DSK Legal
True Value, True Values

NEWSLETTER

February 2023

TABLE OF CONTENTS

CIRCULAR ON RELAXATION ON REGULATION 58 OF LODR

SEBI *vide* its circular dated January 5, 2023 has extended the relaxations up to September 30, 2023, for complying with the requirements of Regulation 58(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") which prescribes that an entity with listed non-convertible securities shall send a hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not registered their email address(es) either with the listed entity or with any depository.

The relevant circular can be accessed here.

CIRCULAR ON RELAXATION OF REGULATION 36 OF LODR

SEBI *vide* its circular dated January 5, 2023 has extended the relaxations up to September 30, 2023, for complying with the requirements specified in Regulation 36(1)(b) of the LODR relating to dispatching hard copy of the statement containing salient features of all the documents as prescribed in section 136 of the Companies Act, 2013 (financial statements, board's report, auditor's report etc.), to those shareholders who have not registered their email address(es). Further, the said circular also mandates that the listed entities shall ensure that the notice of annual general meeting published by advertisement in terms of Regulation 47 of the LODR must disclose the web-link to the annual report so as to enable shareholders to have access to the full annual report.

The relevant circular can be accessed here.

CIRCULAR ON MANAGEMENT AND ADVISORY SERVICES BY ASSET MANAGEMENT COMPANIES TO FPIS

SEBI *vide* its circular dated January 6, 2023 has decided that, asset management companies may also provide management and advisory services to foreign portfolio investors ("**FPIs**") operating from international financial service centres and regulated by international financial service centres authority, not falling under the categories of FPIs specified under para 2(i) of SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/155 dated December 16, 2019, subject to the following:

(a) Such FPI shall be allowed to invest in mutual fund schemes other than the schemes in the category of "**thematic**" as defined in SEBI Circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017;

(b) For investment inequity and equity derivative securities listed on recognized stock exchanges in India, such FPI shall not take contra-position for a period of six months from the date of purchase or sale of such securities.

The relevant circular can be accessed here.

CIRCULAR ON CHANGE IN CONTROL OF PORTFOLIO MANAGERS PROVIDING CO-INVESTMENT SERVICE

SEBI *vide* its circular dated January 10, 2023 has modified para 2(iv) of SEBI Circular No. SEBI/HO/IMD-1/ DOF1/P/CIR/2022/77 dated June 02, 2022 specifying the procedure for seeking prior approval in case of change in control of portfolio manager. All other requirements except Para 2(iv) of the circular dated June 02, 2022 shall remain unchanged.

The relevant circular can be accessed here.

CIRCULAR ON PARTICIPATION OF AIFS IN CDS

SEBI *vide* its circular dated January 12, 2023 has amended the SEBI (Alternate Investment Funds) Regulations, 2012 ("**AIF Regulations**") to allow alternative investment funds ("**AIF(s)**") to participate in Credit Default Swaps ("**CDS**") as protection buyers and sellers. Pursuant to regulations 16(1)(aa), 17(da), 18(ab) and 20(11) of AIF Regulations, SEBI vide this circular has specified conditions enabling participation of AIFs in CDS. The circular comes into force with immediate effect.

The relevant circular can be accessed here.

CIRCULAR ON INTRODUCTION OF FUTURE CONTRACTS ON CORPORATE BOND INDICES

SEBI *vide* its circular dated January 10, 2023 has permitted the introduction of derivative contracts on indices of corporate debt securities rated AA+ and above. Subsequently, the Stock Exchanges are permitted to launch future contracts on corporate bond indices, the stock exchanges desirous of introducing such contracts shall submit a detailed proposal to SEBI for approval.

Annexure A of the circular provides for the details regarding index composition, contract specifications, position limits, risk management framework etc. for introduction of future contracts on corporate bond indices.

Stock exchanges in their proposal must provide details relating to underlying corporate bond index, the index methodology, contract specifications, applicable trading, clearing & settlement mechanism, risk management framework, the safeguards to ensure market integrity, investor protection, surveillance systems etc.

The relevant circular can be accessed here.

CIRCULAR ON COMPREHENSIVE FRAMEWORK ON OFS OF SHARES THROUGH STOCK EXCHANGE MECHANISM

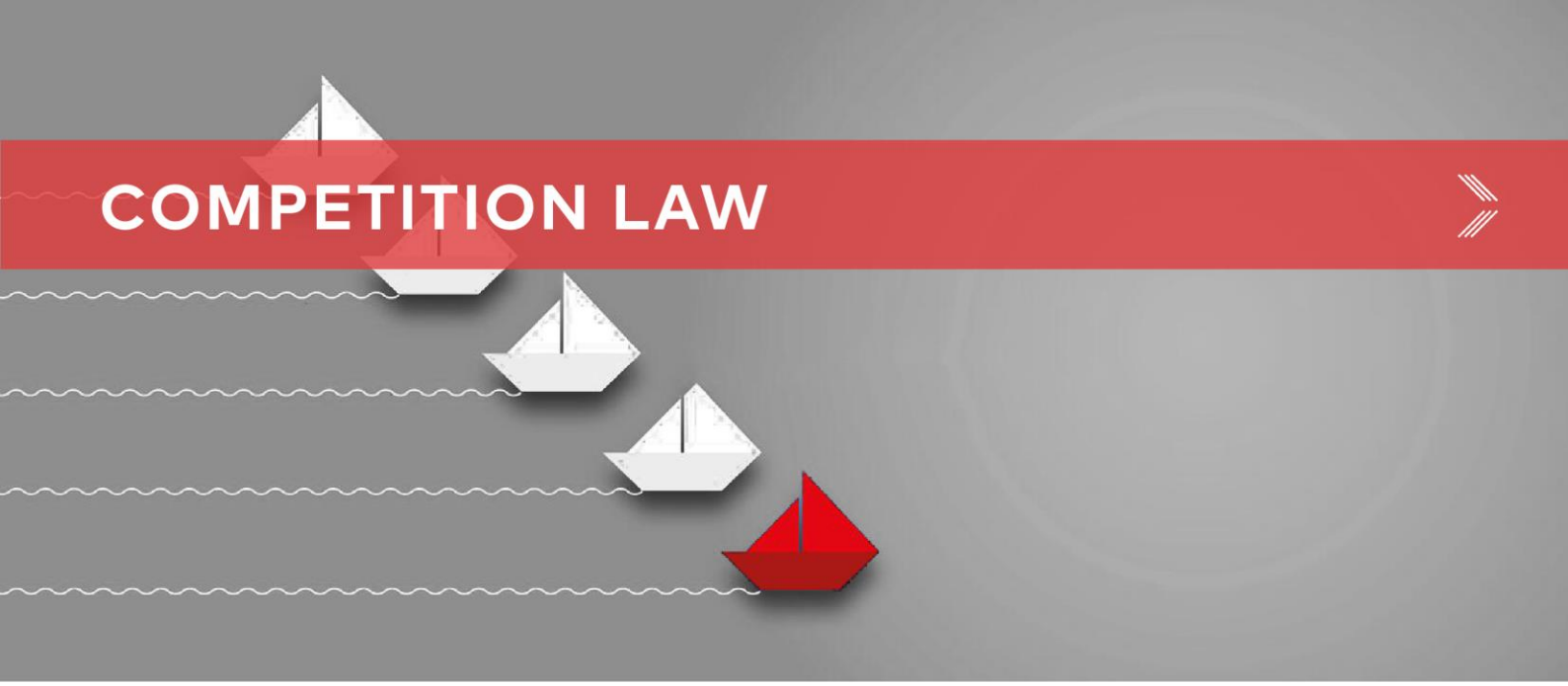
SEBI *vide* its circular dated January 10, 2023 has released a comprehensive framework on offer for sale ("**OFS**") of shares through stock exchange mechanism. The circular shall come into force from the 30th day of issuance of the circular. The circular upon coming into force shall immediately rescind the previous SEBI circulars containing existing provisions on OFS.

The said circular can be accessed here.

CIRCULAR ON FACILITY OF CONDUCTING MEETINGS OF UNIT HOLDERS OF REITS AND INVITS THROUGH VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS

In order to allow maximum participation of unitholders in the meeting and for better governance, it has been decided to allow manager of the real estate investment trust ("**REIT**") and investment manager of the infrastructure investment trust ("**InvIT**") to conduct meetings of unitholders through video conferencing or other audio visual means. While conducting meetings of unit holders through video conferencing or other audio visual means, the manager of the REIT and the investment manager of the InvIT is required to adopt the procedures set out in the circulars in addition to any other requirement specified under the SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014 respectively.

The circulars in relation to REIT can be accessed here and InvIT can be accessed here.



GOOGLE'S APPEAL BEFORE THE NCLAT AND HON'BLE SUPREME COURT OF INDIA

In October 2022, the Competition Commission of India ("CCI") penalized Google for abusing its dominant position in multiple markets in the Android Mobile device ecosystem. The CCI issued a cease-and-desist order against Google. The CCI also laid down a slew of directions that Google is required to comply with. One of the directions pertained to refraining Google from entering agreements that ensure that its search services are exclusive. Another direction is to remove the mandatory pre-installation of various Google apps. The order also directs Google to allow third-party app stores within their Play Store.

Aggrieved by the above findings and directions, Google appealed against the CCI's order at the National Company Law Appellate Tribunal ("NCLAT"), Principal Bench. The NCLAT, via an order dated 04.01.2023, admitted Google's appeal against the CCI's order subject to the deposit of 10% of the penalty amount of Rs. 1337.76 crores. Further, the NCLAT refused to stay CCI's order and fixed the case for hearing in April 2023. Unhappy with this order, Google approached Hon'ble Supreme Court.

Google submitted before the Hon'ble Supreme Court that Android is an open-source system with over 15,000 models, 1,500 device manufacturers, and 500 million devices just in India. Further, it stated that Mobile Application Distribution Agreement ("MADA") is a voluntary agreement between Google and device manufacturers to enhance the user experience and hence Google was not imposing any unfair conditions.

CCI argued that MADA deprives consumers of the choice to choose non-Google apps, thereby not allowing other apps with similar or better features to grow. Additionally, MADA is not free or voluntary as the marketability of the devices comes down significantly if these apps do not feature in them. The pre-installation of the apps creates a behavioral bias and Google uses the same for marketing its products.

Considering the contention of both sides, the Supreme Court via its order dated 19.01.2023 refused to grant interim relief in Google's favor. The Supreme Court, however, did not pass any orders on the merits of the case. Further, the Supreme Court has asked the NCLAT to complete hearing the case by March 31, 2023.

Meanwhile in the USA, the United States Department of Justice has filed a lawsuit against Google alleging that the tech giant has abused monopoly power in the ad-tech industry, hurting web publishers and advertisers that try to use competing products. The lawsuit has been filed before US District Court for the Eastern District of Virginia. The lawsuit asks the court to unwind Google's "anticompetitive acquisitions" and prevent the company from obtaining similar dominance in the future.

MICROMAX AND KARBONN WITHDRAW APPEALS BEFORE NCLAT AGAINST CCI'S ORDER

Micromax and Karbonn have withdrawn their appeals before the National Company Law Appellate Tribunal ("NCLAT") against the CCI order of 12.10.2022 in the Android case whereby CCI has levied INR 1,337 crore penalty on Google for its anti-competitive practices. Both Micromax and Karbonn were not parties before CCI in the Android case. In its appeal before the NCLAT, Micromax had contended that the CCI ruling in the Android case had the effect of condemning its business without affording any opportunity of hearing its viewpoints on the matter.

Micromax believed that implementing the CCI order would result in a change in the existing bundled services offered by Google, including the charging of a price for Google's Android OS and various individual apps. This would result in high input costs for smartphone manufacturing, making

them inaccessible to a large portion of Indian customers. Micromax contented that the CCI's non-monetary directions on Google are detrimental to the interests of the Indian multinationals and the end users.

The NCLAT competition bench comprising Justice Rakesh Kumar and Alok Srivastava via order dated 23.01.2023 disposed of the respective appeals of the two parties as withdrawn. During the preliminary hearing of the appeals by Micromax and Karbonn, NCLAT had found several defects in the applications and cautioned that the Bench would even impose exemplary costs while deciding on allowing the appeal or dismissing it.

CCI SEEKS VACATION OF BOMBAY HIGH COURT ORDER RESTRAINING COERCIVE ACTION AGAINST DEBT TRUSTEE UNITS IF IDBI, AXIS, AND SBICAP FOR ALLEGED CARTELIZATION

The Competition Commission of India ("CCI") moved the Hon'ble Bombay High Court seeking to vacate the court's earlier order stopping CCI from taking any coercive action against the Trustee Association of India and trusteeship units of IDBI, Axis, and SBICap in an alleged cartelization case.

In 2022, the trustee units of IDBI, Axis, and SBI along with the Trustees Association of India had approached the Hon'ble Bombay High Court in individual writ petitions challenging the CCI's investigation into them on a complaint filed by Muthoot Finance Limited. The CCI had formed a prima facie view that there is a form of cartelization between debenture trustees to fix prices or rates of fees to the detriment of the debenture/security issuers. The Securities and Exchange Board of India ("SEBI") was also investigating the same issue.

The petitioners had argued that since SEBI is investigating the issue, the CCI should hold its action in abeyance. The court had observed that there was a possibility of conflicting orders in the present case if parallel investigation by both SEBI and CCI continued. Observing that SEBI is the sectoral regulator, the court said that SEBI shall be first given an opportunity to establish a prima facie view of the matter. Later, in November 2022, the CCI filed interim applications in each writ petition to continue its investigation.

The division bench of Justice GS Patel and Justice SG Dige placed the CCI's interim applications for final disposal on February 17, 2023. The Court observed that the disposal of CCI's interim applications will also result in the disposal of the main writ petitions.

CCI APPROVES THE SCHEME OF AMALGAMATION OF M/S KALYANI CLEANTECH PRIVATE LIMITED AND OTHER ENTITIES

The transaction related to an internal re-organization of certain entities within the same group pursuant to a scheme of amalgamation and endorsement entered between Hibiscus, Rosario, Yokoha, Peach Blossom, KCleantech, Ktechnoweld, KMedicomp, KStrategic, and the Resulting Company ("Proposed Combination"). The Proposed Combination was notified to the Hon'ble Competition Commission of India ("CCI") under Section 5(c) of the Competition Act, 2002 ("Act").

Since the Proposed Combination was effectively an internal restructuring, it did not result in any horizontal, vertical, or complementary overlaps. The ultimate ownership and control of all the entities involved in the Proposed Combination remained unchanged in both pre and post-the internal re-organization.

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

EXTENSION OF TENURE OF CCI'S ACTING CHAIRPERSON

The Ministry of Corporate Affairs has extended the tenure of Sangeeta Verma as the acting Chairperson of the Competition Commission of India ("CCI"), which has been functioning without a full-time Chairperson for three months now. She was initially appointed as the acting Chairperson of CCI on October 25, 2022, for a three-month period or until a new Chairman was appointed.

Additionally, on January 23, 2023, the Ministry of Corporate Affairs invited applications to fill three member posts in CCI and asked that the applications be submitted within 45 days.

Presently, CCI has only two members. A quorum of three members is needed for approval of combinations and mergers and acquisitions by the CCI and hence there has been a hiatus in CCI's decision-making process. As a result, deals worth USD 1.3 billion have been pending approval from CCI. The CCI has been without a full-time Chairperson since the retirement of Mr. Ashok Kumar Gupta from the post of Chairman on October 25, 2022.

ISSUE WHETHER THE MAIN CLAIM IS TIME BARRED, IS AN ISSUE ON MERITS AND THE SAME MUST BE DECIDED IN ARBITRATION PROCEEDINGS

In ***TLG India Pvt Ltd v. Rebel Foods Pvt Ltd***[1]**,** the Hon'ble High Court of Bombay held that an issue whether the main claim is time barred, is an issue on merits and the same must be decided in arbitration proceedings. In the said case, the applicant filed a petition under Section 11 of the Arbitration and Conciliation Act 1996, praying for appointment of an Arbitrator to resolve its dispute regarding pending payments to the tune of Rs. 1,53,01,864/-. The counsel for the Respondent objected to the said prayer on the ground that the payments of the applicant pertained to the year 2015 and that demand of Rs. 1,53,01,864/- was made for the first time in the year 2020 and thus, claim of the applicant was ex-facie time barred and that the application under Section 11 of the Arbitration and Conciliation Act 1996 ought not to be entertained.

The Hon'ble High Court of Bombay observed that since the Respondent had categorically denied its liability to pay the amount of Rs. 1,53,01,864/- for the very first time in the year 2020, it was not a case where the claim itself was ex-facie time barred and dead which warranted not to make a reference at all. Thus, the Hon'ble High Court of Bombay went ahead and exercised its power to appoint the sole arbitrator to adjudicate the disputes that have arisen between the parties.

IF THE ARBITRAL TRIBUNAL MAKES SUO MOTO CORRECTIONS TO AN ARBITRAL AWARD, THE STARTING POINT OF LIMITATION FOR FILING OBJECTIONS UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT 1996 SHALL BE DATE ON WHICH THE SAID SUO MOTO CORRECTIONS WERE MADE

The Hon'ble Supreme Court of India in ***USS Alliance v. State of Uttar Pradesh***[2] has held that if the arbitral tribunal makes *suo moto* corrections to an arbitral award, the starting point of limitation for filing objections under Section 34 of the Arbitration and Conciliation Act 1996 **("Act")** shall be date on which the said *suo moto* corrections were made. In the present case, the Hon'ble Supreme Court was faced with a situation wherein the arbitral tribunal in terms of powers given under sub-section (3) of Section 33 of the Act had on its own initiative made corrections in the arbitral award dated 18.04.2018 and passed the amended/corrected arbitral award dated 05.05.2018.

The Hon'ble Supreme Court of India by taking into account the purpose and object behind Section 34 (3) of the Act, which is to enable the parties to study, examine and understand the award and thereafter file objections under Section 34 of the Act, the starting point for the limitation in case of *suo moto* correction of the award, would be the date on which the correction was made and the corrected award is received by the party. It further held that once the arbitral award has been amended or corrected, it is the corrected award which has to be challenged and not the original award and thus the original award stands modified, and the corrected award must be challenged by filing objections.

[1] Comm. Arbitration Application (L) No. 28026 of 2021

[2] SLP(C) 23676/2022

IRREVOCABLE AND UNCONDITIONAL BANK GUARANTEES ARE BEYOND THE MORATORIUM AND CAN BE INVOKED EVEN DURING THE MORATORIUM

In ***IDBI Bank v. Indian Oil Corporation Ltd & Anr*** *(Company Appeal (AT) (Ins) 543 of 2021)*, the Hon'ble tribunal dealt with the question as to whether Bank Guarantees fall within the scope of moratorium envisaged under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and consequently, whether Bank Guarantees can be invoked during the moratorium period under section 14 of IBC. The Hon'ble Tribunal held that under the amended Section 14(3)(b) of the IBC, irrevocable and unconditional Bank Guarantees are beyond the moratorium and can be invoked even during the moratorium period, as such, the invocation and encashment of the Bank Guarantees by Indian Oil Corporation Ltd *("***IOCL**") was valid and legal. The Hon'ble Tribunal noted that the allegation by the Appellant Bank of fraud committed by the Respondent had no basis as no injustice or harm was caused to the Appellant Bank by encashment of the irrevocable and unconditional Bank Guarantees. Further, the Hon'ble Tribunal noted that Appellant Bank had not taken any steps/ actions despite alleging fraud on the part of the Respondent. The Hon'ble Tribunal relied on the judgment passed by the Hon'ble Supreme Court in *U.P Cooperative Federation Ltd v. Singh Consultant and Engineering Pvt. Ltd. [(1988) 1 SCC 174]*, wherein it was held that Banks are bound to encash the unconditional Bank Guarantees without any demur as and when the same is demanded by the beneficiary.

The Hon'ble Tribunal further relied on the Hon'ble Supreme Court's judgement in *Dynepro Pvt Ltd. v. Nagarajan* wherein it was reiterated by the Hon'ble Apex Court that NCLT had no jurisdiction to decide the question of disputes and claims/ counter claims. Thus, in view of the aforesaid, the Hon'ble Tribunal dismissed the appeal filed by Appellant Bank and affirmed the view taken by the Hon'ble NCLT that Bank Guarantees don't fall within the scope of moratorium as envisaged under Section 14 of the IBC.

WHETHER A LANDOWNER, IN A DEVELOPMENT AGREEMENT, CAN BE CONSIDERED TO BE A FINANCIAL CREDITOR, NCLAT ANSWERS IN NEGATIVE

In ***Ashoka Hi-Tech Builders Pvt Ltd v. Sanjay Kundra & Anr*** *(Company Appeal (AT) (Ins) 46 of 2023),* the Hon'ble Tribunal dealt with the question whether a landowner, in a development agreement, can be considered to be a Financial Creditor within the meaning of Section 5(8) of Insolvency and Bankruptcy Code, 2016 ("**IBC**") and whether the landowner can be included in the Committee of Creditors ("**COC**"). In the case in hand, Appellant was a land owner on which the development project was to be constructed and he had filed the claim before the Resolution Professional which was admitted and he was inducted in the COC , however, subsequently on an Application filed by the Home-Buyers, the Hon'ble NCLT passed an order removing the Appellant from the COC holding that Appellant was not the financial creditor as envisaged under Section 5 of IBC. The Hon'ble NCLAT, while dealing the aforementioned question, placed their reliance on the Judgement passed by the Hon'ble NCLAT in *Namdeo Ramchandra Patil & Ors. (Company Appeal (AT) Ins. No. 821 and 930 of 2021)* wherein it was held that the Landowner is not a financial creditor. The Hon'ble Tribunal noted that Section 5(8)(f) Explanation (i) and (ii) of IBC make it is clear that pre-condition, for a debt to be considered a Financial Debt, is disbursement against the time value of money and clarified that when any amount is raised from an allotment under real estate such transaction is covered under Section 5(8)(f).

The Hon'ble Tribunal further noted that another pre-condition for application of Explanation (i) of Section 5(8)(f) of IBC is that such application should be filed by the allottee who has "disbursed' the amount in question. However, such pre–condition is not fulfilled in the present case as the amount has been raised from the Appellants – the Landowners and not by the allottee. Further, the Hon'ble Tribunal dismissed the submission of the Appellant that they are allottees within the meaning of Section 2(d) of RERA Act and clarified that such transaction don't make the allotee Financial Creditor within the meaning of Section 5(8)(f). Thus, in view of the aforesaid, the Hon'ble Tribunal dismissed the Appeal citing that the Development Agreement clearly stipulates that the Landowner was a collaborator and cannot be considered a financial creditor as there was no disbursement for time value of money by the Landowner within meaning of Section 5(8) of the IBC.

EMPLOYMENT LAW

CLARIFICATION REGARDING THE DUE MINIMUM BENEFIT TO BE PAID FROM THE EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME FUND TO THE ELIGIBLE FAMILY MEMBERS

The Ministry of Labour and Employment vide its notification dated January 2, 2023 has issued directions regarding the due minimum benefit to be paid from the Employees' Deposit Linked Insurance ("**EDLI**") Scheme fund to the eligible family members, who were beneficiaries in cases of death of eligible employees but the amount paid to them was less than the stipulated minimum assurance benefit of INR 2.5 Lakh (Rupees Two Lakh Fifty Thousand) resulting in short payments. The directions are:

- All zonal officers ("**ZO**") are requested to ensure that regional officers ("**RO**") in their respective jurisdictions shall identify all such EDLI claims which have been settled, and where if the minimum benefit has not paid in the intervening period, shall immediately release the balance benefits due, if any.
- A consolidated report shall be sent by the ZO to the Employee Provident Fund Organisation ("**EPFO**") head office confirming that the minimum EDLI benefits have been given in all eligible cases and there are no cases of short payment.
- The report is to be sent within 15 (Fifteen) days on or before January 16, 2023.

PROFESSIONAL REGISTRATION SERVICES THROUGH SINGLE WINDOW 'SILPASATHI PORTAL' IN WEST BENGAL

The Finance department of West Bengal, vide its notification dated January 2, 2023 has mandated the following applications for registrations to be made through the state single window 'Silpasathi Portal' ("**www.silpasathi.wb.gov.in**") instead of each department's standalone online systems, with effect from January 1, 2023:

- Registration under the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979
- Registration of own generating plant under the Bengal Electricity Duty Act, 1935.
- Renewal of registration of own generating plant under the Bengal Electricity Duty Act, 1935.

MEASURES FOR ONBOARDING THE EMPLOYEES' STATE INSURANCE CORPORATION ON THE JEEVAN PRAMAAN PORTAL FOR DIGITAL LIFE CERTIFICATE REGISTRATION

The Employees' State Insurance Corporation ("**ESIC**") on January 3, 2023 has issued a notification regarding onboarding ESIC on the Jeevan Pramaan Portal ("**Portal**") for Digital Life Certificate. In this regard, the following steps have been taken:

- Jeevan Pramaan Project, National Informatics Centre, New Delhi has been requested to onboard ESIC on the Portal, so that the facility of generating Digital Life Certificates can be availed by the pensioners and family pensioners of ESIC.
- In the first phase of implementation of the Jeewan Pramaan in ESIC, State Bank of India (as disburser of pension) has been asked to honour the Digital Life Certificate generated on the Portal in respect of ESIC pensioners and family pensioners for disbursing their pension.
- In the second phase of implementation of Jeewan Pramaan in ESIC, the enterprise resource planning ("**ERP**") system will be functional for those pensioners

and family pensioners whose pension is being disbursed from ESIC Regional Office/Sub-Regional Office ("**RO/SRO**") or Hospitals (after Aadhaar seeding/verification provisions are implemented in ESIC with the permission of the concerned authorities and through Aadhaar vault solutions).

ESIC ISSUES A MEMORANDUM ON EXTENSION OF BENEFITS OF ESIC PENSIONERS MEDICAL SCHEME, 2006

- The ESIC vide a memorandum dated January 6, 2023 has extended the benefits of the ESIC Pensioners Medical Scheme, 2006 ("**ESIC Scheme**") to retired employees of New Pension Scheme ("**NPS**") subscriber and the family members of the deceased employees under NPS subscription in ESIC.

- At present the ESIC Scheme is optional and contributory in nature, being applicable only to pensioners of ESIC who are covered under Central Civil Services (Pension) Rules, 1972 ("**CCS Pension Rules 1972**") and therefore, such pensioners who are covered under NPS are not covered under this ESIC Scheme. It provides medical facilities to pensioners of ESIC on the lines of medical facilities being provided through Central Government Health Scheme.

- Various representations for extension of benefits of the ESIC Scheme to the retired employees covered under the NPS were received by ESIC from individual pensioners and their association on the lines of the Central Government extending the Employees' State Insurance ("**ESI**") scheme to the Central Government retirees/family members of deceased NPS subscribers of Central Government.

- Hence, ESIC has approved the extension of the facility of 'Fixed Medical Allowance' or medical facilities to NPS retirees and family members of the deceased employees under NPS subscription in ESIC through the ESIC Scheme. The terms and conditions of these benefits have been specified in the memorandum.

ONLINE FILING OF APPLICATIONS UNDER THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT,1970 IN PUDUCHERRY

The office of the Chief Inspector of Factories & Boilers, Puducherry vide its notification dated January 12, 2023 has mandated online filing of the following applications:

- Application for license under the Contract Labour (Regulation & Abolition) Act 1970 for engagement in factories of Puducherry, Mahe and Yanam regions of Puducherry.

- Application for renewal of license under Contract Labour Act 1970 for engagement in factories of Puducherry, Mahe and Yanam regions of this Union Territory.

THE WEST BENGAL MINIMUM WAGES NOTIFICATION

The office of the Labour Commissioner, West Bengal vide notification dated January 16, 2023 has released the minimum rates of wages effective from January 1, 2023 to June 30, 2023.

ESIC SEEKS TO REVISE THE MONTHLY AUTOMATIC LIMIT AND TRANSFER OF FUNDS

The ESIC vide its notification dated January 17, 2023 has notified a revision in the monthly automatic limit and transfer of funds. The ESIC has requested industrial units to send the proposal for revision of the monthly automatic limit of the units with the approval of the head of the office before January 31, 2023, subject to the following conditions:

- The fund request must be raised according to the Standard Operating Procedure communicated vide the office letter of even no. dated September 30, 2019.

- The fixed limit will be transferred 2 (Two) days before the last working day in every month. This fixed monthly transfer will not cover 'other administrative expenditure'. Hence the proposal of fixed limit should only comprise of salary/pension, Permanent Disability Benefit/Disability Benefit and other cash benefits amount.

- Fund request should be raised for any other expenditure except the above point only after processing and passing of bills in ERP which is ready for payment. The cash book balance must be mentioned in noting a portion of ERP as on date while raising fund requests which should be tallied with the online ERP cash book balance.

- The concerned cash branch of accounting units should initiate the proposal for revision of the limit and place it before their finance & accounts branch.

- All the accounting units must ensure that their quarterly expenditure is not exceeding the proportionate budget for the quarter and annual budget for the year.

- The proposal should be sent for RO/SRO and branch offices/Dispensary Cum Branch Offices ("**DCBO**") separately in detail as per the given proforma.

- While preparing of branch offices/DCBOs limit, the average expenditure of 6 (Six) months may be considered so that accumulation of funds at the branch office level may be minimised.

- It will be the responsibility of Assistant Director (Finance), Deputy Director (Finance) and Joint Director (Finance) of the accounting unit to avoid an accumulation of funds and keep a close watch on the cash balance of their accounting unit as well as branch offices/DCBOs under their jurisdiction.

ESIC CLARIFIES ON GRANT OF HOSPITAL PATIENT CARE ALLOWANCE/PATIENT CARE ALLOWANCE TO PARAMEDICAL STAFF

- The ESIC has issued a clarification vide a notification dated January 16, 2023 on grant of Hospital Patient Care Allowance and Patient Care Allowance ("**HPCA/PCA**") to paramedical staff.

- According to the clarification, paramedical staff are to be deployed on duties related to medical services only in accordance to their job cards.

- In addition to this, it also reiterates that grant of HPCA/ PCA must be strictly regulated in accordance with instructions issued by the Ministry of Health and Family Welfare dated February 4, 2004.

- Therefore, HPCA/ PCA will not be admissible to paramedical employees in case they are deployed on administrative duties.

ENFORCEMENT OF PROVISIONS OF EMPLOYEES' STATE INSURANCE ACT, 1948 ACROSS CERTAIN DISTRICTS IN PUNJAB, MAHARASHTRA, ODISHA, MIZORAM AND MADHYA PRADESH

The Ministry of Labour and Employment has enforced the following provisions of the Employees' State Insurance Act, 1948 effective from February 1, 2023:

- Sections 38 to 43 and sections 45A to 45H of chapter IV (*provisions pertaining to Contribution*);

- Sections 46 to 73 of chapter V (*provisions pertaining to Benefits*); and

- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of chapter VI (*provisions pertaining to Adjudication of Disputes and Claims*),

In all the areas of the Ferozepur district of Punjab vide its notification dated January 10, 2023, all the areas of Sindhudurg, Ratnagiri, Bhandara, Washim, Gadchiroli and Beed districts of Maharashtra, all the areas of Kendrapara districts of Odisha, all the areas of Aizawl district of Mizoram and all areas of Chindwara and Singrauli districts in Madhya Pradesh vide various notifications dated January 24, 2023.

EMPLOYMENT LAW JUDGEMENTS

The ESIC v. M/S Radhika Theater

In this case, M/s. Radhika Theater ("**Radhika Theatre**") was running a cinema hall since 1981 and they also contributed towards the Employees' State Insurance ("**ESI**") till September 1989. However, Radhika Theatre stopped paying the contributions thereafter because the number of employees at the establishment were less than 20 (Twenty). The ESIC issued demand notices to Radhika Theatre for paying the contributions. Subsequently, Radhika Theatre challenged the demand notices before the Employee Insurance Court ("**EIC**") on the grounds that prior to the insertion of Section 1(6) of the ESI Act it employed less than 20 (Twenty) and therefore, it was not liable to be covered under the provisions of the ESI Act. The EIC dismissed the matter stating that it was subject matter of appeal before the High Court. The High Court allowed the appeal preferred by Radhika Theatre taking the view that insertion of Section 1(6) came into effect from October 20, 1989 because of which it cannot be applicable to an establishment, established prior to October 20, 1989/ March 31, 1989. When the ESIC appealed before the Supreme Court, it was finally they held that:

1. The ESI Act is a welfare legislation which was enacted by the Central Government to provide security in the form of financial protection to an employee for any health related issue. The ESI Act will be applicable to every establishment which has been established before or after 1989. The ESI Act shall be applicable irrespective of the number of people employed.

2. The ESI Act should be given liberal interpretation and should be interpreted in such a manner that social security can be given to the employees.

ENERGY & INFRASTRUCTURE

ENERGY

ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022 AMENDED

The Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 ("**Green Energy Open Access Rules**") has been amended vide the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Amendment Rules, 2023 ("**Amendment Rules**"), introducing the following provisions:

(a) Any consumer can elect to purchase green energy either upto a certain percentage of the consumption or its entire consumption and they may place a requisition for this with their distribution licensee, who will then procure such quantity of green energy and supply it. The consumer will have the flexibility to give separate requisition for solar and non-solar.

(b) credit for banked energy will not be permitted to be carried forward to subsequent banking cycles and will be adjusted during the same banking cycle.

(c) the un-utilised surplus banked energy will be considered as lapsed at the end of each banking cycle and the Renewable Energy generating station will be entitled to get Renewable Energy Certificates to the extent of the lapsed banked energy.

(d) The charges to be levied on Green Energy Open Access consumers will be- (i) transmission charges; (ii) wheeling charges; (iii) cross subsidy Surcharge; (iv) standby charges wherever applicable; (v) banking Charge; and (vi) other fees and charges such as Load Despatch Centre fees and scheduling charges, deviation settlement charges as per the relevant regulations of the Commission.

(e) cross subsidy surcharge and additional surcharge will not be applicable in case power produced from a nonfossil fuelbased Waste-to-Energy plant is supplied to the Open Access Consumer. Provided that additional surcharge will not be applicable in case electricity produced from offshore wind projects, which are commissioned upto December, 2025 and supplied to the Open Access Consumer.

(f) The standby charges, wherever applicable, will be specified by the State Commission and such charges will not be applicable, if the Green Energy Open Access Consumers have given notice, in advance atleast a day in advance before closure time of the Day Ahead Market on 'D - [minus] 1st day', 'D' being the day of delivery of power for standby arrangement to the distribution licensee.

THE NATIONAL GREEN HYDROGEN MISSION

The Union Cabinet has approved the Green Hydrogen Mission ("**Mission**") on 04.01.2023 with a financial outlay of INR 19,744 crores.

The objectives of this Mission are:

(a) make India the Global Hub for production, usage and export of Green Hydrogen and its derivatives

(b) decarbonisation of the economy

(c) reduce dependence on fossil fuel imports

(d) enable India to assume technology and market leadership in Green Hydrogen

(e) to make India a leader in technology and manufacturing of electrolysers and other enabling technologies for Green Hydrogen

To achieve the above objectives, the Mission will build capabilities to produce at least 5 Million Metric Tonne (MMT) of Green Hydrogen per annum by 2030, with potential to reach 10 MMT per annum with growth of export markets.

The Mission will support replacement of fossil fuels and fossil fuel-based feedstocks with renewable fuels and feedstocks based on Green Hydrogen. This will include replacement of Hydrogen produced from fossil fuel sources with Green Hydrogen in ammonia production and petroleum refining, blending Green Hydrogen in City Gas Distribution systems, production of steel with Green Hydrogen, and use of Green Hydrogen-derived synthetic fuels (including Green Ammonia, Green Methanol, etc.) to replace fossil fuels in various sectors including mobility, shipping, and aviation.

Phased approach of the Mission:

(a) PHASE 1 (2022-23 to 2025-26): The focus of Phase I will be on creating demand while enabling adequate supply by increasing the domestic electrolyser manufacturing capacity.

(b) Phase II (2026-27 to 2029-30): Green Hydrogen costs are expected to become competitive with fossil-fuel based alternatives in refinery and fertilizer sector by the beginning of the second phase, allowing for accelerated growth in production. Depending upon the evolution of costs and market demand, the potential for taking up commercial scale Green Hydrogen based projects in steel, mobility and shipping sectors will be explored. At the same time, pilot projects in other potential sectors like railways, aviation etc. R&D activities will be scaled up for continuous development of products.

Implementation:

The Government (through Ministry of New & Renewable Energy) shall undertake the following actions:

(a) provide an enabling policy framework to support establishment of the green hydrogen ecosystem;

(b) provide the standards and regulations framework;

(c) develop public – private – partnerships framework for research and development;

(d) identify and develop green hydrogen hubs to produce and utilize green hydrogen;

(e) provide a skill development programme.

THE ENERGY CONSERVATION (AMENDMENT) ACT, 2022

The Ministry of Power ("**MoP**") vide notification no. 10/07/2018-EC, dated 26.12.2022,, in exercise of the powers conferred by sub-section (2) of section 1 of the Energy Conservation (Amendment) Act, 2022 (19 of 2022), appointed the 1st day of January, 2023 , as the date on which all the provisions of the said Act shall come into force.

INFRASTRUCTURE

INTEREST RATE APPLICABLE FOR HYBRID ANNUITY PROJECTS

The National Highways Authority of India ("**NHAI**") vide policy circular number 8.4.37/2023 dated January 10, 2023 ("**Policy Circular**"), has notified the following interest rates under Clause 23.6.4 of the model concession agreement for hybrid annuity ("**HAM**") model projects ("**Model HAM Agreement**"), payable in relation to the reducing balance of completion cost towards the project:

Sr. No.	Bank's Name	One year MCLR % (as on January 01, 2023	Average rate applicable for the period from January 01, 2023, to March 31, 2023
1.	State Bank of India	8.30	8.43 % per annum plus 1.25%
2.	HDFC Bank	8.60	
3.	ICICI Bank	8.65	
4.	Bank of Baroda	8.30	
5.	PNB	8.30	

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

AMENDMENT IN THE STANDARD REQUEST FOR PROPOSAL AND THE MODEL CONCESSION AGREEMENT OF CERTAIN PUBLIC PRIVATE PARTNERSHIP PROJECTS

The Ministry of Road Transport and Highways ("**MoRTH**") vide circular bearing number RW/NH-33044/88/2021-S&R(P&B)/DNT(215840) dated January 17, 2023 ("**Amendment Circular**"), amended the standard request for proposal ("**RFP**") and model concession agreement of engineering procurement and construction, build operate and transfer (toll) and HAM model projects to ensure compliance with PPP-MII Order, 2017 and Rule 144(xi) of the General Financial Rules, 2017.

As per the office memorandum number NH-35014/35/2020-H-Part (II)(E-196662) dated December 16, 2021, issued by the MoRTH ("**OM**"), a bidder was required to submit a self-certification stating that the item offered meets the local content requirement for class-I local supplier/class-II local supplier depending upon the case along with the technical bid. If the procurement is for a value above INR 10,00,00,000 (Rupees Ten Crore), the class-I local supplier/class-II local supplier must provide a certificate from the statutory auditor or cost auditor of the company or from a cost accountant or chartered accountant giving the percentage of local content.

Pursuant to the OM, the Amendment Circular provides that, if the aforementioned certificate has not been submitted by the bidder in its technical bid, the said bidder must be given an opportunity to submit the desired certificate during the technical evaluation of the bid. If the bidder is still unable to submit the said certificate, action shall be taken in accordance with the RFP for the respective project.

LAUNCH OF THE NATIONAL LOGISTICS PORTAL (MARINE)

On January 27, 2023, the Union Minster for Ports Shipping and Waterways and Ayush, Mr. Sarbananda Sonowal inaugurated the National Logistics Portal (marine) ("**NLPM**"). Some key features of the NLPM are provided hereinbelow:

- NLPM is an "open platform" which will allow the co-existence of several service providers to provide EXIM-related services independently or by combining different connectivity options. Moreover, it has the ability to integrate with various port operating systems/ terminal operating systems, Indian Customs Electronic Data Interchange Gateway (ICEGATE), other regulatory agencies, and stakeholder(s) systems in the ecosystem.
- Thus, NLPM will serve as a single window portal for all logistical trade procedures and will include all modes of transport including the waterways, roadways, and airways along with an e-marketplace to provide a seamless end-to-end logistic service across the country.
- Activities on the NLPM will be categorized into four verticals:(i) carrier; (ii) cargo; (iii) banking and finance; (iv) regulatory bodies and participating government agencies.
- The 'Latch On' feature on the NLPM will facilitate the trade in providing the requisite features by linking through systems developed by other agencies seamlessly without duplication of efforts.
- Digital transactions for payments required for the clearance processes such as port charges, CFS charges, shipping line charges and transportation charges etc. will be enabled through the NLPM.
- NLPM hence aims to connect all the stakeholders of the logistics community using information technology in order to improve efficiency, transparency by reducing logistics costs, minimizing complexities and time delays. It will help in enhancing ease of doing business

in India, promote paperless trade as well as centralize all necessary documentation, compliance certifications, and formal procedures necessary for EXIM trade.

DSK View: *The NLPM will ultimately aid in the achievement of easier, faster and more competitive offerings of services and promote the growth of the logistics sector and improve trade by providing a single and unified platform.*

FINTECH

RBI BEGINS TESTING PHASE OF ITS FOURTH COHORT UNDER REGULATORY SANDBOX

The RBI *vide* a press release dated June 06, 2022 had announced the theme of its Fourth Cohort under the Regulatory Sandbox. The theme for the Fourth Cohort was 'Prevention and Mitigation of Financial Frauds'. The RBI received 9 applications out of which 6 have been declared as selected for the testing phase *vide* press release dated January 05, 2023. The applications which have been selected for testing are from Bahwan Cybertek Private Limited (*Product: rt360 Real Time Monitoring System*), Crediwatch Information Analytics Private Limited (*Product: Crediwatch EWS*), enStage Software Private Limited (*Product: Trident FRM*), HSBC in collaboration with enStage Software Private Limited (*Product: A closed group AI/ML solution*), napID Cybersec Private Limited (*Product: napID Fraud Filter Layer*) and Trusting Social Private Limited (*Product: Trusting Social CI & AV*). These 6 entities will soon commence testing of their products on anti-fraud solutions.

The RBI had started its Regulatory Sandbox back in August 2019 whereunder it provides a controlled ecosystem to eligible fintech entities to test their products. The RBI has, pursuant to its Press Release dated September 05, 2022, decided to not focus on any specific theme for its Fifth Cohort and provide a level-headed testing environment for innovative products and services across all verticals of Fintech which comes under the ambit of the RBI.

INCENTIVE SCHEME TO PROMOTE RUPAY DEBIT CARDS AND BHIM-UPI TRANSACTIONS

*To encourage further adoption of digital payments in India, the Ministry of Electronics and Information Technology ("**MeitY**") vide notification dated January 14, 2023 has approved an incentive scheme of upto Rs. 2,600 Crore which will be allocated between the usage of RuPay Debit Cards through point-of-sale devices ("**PoS**") and digital transactions using BHIM-UPI platform ("**Scheme**").*

*The incentives under the Scheme are aimed at encouraging digital payments RuPay Debit Cards, BHIM-UPI, UPI LITE and UPI 123 PAY. Operational guidelines will be issued by MeitY, after consultation with National Payments Corporation of India ("**NPCI**"), for the implementation of this Scheme.*

RIGHT TO SEEK CANCELLATION OF A TRADEMARK REGISTRATION IS INDEPENDENT OF THE RIGHT TO QUESTION VALIDITY OF A TRADEMARK REGISTRATION UNDER THE ACT

In a petition seeking cancellation of the registered trademark 'Jain Shikanji' filed before the Delhi High Court, the Hon'ble Court has held that the right to seek cancellation of a mark is an independent right, which can be exercised even when the Petitioner has not raised the issue of invalidity in an infringement suit against the said petitioner.

Before institution of the instant petition, Respondent had filed a commercial suit against the Petitioner alleging infringement of their registered mark and the Court had granted an interlocutory order of injunction against the Petitioner. The said order has been challenged by Petitioner and the same is pending adjudication before a Division Bench of the Court.

Respondent contested maintainability of the petition and relied on Section 124 of the Act since a suit alleging infringement of trademark is pending before the Court. The Court heard arguments of both parties and noted that Section 124 of the Act applies when there is suit of infringement of trademark pending before a Civil Court and Defendant pleads invalidity of Plaintiff's trademark registration. It was held that in the present suit, Petitioner never pleaded such invalidity as a defence in the commercial suit and therefore, Section 124 would not apply.

Additionally, reliance was placed on *Patel Field Marshal Agencies v. P.M. Diesels Ltd (2018 2 SCC 112)* which underscored the position that right conferred upon the Defendant in an infringement suit to move the Court for rectification of the register of marks is an independent right. Regardless of whether or not the defence of invalidity was taken by the Defendant in an infringement, Court held that the right under Section 124 is available in addition to the right available and conferred under Section 57 of the Act.

[Anubhav Jain v. Satish Kumar Jain & Anr., 2023/DHC/000233]

SHAPE AND FEATURES OF GOODS INDEPENDENT OF DESIGN REGISTRATION ARE ENTITLED TO TRADEMARK PROTECTION

The Delhi High Court, while deciding interlocutory applications in respect to interim injunction / vacation of the *ad-interim* injunction, held that tread pattern on a tyre can be considered as a trademark and thus, be protected under the trademarks law.

While stressing on the distinctive treads on a manufactured tyre, the learned counsel for the plaintiff averred that the tread patterns are one of the primary source identifiers apart from their brand names, to make the tyres stand out in the showrooms and serve as a distinctive hallmark of the manufacturers, in terms of their source and quality, thus substantiating its claim for passing off.

The learned counsel for the defendant submitted that with the passage of time, the plaintiff's tread pattern has become common to the trade, and thus cannot succeed in its actions for passing off. Further, the defendants counsel submitted that by making and subsequently withdrawing the design application, the plaintiff has lost its right to ascertain any statutory or common law right in respect of the tread pattern treating it as a trademark in view of the statutory exception of Trademarks from the definition of "design", contained in Section 2(d) of the Designs Act. It was also averred that the tread patterns were dependent on the functionality aspect of the tyre and hence no propriety can be claimed over the same. For ready reference, magnified views of the tread pattern of the tyres are shown below:

Tread Pattern of Plaintiff's Tyre	Tread Pattern of Defendants Tyre
	

While finding no merit to the claims of the defendant, the Delhi High Court clarified that an unregistered design could qualify as an unconventional trademark if it was being used for the purposes of business, had acquired a reputation and/or goodwill, which were identified in the minds of the consumers, by associating the design/the mark, with their goods and /or services. The plea would be that the design which was being used as a mark by the manufacturer would identify them as the source of the goods supplied or services offered.

DSK View: *The Judgment regurgitate the dichotomy between design and trademark law as it broadens the scope of unregistered designs to be protected as trademarks. The right to question invalidity of such a design/pattern which is neither registered under the Designs Act nor is registered as a trademark, would not be available to the party who is accused of infringement.*

[Apollo Tyres Limited v. Pioneer Trading Corporation & Ors., CS(Comm) 594/2022]

PRIOR PUBLICATION OF DESIGN EVEN BY THE OWNER CAN INVALIDATE THE REGISTRATION GRANTED IN RESPECT TO THE SAID DESIGN

In a design proceeding instituted before the Delhi High Court, the Hon'ble Court had vacated an *ex-parte ad interim* injunction order which was granted in favour of the Plaintiff on the basis that the Plaintiff itself had disclosed and published the design prior to filing of the application for registration of the said design.

Plaintiff claimed proprietorship in novel design of a water cooler which stands registered as Design No. 322384-002 ("suit design") in class 23-04, and alleged that Defendant's "NOVA" range of coolers infringed the suit design. In view of a strong *prima facie* case, the Hon'ble court had granted an *ex-parte ad interim* injunction. Being aggrieved, the Defendant had filed an application for vacation of the *ex-parte ad interim* injunction.

Defendant relied on the documents filed by the Plaintiff itself, particularly a screenshot from its own website, to argue that the Plaintiff's cooler with suit design was available online for purchase and being sold in the market prior to Plaintiff's application for registration of the design. Upon examining the documents filed and contentions of both parties, the Court held that the internet advertisement filed by Plaintiff indicated prior publication of the design and renders it vulnerable to cancellation under Section 19(1)(b) of the Designs Act. It was observed that Plaintiff did not have a strong enough case to justify continuance of the *ex-parte ad interim* order against the Defendant and hence the order was vacated.

DSK View: *Any disclosure or prior publication of novel design, even by the creator/owner, can be a ground to invalidate the registered design.*

[Novamax Industries LLP v. Prem Appliances & Anr., 2023/DHC/000333]

INDONESIA HAS REQUESTED FOR WTO DISPUTE CONSULTATIONS WITH EUROPEAN UNION REGARDING EU'S MEASURES ON THIRD COUNTRY SUBSIDIZATION

Indonesia has requested for consultations[3] with the European Union ('**EU**') concerning EU's imposition of countervailing and anti-dumping duties on Stainless Steel Cold-Rolled Flat Products ('**SSCRFP**') from Indonesia, *vide* communication (WT/DS616/1) on 24 January 2023. Such communication was circulated to other WTO members on 26 January 2023 (available here).

Indonesia, in its communication (WT/DS616/1), has expressed that the Commission Implementing Regulations (EU) 2022/433 of 15 March 2022 (available here) and 2021/2012 of 17 November 2021 (available here) which impose definitive countervailing duties and a provisional anti-dumping duty, respectively, on imports of SSCRFP originating in India and Indonesia are in violation of the Agreement on Subsidies and Countervailing Measures ('**SCM Agreement**'), Anti-Dumping Agreement ('**ADA Agreement**') and GATT 1994.

The Countervailing Regulation (EU) 2022/433 of 15 March 2022 held that the Agreement between Indonesia and China on Expanding and Deepening Bilateral Economic and Trade Cooperation (2011), the Indonesia-China Five Year Development Program for Economic and Trade Cooperation (2013), the Agreement on Indonesia-China Integrated Industrial Parks (2013) and the Joint Statement on Strengthening Comprehensive Strategic Partnership between China and Indonesia (2015) encouraged Chinese enterprises and financial institutions to participate in the development of economic corridors and specific priority projects of the Indonesian stainless-steel companies by way of grants and preferential loans.

With regard to the above, Indonesia is concerned that the following findings of the European Commission ('**EC**') appear to be inconsistent with the SCM Agreement and GATT 1994:

a. The financial contributions by Chinese grantors to the Government of Indonesia are subsidies within the meaning of Article 1.1(a)(1) of the SCM Agreement;

b. The Government of Indonesia is the granting authority under Articles 2.1 and 2.2 of the SCM Agreement with respect to financial contributions provided by Chinese grantors;

c. The alleged subsidies provided by Chinese grantors to certain enterprises which were not within their jurisdiction are specific in accordance with Articles 1.2, 2.1, 2.2, and 2.4 of the SCM Agreement;

d. The import duty exemption for machinery and spare parts imported from China constitutes as an export subsidy within the meaning of Article 3.1(a) and/or constitutes a financial contribution in the form of revenue foregone by the Government of Indonesia within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement;

With respect to the Anti-Dumping Regulations, Indonesia is further concerned that the EC's omission to appropriately adjust the anti-dumping duty to take account of the countervailing duty for imports of bonded zone spare parts from China is in violation of the requirements under Article

[3] The request for consultations under Article 4 of the Dispute Settlement Understanding ('**DSU**') formally initiates a dispute at the WTO. Consultations give the parties an opportunity to discuss the matter and to find a satisfactory solution without proceeding further with WTO litigation. However, if consultations have failed to resolve the dispute, the complainant may request adjudication by a WTO Panel within 60 days from the data of receipt of the request for such consultations.

VI:5 of the GATT 1994 and Article 9.2 of the Anti-Dumping Agreement.

EU is expected to reply to Indonesia's request for consultation within 10 days from the receipt of such request and enter into consultations within a period of 30 days from such request. Such issues relating to imposition of countervailing duties on financial contributions granted by the Government of another WTO Member would be raised for the first time ever before a WTO Panel, in case the consultations fail to reach a mutually satisfactory solution.

***DSK View**: As per the SCM Agreement, financial contributions and/or benefits granted as a part of government policies within the jurisdiction of such government are subsidies and resultantly, considered as barriers to trade. However, in the present case, Indonesia has raised concerns regarding EU's consideration of financial contributions granted to it by the Government of another nation as subsidies. Such financial contributions have not been explicitly categorized as subsidies under the SCM Agreement and/or the GATT 1994.*

*This perhaps is a move by the EU to harmonize its internal regime in respect of subsidisation by foreign countries in its trade defence as well. We recall EU's Regulation on Foreign Subsidies distorting the internal market ('**FSR**') (available here) which came into force on 12 January 2023. The FSR is applicable to all entities engaging in economic activities in the EU, which receive subsidies from non-EU countries. Under the FSR, all such entities would be susceptible to redressive measures if the foreign subsidies received by them are found to cause distortions in EU's domestic market.*

MEDIA & ENTERTAINMENT

MINISTRY OF I&B CAUTIONS TV CHANNELS AGAINST BROADCASTING DISTURBING FOOTAGES, DISTRESSING IMAGES, GORY IMAGES OF BLOOD, DEAD BODIES, PHYSICAL ASSAULT

The Ministry of Information and Broadcasting, on 9th January 2023, issued an advisory to all television networks against portrayal cases of accidents, deaths, and violence including instances of abuse against women, children and elderly in manners which grossly impede on "good taste and decency". The recommendation was made after the Ministry observed multiple instances of television broadcasters' lack of discretion. According to the Ministry, television channels have shown dead bodies and images/videos of injured people with blood splattered around, people, including women, children, and the elderly, being mercilessly beaten in close shots and other kinds of ghastly scenes without taking due editorial precaution. It has also been stated that the manner of coverage of such incidents is distasteful and distressing to the audience. The advisory emphasised that such reports can have a negative psychological influence on children and other audiences. The advisory also emphasises the critical problem of invasion of privacy, which could be potentially maligning and defamatory. Television, which is typically viewed by families in households with individuals of all ages - old, middle-aged, young children, etc. - and from varied socioeconomic situations, impliedly requires a sense of duty and discipline in broadcasters, as established in the Programme and Advertising Code. The impetus behind the advisory was the observation that most videos are taken from social media and aired without editorial judgement or changes to ensure conformity and consistency with the Programme Code.

DELHI HIGH COURT REFUSED GRANT OF INTERIM RELIEF AGAINST THE RELEASE OF THE FILM "FARAAZ"

In the appeal filed before a division bench of the Delhi High Court ("Court"), by the mothers of two women who got killed in the terrorist attack that took place on July 01. 2016 at Holey Artisan in Dhaka, Bangladesh ("Appellants") against the producer of the film "*Faraaz*" ("Respondent") and the single judge order refusing the grant of interim relief against the release of the film, the Court while seeking the Respondents' response in relation to the appeal and the application raised the question before the Appellants that "*Can these films which depict or are inspired by true life events be injuncted at all. You have to inform us what is your right in law to seek injunction on release of the film. You'll have to be more direct*". In the previous order, the single judge had observed that "*the right to privacy is essentially a right in personam and is not inheritable by the mothers or legal heirs of the deceased persons*". The Appellants submitted before the Court that the Respondents had assured before the single judge that the names of the two girls will not be used in the film and any disclosure of their real pictures or incident will also be removed. However, there are thinly disguised names used in the film and there are certain scenes where faces of girls are displayed during a protest. Addressing the submissions, the counsel for the Respondents contended that the film has already been screened many times for preview purposes in India and at London Film Festival and the details of the incident are already in public domain. Taking into consideration the submissions of both the parties, the Court has asked the parties to sit together and try to resolve the issue. The next hearing on the matter has been scheduled for February 01.

DEPARTMENT OF TELECOMMUNICATIONS FORMULATES THE INDIAN TELEGRAPH (INFRASTRUCTURE SAFETY) RULES 2022

Digital infrastructure and services are becoming increasingly important enablers and vital factors of a country's prosperity and well-being. As a result, the central government envisions meeting communication demands of residents and businesses by establishing a durable, secure, accessible, and cheap Digital Communications Infrastructure and Services.

The government, TSPs, and IPs have collaborated to build the much-needed pan-India telecom infrastructure networks for different telecom sector concerns. Various agencies frequently conduct excavation activities that cause subterranean utility assets to be damaged, either owing to a lack of agency awareness about existing utilities or a lack of collaboration with utility asset owner agencies. These damages result in economic losses for utility asset owners, as well as company losses and public discomfort costing the telecom sector alone, approximately an enormous Rs 3000 crore every year. Accordingly, to address this compelling need for rules and regulations address the issues of safety to the existing telecom infrastructure, the Government has formulated the Indian Telegraph (Infrastructure Safety) Rules, 2022 published in the Gazette of India on January 3, 2023. The salient features of the Rules, inter alia, are:

(i) Mandatory requirement of furnishing notice to the licensee to be complied by any person wishes to exercise a legal right to dig or excavate any property which is likely to cause damage to a telegraph infrastructure, prior to commencement;

(ii) Sought information shall include the name and address of the person exercising the legal, agency details, contact details, date and time of start of the exercise, description and location of the exercise, and the reasons for such dealing;

(iii) The licensee shall, as expeditiously as possible, provide through the common portal, the details of telegraph infrastructure owned/ controlled/ managed by them, falling under/ over/ along the property with which the person intends to deal, along with precautionary measures for coordination in avoiding damages to the telegraph infrastructure.

DELHI HIGH COURT DIRECTS YASH RAJ FILMS TO INCLUDE AUDIO DESCRIPTION, CLOSE CAPTIONING AND SUBTITLES IN THE OTT RELEASE OF THE FILM "PATHAAN"

In a Public Interest Litigation (PIL) filed by various PwDs including lawyers and Executive Director of the National Association for the Deaf ("Petitioners") before the Delhi High Court ("Court") against Yash Raj Films ("Defendants"), seeking the Courts direction for inclusion of audio description, close captioning and subtitles in the OTT release of the film "*Pathaan*", the Court directed the producers of the film to prepare the audio description, close captioning and subtitles in Hindi language within 2 weeks and submit the same to the Central Board of Film Certification (CBFC) for re-certification by February 20. The PIL has been filed by the Petitioners with the intention of making the film accessible for visually and hearing-impaired persons in conformity with the rights of persons with disabilities as prescribed under the Rights of Persons with Disabilities Act, 2016. The Petitioners had submitted before the Court that though certain guidelines have been issued in the past, for example the Ministry of Information and Broadcasting's directions in October 2019 to film producer's associations and CBFC, however the same have not been implemented and there are no sanctions in place for any non-compliance with the same. The Court while listing the next hearing on April 6, 2023 stated that "*In the meantime, insofar as the theatrical show exhibition of the film, if the producer wishes to do so, they may contact the app providers to explore the possibility of providing audio description and subtitling to be done for future films*".

THE DELHI HIGH COURT HAS DISMISSED THE PIL SEEKING DIRECTIONS FOR IMMEDIATE BAN ON ALL NON-FILM SONGS WITH OBSCENE/VULGAR CONTENTS

The Delhi High Court ("Court") has dismissed the PIL filled against the Union Government and the Ministry of Information and Broadcasting (MIB) ("Defendants") seeking directions for immediate ban on all non-film songs with "obscene/vulgar contents" and for setting up of a regulatory authority or censor board to review and censor such non-film songs and their content, before it gets released on internet. While dismissing the PIL, the Court held that a clear regulation or regime to regulate the information or content available to the general public through media platforms is already in place. The Court observed that "*As far as television is concerned, the Cinematograph Act, 1952, and the Cable Television Networks (Regulation) Act, 1995, addresses the issue regarding regulation of content which is being telecasted on these platforms*". The Court further noted that the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 lays down the regime to be followed by every intermediary and any non-compliance of the same attracts penalties and punishment under the IT Act.

TRAI RELEASES CONSULTATION PAPER ON 'LICENSE FEE AND POLICY MATTERS OF DTH SERVICE'

The Telecom Regulatory Authority of India vide its consultation paper dated December 10, 2022 has invited comments on issues related to License Fee payable and Bank Guarantee furnished by DTH operators. The License fee is a non-tax fee placed on a service provider in exchange for the permission of carrying out a licenced activity. In India, DTH operators are currently required to pay a licencing fee of 8% of Adjusted Gross Revenue (AGR) to the Ministry of Information & Broadcasting (MIB) on a quarterly basis, with AGR determined by subtracting Good and Services Tax (GST) from Gross Revenue (GR). The Department of Telecommunications (DoT) recently carried out certain amendments in the Unified License (UL) Agreement for AGR. In view of the aforesaid amendments carried out by DoT, and on the request of DTH association and DTH operators, MIB has sent a reference requesting TRAI to examine issues pertaining to the amendments from policy angle and furnish

its recommendations. The consultation paper seeks inputs on the amended definition of Gross Revenue and rationalization of Bank Guarantees. Comments on the issues are invited by February 13, 2023 and counter comments by February 27, 2023.

THE DELHI HIGH COURT DENIES RESTRAIN ORDER AGAINST WEB SERIES "TRIAL BY FIRE"

The Delhi High Court rejected the suit filed by the Plaintiffs seeking a decree of mandatory and permanent injunction in order to restrain the exhibition, broadcast, telecast and release of the series titled 'Trial by Fire'. The infamous Uphaar Cinema Tragedy took place on June 13, 1997, when a fire broke out at the former Uphaar Cinema in Green Park, New Delhi killing several innocent people. Following the investigation, the plaintiff was found guilty of tampering with evidence under relevant sections of the Indian Penal Code, 1860. In the present case, the Plaintiff was aggrieved by the trailer of the OTT web series 'Trial by Fire' released on January 4, 2023 and the web series scheduled to be released on January 13, 2023, as it may lead to the lowering of public opinion about the Plaintiff. The aforementioned Web Series claimed to be based on the Book written by Defendants 4 and 5, which contained false and defamatory statements, including accusations that the Plaintiff is a murderer. The Court stated that the contents of the Book in question, as well as the various charges made in it about a prominent figure, were in the public domain and so clearly disentitled the plaintiff to any pre-publication injunction. Furthermore, the content is based on the thoughts and opinions of the parents who lost their adolescent children in the horrifying occurrence for which the Plaintiff was convicted. As a result, the High Court stated that "a fictional rendition of their trials and tribulations cannot, *prima facie*, be presumed to be defamatory". Thus, the Court refused the grant of interim injunction against the defendants.

THE UNION GOVERNMENT HAS MADE DISCLOSURE OF MATERIAL INTEREST MANDATORY FOR CELEBRITIES AND SOCIAL MEDIA INFLUENCERS

The Union Consumer Affairs Ministry has released the endorsement guidelines for celebrities and social media influencers making it mandatory for the influencers and celebrities to compulsorily disclose the monetary or material connection between the celebrities/influencers and the brand/product/services being promoted and advertised by them through social media. The guidelines stated that the disclosures shall need to be clearly displayed in the advertisements and terms like "advertisement", "sponsored" or "paid promotion" should be used for all sorts of endorsements. Further, the guidelines also contain the "Endorsements Know-hows", which aims to ensure that the celebrities, influencers and virtual influencers do not mislead the consumers about a product/brand and are at all times in compliance with the provisions of the Consumer Protection Act and other associated rules and regulations.

UNION GOVERNMENT CONSTITUTES 3 GACS FOR REDRESSAL OF GRIEVANCES OF SOCIAL MEDIA USERS

The Union Government has established 3 Grievance Appellate Committees (GACs) based on the recently amended Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021). As per the notification it was provided that avenues for grievance redressal apart from courts shall need to be established by the Central Government to ensure that the constitutional rights of the citizens are not contravened by a third-party platform. The three GACs shall have 3 members each. The GAC will be a virtual digital platform that will operate only online and digitally - wherein the entire appeal process, from filing of appeal to the decision thereof, shall be conducted digitally. Any user shall have the option to appeal against the decision of a grievance officer of a social media and other online intermediary and the GAC shall address the appeal within a period of 30 days.

THE MINISTRY OF INFORMATION AND TECHNOLOGY HAS RELEASED THE DRAFT AMENDMENT TO THE IT (INTERMEDIARY GUIDELINES & DIGITAL MEDIA ETHICS CODE) RULES, 2021 IN RELATION TO ONLINE GAMING

On December 26, 2022, the government issued a change in Allocation of Business regulations appointing Ministry of Electronics and Information Technology as the nodal ministry for online gaming-related problems through a gazette notification. The MEITY issued for public comment the revised draft of the IT (Intermediary Guidelines & Digital Media Ethics Code), 2021 pertaining to online gaming on January 2, 2023. The draft was created to ensure that online games are delivered in accordance with Indian regulations and that consumers are protected from potential harm. Minister of State for Electronics and IT, Shri Rajeev Chandrasekhar commented that the expansion of online gaming ecosystem will be an important catalyst towards India's One trillion-dollar digital economy goal by 2025-26. But expansion of innovation ecosystem around online gaming has to be achieved while being prudent of regulatory requirements such as restricting violent, addictive or sexual content. He further added that the draft has proposed a self-regulatory mechanism which, in future, may also regulate the content of online gaming. The framework has to be dynamic and malleable enough to accommodate various safety concerns as around 40 to 45 percent of the gamers in India are women. Recently, in response to the draft rules, the gaming committee of the Internet and Mobile Association of India (IAMAI) have raised certain issues including but not limited to the role of the proposed self-regulatory body (SRBs) and the process of registration of games. The IAMAI in its submissions has sought the laying down of a common framework for the SRBs to maintain uniformity and

transparency. The IAMAI has further pitched that at least one member of the SRBs should be a retired judge of the Supreme Court of India or any High Court, since the SRBs will be performing adjudication functions as well.

OVER 350 SINGERS, SONGWRITERS AND MANAGERS SUPPORT THE US COPYRIGHT OFFICE'S PROPOSAL REGARDING US STREAMING ROYALTIES

Over 350 American singers, songwriters and managers have come in support of a newly proposed federal copyright rule that will ensure that the songwriters start receiving royalties once they regain the rights in their music. The proposed rule is in relation to the US Copyright Office's plan to overturn a policy adopted by the Mechanical Licensing Collective (MLC). The MLC is responsible for collecting the streaming royalties. Because of this policy, event when a writer uses their "termination right" to take back the control of their songs/music from the publisher, sometimes the royalties may continue to be sent to the publishers even when they do not own any rights in the same. This "termination right" permits the songwriters to reclaim their rights in a song/music by terminating the assignment of the copyrights to another party, such as a publisher, after 35 years. Though the publishers do not object the goal of the new rule, they have advised the copyright office that a formal amendment of the Copyright Act will be the better course of action in order to avoid litigations against the new rule.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

COMPANIES (INCORPORATION) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 19, 2022 (accessible here), has notified the Companies (Incorporation) Amendment Rules, 2023 ("**Incorporation Amendment Rules**"), which amends the Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**"). The key provisions of the Incorporation Amendment Rules have been summarised below:

1. In respect of the nominee in a One Person Company ("**OPC**"), who shall in the event of the sole member's death or incapacity to contract, become the member of the OPC, Rule 4(2) of the Incorporation Rules has been amended to state that the name of the nominee of an OPC is to be mentioned in the memorandum of association of the OPC and the nomination details along with the consent of the nominee is required to be filled in Form INC-32 (SPICe+) with the Registrar of Companies ("**ROC**") at the time of incorporation. Prior to this amendment, the consent of the nominee was obtained separately in Form INC-3. Under the new regime, the Form INC-3 for written consent of the nominated person has been replaced with a declaration in Form INC-4.

2. In respect of conversion of an OPC to a public company or a private company, Rule 6 of the Incorporation Rules has been amended to omit the requirement of attaching copy of resolution, the list of proposed members and its directors along with consent, list of creditors and latest audited balance sheet and profit and loss account, and the OPC is required to file only the altered e-MOA and e-AOA with the conversion application. The obligation has been imposed on the ROC to verify the latest audited financial statements of the OPC as part of the review of the conversion application.

3. In respect of conversion of a private company into an OPC, Rule 7 of the Incorporation Rules has been amended to omit the requirement of attaching the list of members, list of creditors, audited balance sheet, profit and loss account and secured creditors' NOC with the conversion application. However, the private company is now required to attach the altered e-MOA and e-AOA and NOC of every creditor with the conversion application and an affidavit from the directors confirming that all the members of the company have given their consent for such conversion to OPC. The obligation has been imposed on the ROC to verify the latest audited financial statements of the applicant company as part of the review of the conversion application.

4. In respect of application by existing companies for obtaining license under Section 8 (Formation of companies with charitable objects, etc.) of the Companies Act, 2013 ("**Act**"), Rule 20 of the Incorporation Rules has been amended to omit the requirement of attaching the audited financials, board reports and audit report with the application. The obligation has been imposed on the ROC to verify the audited financial statements of the applicant company as part of the review of the application.

5. In respect of the application to be filed with the Central Government for shifting of the registered office of the Company from one state or union territory to another, the requirement for submitting a separate copy of the application with the ROC has been done away with.

COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 19, 2022 (accessible here), has notified the Companies (Appointment

and Remuneration of Managerial Personnel) Amendment Rules, 2023 which provides for new formats of Form MR 1 (Return of appointment of managerial personnel) and Form MR-2 (Form of application to the Central Government for approval of appointment of managing director or whole-time director or manager).

In Form MR-1, additional disclosure has been included in respect of whether the appointee is a non-resident. In Form MR-2, additional disclosure have been included in respect of applications pending before NCLT/NCLAT and the SRN obtained while taking the central government's approval, while the particulars relating to the financial position of the company and details in respect of managerial remuneration have been omitted.

COMPANIES (AUTHORISED TO REGISTER) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 19, 2023 (accessible here), has notified the Companies (Authorised to Register) Amendment Rules, 2023 which amends the Companies (Authorised to Register) Rules, 2014 ("**AR Rules**"). As per the aforesaid amendment rules, in Rule 3(2) of the AR Rules, in relation to Form URC-1 (application for conversion of LLP, partnership firm, society or trust into a company), the requirement for obtaining a '*Written consent or No Objection Certificate from all the secured creditors of the applicant*' has been substituted with a '*No Objection Certificate from secured creditor along-with charge holder, if applicable*'. Further, the requirement of obtaining the written consent of majority of members of the LLP, partnership firm, society or trust for registration as a company and the undertaking from proposed directors to comply with provisions of the Indian Stamp Act, 1899 has now been omitted.

COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) (AMENDMENT) RULES, 2023

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Companies (Appointment and Qualification of Directors) (Amendment) Rules, 2023 ("**AQ Amendment Rules**"). As per the AQ Amendment Rules, the requirement of submitting Form DIR-8 (for intimation of disqualification) has also been imposed on the directors disqualified under sub-section (1) (relating to disqualification on account of insolvency, unsound mind, conviction under an offence etc.) of Section 164 of the Act. Previously, this reporting requirement was only imposed on directors who were disqualified under sub-section (2) (relating to disqualification on account of company's failure to file annual returns, repay deposits, pay dividends etc.) of Section 164 of the Act.

Additionally, the requirement for filing Form DIR-9 with the ROC has been extended to companies upon receiving information in Form DIR-8 from its disqualified director(s), which is to filed by such company within thirty days of the receipt of Form DIR-8 from such disqualified director(s). It has further been clarified that the application for removal of disqualification of directors in Form DIR-10 is required to be filed before the Regional Director. In light of the above changes and in relation to the migration of MCA website to MCA21 V3 portal, new formats of the Form DIR-3, Form DIR-3C, Form DIR-5, Form DIR-6, Form DIR-8, Form DIR-9, Form DIR-10, Form DIR-11 and Form DIR-12 have also been notified.

COMPANIES (REGISTRATION OF FOREIGN COMPANIES) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Companies (Registration of Foreign Companies) Amendment Rules, 2023 which amends the Companies (Registration of Foreign Companies) Rules, 2014 ("**FC Rules**"). In Rule 3(2)(c) of the FC Rules, in respect of the particulars relating to the list of directors and secretary or equivalent to be furnished by the foreign company, '*father's name or mother's name and spouse's name*' has been substituted with '*father's name or mother's name or spouse's name*'. In light of the aforesaid amendment and in relation to the migration of MCA website to MCA21 V3 portal, the following e-forms have been revised:

(i) Form FC-1 (Information to be filed by foreign company);

(ii) Form FC-2 (Return of alteration in the documents filed for registration by foreign company);

(iii) Form FC-3 (Annual accounts along with the list of all principal places of business in India established by foreign company); and

(iv) Form FC-4 (Annual Return of a Foreign Company).

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023 which amends the Companies (Prospectus and Allotment of Securities) Rules, 2014, to provide new formats of Form PAS-2 (Information Memorandum), Form PAS-3 (Return of Allotment) and Form PAS-6 (Reconciliation of Share Capital Audit Report).

COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Companies (Registration Offices and Fees) Amendment Rules, 2023 which amends the Companies (Registration Offices and Fees) Rules, 2014 ("**ROF Rules**"). The aforesaid amendment has inserted a new Rule 8A in the ROF Rules to provide that in case of companies which are under insolvency or liquidation, the e-forms, where applicable, shall be signed by the insolvency resolution professional or resolution professional or liquidator of companies. In light of the aforesaid amendment and in relation to the migration of MCA website to MCA21 V3 portal, new formats of Form GNL-2, Form GNL-3 and Form GNL-4 have also been notified.

COMPANIES (ACCOUNTS) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Companies (Accounts) Amendment Rules, 2023, which amends the Companies (Accounts) Rules, 2014 to provide the new format of Form AOC-5 (Notice of address at which books of account are to be maintained). Under the revised Form AOC-5, the details in respect of the proof of address, copies of utility bills and the photographs of the registered office are now required to be attached with the aforesaid form.

COMPANIES (MISCELLANEOUS) AMENDMENT RULES

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Companies (Miscellaneous) Amendment Rules, 2023 which amends the Companies (Miscellaneous) Rules, 2014. The aforesaid amendment rules have excluded the requirement of enclosing the ***(a)*** copy of the concurrence of the lender in case of any outstanding unsecured loans, and ***(b)*** certificate stating that there is no dispute in the management or ownership of the Company, while filing an application for obtaining status of a dormant company.

Additionally, new formats of the following e-forms have also been notified:

(i) Form MSC-1 (Application to ROC for obtaining the status of Dormant Company): This form has been revised to *inter alia* include the details of ***(a)*** any acts/legislations regulating the objects of the Company, and any approval/NOC obtained from regulators for obtaining the status of dormant company, and ***(b)*** the last financial statement and annual returns filed by the company.

(ii) Form MSC-3 (Return of Dormant Company): This form has been revised to *inter alia* include additional details of the existing share capital of the Company including any addition and reduction in the share capital during such financial year.

(iii) Form MSC-4 (Application for seeking status of active company): This form has been revised to also specify whether the application is on account of non-compliance, if any, with conditions applicable to dormant company, along with description of such non-compliance.

NIDHI (AMENDMENT) RULES, 2023

The MCA, *vide* its notification dated January 20, 2023 (accessible here), has notified the Nidhi (Amendment) Rules, 2023 which amends the Nidhi Rules, 2014. As per the aforesaid amendment rules, new formats of Form NDH-1 (Return of statutory compliances), Form NDH-2 (Application to Regional Director and intimation to the Registrar), Form NDH-3 (Return for the half year ended) and Form NDH-4 (Form for filing application for declaration as Nidhi company and for up-dation of status by Nidhis) have been notified, and the key changes in the new forms are summarised below:

(a) Form NDH-1 has been amended to add the details of whether an application has been filed by the company with Regional Director for extension of time regarding maintaining of ratio of net owned funds to deposits;

(b) Form NDH-2 has been revised to include additional options in the 'purpose of the application' such as requesting an extension of time, seeking permission to open a branch, etc..

(c) Form NDH-3 and Form NDH-4 have been revised to include additional disclosure in respect of deposits, profit and bank details. Additionally, Form NDH-4 now also requires the applicant to mention the SRN of NDH-2/RD-1 in respect of application made to Regional Director.

COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 21, 2023 (accessible here), has notified the Companies (Management and Administration) Amendment Rules, 2023 which amends the Companies (Management and Administration) Rules, 2014. In light of the aforesaid amendment and in relation to the migration of MCA website to MCA21 V3 portal, new formats of ***(a)*** Form MGT-3 (Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept) which includes include additional details such as telephone number, fax number etc., in respect of the situation of office in which the foreign

register is kept, and ***(b)*** Form MGT-14 (Filing of resolutions and agreements to the Registrar) which *inter alia* includes additional details in respect of the securities proposed to be allotted as per the resolution, have also been notified.

COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated January 21, 2023 (accessible here), has notified the Companies (Share Capital And Debentures) Amendment Rules, 2023 which amend the Companies (Share Capital And Debentures) Rules, 2014 ("**SCR Rules**"). Under the aforesaid amendment rules, Rule 17(14) of the SCR Rules has been amended to remove the requirement of submitting certificate in Form SH-15 after completion of buy-back and substituted the same with a declaration to be provided by the directors in this regard.

Additionally, the amendment rules also notified new formats of (i) Form SH-7 (Notice to Registrar of any alteration of share capital); (ii) Form SH-8 (Letter of Offer); (iii) Form SH-9 (Declaration of solvency); (iv) Form SH-11 (Return in respect of buy-back of securities). The new forms inter alia require disclosure of the capital structure before and after the consolidation/sub-division or conversion or re-conversion, in cases where any of these structuring activities in respect of the shares has taken place.

RBI & FEMA

RESERVE BANK OF INDIA ("RBI") RELEASES DISCUSSION PAPER ON EXPECTED LOSS-BASED APPROACH FOR LOAN LOSS PROVISIONING BY BANKS

RBI vide its press release number 2022-2023/1558, dated January 16, 2023 has published a discussion paper that examines various issues and proposes a framework for adoption of an expected loss-based approach for provisioning by banks in India ("**Proposed Framework**").

The key requirement of the Proposed Framework requires banks to categorize financial assets (primarily loans, including irrevocable loan commitments, and investments classified as held-to-maturity or available-for-sale) into one of three categories — Stage 1, Stage 2, or Stage 3 depending on the assessed credit losses on them, at the time of initial recognition as well as on each subsequent reporting date, and make necessary provisions. Banks would also be allowed to design and implement their own models for measuring expected credit losses for the purpose of estimating loss provisions in line with the Proposed Framework.

However, the RBI will be giving comprehensive recommendations that will be expected to be taken into consideration while constructing the credit risk models by commercial banks in order to alleviate the concerns connected to model risk and taking into account the large unpredictability that may arise.

The Proposed Framework proposes to keep regional rural banks and smaller cooperative banks out of its purview.

DSK View: *The Proposed Framework discusses the concept of estimating credit-losses and making provisions for the same, rather than waiting to incur losses and provisioning thereafter. Thus, a forward looking credit loss approach is contemplated under the Proposed Framework for estimating credit losses. The Proposed Framework seems to have been issued in light of the recommendations of the Basel Committee on banking supervision, which recommended accounting standard setters to modify provisioning practices to adopt a forward-looking approach instead of recognizing losses after their occurrence.*

SECURITIES AND EXCHANGE BOARD OF INDIA ("SEBI") ANNOUNCES LIMITED RELAXATION OF DISPATCH OF PHYSICAL COPIES OF FINANCIAL STATEMENTS UNDER THE SEBI (LISTING), 2015 REGULATIONS

SEBI vide circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/001 dated January 05, 2023, has relaxed the physical copy dispatch requirements under Regulation 58(1)(b) of the Listing Regulations ("**Regulation**") to September 30, 2023. The Regulation stipulates that an entity with listed non-convertible securities shall send a hard copy of statement containing the salient features of all the documents, as specified in Section 136 of the Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not registered their email address(es) either with the listed entity or with any depository.

This is in pursuance of the relaxation issued by the Ministry of Corporate Affairs ("**MCA**") vide general circular number 20 dated December 28, 2022 (reference to circular dated May 05, 2020). The relaxation is now extended till September 30, 2023.

DSK View: *The above relaxation has been issued pursuant to several requests from companies, asking for exemption from the requirement to dispatch physical copies. This may seem helpful for security issuers who often face difficulties in expediting the dispatch of hard copies under Regulation 58 (1)(b) of the Regulation.*

RBI ISSUES GUILDELINES ON PERIODIC UPDATION OF KNOW YOUR CUSTOMER ("KYC") DETAILS OF CUSTOMERS

Keeping in mind the Master Direction on re-KYC norms dated May 10, 2021, the RBI, vide press release number 2022-2023/1500 dated January 05, 2023 ("**Press Release**"), has announced that a self-declaration form is enough to inform the concerned agencies if there is no change in KYC information.

In certain situations, such as when the customer's existing KYC documents on file do not meet the current list of officially valid documents (such as passport, driver's license, proof of possession of Aadhaar number, voter ID card, etc.) or when the validity of the previously submitted KYC documents has expired, a new KYC process or documentation may be required. In these cases, banks are responsible for providing an acknowledgement receipt of the customer's updated KYC documents or self-declaration.

***DSK View**: KYC practices are important for both financial institutions and customers. Over the years, RBI has been making efforts to simplify the process of rationalizing KYC related instructions while also considering technological advancements, to ensure a smooth experience for customers.*

RBI RELEASES DISCUSSION PAPER ON SECURITISATION OF STRESSED ASSETS FRAMEWORK ("SSAF")

RBI vide its press release number 2022-2023/1614, dated January 25, 2023 has published a discussion paper ("**Discussion Paper**") that broadly covers 9 (nine) relevant areas of SSAF, including asset universe, asset eligibility, minimum risk retention, a regulatory framework for special purpose entity and resolution manager, access to finance for resolution manager, capital treatment, due diligence, credit enhancement and valuation etc.

According to the Discussion Paper, the main distinction between the securitization of stressed assets and standard assets relates to the stressed assets' lower level of cash flow certainty from the underlying pool. Furthermore, it says that the investors face the risk that the workout of resolution exercise may not generate sufficient recoveries to cover the net value of the transferred underlying assets.

RERA

HARYANA RERA DIRECTS ISH REALTORS TO REFUND BUYER'S MONEY FOR FAILING TO DELIVER THE UNIT AS PER THE BUILDER BUYER AGREEMENT

The Haryana Real Estate Regulatory Authority ("**H-RERA**") has directed a developer to refund an allotee's money who had booked a commercial unit in ISH Realtors Private Limited's ("**Developer**") Sector 109 project in September 2013. According to the builder-buyer agreement the Developer had promised to deliver the unit in four years but failed to keep its commitment. As per the RERA's order, passed on January 12, 2023, the Developer will have to return the full amount of Rs 16 lakh to the allottee along with interest at the rate of 10.60% as prescribed under Rule 15 of the Haryana Real Estate Regulation and Development Rules 2017 from the date of each payment till the actual date of refund of the amount within the timelines as provided in Rule16 of the Haryana Real Estate Regulation and Development Rules 2017.

ICICI BANK DEVELOPED A DIGITAL BANKING "STACK" WHICH WILL HELP THE REAL ESTATE PLAYERS TO CONDUCT FINANCIAL TRANSACTION QUICKLY AND CONVENIENTLY ON A SINGLE PLATFORM

As real estate sector contributes almost 7% (Seven Percent) of the country's annual GDP and as the demand for real estate, especially for residential housing has increased substantially, to cater to this increasing demand ICICI Bank has developed a digital banking 'STACK' for real estate to enable builders, real estate investment trusts ("**REITS**") and alternative investment funds (AIFs) to conduct financial transactions quickly and conveniently on a single platform. It is a secure and integrated banking platform which will help the real estate stakeholders to manage the financial transaction in a streamlined manner. It offers services for digital collection, reconciliation, surplus distribution and custodial services to REITs and AIFs. The STACK enhances financial and operational efficiencies of the developers.

DELHI REALTORS AVOIDING PROJECT REGISTRATION WITH RERA

As per section 3(2)(a) of the RERA, exemption from registration has been provided, if the land proposed to be developed was less than 500 square meter or the number of the apartments proposed to be developed was less than 08 (Eight). Using this as a loophole many developers in posh colonies of Delhi have been avoiding registrations. After complaints came to light about buyers not getting their property, the RERA in April 2022, said even low-rise development required registration. However, the situation remains the same even after the order has been passed, several under constructed buildings in West-end Vasant Vihar, Anand Lok and Panchsheel Park are being constructed without RERA registration. Multiple builders in South Delhi with 800-1000 square meters plots avoid registration of projects with RERA. The whole of Delhi has only 81 registered projects, one of the lowest in the country.

MAHARASHTRA RERA SET UP A DEDICATED SYSTEM TO MONITER THE RECOVERY WARRANT ORDERS PENDING WITH 13 DISTRICT COLLECTORATES

Maharashtra Real Estate Regulatory Authority ("**MahaRERA**"), after receiving several complaints from the consumer related to the delayed execution of the recovery warrant orders, MahaRera decided to take an initiative step against 27 (Twenty-Seven) pending recovery warrant orders, worth Rs. 6.77 Crores, from Raigad. The orders would be executed through auctioning of the properties by Panvel tehsil office to reimburse the homebuyers. MahaRERA has also set up a dedicated system to monitor the recovery warrants orders pending with 13 districts collectorates, including Pune. The official website of MahaRERA reveals that 884 recovery warrant orders from 13 districts have been issued against 351 projects till December last year recovering amount of Rs. 543.84 crore and the maximum recovery has been done in Pune, Mumbai, Thane and Raigad collectorates.

WEST BENGAL GOVERNMENT EXTENDS REBATE ON STAMP DUTY TILL MARCH 2023

The West Bengal government has extended the rebate on stamp duty and circle rate till March 2023. The West Bengal government is providing a 2% (Two Percent) reduction in stamp duty and a 10% (Ten Percent) rebate in circle rate since 2021, a step taken to bring traction in the pandemic-hit economy. This will help prospective home buyers take decisions and also request the government to reduce the circle rates, particularly for land in suburbs, Salt Lake (IT hub) Sector V and also urge the government to permanently reduce stamp duty on constructed properties by 2% (Two Percent).

UP-RERA WEBSITE TO IMPROVE SERVICES WITH LAUNCH OF VERSION 2.0 BY MAY 2023

The Uttar Pradesh Real Estate Regulatory Authority ("**UP RERA**") will launch a new version of its portal by May, 2023 to facilitate users with improved experience in accessing the services of the portal.

The new site will address complaints quickly, providing the convenience of service and thorough data, and taking any action on defaulters as soon as possible. Machine learning, laser character recognition, connectivity, e-office, modernization, SaaS, Power BI (business analytics), robot-assisted process automation and e-signing will all be part of the new edition 2.0.

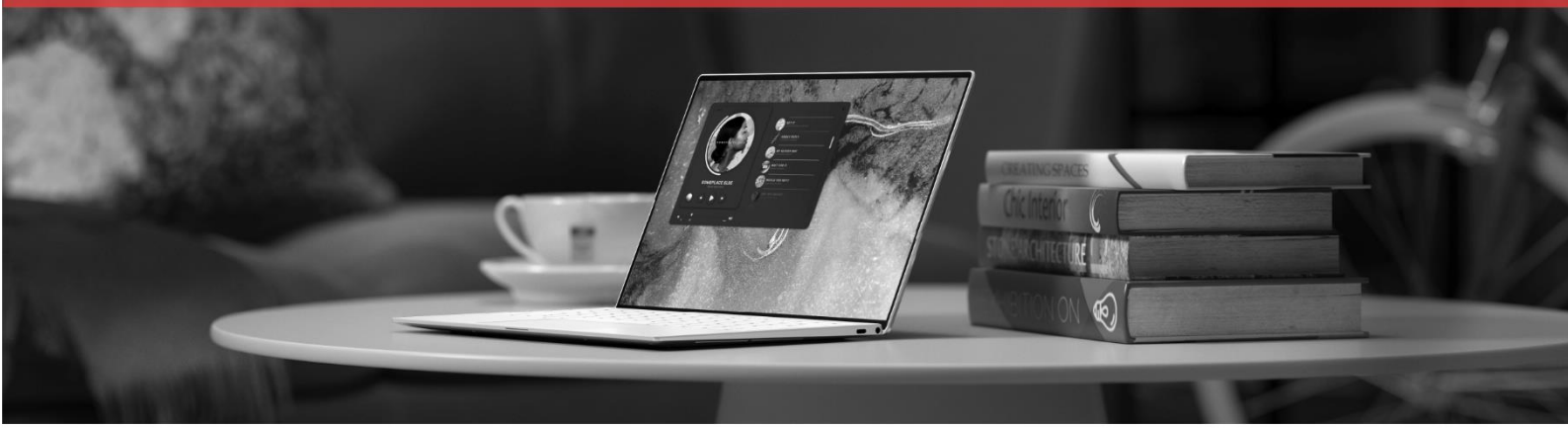
RERA has hired Ernst and Young LLP to conduct a technical evaluation of the current system as well as a comprehensive direct comparison of the gateways of other government RERAs, eliciting recommendations from key stakeholders such as affiliations of beneficiaries, associations of promoters, and other stakeholders through virtual and physical workshops and individual interactions including both NCR and non-NCR locations, as well as soliciting feedback through surveys.

HARYANA REALTY REGULATOR RESTRAINS BANK OF BARODA FROM CONDUCTING E-AUCTION IN CHD E-WAY TOWER COMMERCIAL PROJECT

The H-RERA, which consists of chairman and three members, observed in January 2023, that the bank's e-auction attempt is "devoid of" considering and settling the claims of individual allottees who are stakeholders in the project. Thus, H-RERA restrained Bank of Baroda from conducting an e-auction on January 24 in CHD E-Way Tower at Gurugram's Sector 109. They also ordered that forensic audit of the accounts of CHD Developers Limited should be done to bring out clear picture of the utilization or diversion of funds of invested funds with respect to the project.

CHHATTISGARH RERA CRACKS WHIP ON PVT COLONIZER

Chhattisgarh's Real Estate Regulatory Authority handed over a private housing project, City of Valencia, located on the outskirts of Raipur, to the Chhattisgarh Housing Board in the interests of its residents. Its promoter and builder were reluctant to develop the project and provide basic amenities like road, electricity, water and sewerage to the residents though promised in the brochure. 130 plot holders in City of Valencia in Nardaha filed a complaint in the year 2019 underlining that the development work at the project had not been completed. The Housing Board will now take ownership of the project and submit an action plan for its development within 02 (Two) months to the regulatory authority.



MEITY PROPOSES AMENDMENTS TO THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES & DIGITAL MEDIA ETHICS CODE) RULES, 2021

The Ministry of Electronics and Information Technology ("**MeitY**") issued draft amendments to the Information Technology (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021 ("**Draft Amendments**") on January 2, 2023 (*accessible here*). Such Draft Amendments, once promulgated, will provide framework for self-regulatory mechanism for online gaming intermediaries, constitution of an independent self-regulatory body for online gaming platforms, appointment of a nodal officer by such gaming platforms for coordination with law enforcement agencies and officers, amongst others. Further, the Draft Amendments also proposed additional due diligence (such as demonstration of the registration for all its online games, adequate intimation to its users about the KYC procedures amongst others) which are required to be observed by the online gaming intermediaries in addition to the requirement to appoint a chief compliance officer to ensure legal and regulatory compliances to be undertaken by such intermediaries etc.

CENTRAL GOVERNMENT ISSUES GUIDELINES TO REGULATE ADVERTISEMENT BY SOCIAL MEDIA INFLUENCERS

The Department of Consumer Affairs under the Ministry of Consumer Affairs, has issued guidelines on 'Endorsement Know-Hows for Celebrities, Influencers and Viral Influencers on Social Media Platforms' ("**Endorsement Guidelines**") on January 20, 2023 (*accessible here*) for regulating social media influencers who have a considerable influence over the purchasing decisions of their audience. The Endorsement Guidelines require the social media influencers to disclose any material connection that they might have with the relevant advertiser, while posting any social media post in this regard. The Endorsement Guidelines provide an indicative list of such material connections such as: (a) monetary incentives; (b) free products with or without any conditions attached; (c) trips or hotel stays; and (d) media barters, awards etc. Further, such disclosure shall be displayed in a clear, legible and in a prominent manner and in instance of a live stream, such disclosure shall be continuously run during the stream. In case of any violation of the Endorsement Guidelines, the social media influencers will be liable to be penalized under the provisions of the Consumer Protection Act, 2019.

SUPREME COURT REFUSES TO INTERVENE IN THE GOOGLE ANDROID ANTITRUST CASE

The Supreme Court of India ("**SCI**") on January 20, 2023 has decided to not intervene with the order passed by National Company Law Appellate Tribunal ("**NCLAT**") which did not grant stay to Google in the verdict delivered against it by Competition Commission of India ("**CCI**"). The CCI on October 20, 2022, imposed penalty of 1337.76 crores on Google in relation to abuse of its dominant position in the android mobile devices sector and also required Google to modify its conduct in such sector within the defined timeline. Google approached NCLAT to contend such order of CCI on the account that it will impact its consumers base in India as the business model of Google would require an overhaul. Further, Google also contented that the CCI's verdict is primarily based on the findings of the European Commission and that a large portion of such verdict is not applicable in the Indian context. SCI, while rejecting Google's petition, mentioned that there is no manifest error in the findings by CCI and CCI has the competent jurisdiction to pass the orders. However, the SCI has directed NCLAT to dispose of the appeal by Google by March 31, 2023.

The order of the SCI is accessible here.

CENTRAL GOVERNMENT CONSTITUTED THREE GRIEVANCE APPELLATE COMMITTEES UNDER INTERMEDIARY RULES

MeitY, on January 28, 2023, constituted three grievance appellate committees ("**GACs**") under the Information Technology (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021 ("**Intermediary Rules**") to efficiently resolve complaints of users against social media intermediaries like Facebook, Twitter, Instagram etc (*accessible here*). The GACs have been primarily constituted for ensuring open, safe, trusted and accountable internet for all Indian users. The social media users can now appeal to GACs challenging the decisions of the grievance redressal officer of the social media intermediaries in relation to their grievances. Such appeal shall be submitted within 30 days of decision passed by grievance redressal officer and the GACs are required to adjudicate upon such appeal in 30 days. The social media intermediaries are also required to upload a compliance report on their platform as well evidencing their compliance with the order passed by GACs.

TRAI RELEASES CONSULTATION PAPER FOR CONVERGENCE OF DIGITAL AND BROADCASTING SERVICES

The Telecom Regulatory Authority of India ("**TRAI**") has released a consultation paper on January 30,2023 (*accessible here*) for the convergence of broadcast services and telecommunication services. The consultation paper comes in the backdrop of enormous increase in the technological developments in the digital market and given the fact that digital connectivity which was primarily used for telecom and internet services is now providing broadcasting services as well, it is imperative that the existing norms shall be overhauled for an efficient regulatory regime and reduce the licensing and regulatory burden on the eco-system participants. The consultation paper primarily scrutinizes the existing legal, administrative, and licensing framework and the relevant procedures and to assess the changes required to deal with them. TRAI has invited comments from the stakeholders on such consultation paper and the same can be submitted on the following e-mail id: advbbpa@trai.gov.in with a copy to jtadv-bbpa@trai.gov.in by February 27, 2023.

WHITE COLLAR CRIME

CONDITIONS IMPOSED WHILE GRANTING BAIL CANNOT BE SO HARSH THAT IT TANTAMOUNT TO REFUSAL OF BAIL

The Supreme Court in ***Guddan @ Roop Narayan v. State of Rajasthan*** (Criminal Appeal No. 120 of 2023) held that conditions of bail cannot be so onerous that the existence of the conditions itself tantamount to refusal of bail. In the present case, the complainant was assaulted on the head with an iron rod by the Appellant. An FIR was filed against the Appellant under Sections 341, 323, 325 and 307 of the Indian Penal Code, 1860 ("**IPC**"). Subsequently, the Appellant was convicted by the Trial Court and sentenced to 10 years of imprisonment along with fine of Rs. 1,00,000/- was imposed. The Appellant then preferred an appeal before the High Court of Rajasthan, wherein, during the pendency of the appeal, the court suspended the sentence of the Appellant but imposed strict conditions for bail. As per the order of the High Court, the Appellant had to deposit a fine amount of Rs. 1,00,000/- along with a surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each. The Appellant then challenged the order of the High Court before the Supreme Court of India. The Counsel for Appellant argued that the excessive conditions imposed by the High Court for grant of suspension of sentence are unreasonable and must be struck down. The Supreme Court reiterated that jail is the exception and grant of bail is the rule and observed that the conditions of bail cannot be onerous. The Court further observed that to keep the accused in jail, that too in a case where normally the bail would be granted for the alleged offence, is not a symptom of injustice but injustice itself. The Court waived off the conditions imposed by the High Court and continued the bail order.

DSK View: *The Supreme Court, by way of this judgment, emphasized on the importance of protection of one's protects personal liberty and held that the conditions for bail cannot be excessive. It reiterated the position that bail is the rule and jail is an exception.*

DEFAULT BAIL UNDER SECTION 167(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973 CAN BE CANCELLED ON MERITS

The Supreme Court in ***The State Through Central Bureau of Investigation v. T. Gangi Reddy @ Yerra Gangi Reddy*** (Criminal Appeal No. 37 of 2023) held that default bail can be cancelled after looking at the merits of the case. In the present case, former member of A. P. Legislative Council was found dead in his house and subsequently, the accused was arrested on March 3, 2019. The Special Investigation Team (**SIT**) constituted by the State undertook the investigation and the accused was remanded to judicial custody. The statutory period of 90 days lapsed on June 26, 2019 and the accused filed a bail application for default bail under Section 167(2) of the Code of Criminal Procedure, 1973 ("**CrPC**") which was allowed by the JMFC Court. Subsequently, the investigation was transferred to CBI, who filed a chargesheet on October 26, 2021. Their investigation revealed that a conspiracy was hatched up by the accused persons to kill the deceased. Consequently, CBI filed an application for cancelation of bail granted to the accused which was rejected by both, the Trial Court and High Court. CBI then preferred an appeal before the Supreme Court. The contention of the CBI was that release on default bail under Section 167(2) is not a release of the accused on merits but due to the failure of the investigating agency to conclude the investigation within the time stipulated under the CrPC. Once the chargesheet is filed the application for cancellation of bail on merits can be considered by the Court. The Counsel for the Accused relying on *Mohamed Iqbal Madar Sheikh and Ors. v. State of Maharashtra (1996) 1 SCC 722* argued that non-filing of chargesheet within stipulated time is an indefeasible right accrued in favour of the accused and once the accused is release on bail in exercise of such right, the same cannot be taken away. The Court held, every person released on bail under Section 167(2) of the CrPC shall be deemed to be so released under the provisions of Chapter XXXIII and that Section 167(2) creates a deeming fiction that the person is equated to be released under Chapter XXXIII of

the CrPC. As the bail is granted due to the default of the investigating agency and not on merit, bail can be cancelled on making out a special and strong ground that commission of non-bailable crime is disclosed from the chargesheet. The Supreme Court while remitting back the matter to High Court of Telangana for hearing the application afresh observed that, mere subsequent filing of a chargesheet is not sufficient reason to cancel the bail application, but if a strong case is made out and on merits it is found that he has committed a non-bailable offence then the bail application can be cancelled on merits.

DSK View: *The Supreme Court through this judgement has observed that there is no bar in cancelling a bail on merits once a person is released on default bail under section 167(2) of the CrPC. Though this judgement may give rise to various applications of cancellation for default bail, the court has clarified that the bail can be cancelled only if a strong case is made out against the accused and on special reasons being made out from the chargesheet that the accused has committed a non-bailable offence.*

CHARGESHEET CANNOT BE CONSIDERED AS A PUBLIC DOCUMENT

The Supreme Court in ***Saurav Das v. Union of India & Ors.*** (W.P. (Civil) No. 1126 of 2022) held that directing all challans/chargesheet filed under section 173 of the CrPC to be published on public domain will be contrary the scheme of the Code. In the present case, a petition was filed under Article 32 of the Constitution of India 1950, seeking for chargesheets and related documents to be published on public domain. The counsel for the petitioner submitted that under sections 207, 173(4) and 173(5) a duty is cast upon the investigating agency to furnish the copy of chargesheet in public domain to ensure there is transparency in the working of the criminal justice system. It was further argued that under sections 74 and 76 of the Evidence Act, 1872 once the chargesheet is filed in the Court, it becomes a public document and under section 4(2) of the Right to Information Act,2005 ("**RTI Act**") a duty is cast upon the investigating officer to provide the information to public in regular intervals. The court held conjoint reading of Sections 173 and 207 of the CrPC states the investigating agency is required to furnish the copies relied upon the prosecution to the accused alone and none other. Publishing FIR on public domain cannot be extended to chargesheet. The court opined, that chargesheets and documents relating to it does not fall under the purview of Section 4(1)(b) of the RTI Act. The Court held that under sections 74 and 76 of the Evidence Act, the chargesheet and related documents cannot be considered as public documents and dismissed the petition.

PROCESS OF CRIMINAL LAW CANNOT BE UTILIZED FOR MONEY RECOVERY

The Supreme Court in ***Bimla Tiwari v. State of Bihar and Ors.*** (Special Leave Petition (CRL.) Nos. 834-835 of 2023) held process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings. In the present case, the accused was alleged of committing offences under Sections 406 and 420 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The allegation was such that the informant's husband had given a sum of Rs. 6,00,000/- in cash to the respondents, however, respondents made further demands for money and vehicle. Due to high demands from the accused, the wedding was called off but Rs. 6,00,000/- were not returned. The Additional Session Judge IV, Patna rejected the pre-arrest bail application. The Patna High Court allowed their pre-arrest bail application recording the offer made by one of the accused of making payment of a sum of Rs. 75,000/- to the informant. The informant challenged the order of the High Court before the Supreme Court, wherein the Supreme Court dismissed the petition and affirmed the order of the High Court. However, the Supreme Court deleted the requirement of payment of a sum of Rs. 75,000/- to the informant. The Court observed that the process of criminal law cannot be utilised for money recovery especially while opposing the prayer for bail. A bail to be granted or not must be examined by the discretion of the Court with reference to the material on record and the parameters governing bail considerations.

DSK View: *By way of this judgment, the Supreme Court has upheld the principles of criminal justice and clarified that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail, as the same is within the realm of civil proceedings.*

COMPLAINANT FILED UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881, THROUGH A POWER OF ATTORNEY HOLDER IS VALID PROVIDED THE POWER OF ATTORNEY HOLDER WITNESSES THE TRANSACTION

The Kerala High Court in ***Razak Mether v. State of Kerala and Anr.*** (Crl.MC No. 8287 of 2022) held that a complaint can be filed under section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") through a power of attorney holder only when he has witnessed the transaction. In the present case, a petition was filed under Section 482 of the CrPC to quash a complaint filed under section 138 of the NI Act along with the order passed by the Special Judicial First Class Magistrate Court (N.I. Act Cases) Kozhikode taking cognizance of the said complaint. The contentions of the petitioner were that there was no mention of the power of attorney holder representing the complainant in the body of the complaint. Further, there was no assertion in the complaint regarding the direct knowledge of the power of attorney holder regarding the transaction and the that the power of attorney

holder had witnessed the transaction, and hence, the power of attorney holder cannot prove the contents of the complaint filed. The contention of the Respondent was that the complainant himself filed proof affidavit under Section 145 of the NI and hence, the order and complaint cannot be quashed. The High Court held that a complaint filed under section 138 of the NI Act through a power of attorney holder is legal and competent for which a Magistrate can take cognizance. However, the power of attorney holder must witness the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the transaction and the complainant had made specific assertion explicitly in the complaint of the said knowledge can depose and verify on oath before the court to prove the contents of the complaint filed under Section 138 of the NI Act. If the above is not satisfied the power of attorney holder cannot verify the contents of the complaint. The Court further held that, as there were no averments in the complaint indicating that the power of attorney holder possessed the knowledge about the transaction, the cognizance taken by the Magistrate was illegal and set aside the same.

DSK Legal
True Value, True Values

DSK Legal Knowledge Center

Contact Details for any queries: knowledge.management@dsklegal.com

Mumbai

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

Mumbai

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

Bengaluru

201, 2nd floor, Prestige Loka,
7/1 & 7/7, Brunton Road,
Craig Park Layout, Ashok Nagar,
Bengaluru - 560025.
Tel +91 80 6954 8770

New Delhi

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

Pune

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

Hyderabad

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

contactus@dsklegal.com
DSK Legal
www.dsklegal.com

Disclaimer