31.05.2023 if certain conditions are met. The proposed transaction is in the nature of acquisition under Section 5(a)(1)(A) and was notifiable to CCI under Section 6(2).

The Acquirer is an investment vehicle of Ontario Teachers' Pension Board (**OTPP**). OTPP is engaged in the administration of pension benefits and investment of pension plan assets of active and retired teachers in Ontario, Canada. The Target is engaged in setting up, acquiring, owning, and operating in energy generation projects.

The CCI in its [order dated 29.11.2022](#) observed that there were no existing or potential horizontal/vertical overlaps between the activities of the Acquirer and the Target. The proposed transaction was thus notified under the Green Channel route under Regulation 5A(1) read with Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).

## CCI ADDED TO THE LIST OF ENTITIES WITH WHOM ED CAN SHARE INFORMATION UNDER PMLA

The Central government has issued an amendment [notification dated 22.11.2022](#) to add 15 bodies to a list of entities with whom the Enforcement Directorate (**ED**) can share information about cases under the Prevention of Money Laundering Act, 2002 (**PMLA**). Earlier, the ED was permitted to share data with only 10 agencies including CBI, RBI, SEBI, IRDAI, Intelligence Bureau and Financial Intelligence Unit, among others.

A notification issued by the Union Finance Ministry was published on November 22 said that the list has been amended in exercise of its powers under Section 66 of PMLA, in public interest. Section 66 of PMLA states that ED may furnish information, directly or indirectly, to entities specified through a notification by the Central Government.

### CCI TO REPLACE NAA FOR ANTI PROFITEERING COMPLAINTS UNDER GST

The Central Board of Indirect Taxes and Customs (CBIC) has notified that the Competition Commission of India (CCI) will replace the National Anti-Profiteering Authority (NAA) for GST anti-profiteering complaints from December 1, 2022.

NAA was set up in November 2017 to check unfair profiteering by registered suppliers under the GST law to safeguard consumers. The tenure of NAA ends as on 30.11.2022.

Under the GST law, a three-tier structure was set up for investigation and adjudication of profiteering complaints. A state-level screening committee looked into the complaints and if satisfied forwarded them to Director General Anti-Profiteering (DGAP) for investigation. DGAP then submitted the investigation report to NAA, which passed an order after hearing both the parties.

With the said notification, CCI will be empowered to investigate whether or not a registered person's use of input tax credits or a reduction in the tax rate has actually resulted in a corresponding reduction in the price of the goods or services or both supplied by the registered person. The CCI will create a separate wing to handle complaints relating to GST profiteering.

### HIGH COURT REFUSES TO HALT CCI PROBE AGAINST KARNATAKA CHEMISTS AND DRUGGISTS ASSOCIATION

The Karnataka High Court has refused to interfere with the investigation initiated by CCI against the Karnataka Chemists and Druggists Association (KCDA), which is accused of anti-competitive unfair trade practices.

The president of All India Chemist and Druggist and Distributors Federation (AIOCD) had filed a complaint in 2012 against AIOCD, KCDA and several others making allegations stating that they have violated Section 3(4)(a) to (e) of the Competition Act and indulged in anti-competitive unfair trade practices. It was alleged by the complainant that the petitioners indulged in anti-competitive unfair trade practices which are violative of Section 2, 3 and 4 of the Act.

It was said that AIOCD is compelling the Association of Manufacturers to enter into a memorandum of understanding with them and such memorandum of understanding was based on the unreasonable demands of AIOCD, which are being used to arm twist the market to its advantage. Further, it was said that AIOCD and its affiliate associate was collecting product information service charge from the manufacturers for every drug that is introduced in the market.

The CCI directed its Director General to investigate the complaint and submit a report within a period of 60 days. The DG then issued notice to the petitioners to furnish requisite information. Aggrieved by the said notice, the petitioners had approached the Court.

The High Court held KCDA's plea to be premature. The Court granted KCDA a liberty to submit their objections along with the information and documents to CCI Director General within a period of four weeks, in response to the notice issued to them.



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## **INTERIM MORATORIUM UNDER SECTION 96 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC) WOULD NOT IPSO FACTO PROTECT THE OTHER CO-GUARANTOR FOR THE SAME DEBT**

Recently, the Delhi High Court while passing a judgment in the case of *Axis Trusteeship Services Limited v. Brij Bhushan Singhal & Anr.*<sup>1</sup> on 04.11.2022 specifically held that the relevant date for interim moratorium as provided under Section 96 shall be the date 'when an application is filed under Section 94/95 of the IBC', while relying on the fact that the legislature has specifically used the word 'filed' and thus the court cannot read the same to mean the date when the application is 'registered'. The Court observed that the effect of the interim moratorium as provided under Section 96 of the IBC is that all pending legal proceedings are deemed to have been stayed, which is in contrast to the moratorium as mentioned under Section 14 of the IBC, whereby the moratorium comes into effect only upon an order being passed by the Adjudicating Authority (NCLT) *inter- alia* declaring a moratorium.

Furthermore, the Court was of the opinion that the language used in Section 96(1) of the IBC cannot be extended so as to include all co-guarantors within the ambit of the interim moratorium and thus the effect of the interim moratorium is only in respect of the debts of a 'particular debtor'. It was held that by no stretch of imagination can it be said to include other independent guarantors in respect of the same debt of a corporate debtor. Accordingly, the Court opined that merely because an interim moratorium under Section 96 is operable in respect of one of the co-guarantors, the same would not apply to the other co-guarantor(s).

Keeping in view the clear mandate as provided under Section 96 of the IBC and further by relying on the case of *Stichting Doen-postcode Loterij v. Vin Poly Recyclers Pvt. Ltd. & Ors.*<sup>2</sup>, the Court stayed the summary suit proceedings filed by Plaintiff against the Defendants.

## **JURISDICTION OF CIVIL COURTS NOT BARRED, BORROWER CAN INITIATE CIVIL PROCEEDINGS AGAINST THE FINANCIAL INSTITUTIONS/ BANKS**

The Supreme Court while passing the judgment in the case of *Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.*<sup>3</sup> was posed with the question pertaining to the legal right of the borrower to initiate proceedings before a Civil Court against the bank or a financial institution, which seeks to recover the loan amount against the borrower.

In the present case, the Court dismissed the appeal filed by the Appellant and thereby upheld the decision passed in cases of *Indian Bank v. ABS Marine Products (P) Ltd.*<sup>4</sup> and *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation*<sup>5</sup> wherein Courts had taken a view that the jurisdiction of the Civil Courts was not barred in regard to any suit filed by the borrower against a bank for any relief. The jurisdiction was barred only in regard to applications/suits filed by a bank or a financial institution for recovery of its debts. It was thus held that the borrower had the option to file a separate suit before the Civil Court and the counterclaim before the DRT was not the only remedy.

The Court further expressed that the law laid down in the judgments namely, *United Bank of India v. Abhijit Tea Co. Pvt. Ltd.*<sup>6</sup>, and *State Bank of India v. Ranjan Chemicals Ltd.*<sup>7</sup> do not lay down the correct legal proposition and

<sup>1</sup> CS(COMM) No. 8/2021

<sup>2</sup> 2010 (115) DRJ 708 (DB)

<sup>3</sup> Civil Appeal Nos. 8972-8973/2014

<sup>4</sup> (2006) 5 SCC 72

<sup>5</sup> (2009) 8 SCC 646

<sup>6</sup> (2000) 7 SCC 357

<sup>7</sup> (2007) 1 SCC 97

accordingly held that the law laid down in Section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDB Act') bars the jurisdiction of the Civil Court only in respect of applications filed by the bank or financial institution. Thus, the said provision does not bar the jurisdiction of the Civil Court to try a suit filed by the borrower. It was also observed that there was an absence of a provision in the RDB Act for transfer of suits and proceedings except as provided Section 31 of the RDB Act, which relates to pending suit proceedings by a bank or financial institution for recovery of debt. Accordingly, it was held that there is no provision in the RDB Act by which the remedy of a 'civil suit' by a defendant against the financial institution/ bank is ousted, but it is the matter of choice of that defendant.

**CONTRACTUAL ISSUES/DISPUTES ARE OUTSIDE THE SCOPE OF SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ('IBC')**

The National Company Appellate Tribunal ('NCLAT') while passing the judgment in the matter titled '*a'XYKno Capital Services Pvt. Ltd. vs. Rattan India Power Ltd.*'<sup>8</sup> held that the disputes pertaining to contractual issues are not to be resolved by initiating proceedings under Section 9 of the IBC. In the said matter, the NCLAT upheld the decision of the Adjudicating Authority (NCLT) while observing that there was a pre-existing dispute *inter- se* the parties and thus the application would not fall under the scope and ambit of Section 9 of the IBC.

While rejecting the arguments advanced by the Appellant, the NCLAT observed that prior to the receipt of the notice under Section 8 of the IBC, the Respondent (i.e. the Corporate Debtor) vide its letter dated 18.02.2015 had informed the Appellant (i.e. the Operational Creditor) regarding the poor performance of the consultancy services which were being provided to the Respondent by the Appellant. Emphasis was further laid on the fact that the said letter dated 18.02.2015 was a detailed letter wherein different items/instances were mentioned and it further specifically mentioned that the whole process of consultancy was managed in a very chaotic manner with poor end result.

One of the argument raised by the Appellant was also to the effect that the Appellant continued to render services even after the issuance of the letter dated 18.02.2015 and the contract was also not terminated by the Respondent. In this regard, the NCLAT observed that the issues pertaining to the present matter were clearly contractual in nature and thus the same were not to be resolved under proceedings initiated in terms of Section 9 of the IBC. It was further observed that the present case was not a case where there was an 'undisputed debt' for which insolvency could have been initiated by the Appellant.

<sup>8</sup> Company Appeal (AT) (Insolvency) No. 913 of 2022

**BAR UNDER SECTION 34 OF THE SARFAESI ACT NOT TO BE APPLICABLE IN CASES WHEREIN DRT OR DRAT IS EMPOWERED TO DECIDE THE MATTER UNDER THE SARFAESI ACT**

The Supreme Court while passing the judgment in the case of *Leelamma Mathew v. Indian Overseas Bank and Ors.*<sup>9</sup> has held that the jurisdiction of civil courts as barred under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act') shall only be applicable in cases wherein the Debt Recovery Tribunal ('DRT') or the Debt Recovery Appellate Tribunal ('DRAT') is empowered to decide the matter under the SARFAESI Act.

The present appeal was preferred by the auction purchaser before the Supreme Court, being aggrieved and dissatisfied with the impugned judgment passed by the High Court of Kerala in RFA No.379/2014 wherein the High Court allowed the appeal preferred by the Bank and set aside the judgment dated 31.01.2014 passed by the Trial Court *inter- alia* directing the Bank to pay to the auction purchaser a sum of Rs. 58,10,000/- on account of compensation and damages.

It was the case of the auction purchaser that despite the fact that the Bank had issued the sale certificate for the land admeasuring 54 cents, the Bank had only handed over the possession of the secured property admeasuring 39.60 cents. Thus, the auction purchaser (being the Plaintiff) had filed a suit before the Trial Court thereby seeking compensation and damages with respect to the remaining 14.40 cents. The auction purchaser further emphasised on the fact that it had paid the total sale consideration for 54 cents which was duly accepted by the Bank, despite being aware of the correct factual position. In this regard, it was the case of the auction purchaser that the bank had suppressed the material facts and had committed fraud.

However, the High Court observed that the suit filed by the auction purchaser before the Trial Court was for damages and compensation and thus the same was barred in terms of Section 34 of the SARAESI Act.

The Supreme Court observed that the suit filed by the auction purchaser before the Trial Court was for damages with respect to the balance land and such a dispute could not have been decided by the DRT or the DRAT. It was noted that in the present case, the auction purchaser did not challenge the sale or the sale certificate and as such the grievance of the auction purchaser was limited to damages with respect to the less area, which could have only been adjudicated by a civil court. Accordingly, it was held that the bar as expressed under Section 34 of the SARFAESI Act shall be applicable only in a case where the DRT or the DRAT is empowered to decide the matter under the SARFAESI Act.

<sup>9</sup> 2022 SCC Online SC. 1601

# EMPLOYMENT LAW

## GOVERNMENT OF ANDHRA PRADESH ALLOWS RETAIL ENTERPRISES TO STAY OPEN EVERY DAY FOR A PERIOD OF 5 (FIVE) YEARS

The Government of Andhra Pradesh, vide its notification dated November 1, 2022, has allowed all retail enterprises to stay open every day of the year for a period of 5 (Five) years subject to the following conditions:

- Employees are given compensatory and compulsory weekly holiday on a preferential basis without any deduction of benefits, monetary and otherwise. List of such holidays for a month shall be placed on the notice board in advance.
- Working hours of employees shall be a maximum of 8 (Eight) hours per day and not more than 48 (Forty-Eight) hours in a week. Record of time shall be maintained in wage register separately in respect of employees who worked beyond normal working hours and overtime wages shall be paid to all eligible employees.
- Retail enterprises shall be allowed to operate between 6:00 am to 11:00 pm and employment of women shall be permitted in all shifts, subject to the enterprises ensuring safe and secure working environment.
- Retail enterprises are allowed to maintain record like wages register, muster roll in respect of the employees in electronic form which shall be easily accessible online to the inspector under the Andhra Pradesh Shops and Establishment Act, 1988.

## GOVERNMENT OF GOA NOTIFIES SALARY REIMBURSEMENT SCHEME

The Government of Goa vide its notification dated November 3, 2022, notified the Salary Reimbursement Scheme (“SRS”). Some of the key characteristics of the SRS are mentioned below:

- All the startups which have been certified by the Start-up IT Promotion Cell (“SITPC”) and have a valid start-up certificate number are eligible to apply for the SRS. For availing the benefit, the employee whose salary is being claimed for reimbursement must be a professional.
- For start-ups hiring local talent, 50% (Fifty Percent) of the salary of freshers will be reimbursed, subject to a cap of INR 15,000 (Rupees Fifteen Thousand) per month per recruit. A start-up can claim salary of maximum 25 (Twenty-Five) people per month for a period of 3 (Three) years. This benefit can be availed by 100 (One Hundred) start-ups each year which shall be selected by the SITPC as per its guidelines.
- For start-ups whose work force comprises of 60% (Sixty Percent) of locals, up to 25% (Twenty Five Percent) of salary of the local work force subject to cap of INR 25,00,000 (Rupees Twenty-Five Lakhs) per year will be reimbursed for 3 (Three) years. A start-up can claim salary of maximum 25 (Twenty-Five) people. This benefit can be availed by 100 (One Hundred) start-ups each year which shall be selected by the SITPC as per its guidelines.
- The applicant can apply for this scheme at any time of the financial year after incurring the relevant expenditure.

## GOVERNMENT OF HARYANA NOTIFIES EMPLOYMENT GENERATION SUBSIDY SCHEME

The Government of Haryana, vide its notification dated November 3, 2022, has notified the Employment Generation Subsidy Scheme (“EGS Scheme”) which shall be applicable to electric vehicle manufacturing units located only in B, C and D category blocks in the State. The main objective of the EGS Scheme is capacity building of persons belonging to the State of Haryana (skilled/semi-skilled/un-skilled) and to generate employment opportunities in the state in automotive manufacturing sector for supporting electric vehicle manufacturing and adoption within the state.

The EGS Scheme shall commence from July 10, 2022, and shall remain in operation for a period of 5 (Five) years or till the Government decides to discontinue the scheme, whichever is earlier. To manufacture electric vehicles certain conditions need to be complied with, which are as follows:

- Manufacturers of electric vehicles, battery electric vehicles and fuel cell electric vehicles, charging infrastructure and electric vehicle/Hydrogen/charging infrastructure component manufacturers shall be eligible for this incentive.
- The unit shall be eligible for subsidy only in respect of direct employment on pay roll or contract who have Employees' State Insurance ("ESI")/Provident Fund number.
- The unit should not have been placed in the restrictive list as notified by the state government from time to time. The unit should have obtained No Objection Certificate/Change of Land Use from competent authority if applicable.
- The unit should be in commercial production at the time of disbursement and the subsidy shall not be released to the closed unit.
- Units shall mandatorily employ at-least 75% (Seventy Five Percent) of Haryana domicile workforce or as stated by Haryana State Employment of Local Candidates Act, 2020 as amended from time to time.
- Large and mega units shall compulsorily establish a battery disposal/recycling/material recovery facility at their proposed plant for claiming any incentive under this policy.

#### **EMPLOYEES' STATE INSURANCE CORPORATION ONLINE MATERNITY BENEFIT CLAIM PORTAL LAUNCHED BY UNION MINISTER FOR LABOUR AND EMPLOYMENT**

The Union Minister of Labour & Employment and Environment, Forest & Climate Change vide its notification dated November 11, 2022, launched the Employees' State Insurance Corporation ("ESIC") online maternity benefit claim facility. This portal will make the benefits easily accessible to the beneficiaries. The facility will ease the process of claiming maternity benefits for insured women as the process has now been made online, where the beneficiaries, at their convenience can now claim the maternity benefits from anywhere.

#### **APPRENTICESHIP (AMENDMENT) RULES, 2022**

The Central Government, vide its notification dated November 15, 2022, after consulting with the Central Apprenticeship Council, have passed the Apprenticeship (Amendment) Rules, 2022, and shall come into force on the date of its publication, i.e., November 15, 2022. The Apprenticeship Rules, 1992, have been amended to ensure that the employer pays stipend to the apprentice at the rate

specified from time to time under Rule 11 of the Apprenticeship Rules, 1992, which pertains to payment of stipend to apprentices. However, the cost of stipends shall be borne by the Central Government and the employer up to such limits as may be laid down by the Central Government.

#### **ESIC EXTENDS THE SCOPE OF ESI BENEFITS TO EMPLOYEES ACROSS ODISHA AND TAMIL NADU**

The Ministry of Labour and Employment, vide its notification dated November 16, 2022, has made certain provisions of Employees' State Insurance Act, 1948 applicable to (i) all the areas of Gajapati district, in addition to the already notified areas of the said district, and in all the areas of Nuapada, Malkangiri and Deogarh districts, in the state of Odisha, and (ii) the areas of Dindigul district, in addition to the already notified areas of the said district, in the state of Tamil Nadu. The following provisions have been made applicable to the afore-said districts:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV (*provisions related to Contributions*).
- sections 46 to 73 of Chapter V (*provisions related to Scheme for Other Beneficiaries*); and
- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI (*provisions related to Adjudication of Dispute and Claims*).

Further, the Government of India, vide its notification dated November 4, 2022, stated that November 1, 2022 is the fixed date from which the medical benefit as laid down in Regulation 95-A of the Employees' State Insurance (General) Regulations, 1950 and the Tamil Nadu Employees' State Insurance (Medical Benefit) Rules, 1955 shall be extended to the families of insured persons in the entire area of Chengalpattu, Karur and Salem districts (in addition to the already notified areas in the districts) in the state of Tamil Nadu.

#### **THE KERALA CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT RULES, 2022**

The Government of Kerala, vide its notification dated November 18, 2022, has amended various provisions of the Kerala Child Labour (Prohibition and Regulation) Rules, 1993, and shall come into force on November 18, 2022.

Some of the key amendments include addition of rules that pertain to payment of amount to child or adolescent from and out of Child and Adolescent Labour Rehabilitation Fund, awareness on prohibition of employment of child and adolescents in contravention to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, and conditions subject to which child may be allowed to work as an artist.

Further, format of “Certificate of age” in Form C and the process of its issuance has been amended. The existing Rule 17 (*Abstract of the Act*) has been renumbered as Rule 18 and new Rules 17 to 17D have been added which pertain to persons who may file complaint, manner for compounding offences, duties of the District Magistrate, duties of the Inspector, periodical inspection and monitoring.

### REVISED RATES OF MINIMUM WAGES

- Chandigarh: The union territory of Chandigarh, vide notification dated November 2, 2022, released the minimum wages effective from October 1, 2022, to March 31, 2023. The minimum rates of wages for each category of employee has increased by INR 728 (Rupees Seven Hundred Twenty Eight) per month.
- Ladakh: The administration of union territory of Ladakh, vide notification dated November 4, 2022 has revised the rates of wages:
  - o Un-Skilled- INR 450 (Rupees Four Hundred Fifty) per day
  - o Skilled- INR 575 (Rupees Five Hundred Seventy Five) per day
  - o Highly Skilled- INR 835 (Rupees Eight Hundred Thirty Five) per day
  - o Administrative/ministerial/accounts staff- INR 535 (Rupees Five Hundred Thirty Five) per day

The minimum wages in the tehsils of Zanskar, Durbuk and Nyoma (due to difficult living condition and geographical distance) shall be 10% (Ten Percent) additional to the revised minimum wages mentioned above.

- Goa: The Government of Goa, vide its draft notification dated November 10, 2022, has proposed the revised

minimum rates of wages payable to various categories of employees employed in various trades in the scheduled employment, namely, “Employment in private hospital, nursing homes, dispensaries, medical clinics, radiology, pathology laboratories, surgical clinics including such establishments where medical treatment is given to patients”. The revised minimum rates of wages are as follows:

- o Highly skilled employees: INR 806 (Rupees Eight Hundred Six) per day;
- o Skilled employees: INR 734 (Rupees Seven Hundred Thirty-Four) per day; and
- o Unskilled employees: INR 553 (Rupees Five Hundred Fifty-Three) per day.

Further, the Government of Goa, vide draft notification dated November 10, 2022, has proposed the revised minimum rates of wages payable to various categories of employees employed in various trades in the scheduled employment, namely, “Employment in breweries and distilleries”. The revised minimum rates of wages are as follows:

- o Category-I: INR 806 (Rupees Eight Hundred Six) per day;
- o Category-II: INR 734 (Rupees Seven Hundred Thirty-Four) per day; and
- o Category-III: INR 553 (Rupees Five Hundred Fifty-Three) per day.

- Kerala: The Government of Kerala, vide notification dated November 22, 2022, revised the Consumer Price Index (Cost of Living Index) numbers, updating the rate of variable dearness allowance for all the industries in the state of Kerala, with effect from September 1, 2022.

## ENERGY

### AMENDMENT IN THE 'CHARGING INFRASTRUCTURE FOR ELECTRIC VEHICLES (EV)- THE CONSOLIDATED GUIDELINES AND STANDARDS' ISSUED BY THE MINISTRY OF POWER ON 14.01.2022

The Ministry of Power ("MoP") vide notification no. 12/2/2020-EV-Part(5) (Comp No. 259314), dated 07.11.2022, has amended the Charging Infrastructure for Electric Vehicles-revised Consolidated Guidelines & Standards dated 14.01.2022 ("EV Charging State Guidelines"). The following additions have been made to the EV Charging Station Guidelines:

- (a) Public charging stations to have the feature of prepaid collection service charges with the time of the day rates and discounts for solar hours;
- (b) A Committee under Central Electricity Authority (CEA) to periodically recommend the State Government, the ceiling limit of service charges to be charged by public charging stations and fast charging stations. The Committee will also recommend "time of the day rate" for service charges as well as the discount to be given for charging during solar hours.

### AMENDMENT IN THE 'GUIDELINES FOR TARIFF BASED COMPETITIVE BIDDING PROCESS FOR PROCUREMENT OF POWER FROM GRID CONNECTED WIND SOLAR HYBRID PROJECTS' ISSUED ON 14.10.2020

The Ministry of New and Renewable Energy ("MNRE") vide office memorandum dated 02.11.2022 amended the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects" dated 14.10.2022, which was subsequently amended on 23.07.2021 and 09.03.2022 ("Guidelines").

Clause 17.4 (Delay in Commissioning on account of delay in LTA Operationalization) of the Guidelines have been amended to provide as under:

- Long Term / Medium Term / Short Term Access will be required to be submitted by the Generator prior to commissioning of the Project. However, for sale of power to procurer from scheduled commercial date (SCD), the hybrid power generator shall have Long Term Access (LTA).
- Subject to adherence to the above and subsequent to grant of connectivity, in case there is a delay in grant/operationalization of LTA by the Centra Transmission Utility (CTU)/ State Transmission Utility (STU) and/or there is a delay in readiness of the Inter State Transmission System (ISTS)/ InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS /InSTS network until SCD of the Project, and it is established that:
  - (a) The Generator has complied with the complete application formalities as per the Connectivity Procedure.
  - (b) The delay in grant of connectivity/ LTA by the CTU/ STU and/or delay in readiness of the ISTS/ InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS/ InSTS network, is a factor solely attributable to the STU/ CTU/transmission licensee and is beyond the control of the Generator;

The above shall be treated as delays beyond the control of the Generator and such Projects shall be eligible for suitable time extension in their SCD.

## MNRE NOTIFIES NATIONAL BIO ENERGY PROGRAMME

On 02.11.2022, the MNRE notified the National Bioenergy Programme. MNRE has continued the National Bioenergy Programme for the period from FY 2021-22 to 2025-26. The Programme has been recommended for implementation in two Phases. The Phase-I of the Programme has been approved with a budget outlay of Rs. 858 crores.

The National Bioenergy Programme will comprise of the following sub-schemes:

- i. Waste to Energy Programme (Programme on Energy from Urban, Industrial and Agricultural Wastes /Residues) to support setting up of large Biogas, BioCNG and Power plants (excluding MSW to Power projects).
- ii. Biomass Programme (Scheme to Support Manufacturing of Briquettes & Pellets and Promotion of Biomass (non-bagasse) based cogeneration in Industries) to support setting up of pellets and briquettes for use in power generation and non-bagasse based power generation projects.
- iii. Biogas Programme to support setting up of family and medium size Biogas in rural areas.

## INFRASTRUCTURE

### CLARIFICATION ON DEBARMENT PROCESS FOR PROCUREMENT OF PROJECTS/SERVICES

The National Highways Authority of India (“NHAI”), vide policy circular bearing number 16.16/2022 dated November 11, 2022 has clarified its position regarding continuation of the bidding process in light of issuance of a show cause notice. In this regard, NHAI has observed that upon issuance of a show-cause notice to a bidder, the technical divisions do not conclude the bidding process and wait for the debarment process to get completed, which delays the bidding process. Therefore, vide this policy circular, NHAI has

### CABINET APPROVES MECHANISM FOR PROCUREMENT OF ETHANOL BY PUBLIC SECTOR OIL MARKETING COMPANIES AND ETHANOL BLENDED PETROL (EBP) PROGRAMME-REVISION OF ETHANOL PRICE FOR SUPPLY TO PUBLIC SECTOR QMCS FOR ETHANOL SUPPLY YEAR (ESY) 2022-23

As per Press Information Bureau (“PIB”) press release dated 02.11.2022, the Cabinet Committee on Economic Affairs has approved higher ethanol price derived from different sugarcane based raw materials under the EBP Programme for the forthcoming sugar season 2022-23 during ESY 2022-23 from 1<sup>st</sup> December 2022 to 31<sup>st</sup> October, 2023:

- (a) The price of ethanol from C heavy molasses route has been increased from Rs.46.66 per litre to Rs.49.41 per litre
- (b) The price of ethanol from B heavy molasses route has been increased from Rs.59.08 per litre to Rs.60.73 per litre,
- (c) The price of ethanol from sugarcane juice/sugar/sugar syrup route has been increased from Rs.63.45 per litre to Rs.65.61 per litre,
- (d) Additionally, GST and transportation charges will also be payable.

Further all distilleries will be able to take benefit of the scheme and large number of them are expected to supply ethanol for the EBP programme. Remunerative price to ethanol suppliers will help in early payment to cane farmers, in the process contributing to minimize difficulty of sugarcane farmers.

reiterated that the period of debarment commences from the date of the debarment order, and that issuance of a show-cause notice cannot be considered as a reason to halt the bidding process. However, for ample precaution, such show-cause notices shall be hosted on the procurement portal for information to all bidders. It must be noted that the clarification comes in light of the Department of Expenditure’s office memorandum bearing number F.1/20/2018-PDD dated November 2, 2021, whereby it had notified guidelines pertaining to debarment of entities from bidding, pursuant to Rule 151 of the General Financial Rules, 2017.



## **NPCI EXTENDS THE DECEMBER 31 DEADLINE FOR VOLUME CAP**

The National Payments Corporation of India (“NPCI”) has deferred the deadline with respect to the implementation of volume cap on the UPI service providers by 2 years till December 31, 2024. The NPCI, which runs the UPI digital mechanism in India, had earlier issued guidelines on November 05, 2020 (“TPAP Guidelines”) for implementing a volume cap in the UPI market and the third-party app providers (i.e., the UPI market players) (“TPAPs”) were given time till December 31, 2022 to adhere with the terms of the TPAP Guidelines.

Under the TPAP Guidelines, the NPCI put a 30% volume cap on the TPAPs to avoid any concentration risk. Currently, Google Pay, PhonePe and Paytm are the key market players which collectively captures about 96% of the entire UPI market share. The NPCI gave a timeline of 2 years to the TPAPs to comply with the provisions of the TPAP Guidelines including the adherence to the market share. Once implemented, if a TPAP reaches the 30% threshold, the NPCI will not process any further payment instructions received from such TPAP.

**DSK View:** The extension was foreseeable for two big reasons. Firstly, the NPCI had received a big push from the key market players to defer the implementation of the volume cap. Even if the NPCI had decided to enforce the TPAP Guidelines, it would have been a big practical challenge for them to implement them in the present ecosystem. If volume cap is implemented, it will eventually be the users who will face tremendous issues due to payment failures and ultimately it will be a huge and immediate setback to the industry.

## **OPERATIONALISATION OF CENTRAL BANK DIGITAL CURRENCY - RETAIL PILOT**

Pursuant to its October 31, 2022 press release on central bank digital currency (“CBDC”), the RBI launched the first pilot project for CBDC in the retail sector on December 01, 2022. The first phase includes four participating banks (i.e., State Bank of India, ICICI Bank, Yes Bank and IDFC First Bank) in four cities (Bengaluru, Mumbai, New Delhi and Bhubaneswar).

The first pilot project will be undertaken within a closed user group (“CUG”) comprising of participating customers and merchants. The RBI issued approximately Rs. 1.7 Crore to the participating banks. The identified customers of the participating banks can download a digital wallet and request for transfer of digital currency to their digital wallet in the form of tokens from their bank account. These digital tokens which are being used in the retail sector under this program represent legal tender. The transactions using e₹-R can be conducted through these digital wallets which are stored on mobile phones/devices of the users. Payments to merchants can be made using QR codes displayed at merchant locations.

**DSK View:** It is too early to comment on the viability of this program. However, after the first day in the retail pilot project, the participants are of the view that the users (i.e., both the customers and the merchants) will require detailed training in order to make this program a success.

## **RBI REVISES ELIGIBILITY CRITERIA FOR OFFERING INTERNET BANKING FACILITY BY REGIONAL RURAL BANKS**

The RBI, through its notification dated November 01, 2022, extended the internet banking facility to the Regional Rural Banks (“RRBs”). The notification contained the eligibility criteria for RRBs for offering internet banking facilities to its

customers include: (i) Full implementation of core banking solutions (CBS) and migration to IPv6; (ii) Compliance with minimum prescribed CRAR (i.e., capital to risk assets ratio) requirement as applicable from time to time; (iii) Net worth of Rs. 50 crore or more as on March 31 of the previous financial year; (iv) Net NPA of not more than 5% as on March 31 of the previous financial year; (v) Net profit in the two immediately preceding financial years; (vi) No instance of default in maintenance of CRR/SLR during the immediately preceding financial year; (vii) Satisfactory track record of the RRB with respect to the regulatory compliance and there shall be no instances of monetary penalty imposed for violation of RBI directives/guidelines during the two preceding financial years; (viii) RRB must have a sound internal control system which is approved by a CISA qualified independent auditor. For extending internet banking services with transactional facility, RRBs which fulfil the above-mentioned criteria and other general conditions prescribed by the RBI, can make an application to the concerned Regional Office of Reserve Bank of India through NABARD.

#### **SEBI ISSUES REGULATORY FRAMEWORK FOR ONLINE BOND PLATFORM PROVIDERS**

Securities and Exchange Board of India (“SEBI”) has come out with a regulatory framework for Online Bond Platform Providers (“OBPPs”) in a bid to streamline their operations. OBPPs would be companies incorporated in India and they are required to register themselves as stock brokers in the

debt segment of the stock exchange. These OBPPs are basically the companies which provide debt securities to non-institutional investors through online platforms. Most of these OBPPs are FinTech companies which are backed by stockbrokers or SEBI registered intermediaries. Given the increase in the number of OBPPs which are offering debt securities to non-institutional investors, SEBI felt the need to scrutinize their operations and require them to disclose the details to their investors.

The new framework contains rules such as (i) requirement of registration certificate as a stockbroker from SEBI to act as OBPPs; (ii) after obtaining the aforesaid registration, OBPPs would have to apply to the bourse to act as OBPPs; (iii) OBPPs without registration prior to this framework will need to obtain the registration within three months from this framework becoming effective; (iv) OBPPs would have to ensure compliance with the minimum disclosure requirements. They would also have to disclose on their platform all instances of conflict of interest, if any, arising from its transactions or dealings with related parties.

# INTELLECTUAL PROPERTY RIGHTS



## **BOMBAY HIGH COURT RESTRAINS SAREGAMA FROM INFRINGING COPYRIGHT BUT ALLOWS STAGING OF THE SHOW IN QUESTION**

In a suit filed by Shemaroo Entertainment Ltd. (“Shemaroo”) before the Bombay High Court, it has alleged infringement of its copyright by Saregama India Ltd. (“Saregama”). Shemaroo claimed that the Producer of the film “Disco Dancer” had assigned in its favour rights in the cinematographic film as well as other rights *inter alia* right to adapt the film in various mediums, vide an assignment agreement executed in 2011.

The question before Court was to decide whether Shemaroo was also assigned adaptation rights with respect to the film and that whether Saregama had acquired any rights to adapt and use the story and characters of the film.

After considering all the facts and circumstances of the case, Court was of the prima facie opinion that the adaption rights in the film had already been assigned to Shemaroo in 2011 and any subsequent agreement executed by the Producer to assign the same rights to a third party would have no validity. In order to balance equities, the Court allowed staging of the musical based on the film to Saregama but granted temporary injunction against infringing Plaintiff’s rights in the film in future. The staging was allowed with a direction to deposit the entire collections with the Court within two weeks.

**DSK View:** Copyright is a bundle of rights and it is crucial in case of assignment that the parties clearly indicate which rights are being assigned.

**[Shemaroo Entertainment Ltd. v. Saregama India Ltd. & Ors. – Commercial IP Suit (L) No. 35156 of 2022]**

## **DELHI HIGH COURT AWARDED 15 LAKHS AS COSTS AND DAMAGES IN FAVOUR OF STARBUCKS**

In the captioned matter, the Delhi High Court has awarded damages and cost of over 15 lakhs to Starbucks against a Jaipur based small restaurant, which was found to be using the brand ‘Frappuccino’ for their goods and services. On August 23, 2019, an *ex-parte* injunction was also granted in favour of Starbucks restraining the defendants from using the ‘Frappuccino’ mark in any manner on any of the products sold by them.

In spite of service of summons, the defendants chose not to appear or file their written statements and the Court passed a Summary Judgment after considering the pleadings of the Plaintiff. The Court noted that the mark ‘FRAPPUCCINO’ has a ‘worldwide reputation’ and the adoption and use of the identical mark by the Defendant, has deceived unwary consumers and hence, the said action amounts to infringement of the plaintiff’s trademark and results in passing off. In case Starbucks intends to execute the decree, the Court can order attachment and sale or by the sale without attachment of any property along with criminal charge against the defendant.

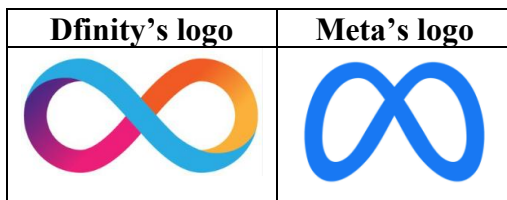
**DSK View:** Indian Courts, especially the Delhi High Court has been granting exemplary damages in non-contested matters. However, the Plaintiff would benefit from such orders upon proper execution of the decree.

**[Starbucks Corporation v. Lol Cafe & Anr., 2022 SCC OnLine Del 3878]**

## **META WINS TRADEMARK LAWSUIT FILED BY DFINITY FOUNDATION OVER ITS INFINITY LOGO**

Meta Platforms Inc. won a trademark lawsuit filed by a blockchain non-profit Dfinity Foundation. In May 2022,

Dfinity filed an opposition proceeding before the USPTO for trademark infringement against Meta (formerly known as Facebook), on the grounds that Meta's infinity logo is extremely similar to its logo which resulted in consumer confusion. Dfinity contended that it is the registered proprietor of two trademarks consisting of the colorful infinity logo and the other with its name underneath in no particular color. For ready reference, a comparison of both parties' logo is shown below:



After hearing the contentions of the parties, the San Francisco Federal Court dismissed Dfinity's case and opined that Meta's infinity logo is not likely to cause confusion with Dfinity's infinity logo as there is a key difference in the shape and colour of both the logos as well as the target audience. The Court noted that the Meta's logo is being used in a particular shape and denotes a letter 'M'. The Court further opined that Dfinity was unable to show the use of its uncolored logo in the course of trade and the rainbow logo is not similar enough to maintain the lawsuit. In light of the same, the Court dismissed the lawsuit in favour of Meta Inc.

**DSK View:** Under the Trademarks law, use of distinctive color/combination of colors helps customers or the general public to associate the goods/services with their source, which helps to increase the market of a particular source and also excludes others from deriving any benefit accrued from these unique marks.

**WIPO LAUNCHES NEW FLAGSHIP PUBLICATION: THE GREEN TECHNOLOGY BOOK**

WIPO has launched a new initiative and introduced the "Green Technology Book" focusing on innovation, technology and intellectual property (IP) at the forefront of the fight against climate change. In the first edition of the book, WIPO has identified and highlighted 200 cutting-edge technologies which will be helpful to Indian businesses in various sectors *inter alia* rainwater harvesting and irrigation, thermocrete concrete, AI based flood forecasting system, genetically modified insect resistant BT cotton, breeding of climate-resilient rice among others. The publication can be accessed through the following link:

<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-1080-en-green-technology-book.pdf>



## **COP27 REACHES A BREAKTHROUGH AGREEMENT BY ESTABLISHING A 'LOSS AND DAMAGE' FUND FOR VULNERABLE COUNTRIES**

Delegates from 190 countries (members of the Paris Climate Accord), gathered at the 27<sup>th</sup> session of the Conference of Parties ("COP27") to once again reaffirm their commitments to limit global temperature rise to 1.5 degrees Celsius above pre-industrial levels.

The most central and important result of the COP27 decision was the creation of a specific 'loss and damage' fund for the developing countries, and particularly, the countries vulnerable to the adverse effects of a climate crisis. This fund aims to initially draw on contributions from developed countries and other private and public sources, such as international financial institutions.

Despite such an agreement, no contributions have been pledged to the loss and damage fund. Most of the developed countries were concerned that creation of such a fund would open them to a long-term liability and hence, it was negotiated explicitly that all the contributions made to the loss and damage fund would be voluntary.

Further, the member-parties have agreed to establish a Transitional Committee which would make recommendations on how to operationalise the fund at COP28 next year. The first meeting of the Transitional Committee is expected to take place before the end of March 2023.

Essentially, the COP27 decision of funding has merely created a framework for contributions by developed countries without ironing out the key details regarding the meaning of 'loss and damage', financial liability of a developed country, amount of funding and how and which

countries would benefit from the contributions made to the fund.

However, the creation of a loss and damage fund at COP27 is a stepping-stone to set a new collective quantified goal on climate finance which seems to have taken into account the needs and priorities of developing countries.

**DSK View:** *Though the cover decision of the Sharm el-Sheikh Implementation Plan has highlighted that the global transformation to a low-carbon economy requires massive investments; delivering such funding would require a swift and comprehensive transformation of the financial system, its structure, and processes along with the engagement of various government stakeholders, central banks, commercial banks, institutional investors, and other financial actors.*

*However, as is evident from the discussion at COP27, the loss and damage fund is completely voluntary and the developed countries have specifically avoided terms like liability and/or compensation. Without having specific commitments from the wealthy developed countries who possess cutting-edge technology along with the required funds to support the developing countries in transitioning towards cleaner sources of energy; the entire purpose and aim of COP27 to combat climate change and limit the global rise of temperatures to 1.5 degrees Celsius seems to be idealistic at best. It remains to be seen how far these lofty goals reach fruition until COP 28.*

## **US, CANADA, TAIWAN, PENGHU, KINMEN AND MATSU RAISED CONCERNS AT THE WTO REGARDING INDIA'S BIS NORMS**

In a communication dated 11 November 2022 (G/TBT/W/774), the delegations of Canada, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States ("concerned countries") have alleged

that the implementation of the Quality Control Orders (“QCOs”) issued by the Bureau of Indian Standards (“BIS”) for toys, chemicals, ICT products and automobile parts is inconsistent with India’s obligations under the WTO. Such concerns have been raised in light of the fact that compliance with the Indian standards was previously voluntary.

The communication urges India to accept foreign laboratory test results from internationally accredited labs as proof of compliance with Indian requirements. This is expected to ensure that India's national standards keep pace with the relevant international standards as divergences between standards can result in products which are less safe.

Although the concerned countries have acknowledged India’s goal of streamlining the domestic process for standardisation of products, yet they have highlighted the following issues in their communication to the WTO:

- a. Though the BIS possesses the authority to recognise laboratories for the purposes of standardization and quality control, including institutions outside of India. However, the processes through which institutions could obtain recognition is unclear and lack transparency.
- b. Additionally, the exporters whose products have already been certified by accredited international laboratories are not being accepted as being compliant with the requirements of the Compulsory Registration Order and the Mandatory Testing and Certification of Telecommunications Equipment scheme. As a result, exporters are being forced to undertake duplicative testing.
- c. Owing to the travel restrictions caused by the pandemic, the exporters have been unable to comply with the existing QCO’s for foreign inspection due to lack of provision for virtual auditing. Particularly in the case of toys, every import shipment is subjected to an additional on-site sampling at the manufacturing facility and a subsequent in-country testing in India.

Further, an update is sought on the proposed e-labels which comply the QCO’s designation code requirements. Questions regarding how the BIS standards are regularly updated to ensure that they reflect the latest scientific and technological changes and safety considerations have also been raised by the concerned countries.

In view of the above issues, they have requested India to reinstate full and permanent recognition of results from International Laboratory Accreditation Cooperation-accredited labs. The concerned countries have also urged India to consider virtual and/or alternative options for inspections under the issued QCOs while pledging that the products from their countries conform to the applicable technical regulations or standards.

**DSK View:** *Historically, WTO members have either relied on international standards in their domestic laws or have formulated their own standards basis their domestic requirements. In many such instances, the domestic standards have also exceeded the applicable international standards. While India has traditionally relied on following the relevant international standards in many disciplines, it seems that pursuant to its requirements, it is also proposing standards which may differ from the applicable international standard.*

*A basic scrutiny of the requirements under the QCOs provides that the same are applicable to domestic as well as imported goods in an equivalent fashion. Additionally, all the stakeholders are provided adequate transition time for their implementation. Hence, implementation of the QCOs prima facie may not be regarded as highly burdensome for the exporters particularly and thus, may not be inconsistent with India’s obligation under the WTO covered agreements.*

*Having said that, the concerns of the other WTO member countries seem to be also with respect to lack of transparency under the Indian law vis-à-vis recognition of foreign laboratories. It could be relevant to analyse whether a claim can be made of violation of WTO covered agreements on ‘as applied’ basis.*

# MEDIA & ENTERTAINMENT



## **BOMBAY HIGH COURT RESTRAINS SAREGAMA INDIA LIMITED FROM PERFORMING THE STAGE PLAY “DISCO DANCER – THE MUSICAL”**

In a suit filed by Shemaroo Entertainment Limited (“Plaintiff”) before the Bombay High Court (“Court”) against Saregama India Limited and others (“Defendants”), seeking relief against the Defendants from infringing the Plaintiff’s copyright in the film “Disco Dancer”, the Court has passed an interim order restraining the Defendants from performing their stage play “Disco Dancer – The Musical”. The Plaintiff had submitted before the Court that the rights in the film including the theatrical rights, were assigned by the film’s producer to the Plaintiff via an agreement dated November 2011. In response to the same, the Defendants submitted, that Gamophone Company (“Company”) had executed an agreement with the producer of the film in the year 1982, thereby acquiring the rights related to recording of performance of musical nature and soundtracks, which was subsequently assigned to the Defendants by the Company via an agreement dated 2019. The Court observed that the Plaintiff has made a prima facie case in their favour and hence passed the said order. However, the Court refused to restrain the Defendants from staging the London musical by stating that “Granting an order of restraint even for staging the musical from November 16, 2022 for four days in a row in London may not be appropriate”. The next hearing of the matter will be on January 9, 2023.

## **THE DIGITAL PERSONAL DATA PROTECTION BILL PROPOSES TO AMEND THE RIGHT TO INFORMATION ACT TO PUT A COMPLETE BAR ON DISCLOSURE OF PERSONAL INFORMATION**

The Ministry of Electronics and Information Technology (MeitY) on November 18, 2022 released the draft of the Digital Personal Data Protection Bill (“Bill”) for the public to send their feedbacks on the same. As per Clause 30(2) of the Bill, MeitY has proposed an amendment to Section 8(j) of the

Right to Information Act, 2005 (“RTI Act”). Section 8(j) of the RTI Act states that personal information shall be exempted from the application of the RTI Act, if its disclosure has “no relationship to any public activity or interest or if it would cause unwarranted invasion of the privacy of the individual”. However, the Public Information Officer can direct the disclosure of the same if it is satisfied that “the larger public interest justifies the disclosure of such information”. Now, the Bill proposes to completely waive off such limitations and to remove the powers of the Public Information Officers. RTI activist and former Central Information Commissioner, Shailesh Gandhi has expressed his concerns while commenting on the Bill that the amendment will significantly weaken the RTI Act and “make RTI Right to Denial of Information”. The last date for submitting the feedbacks is December 17, 2022.

## **A COMMERCIAL COURT IN MANSI RESTRAINED SALIM MERCHANT AND SULAIMAN MERCHANT FROM RELEASING THE SONG “JAANDI VAAR”**

In a suit filed by the parents (“Plaintiffs”) of the late Punjabi singer Sidhu Moosewala (“Singer”), before a Commercial Court in Mansi (“Court”), against the record label Merchant Records Private Limited and its directors Salim Merchant and Sulaiman Merchant (“Defendants”), seeking injunction against the Defendants from infringing the copyright in the song “Jaandi Vaar”, which was sung by the Singer, the Court has restrained the Defendants from using the alleged song in any manner till the final disposal of the suit. The Plaintiffs has submitted before that Court that the Singer was the author, composer and sole owner of the original song which was released in the year 2018 and being the legal representative of the Singer, they are entitled to the inheritance of the copyright upon his death. Further, the Plaintiffs submitted that there is no existing assignment/license agreement between the Singer and the Defendants. However, the Defendants submitted that the mere fact that the Singer had performed in the song, doesn’t make him the sole owner and

as the main “hook-line/antaraa” of the song was composed by the Defendants, they are the joint owners of the copyright in the song. The Court after hearing the contentions of both the sides observed that, “It is admitted fact that the deceased singer is the original author of the song, which was sung by him in the year 2017 and the new song in question is nothing but reprised version or cover version of the old song, for which, even the defendants were required to obtain right from the deceased singer. The act of the defendants is apparently prohibited by section 31C (1) of the Copyright Act, 1957”.

### **THE UNION CABINET RECENTLY APPROVED THE UPLINKING AND DOWNLINKING OF THE SATELLITE TELEVISION CHANNELS IN INDIA, 2022**

The objective of the said guidelines is to ease issue of permission to LLPs and companies registered in India for uplinking and downlinking of TV Channels, setting up of Teleports/Teleport Hub, temporary uplinking of a live event among various other things. Under the new guidelines, programmes of national interest and national importance would be given a 30-minute time slot for broadcast. Also, no prior permission for live telecast of events would be needed, only prior registration of events to be telecast live would be necessary. A channel can be uplinked by using facilities of more than one teleport/ satellite as against only one teleport/satellite at present. Further, according to the guidelines, a company/LLP can use news-gathering equipment other than digital satellite news gathering services (DSNG), such as optic fibre, bag back, mobile, among others and no separate permission would be necessary for the same. Additionally, the LLPs/companies would be allowed to uplink foreign channels from Indian teleports as well.

### **THE SUIT FILED BY THAIKUDDAM BRIDGE AGAINST THE MAKERS OF THE FILM “KANTARA”, HAS BEEN RETURNED BY THE KOZHIKODE DISTRICT COURT CITING LACK OF JURISDICTION**

The band Thaikuddam Bridge (“Plaintiff”), a fusion group from Kerala, had initially obtained an injunction order dated 28<sup>th</sup> October 2022, against the makers of the film “Kantara”, alleging that the song “Navarasam” has been infringed by “Varaha Roopam” featured in “Kantara”. The Kozhikode District Court vide order dated November 25, 2022 returned the suit citing lack of jurisdiction. It further directed that the parties shall appear before the Commercial Court at Ernakulam within 14 days. Parallely, Mathrubhumi Printing and Publishing Co. Ltd., claiming to be the assignee of copyright in the song “Navarasam”, also procured an injunction from District Court in Pallakad District on November 02, 2022 against Hombale Films & Ors (“Defendants”). The order was challenged by the Defendants, by way of a writ petition which has been dismissed by the Kerala High Court citing, that

alternative appellate remedies under the Civil Procedure Code, 1908 ought to be exhausted. As a result, the ad-interim injunction order passed by the Kozhikode District Court ceased to have effect, however, the injunction order passed by the District Court in Pallakad appears to be still in force.

### **MRT MUSIC FILES COPYRIGHT INFRINGEMENT CASE AGAINST INDIAN NATIONAL CONGRESS (INC) FOR USING SONGS FROM THE FILM “KGF-2” FOR PROMOTING “BHARAT JODO YATRA”**

An FIR has been filed by MRT Music (“Complainant”) against Indian National Congress (INC) leaders, Rahul Gandhi, Supriya Shrinete and Jairam Ramesh (“Respondents”), alleging copyright infringement of the songs from the film “KGF-2 (Hindi)”, the rights of which are owned by the Complainant, for creating marketing videos for the Rahul Gandhi led “Bharat Jodo Yatra”. The complaint has been filed under sections 403 (dishonest misappropriation of property), 465 (punishment for forgery), 120 (concealing design to commit offence punishable with imprisonment) and 34 (common intention) of the Indian Penal Code, 1860, Section 66 of the Information Technology Act, 2000 and under Section 63 of the Copyrights Act, 1957. In the complaint, the Complainant has alleged that, “INC has created a video by unlawfully downloading and synchronising and broadcasting the songs pertaining to the movie KGF – Chapter 2 in Hindi and portraying it to be owned by the INC.

### **THE TELANGANA HIGH COURT HAS DIRECTED THE CITY CIVIL COURT TO DISPOSE-OFF THE SUIT FILED AGAINST NETFLIX, IN RELATION TO ITS SERIES “BAD BOY BILLIONAIRES”**

In an appeal filed by Netflix (“Appellant”), against the ad interim injunction order passed by the Additional Chief Judge, City Civil Court, Hyderabad restraining the platform from airing an episode on Satyam Computer’s B. Ramalinga Raju (“Respondent”) in its documentary series “Bad Boy Billionaires – India”, the Telangana High Court (“Court”) has passed orders directing the City Civil Court to dispose of the matter on merits within a period of three weeks. The Appellant in the appeal submitted that as per the City Civil Court’s injunction order, the platform was restrained from streaming the series and trailer using the Respondent’s name/image/reference, however the order is being extended from time to time without getting to any conclusion. The Court while passing the order noted that “Order XXXIX Rule 3A mandates that where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted”, and the City Civil Court has ignored the same.

**INTER-MINISTERIAL PANEL IN ITS REPORT PROPOSES THE NEED FOR A CENTRAL LEGISLATION GOVERNING ONLINE GAMING**

An Inter-Ministerial Task Force (IMTF), set up by the Ministry of Electronics and Information Technology (MeitY) to explore new regulations for online gaming, in its report submitted to the Prime Minister’s Office in September 2022 has recommended for the formulation of a central legislation governing the online gaming and gambling sector. IMTF in its report submitted that the current legislation governing gambling activities in the Indian Territory, i.e., the Public Gambling Act of 1867 (“Gambling Act”) is an obsolete legislation and is incapable of *“covering/defending/dealing with digital-based activities and the emerging technologies associated with it”*. The report further added that some of the state governments follow the Gambling Act and resultantly allow real money games of skill while some other states have sought to prohibit both “Games of skill” and “Games of chance”, even when the Supreme Court has given its recognition to the fundamental right to trade for Games of skill. The Report has further pointed out the absence of any central legislation to deal with the issue of offshore illegal gambling sites.

**DELHI HIGH COURT RECENTLY PASSED AN ORDER IN FAVOUR OF STAR INDIA AND NOVI DIGITAL FOR BLOCKING THE “PIKASHOW” MOBILE APPLICATION**

In a suit filed by Star India Private Limited and Novi Digital Entertainment Private Limited (“Plaintiffs”) before the Delhi High Court (“Court”), against the mobile application “PikaShow” and its owners (“Defendants”) alleging the Defendants of hosting content on the mobile application, over which the Plaintiffs have exclusive rights and copyright, the Court has passed interim injunction order in favour of the Plaintiffs and directed the Department of Telecommunications (DoT) and Ministry of Electronics and Information Technology (MeitY) to block the application, any of the domain names or websites available. The Plaintiffs submitted before the Court that *“PikaShow application is a standalone app which is brazenly engaged in piracy of exclusive content belonging to various copyright owners”*. The Court also noted that in an earlier case, similar directions were passed against streaming of infringing content by rogue apps and URLs with similar name to the PikaShow app. The matter will now be heard on January 25, 2023.

**THE LAWSUIT FILED AGAINST SINGER MARIAH CAREY FOR THE SONG “ALL I WANT FOR CHRISTMAS IS YOU”, HAS BEEN DROPPED BY THE PLAINTIFF VOLUNTARILY**

The lawsuit filed by a Mississippi songwriter, Andy Stone (“Plaintiff”) against the singer Mariah Carey and her song writing partner Walter Afanasieff (“Defendants”), has been voluntarily dropped by the Stone’s attorneys. The lawsuit was filed by Stone alleging copyright infringement by the Defendants of the Plaintiff’s song titled “All I Want For Christmas Is You”, which was recorded and released by the Plaintiff in the year 1989 under the name “Vince Vance and the Valiants”. The Plaintiff further accused the Defendants of making a “derivative” version of the Plaintiff’s song and profiting from the track since its release in the year 1994. The Plaintiff was seeking damages of around \$20 million from the Defendants. However, as per a report published by the magazine “Rolling Stone”, the Plaintiff was *“unlikely to win the lawsuit, as there are 177 copyrighted songs with the title “All I Want For Christmas Is You”, including many that were written before the Vince Vance and the Valiants version”*.

**A NEW LAWSUIT HAS BEEN FILED BY THE PRODUCERS OF THE TV SERIES “THE WALKING DEAD” AGAINST AMC NETWORKS**

A new \$200 million lawsuit has been filed before the California Supreme Court by several producers (“Plaintiffs”) of the TV series “The Walking Dead” against AMC Networks (“Defendants”) to recover profits from the series and its various spin-offs, claiming that the Defendants’ \$200 million settlement in the year 2021 with the series creator, Mr. Frank Darabont and his agency, CAA, entitled them to a similar treatment. The Plaintiffs in their statement stated that *“On the one hand AMC tells them they are entitled to nothing based on erroneous pre-trial rulings which are subject to appeal, while AMC paid \$200 million to Frank Darabont and CAA to avoid a New York jury’s review of the exact same contingent compensation definition”*. However, the Defendants stated that the settlement was a full buyout of the creator’s rights and ended the profit participation between the parties for the series and its spinoffs, along with any rights or claims to future compensation. The trial date for the lawsuit has been set as February 2023.



## COMPANIES (REGISTERED VALUERS AND VALUATION) AMENDMENT RULES, 2022

The MCA *vide* notification dated November 21, 2022 (accessible [here](#)), has notified the Companies (Registered Valuers and Valuations) Amendment Rules, 2022 ("**RV Amendment Rules**"), which amends the Companies (Registered Valuers and Valuations) Rules, 2017 (hereinafter "**RV Rules**"), and the key amendments have been summarised below:

1. It has now been clarified (to rectify a typographical error in the RV Rules) that no partnership or company shall be eligible to be a valuer unless all the partners or directors of such partnership or company (as applicable) are eligible to be valuers as per the norms prescribed under the RV Rules.
2. The RV Amendment Rules brings to force a new requirement being that a company or a partnership cannot be a registered valuer unless it is a member of a 'registered valuers organisation' (being a valuers organisation registered with Insolvency and Bankruptcy Board of India ("**IBBI**") as per the RV Rules), it being clarified that the valuer cannot be a member of more than one such 'registered valuers organisation' at any given point of time.
3. A partnership or a company, already registered as valuers under the RV Rules, on the date of coming into force of the RV Amendment Rules, will have to comply with the stipulations stated in paragraphs 1 and 2 above within 6 (six) months from the date of coming into force of the RV Amendment Rules.
4. As per the new Rule 7A of the RV Rules introduced *vide* the RV Amendment Rules, a registered valuer is now required to intimate IBBI of any change in the personal details or any modification in the composition of partners or directors or any modification in any clause of the partnership agreement or Memorandum of Association, which may affect the registration of the registered valuer, after paying the fee as per Table I of Annexure V of RV Rules (which annexure has been newly introduced *vide* the RV Amendment Rules).
5. The RV Amendment Rules have clarified that a valuer can use either of the internationally accepted valuation standards *or* valuation standards adopted by any 'registered valuers organisation' for valuation thereby removing the ambiguity in the existing provisions which required adoption of both the aforesaid methods of valuation.
6. As per the new Rule 14A to the RV Rules introduced *vide* the RV Amendment Rules, a 'registered valuers organisation' is now required to intimate IBBI of any change in composition of its governing board, or its committees or appellate panel, or other details, after paying the fee as per Table II of Annexure V of RV Rules (which annexure has been newly introduced *vide* the RV Amendment Rules).
7. The RV Amendment Rules have clarified that an individual member of any 'registered valuers organisation' functioning as a whole-time director in a company registered as a valuer will be entitled to continue as a valuer under the RV Rules (and will not be disentitled from continuing his/her registration as a valuer, as was the case prior to the RV Amendment Rules).

## **MANNER OF REPORTING OF TRADES IN NON-CONVERTIBLE SECURITIES UNDER SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) REGULATIONS, 2021**

The Securities and Exchange Board of India (“SEBI”), vide Operational Circular No. SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021 (“Operational Circular” as amended from time to time), has prescribed certain requirements in relation to the operations and other aspects of issuance and listing of non-convertible securities. The Operational Circular contains provisions relating to reporting, clearing and settlement of over the counter trades by all person(s) dealing in non-convertible securities.

In furtherance thereto, the SEBI vide notification no. SEBI/LAD-NRO/GN/2022/102 dated November 24, 2022 (“OTC Circular”), has replaced paragraph 1.3 of Chapter XVI titled ‘Reporting of Trades’ of the Operational Circular introduced to state that reporting of over the counter trades in non-convertible securities shall be made in the revised format stipulated thereunder. The said reporting is required to be made irrespective of whether the persons dealing in the securities are SEBI registered intermediaries or otherwise.

The provisions of the OTC Circular will come into force on January 1, 2023.

**DSK View:** SEBI has observed that investors provide incomplete and inaccurate data for over the counter trades of listed non-convertible securities, thereby leading to incorrect and distorted information being displayed on stock exchanges. In order to address this issue, SEBI has issued operational guidelines to try and ensure a uniform format for disclosures are followed and correct information is available to the public.

## **SECOND AMENDMENT TO SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) REGULATIONS, 2021**

SEBI vide notification no. SEBI/LAD-NRO/GN/2022/102 (“Second Amendment”) has introduced a chapter on Online Bond Platform Providers (“OBPPs”) notifying that anyone acting as an online bond platform provider is required to have a certificate of registration from the SEBI as a stockbroker under the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992. Further, anyone who is already acting as an OBPP is required to get the certificate within 3 (three) months of the Second Amendment coming into force or such other time period as may be specified by the SEBI.

**DSK View:** With the rise in a number of fintech companies operating as OBPPs and offering debt securities to non-institutional investors, SEBI has introduced mandatory registration of OBPPs to the debt segment to ensure operational transparency and investor disclosures.

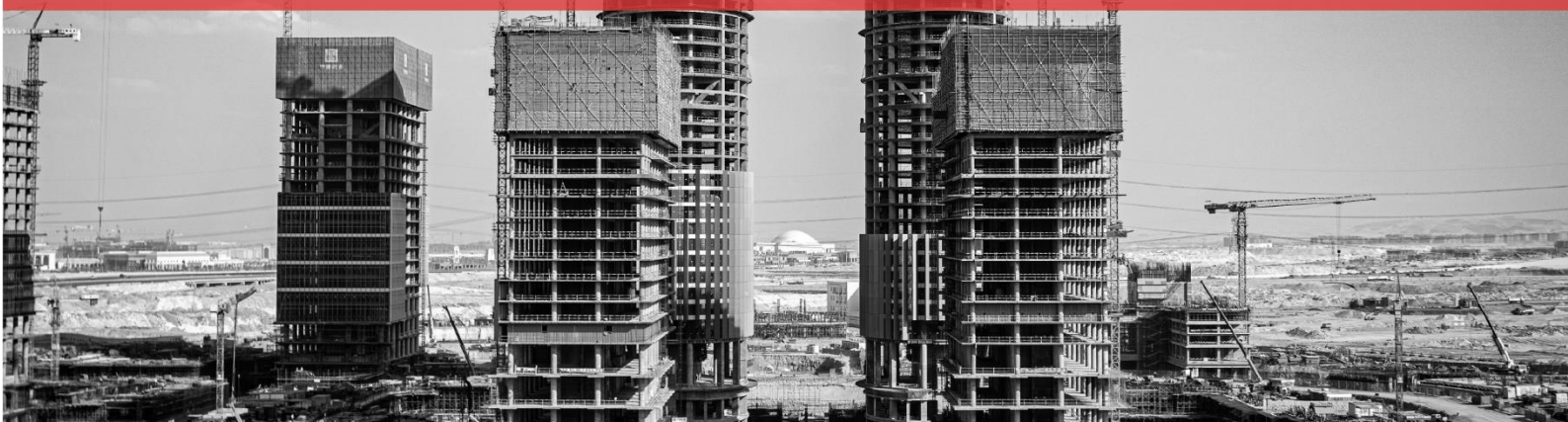
## **SEBI ISSUES CLARIFICATION ON DISCLOSURES AND COMPLIANCE REQUIREMENTS FOR ISSUANCE AND LISTING OF MUNICIPAL DEBT SECURITIES UNDER SEBI (ISSUE AND LISTING OF MUNICIPAL DEBT SECURITIES) REGULATIONS, 2015**

The SEBI vide circular bearing number SEBI/HO/DDHS/DDHS Div1/P/CIR/2022/158 dated November 24, 2022 (“ILMDS Circular”), has notified certain disclosure and compliance requirements for the municipal debt securities issued under the (Issuance and Listing of Municipal Debt Securities) Regulations, 2015 (“ILMDS Regulations”), and falling within the definition of “green debt security”. Additionally, issuers of such securities are also required to comply with the rules for green debt security stated under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”) and circulars thereof. Stock exchanges and depositories have been advised to amend their bye-

laws, rules, and regulations, carry out system changes, disseminate the ILMDS Circular on their website and monitor the compliance of such issuances.

**DSK View:** *ILMDS Circular has been issued by SEBI following several representations from issuers and other stakeholders*

*as the ILMDS Regulations, unlike the NCS Regulations, do have any provisions for issuance of green debt securities. The ILMDS Circular is also a step towards protecting the interest of investors wishing to subscribe to such securities and also to develop and regulate the market for green debt securities issued under the ILMDS Regulations.*



### INAUGURATION OF AROUND 3000 FLATS BUILT FOR REHABILITATING SLUM DWELLERS IN DELHI

On November 02, 2022, Hon'ble Prime Minister inaugurated 3,024 newly constructed EWS flats built in South Delhi for rehabilitating slum dwellers under the 'In-Situ Slum Rehabilitation' Project undertaken by the Delhi Development Authority ("DDA"). The objective of the project is to provide a better and healthy living environment to the residents of jhuggi jhopri clusters, with proper amenities and facilities. Under this project, DDA is rehabilitating three slum clusters namely Bhoomiheen Camp, Navjeevan camp and Jawahar camp located at Kalkaji in Delhi to be taken up in a phased manner. The DDA has undertaken three such projects at Kalkaji Extension, Jailorwala Bagh, and Kathputli Colony.

It is pertinent to note that 3,024 flats at a nearby vacant commercial centre site have been constructed in Phase I of the project at a cost of about Rupees Three Hundred and Forty-Five Crores Only equipped with all civic amenities. The allotment of flats would provide ownership title and a sense of security to the residents. The site at Bhoomiheen Camp will be vacated by rehabilitating eligible households to the newly constructed flats. The vacated area shall be utilized for rehabilitation of Navjeevan Camp and Jawahar Camp in Phase II.

### PROPERTY TRANSACTIONS MAY GO PAPERLESS: NASSCOM

The Ministry of Electronics and Information Technology ("MEITY/Ministry") amended the Information and Technology Act, 2000 ("IT Act") vide Notification No. S.O. 4720(E), amended the first schedule of the IT Act that opened doors for several new opportunities for digitization and innovation in the financial and real estate sectors.

The first schedule of the IT Act provides a list of documents/transactions excluded from the purview of the IT Act including contracts for the sale or conveyance of

immovable property or any interest in such property. The excluded documents were seen to be high-risk transactions, and, for them, it was thought that parties must use paper records. However, the new notification makes the list of exclusions much smaller.

Point number 5 of the First schedule, "Any contract for the sale or conveyance of immovable property or any interest in such property" was omitted from the schedule. It is being presumed that if state government laws such as stamp duty and registration charges are also amended, it will be possible to make all property transactions paperless and digitalized. This step can reduce administrative costs in real estate and in land record offices.

### DHARAVI SLUM REDEVELOPMENT: DLF, ADANI REALTY AND SHREE NAMAN DEVELOPERS IN THE FINAL RACE

DLF, Naman Group and Adani Realty have submitted their bids for an amount of Rupees Twenty Thousand Crores for a 240 hectares re-development project in Dharavi, one of Asia's largest slum. The concerned authority floated a tender for the redevelopment work in the month of October for inviting bids which is aimed to be completed by the end of December 2022. Around eight companies from India, the United Arab Emirates (UAE), and South Korea had shown interest in the redevelopment of Dharavi in the pre-bid meeting.

It has been decided by the authorities that the chosen developer in the bid shall get seven years to complete the rehabilitation work. Further, the project needs to be undertaken by a joint venture in which the selected developer is expected to hold 80% equity (estimated to be Rs 400 crore, while the state government will hold 20% with Rs 100 crore equity capital). Apart from the equity of Rs 400 crore, any investment required for the project shall be brought by the lead partner in the form of instruments such as Compulsorily Convertible Debentures and/or Compulsorily Convertible Preference Shares, as the state

government mandates. A floor space index (“FSI”) of four and an additional fungible FSI is available as per the prevailing development control regulations for rehabilitation, renewal component, and free sale built-up area in the open market.

### **NCLT DELHI INITIATES INSOLVENCY PROCEEDINGS AGAINST ANSAL PROPERTIES & INFRASTRUCTURE LTD.**

The National Company Law Tribunal (“NCLT”), New Delhi Bench, comprising of Shri Bachu Venkat Balaram Das and Shri L.N. Gupta while adjudicating a petition filed by 126 flat buyers of ‘The Fernhill’ project located in Sector 91, Gurugram in ‘Bibhuti Bhushan Biswas & Ors. v. M/s Ansal Properties and Infrastructure Ltd.’, directed to initiate insolvency proceedings against the realty firm. The buyers had alleged defaults on part of the realty firm in delivering the project within the promised timelines as well as the grace period provided under the clauses of the builders-buyers agreement. According to the flat buyers, the realty firm had promised to hand over the physical possession of the units booked within 48 months, by July 2017 for most of the applicants, however, the entire project is lying incomplete/unfinished even after a gap of four years.

As a necessary consequence of the moratorium, it also imposed prohibitions against any recovery under suits, transfer of property, disposal of assets of the real estate firm and others under the Insolvency & Bankruptcy Code.

### **INCREASING CONCEPT OF THE STRUCTURAL SAFETY POLICY BOOSTS PEOPLE’S CONFIDENCE TO BUY UNITS IN SUCH BUILDINGS HIGH-RISE BUILDINGS**

Noida Authority approves a structural safety policy defining the responsibility of both developers and Apartment Owners Associations (“AOAs”) to ensure the safety of high-rise buildings. This move was followed by building collapses across the National Capital Region (NCR) centred in Delhi that includes Noida.

According to the policy, the developer will now have to submit a structural audit report from empanelled IITs, NITs or specialist institutions, before issuance of the partial or full occupancy certificate. Further, structural defects, if any, must be rectified by the builder within five years from the date of issue of occupancy certificates, according to the new policy. The move will boost the confidence of homebuyers when they invest in high-rise buildings. The Chief Executive Officer of Noida Authority said that the structural policy had been prepared on demands by flat buyers and AOAs.

### **MAHARERA TO APPOINT VALUERS TO CHECK PROGRESS OF PROJECTS**

The Maharashtra Real Estate Regulatory Authority (“MahaRERA”) is aiming to appoint valuers to inspect delayed as well as ongoing real estate projects because of increasing complaints regarding the progress and delayed development of the projects. The valuers would be certified by the income tax department or the Insolvency and Bankruptcy Board of India to carry out site visits and such reports would be certified by the Union Government.

The authority has decided to first appoint valuers for cities like Mumbai Metropolitan Area, Pune, Nashik, Aurangabad, Amravati and Nagpur. Further, for other cities of Maharashtra, government authorities with prior work experience as certified engineers would be appointed as valuers. These inspections are expected to begin by the MahaRERA after two months.

### **NOIDA AUTHORITY STARTS ISSUING NOTICES TO DEVELOPERS TO CLEAR THEIR LAND DUES OF RS. 9000 CRORES**

The Noida Authority has begun to issue notices to developers for paying the outstanding amounts against their name, as a result of which the registration of flats shall begin. The move will benefit thousands of homebuyers who are waiting to get their homes registered.

The Supreme Court quashed its 2020 order directing builders to pay land dues as per the terms and conditions agreed upon between them and the authorities, paving way for the bodies managing Noida and Greater Noida, to recover dues from builders at an increased rate set by them.

### **SHRIRAM PROPERTIES ACQUIRES SUVILAS REALITIES FOR RUPEES THIRTY CRORE**

Shriprop Builders (“Company”), a wholly owned subsidiary of Shriram Properties, acquires 100% (One Hundred Percent) equity shares of a Bengaluru-based company, Suvilas Realities, which is currently developing a residential project located at Jalahali, under the name of Shriram Suvilas Palms, for a value of Rupees Thirty Crores Only. The acquired company becomes tier-2 subsidiary of Shriram Properties. The Company aims to develop under the development management arrangement with Shriram Properties and monetise at the early stage.

Further, in a different transaction Shriram Properties has acquired another project named Shriram Suvilas Garden of Joy, from Suvilas, which comprises 152 units being developed at a two-acre land parcel at Jalahali.



## MEITY RELEASES DIGITAL PERSONAL DATA PROTECTION BILL, 2022

The Ministry of Electronics and Information Technology (“MeitY”) released the Digital Personal Data Protection Bill, 2022 (accessible [here](#)) (“Data Protection Bill”) on November 18, 2022, for public consultation. Earlier this year in August 2022, the MeitY withdrew the long-standing Personal Data Protection Bill, 2019, citing the numerous recommendations proposed by the Joint Parliamentary Committee and noting that incorporation of such recommendations would mandate an overhaul of the proposed legislation. As a result of such withdrawal, the Data Protection Bill has been introduced to protect the personal and sensitive personal data of an individual.

The Data Protection Bill has been grounded on internationally recognized principles of data protection which *inter alia* include lawfulness, fairness, and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality; and accountability. In this regard, it is pertinent to note that the Data Protection Bill intends to strike a balance between the rights of data principals to protect their digital personal data and the requirement of processing such data by the data fiduciaries. The primary responsibility of complying with the provisions of the Data Protection Bill, including maintaining adequate security safeguards and notifying the data principal in case of a data breach, has been imposed on data fiduciaries.

Further, the Data Protection Bill also envisions the establishment of a data protection board, in a supervisory role, with wide ranging powers which *inter alia* include power of reviewing its own orders, referring disputes/complaints to alternate dispute resolution mechanisms, and accepting voluntary undertakings from defaulters. The said bill further provides for safeguard provisions such as seeking prior notice and consent from

data principals for processing personal data; and rights and duties of data principals.

Notably, the Data Protection Bill also encapsulates a massive penalty for non-compliance with its provisions, where such penalty may extend up to INR 500 crores.

Read detailed analysis by DSK [here](#) and [here](#).

## ADVERTISING STANDARDS COUNCIL OF INDIA PUBLISHES DISCUSSION PAPER ON DARK PATTERNS

The Advertising Standards Council of India (“ASCI”) on November 10, 2022, published a discussion paper titled ‘Dark Patterns – The New Threat to Consumer Protection’ (accessible [here](#)), with the intent to protect the interest of online consumers. A ‘Dark Pattern’ is essentially a user interface which may be utilised to: (a) trick or manipulate online users to make such choices which are detrimental to their interests (such as paying more than what was initially disclosed on the e-commerce platform).

To gain a deeper understanding on Dark Patterns and in order to propose relevant safeguards against the same, ASCI formed a task force which has *inter alia* recommended incorporation of the following advertising related concerns in the ASCI code for self-regulation of advertising content in india: (a) drip pricing; (b) bait and switch; (c) false urgency; (d) disguised advertising; (e) privacy; (f) confirm-shaming; (g) checkbox treachery; (h) nagging; and (i) sneak-in basket.

## TRAI PUBLISHES REGULATORY FRAMEWORK FOR PROMOTING DATA ECONOMY IN INDIA

The Telecom Regulatory Authority of India (TRAI) vide a press release (accessible [here](#)) dated November 18, 2022, published its recommendations on ‘Regulatory Framework for Promoting Data Economy Through Establishment of Data

Centres, Content Delivery Networks, and Interconnect Exchanges in India' (accessible [here](#)).

The salient features of the recommendations envisage inter alia: (a) facilitating and incentivizing establishment of data centres and data centre parks; (b) developing India-specific building norms, standards, and security certification framework; (c) promotion of green data centres; (d) capacity building by development of tailor-made short term and long-term educational courses at diploma, undergraduate and post-graduate levels; and (e) addressing issues related to demand of digital data infrastructure.

#### **INTRODUCTION OF FRAMEWORK FOR ONLINE CONSUMER REVIEWS ON E-COMMERCE PLATFORMS**

The Department of Consumer Affairs, under Ministry of Consumer Affairs, Food & Public Distribution, has launched the framework, namely, '*Indian Standard (IS) 19000:2022, Online Consumer Reviews — Principles and Requirements for their Collection, Moderation and Publication*' (accessible [here](#)).

The said framework is aimed at safeguarding and protecting consumer interest from fake and deceptive reviews on e-commerce platforms. The standards set out in this framework will initially be a voluntary compliance to be undertaken by all e-commerce platforms. In this regard, the Bureau of Indian Standards (BIS) will also develop a

Conformity Assessment Scheme for the standard to assess compliance. The guiding principles of the standards are integrity, accuracy, privacy, security, transparency, accessibility, and responsiveness. The standard prescribes specific responsibilities for the review author and the review administrator.

#### **RBI LAUNCHES PILOT OF DIGITAL RUPEE**

The Reserve Bank of India ("RBI") vide its press release dated October 31, 2022, had announced the commencement of the pilot launch of Digital Rupee ("e₹") in the Digital Rupee – Wholesale segment (e₹-W) within a month from November 01, 2022 (accessible [here](#)). Accordingly, vide a press release dated November 29, 2022, RBI announced the commencement of the pilot launch of Digital Rupee ("e₹") in the Digital Rupee – Retail segment (e₹-R) from December 01, 2022 (accessible [here](#)).

RBI in its earlier press release dated October 07, 2022, planned to commence pilot launches of e₹ for specific use cases and had issued the concept note ("**Concept Note**") on central bank digital currency ("**CBDC**") (accessible [here](#)). CBDC is a form of digital currency issued by a central bank. The Concept Note explained the objectives, choices, benefits and risks of issuing a CBDC in India, referred to as e₹ which will provide an additional option to the currently available forms of money. The Concept Note has been issued with the purpose of creating awareness about e₹ and its features.

# WHITE COLLAR CRIME

## PENDENCY OF INVESTIGATION NOT A GROUND FOR REFUSAL TO RENEW A PASSPORT

The Jammu and Kashmir and Ladakh High Court in the case of **Rajesh Gupta v. Union of India and Anr.** (WP (C) No. 1534 of 2022) held that mere registration of an FIR or pendency of investigation by the Investigating Agency is no ground to refuse issuance or renewal of passport under the Passport Act 1967. The Petitioner in the present case had applied for renewal/ re-issue of passport which was due to expire. Even after the lapse of substantial time, the Petitioner received no intimation about the status of his application. The Petitioner later came to know that his application was rejected by the passport authorities on account of a police report indicating that an FIR was registered against him. Subsequently, the Petitioner filed a writ petition seeking to direct the Respondents to re-issue his passport and contended that that the proceedings in respect of an offence shall be deemed to be pending before a Criminal Court only when a final report is presented to the Court by the police or cognizance of a criminal complaint against the Petitioner is taken by the competent Criminal Court. The Respondent submitted that on account of the police report the Petitioner was asked to provide 'No Objection Certificate' from the Court with regards to the FIR registered against him, which the Petitioner failed to submit. The Court while allowing the petition directed the Respondent No. 2 to issue passport facility to the petitioner in the re-issue category without insisting for production of NOC from the Court, after verifying if a final report has been in the said FIR.

**DSK View:** *The court has clarified that it is only when a final report is laid down by the investigating agency before the competent court and when such court takes cognizance and proceeds in the manner provided under the CrPC, it can be said that the criminal proceedings have commenced.*

## CRIMINAL PROCEEDINGS CAN BE QUASHED WHEN THE COMPLAINT DOES CONTAIN ANY ALLEGATIONS AGAINST THE ACCUSED PERSONS

In **Ramesh Chandra Gupta v. State of U.P. & Ors.** (Criminal Appeal No(s). 2060 of 2022) the Supreme Court held that criminal proceedings arising out of a complaint can be quashed, if the complaint does not disclose any Acts of the accused or his participation in commission of a crime. In the present case FIR was registered under Sections 420, 467, 468, 471, 504, 506, 447, 386 of the Indian Penal Code, 1860, wherein the Appellant and others were named as accused. Subsequently, a chargesheet was submitted by the investigating officer and the Chief Judicial Magistrate, Jhansi, took cognizance of the matter and issued summons. Being aggrieved by the summons order, the Appellant along with other accused persons filed an application under section 482 of the CrPC before the Allahabad High Court. The Allahabad High Court dismissed the Application. Therefore, the Appellants preferred the present appeal before the Supreme Court. The Supreme Court relied on judgement of *State of Haryana v. Bhajan Lal and Others* (1992 Supp. (1) 335) and observed that a mere perusal of the complaint did not disclose any allegations against the Appellants and implicated the present Appellants being members of the family to put pressure for obtaining possession of the subject property and to settle the civil dispute which is pending between de-facto complainant and others in a suit. The Supreme Court further observed that the High Court ought to have exercised its powers of quashing under section 482 of the CrPC. The Supreme Court accordingly set aside the judgement of the Allahabad High Court and quashed the FIR *qua* the Appellants.

**DSK View:** *In this case the court has reiterated the settled law that that criminal proceedings can be quashed in case the allegations made in the complaint do not prima facie disclose the commission of any offence or make out any case against the accused persons.*

## INFIRMITY IN CHEQUE RETURN MEMO DOES NOT RENDER ENTIRE TRIAL AS NULLITY

The Delhi High Court in the case of ***Guneet Bhasin v. State of NCT Delhi & Anr.*** (CRL. M.C. 4100 of 2022 & CRL. M. A. 16919 of 2022) held that any infirmity in the cheque return memo does not render the entire trial under Section 138 of the Negotiable Instruments Act, 1881 (“**NI Act**”) as nullity. In this case, the Petitioner had issued a check which was returned with a remark “account blocked.” However, the trial court observed that there was a prima facie ground to proceed against the accused persons and thereby issued summons. The Petitioner challenged this summons order citing infirmity in the cheque return memo. The case of the Petitioner is that the Respondent in this case only filed the

photocopy of the cheque return memo without any bank seal and mark. Also, the same was not certified by the Banker under the Bankers Book Evidence Act, 1891. The Delhi High Court observed that the section 138 of the NI Act does not mandate any particular form of cheque return memo and it is nothing, but a mere information given by the banker of the due holder of a cheque that the cheque has been returned as unpaid. The Delhi High Court thus held that, if there is any infirmity in the cheque return memo, it does not render entire trial under section 138 of the NI Act as nullity.

**DSK View:** *The Court in this case has made stringent observations by stating that the petition was filed in order to delay the proceedings. The Court has therefore rightly directed the trial court to expedite the trial.*



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