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NEWSLETTER

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TABLE OF CONTENTS

SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATIVE INVESTMENT FUNDS) (AMENDMENT) REGULATIONS, 2024[1]

The Securities and Exchange Board of India (**"SEBI"**) has issued the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations on January 05, 2024, amending the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

A new sub-clause 15(1)(i) is added after Regulation 15(1)(h), mandating that Alternative Investment Funds (**"AIF"**) hold their investments in dematerialized form, subject to conditions specified by the Board. However, certain exemptions are provided for specific types of investments that are not eligible for dematerialization.

In regulation 20, sub-regulation (11) is substituted, requiring the Sponsor or Manager of the AIF to appoint a Custodian registered with the Board for safekeeping of the fund's securities. The Custodian for Category III AIFs is specified to keep custody of securities received in physical settlement of commodity derivatives.

A new sub-regulation (11A) is added after sub-regulation (11), stating that a Custodian, which is an associate of the Sponsor or Manager of an AIF, may act as a custodian for that fund under certain conditions. These conditions include the Sponsor or Manager having a net worth of at least twenty thousand crore rupees, directors of the Custodian not predominantly representing the interests of the Sponsor or Manager, independence between the Custodian and the Sponsor or Manager, absence of common directors, and a signed undertaking to act independently in dealings related to the fund's schemes.

These regulations came into effect immediately, i.e. January 05, 2023.

FRAMEWORK FOR SHORT SELLING[2]

SEBI has issued a circular dated January 05, 2024, on the framework for short selling. SEBI issued Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171 on October 16, 2023, focusing on the framework for 'Short Selling and Securities Lending and Borrowing Scheme' in Chapter 1, Paragraph 10. The broad framework for short selling is outlined in 'Annexure 3' of Chapter 1 of the Master Circular. The contents of 'Annexure 3' align with the provisions of the rescinded SEBI Circular No. MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007.

Annexure 3 outlines the broad framework for short selling, defining it as selling stocks not owned at the time of the trade. All classes of investors, including retail and institutional, are allowed to short sell. Naked short selling is prohibited, and investors must honor their delivery obligations at settlement. Institutional investors are not permitted to engage in day trading; transactions must be grossed at the custodians' level. Stock exchanges are to establish deterrent provisions and take action against brokers failing to deliver securities at settlement.

A Securities Lending and Borrowing (**"SLB"**) scheme will support short selling, introduced simultaneously with institutional investors. Short selling is eligible for securities traded in the F&O segment, with periodic reviews of eligible stocks. Institutional investors must disclose upfront if a transaction is a short sale, while retail investors can make a similar disclosure by the end of the trading day. Brokers are mandated to collect and upload scrip-wise short sell positions to stock exchanges before trading starts the next day. Stock exchanges will consolidate and disseminate this

[1] SEBI/LAD-NRO/GN/2024/163

[2] SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/1

information weekly for public awareness, with the possibility of reviewing disclosure frequency with SEBI approval.

This circular came into effect immediately, i.e. January 06, 2024.

FOREIGN INVESTMENT IN ALTERNATIVE INVESTMENT FUNDS (AIFS)[3]

SEBI has issued a circular dated January 11, 2024, on Foreign Investment in AIFs. The Government of India, through gazette notifications dated March 07, 2023, and September 04, 2023, amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, revising the thresholds for determining beneficial ownership. As a result, in SEBI Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023, for AIFs, para 4.1.2 under Chapter 4 is modified. The investor or its beneficial owner, as determined by the rules, should not be on the United Nations Security Council Sanctions List and should not be a resident in a country identified by the Financial Action Task Force as having strategic deficiencies in anti-money laundering or combating terrorism financing.

If an investor already on-boarded to an AIF scheme does not meet the revised conditions, the AIF manager is prohibited from drawing down any further capital contributions from that investor for making investments until the investor meets the specified condition. The circular is effective immediately upon issuance and is approved by the competent authority.

This circular came into effect immediately, i.e. January 11, 2024.

EASE OF DOING INVESTMENTS BY INVESTORS- FACILITY OF VOLUNTARY FREEZING/BLOCKING OF TRADING ACCOUNTS BY CLIENTS[4]

SEBI has issued a circular dated January 12, 2024, in order to enable investors to voluntarily freeze or block their trading accounts. The stock broking industry in India has transitioned to online mode, and there is a need for a facility allowing investors to voluntarily freeze/block their trading accounts due to suspicious activities. The proposal, in consultation with the Brokers' Industry Standards Forum (**"ISF"**), aims to establish a framework for Trading Members to provide this facility on or before April 1, 2024.

The policy for voluntarily freezing/blocking a client's online trading account includes modes for client requests to the Trading Member, issuing an acknowledgment upon receipt and specifying the time period for processing and freezing/blocking. Additionally, it outlines actions by the Trading Member upon receiving a request, process for re-enabling the client and intimation to clients about the introduction of the facility.

Stock Exchanges are required to ensure implementation of the guidelines by Trading Members from July 1, 2024, and submit a compliance report of the same to SEBI by August 31, 2024. Stock Exchanges should take necessary steps, make amendments to bye-laws, rules, and regulations, and disseminate the circular to Trading Members and on their websites.

This circular came into effect immediately, i.e. January 12, 2024.

EASE OF DOING BUSINESS- CHANGES IN REPORTING[5]

SEBI has issued a circular dated January 12, 2024, pertaining to changes in reporting standards of stock exchanges. SEBI has implemented measures to protect investors' collateral with stockbrokers. However, due to inefficiencies and duplication in monitoring mechanisms, SEBI received representations and advised industry associations, through the Broker's Industry Standards Forum (**"ISF"**), to propose changes. As a result, certain reports related to monitoring client collateral are discontinued to enhance efficiency. Modified clauses include the deletion of Clause 15.5.2, modification of Clause 15.5.3 reiterating the 'G' principle, and deletion of Table 5, 6, and Table 7 from the master circular. These changes aim to streamline reporting and facilitate ease of doing business while ensuring supervision over client collateral by stock exchanges and clearing corporations.

Stock exchanges must bring the provisions of this circular to the attention of stockbrokers and disseminate the information on their websites. Within 15 days of the circular issuance, stock exchanges are required to jointly issue operational guidelines and a Standard Operating Procedure (**"SOP"**) for monitoring the implementation of circular provisions. Amendments to relevant bye-laws, rules, and regulations should be made to facilitate the implementation of the circular. Additionally, stock exchanges are instructed to communicate the status of circular implementation to SEBI in their monthly development report.

This circular came into effect immediately, i.e. January 12, 2024.

[3] SEBI/HO/AFD/PoD1/CIR/2024/2
[4] SEBI/HO/MIRSD/POD-1/P/CIR/2024/4
[5] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/03

GUIDELINES FOR AIFS WITH RESPECT TO HOLDING THEIR INVESTMENTS IN DEMATERIALISED FORM AND APPOINTMENT OF CUSTODIAN[6]

SEBI has issued a circular dated January 12, 2024, highlighting certain guidelines for AIFs, regarding holding investments in a dematerialized form and appointing a custodian. The SEBI (Alternative Investment Funds) Regulations, 2012, have been amended and officially announced on January 05, 2024, concerning the requirement for AIFs to hold their investments in dematerialized form and the appointment of custodians.

Holding investments of AIFs in a dematerialized form:
As per Regulation 15(1)(i) of the AIF Regulations, AIFs must hold investments in dematerialized form, subject to specified conditions. New investments made by AIFs from October 1, 2024, must be in dematerialized form. Exemptions are granted for investments made prior to this date, except where the investee company is legally mandated for dematerialization or when the AIF, independently or with other SEBI-registered entities, exercises control over the investee company. For qualifying investments made before October 1, 2024, dematerialization is required by January 31, 2025. The dematerialization requirement doesn't apply to schemes with a tenure ending on or before January 31, 2025, or those in an extended tenure as of the date of this circular.

Appointment of custodians for AIFs
As per AIF Regulations, Regulation 20(11) mandates the Sponsor or Manager of an AIF to appoint a custodian registered with the Board, following specified guidelines for safekeeping of the AIF's securities. Moreover, under Regulation 20(11A), a custodian associated with the Sponsor or Manager of an AIF may serve as a custodian only if specific conditions outlined in the Regulations are fulfilled. Custodian appointment for an AIF scheme is required before the scheme's first investment date. Existing Category I and II AIF schemes with a corpus of INR 500 crore or less, holding at least one investment as of this circular's date, must appoint a custodian by January 31, 2025. AIFs with custodians associated with their manager or sponsor must ensure compliance with Regulation 20(11A) by January 31, 2025.

Reporting of investments of AIFs under custody
According to AIF Regulations, Regulation 20(11) mandates custodians to report AIF investment information based on guidelines specified by the Board. The Standard Setting Forum for AIFs (**"SFA"**), in collaboration with SEBI, will create standards for reporting AIF investment data. These standards will outline the reporting format from AIF managers to custodians and subsequently from custodians to SEBI. AIF managers and custodians are required to adopt and adhere to these standards, which will be published on industry association websites (i.e. Indian Venture and Alternate Capital Association, PE VC CFO Association and Trustee Association of India) within 60 days of this circular. Trustees/sponsors of AIFs must ensure that the Compliance Test Report, according to SEBI Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023, includes compliance with the provisions outlined in this circular. Information necessary for compliance verification will be integrated into the quarterly reporting format for AIFs on the SEBI Intermediary Portal. AIF managers should furnish the required details when submitting the quarterly report to SEBI.

This circular came into effect immediately i.e. January 12, 2024.

FRAMEWORK FOR OFFER FOR SALE (OFS) OF SHARES TO EMPLOYEES THROUGH STOCK EXCHANGE MECHANISM[7]

SEBI, on January 23, 2024, issued a circular outlining the framework for Offer For Sale (**"OFS"**) of Shares to Employees through Stock Exchange Mechanism. SEBI, through Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171 dated October 16, 2023, has introduced a framework for the OFS of shares through the stock exchange mechanism. The framework specifies that promoters of eligible companies can sell shares to employees within two weeks of the OFS transaction. This offering to employees will be considered part of the OFS transaction. The promoters have the discretion to offer these shares at the price discovered in the OFS transaction or at a discount to that price. The promoters must disclose relevant details in the OFS notice to the exchange. This new procedure aims to streamline and enhance efficiency in OFS to employees by incorporating it into the stock exchange mechanism, providing an additional option to the existing procedure outside the exchange mechanism.

The process for offering shares to employees in OFS through stock exchanges involves conducting the offering on T+1 day under a designated "Employee" category. Employees can bid for this category during trading hours, selecting the "Employee" category and others within specified limits. A predetermined number of shares are reserved for employees, disclosed in the OFS notice. Bidding is limited to

[6] SEBI/HO/AFD/PoD/CIR/2024/5
[7] SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/6

T+1 day, with the floor price for the retail category disclosed to participants. Employees bid at the T+1 day cut-off price, and allotment is based on the cut-off of the retail category, with a maximum bid amount of INR 5,00,000. Each employee is eligible for allotment of equity shares up to INR 2,00,000. In case of under-subscription, the unsubscribed portion may be allotted proportionately to employees. Employees must pay 100% upfront margin in cash or cash equivalents. Bids for the "Employee" category are not displayed on the stock exchange website. The bid book for the "Employee" category is separated for allotment, and the allotment process relies on PAN details provided by the company on T-1 day, with PAN mismatched bids rejected. Promoters transfer all OFS shares on T-1 day, including those reserved for the "Employee" category, to the designated clearing corporation.

All acknowledged stock exchanges and clearing corporations are instructed to implement the provided guidelines by taking essential measures and establishing the required systems. They must modify the applicable bye-laws, rules, and regulations as needed to adhere to the guidelines. They must also ensure awareness among market participants, including investors, by notifying them of the circular's provisions and disseminating the information on their respective websites.

This circular will come into effect from the 30th day of its issuance i.e. February 22, 2024.

EXTENSION OF TIMELINE FOR VERIFICATION OF MARKET RUMOURS BY LISTED ENTITIES[8]

SEBI has issued a circular dated January 25, 2024, extending the timeline for verification of market rumours by listed entities. The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**"LODR Regulations"**), mandates the top 100 and subsequently the top 250 listed entities by market capitalization to verify, confirm, deny, or clarify market rumors. SEBI, through Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/162 dated September 30, 2023, has specified the applicability of this provision to the top 100 entities from February 1, 2024, and to the top 250 entities from August 1, 2024.

Due to ongoing finalization of industry standards and necessary amendments to LODR Regulations, the implementation timeline for the proviso to Regulation 30(11) has been extended. For top 100 listed entities by market capitalization, the new effective date is June 1, 2024, and for top 250 listed entities, it is December 1, 2024.

This circular came into effect immediately, i.e. January 25, 2024.

STREAMLINING OF REGULATORY REPORTING BY DESIGNATED DEPOSITORY PARTICIPANTS (DDPS) AND CUSTODIANS[9]

SEBI has issued a circular dated January 25, 2024, regarding regulatory reporting by DDPs and Custodians. SEBI, in its review, has assessed reports submitted by DDPs and Custodians to establish consistent compliance standards for streamlined reporting and regulatory purposes. As per Regulation 31(4) of SEBI (Foreign Portfolio Investors) Regulations, 2019, and Regulation 20 of the SEBI (Custodian) Regulations, 1996, along with the Master Circular for Custodians dated April 27, 2023, all DDPs and Custodians are required to submit specified reports as mandated by the Board.

Following the assessment, it has been determined that DDPs and Custodians will now submit specified reports on the SEBI Intermediary Portal (**"SI Portal"**):

Annual:
Annual audit reports on internal controls under Regulation 31(6) of SEBI (Foreign Portfolio Investors) Regulations, 2019. Custodians are required to submit an annual review report of their systems, procedures, and controls by an expert under Regulation 14(2) of Custodian Regulations, along with the audited annual report and net worth certificate under Clause 7 of Chapter IV of the Master Circular for Custodians.

Half-yearly:
AI/ML report as per the provisions of Clause 9(v) in Chapter IV of the Master Circular for Custodians.

Quarterly:
Custodian Quarterly report as per Clause 6, FPI General Information for eligibility assessment under Regulation 4 of FPI Regulations, NRI/OCI/RI requirements under Clause 1(ii) of Master Circular for Foreign Portfolio Investors (**"FPIs"**) and DDPs (dated December 19, 2022), non-compliance of FPIs with Legal Entity Identifier requirements (July 27, 2023 circular), FPIs not submitting granular BO details (August 24, 2023 circular), and details of FPIs granted exemption (August 24, 2023 circular).

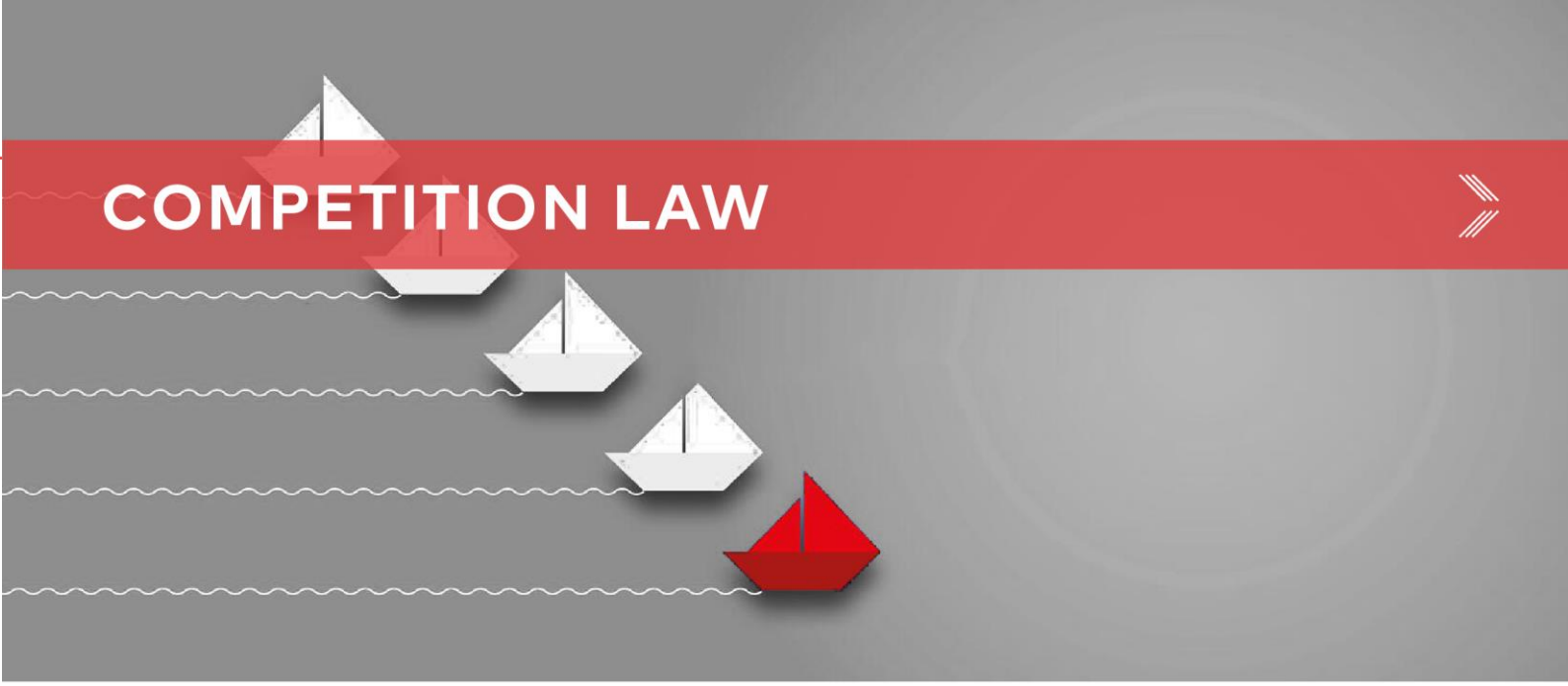
[8] SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/7

[9] SEBI/HO/AFD/AFD-SEC-2/P/CIR/2024/8

Monthly:
Reporting a delay in material information change as per Clause 14(iii) of Master Circular for FPIs and DDPs and reporting short sales by FPIs under Clause 4 of Master Circular for Custodians.

DDPs and Custodians are required to share the final reporting formats, as established in collaboration with the pilot Custodians and Designated Depository Participants Standard Setting Forum (**"CDSSF"**), on their respective websites. The reporting by DDPs under Clause 14(iii) of Part A of the Master Circular for FPIs and DDPs is now a monthly requirement on the SI Portal. Additionally, DDPs must promptly report certain material changes to SEBI via email. The submission of reports by DDPs and Custodians on the SI portal follows specific timelines, i.e. monthly and quarterly reports within 15 calendar days after the end of the respective periods, and other reports as per the Master Circular's specified timelines.

This circular will come into effect from the month ending February 2024.



The following are the main highlights in the Competition Law space for the month of January 2024:

CCI DISMISSES ALLEGATIONS AGAINST OLA ELECTRICS AND OTHERS

The Competition Commission of Inda (**CCI**), vide its order dated January 23, 2024, dismissed allegations of contravention of Section 4 of the Competition Act, 2002 (**Act**).

The Information was filed by the Informant against Ola Electric Limited, VIDA Hero Moto Corp Limited, TVS Motors, and Ather Energy Private Limited (**Opposite Parties/Parties**).

The Informant, claiming confidentiality, alleged that the Parties were involved in taking undue and illegal advantage of the FAME Policy launched by the Ministry of Heavy Industries and Public Enterprises. It was alleged that the parties had utilized deceitful pricing mechanisms which allowed them to fall under the FAME Policy, depriving genuine manufacturers from availing the benefit of the budget allocated by the Government. Furthermore, this misuse of policy had allegedly resulted in an adverse effect on competition in the relevant market.

Based on information available in the public domain, the CCI noted that none of the market players had a stable market share or position, and the presence of other major players indicates that there was no single player who would be able to exert market power in their favour. The CCI did not find any *prima* facie case of contravention of the provisions of Section 4 of the Act and consequently closed the information.

CCI DISMISSES ABUSE OF DOMINANCE ALLEGATIONS AGAINST PVR LIMITED

The CCI, vide its order dated January 3, 2024, dismissed allegations of abuse of dominant position by PVR, seeing that there was no discernible competition concern relating to the matter.

The Informant, a lawyer and filmmaker, sought an investigation into the alleged contraventions under Sections 3 and 4 of the Act, on the grounds that PVR had:

1. Abused its dominance by constraining the entry of independent filmmakers and favouring affluent production houses; and
2. Indulged in cartelization and vertical integration by entering into the business of film production, distribution, and exhibition with the big production houses.

The CCI did not deem it necessary to delve into the allegations, noting that the grievance of the Informant did not contain any concerns regarding competition in the market. Furthermore, the CCI found force in PVR's submissions, holding that PVR's vertical integration with the production, distribution, and exhibition of films did not *per se* amount to any contravention of Section 3(4) of the Act.

COMPETITION COMMISSION OF INDIA APPROVES THE PROPOSED ACQUISITION OF 100% SHAREHOLDING OF GVK (GOINDWAL SAHIB) POWER LIMITED BY PUNJAB STATE POWER CORPORATION LTD

The CCI in its order dated January 2, 2024, has provided its approval to Punjab State Power Corporation Ltd. (**Acquirer**) to acquire 100% shareholding of GVK Power (Goindwal Sahib) Limited (**Target**). The Acquirer is a fully owned undertaking of the Government of Punjab while the Target is

engaged in power generation through a coal-based thermal power plant.

In October 2022, the Target was admitted for corporate resolution and insolvency proceedings based on a petition filed by Axis Bank due to the Target's default on financial debt amounting to INR 442 crores. The Acquirer was the sole resolution applicant, and upon the approval of the Resolution Plan by the NCLT (Hyderabad Bench) will commence on the proposed combination.

Detailed orders from the CCI for the same are awaited.

CCI APPROVES ACQUISITION OF REMAINING 30% EQUITY STAKE IN SIGNET EXCIPIENTS BY IMCD INDIA

The CCI in its order dated January 9, 2024, has approved the acquisition of the remaining 30% equity stake in Signet Excipients Private Limited (**Target**) by IMCD India Private Limited (**Acquirer**) by exercising a call option.
The Acquirer is an indirectly wholly-owned subsidiary of IMCD N.V., a Dutch entity, and is located in Mumbai, India. They are engaged in the sales, marketing, and distribution of specialty chemicals including food and pharma ingredients in the Indian market across various product segments, including but not limited to pharmaceutical excipients, food and nutrition ingredients and excipients, and coatings and construction chemicals.

The Target company is jointly controlled by the Acquirer and its promotors and is engaged in the business of sales, marketing, distributing, importing, or exporting of excipients used for pharmaceuticals, nutraceuticals, biotech, food, API products, and other related products for pharmaceutical formulation. A detailed order from the CCI for the said transaction is anticipated.

CCI APPROVES 100% ACQUISITION OF WISTRON INFOCOMM MANUFACTURING BY TATA ELECTRONICS

The CCI, through its order dated January 23, 2024, has approved a proposed transaction by Tata Electronics (**Acquirer**) through which they are set to acquire 100% equity share capital of Wistron Infocomm Manufacturing (India) Private Limited (**Target**) from SMS Infocomm (Singapore) Private Limited And Wistron Hong Kong Limited. These companies hold 99.99% and 0.01% of the share capital respectively, on a fully diluted basis.

The Acquirer is a greenfield venture of Tata Sons Private Limited and is engaged in the manufacture of smartphone enclosures. The Target company is an electrical and electronics manufacturing company, incorporated in 2017 by the Wistron Group. It is engaged in electronic manufacturing services for smartphones in India.

The CCI stated that the proposed transaction did not exhibit any horizontal overlaps, with a potential vertical overlap not having any appreciable adverse effect on competition. A detailed order of the Commission is anticipated.

CCI APPROVES JSW VENTURES SINGAPORE'S ACQUISITION OF MAJORITY SHARE CAPITAL OF MG MOTOR INDIA PRIVATE LIMITED

The CCI, in its order dated January 23, 2024, approved the acquisition of 46% share capital of MG Motor India (**Target**) by JSW Ventures Singapore Pte. Ltd. (**Acquirer**). The proposed transaction is a strategic collaboration that intends to streamline MG Motor's business and improve competitiveness in the market.

The Acquirer is a newly incorporated entity, not engaged in any activities. It is a wholly-owned subsidiary of JSW International Tradecorp Pte Limited, belonging to the JSW Group. The target is an Indian company engaged in the automobile original equipment manufacturing business and after-sale services, primarily engaged in the manufacture and sale of passenger cars under their brand 'MG'.

The CCI noted in their order that there are limited existing and potential vertical linkages, however, they are unlikely to raise any competition concerns.

CCI APPROVES AMALGAMATION OF FINCARE SMALL FINANCE BANK LIMITED INTO AU SMALL FINANCE BANK LIMITED

The CCI, through its order dated January 23, 2024, approved the amalgamation of Fincare Small Finance Bank (**Fincare**) into AU Small Finance Bank, (**AU**) with AU being the surviving entity. As consideration for the proposed amalgamation, the shareholders of Fincare will be allotted shares in the Merged Entity once the proposed combination is completed.

AU is a banking company that provides personal and commercial banking services and is engaged in ancillary functions such as the distribution of insurance and investment products and portfolio management services. It is also licensed to transact business under the AD-II bank category, which pertains to foreign exchange. Fincare is a banking company providing deposit services, lending services, and digital banking services. A detailed order of the CCI is anticipated.

THE SECURITY FOR REFUND OF THE ADVANCE AMOUNT CANNOT BE HELD TO BE FINANCIAL DEBT

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") New Delhi Bench, in the case of *Sainik Industries Private Limited vs. Ritesh Raghunath Mahajan, RP, Indian Sugar Manufacturing Company Limited*[10] held that the security for the refund of the advance amount cannot be held to be financial debt.

In the present case, an agreement ("**Agreement**") was entered between Sainik Industries Pvt. Ltd. **('Sainik/Appellant')** and Indian Sugar Manufacturing Company Ltd. ("**Corporate Debtor**"), a company engaged in manufacturing and selling of sugar, for the supply of sugar. The Agreement contained certain clauses imposing a penalty in the event the Corporate Debtor refuses or fails to deliver the entire/part quantity of sugar. The Agreement also contemplated giving of security cheques by the Corporate Debtor towards refund of the advance amount. The Appellant advanced an amount of Rs.10 Crores to the Corporate Debtor. Upon failure of the Corporate Debtor to meet its obligations, the Appellant deposited the security cheques which were dishonoured. In view of the aforesaid, Sainik filed a Section 9 Petition, which came to be listed as Company Petition No. 469 of 2020. During the pendency of the aforesaid Company Petition No. 469 of 2020, another company petition was admitted against the Corporate Debtor and Mr. Ritesh Raghunath Mahajan was appointed as Interim Resolution Professional **("IRP")**, rendering the Appellant's company petition infructuous. Accordingly, Company Petition No. 469 of 2020 was dismissed as infructuous by order dated 28.08.2023. Subsequently, Sainik submitted its claim under Form C to the Resolution Professional **('RP')** classifying its debt of Rs.34.65 crores as a Financial Debt which was rejected by the RP, who categorized it as an operational debt. Aggrieved by the aforesaid decision of the RP, Sainik filed an application before Ld. National Company Law Tribunal, Mumbai ("**NCLT**") seeking direction to be made to RP to accept its debt as a financial debt. The Ld. NCLT rejected the contention of the Appellant and categorified its debt as Operational Debt. Aggrieved by the aforesaid decision, the Appellant filed an appeal against the aforesaid order before the Hon'ble NCLAT.

While adjudicating the present Appeal, the Hon'ble NCLAT delved into the scope and definition of 'operational debt' of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). Hon'ble NCLAT noted that a claim made in respect of the provision of goods or services, as stipulated under section 5(21) of the Code, ought to be considered as Operational Debt. Further, reliance was placed on the judgment of the Hon'ble Supreme Court in *Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited*[11] wherein the Hon'ble Apex Court held that advance payment made to a proprietary concern, falls within the definition of operational debt. The Hon'ble NCLAT assessed various clauses of the Agreement between the parties particularly the clause under which the Corporate Debtor had given security cheques of Rs.5 Crore each towards the refund of the advance amount, the Hon'ble Tribunal held that the transaction is in respect of the provision of goods or services, therefore the debt is operational debt. The Hon'ble Tribunal further noted that the Appellant had itself classified its debt as operational debt, when it filed its Section 9 Petition.

After analyzing the clauses of the Agreement and in view of the fact that had itself classified its debt as operational debt when it filed its section 9 Petition, the Hon'ble NCLAT upheld the order passed by Ld. NCLT as correct in law and therefore, dismissed the appeal.

[10] 2024 SCC OnLine NCLAT 63

[11] (2022) 7 SCC 164

CIRP APPLICATION AGAINST THE FINANCIAL SERVICE PROVIDER IS NOT MAINTAINABLE UNDER IBC

The National Company Law Appellate Tribunal ("**NCLAT**") New Delhi bench in the case of *Globe Capital Market Ltd. vs. Narayan Securities Ltd.*,[12] observed that Corporate Insolvency Resolution Process ("**CIRP**") cannot be initiated against a Financial Service Provider. "Financial Service Provider, under section 3(17) of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.

In the present case, an appeal ("**Appeal**") was filed against the order dated 03.07.2023 passed by Ld. National Company Law Tribunal **("NCLT").** *Vide* the aforesaid order, the Ld. NCLT rejected the Section 7 application filed by Globe Capital Market Ltd on the ground that the Respondent is a Financial Service Provider as defined under Section 3(17) of the code, as a consequence of that, it cannot be considered a "Corporate Person" as defined under Section 3(7) of the Code, therefore, the application under Section 7 is not maintainable against a Financial Service Provider. Further, the Ld. NCLT held that CIRP cannot be initiated, under section 9 and section 10 of the Code, against a Financial Service Provider.

The Hon'ble NCLAT found no reason to interfere with the order dated 03.07.2023 passed by the Ld. NCLT and accordingly, dismissed the appeal while reiterating the finding of the Ld. NCLT.

A PARTY CANNOT CHALLENGE AN ARBITRAL AWARD AFTER RECEIVING THE AMOUNT PAYABLE UNDER IT

The Hon'ble High Court of Delhi in ***MS K S Jain Builders vs. Indian Railway Welfare Organization***[13] has held that a party cannot challenge an arbitral award after receiving the amount payable under it by the Respondent. In the said case, 'A letter of acceptance (LOA) dated 12.04.2016 was awarded in favour of the Petitioner for the construction of 144 dwelling units for the Respondent. However, the work could not be completed due to various failures of the Respondent which led the Petitioner to invoke arbitration. The arbitrator partially allowed the claims of the Petitioner and rejected the counter-claims by the Respondent. However, the Petitioner was not satisfied with the quantum awarded by the tribunal in respect of one of its claims and accordingly, it challenged a part of the award under Section 34 of the A&C Act. However, since the Respondent had already made payment to the Petitioner regarding the claim it challenged, it is now estopped from challenging the said award.

The Hon'ble High Court further held that a party that has received payment in terms of an arbitral award cannot challenge the award with respect to the disallowed claims. The Court also held that mere misapplication of the terms of the contract does not put the award within the ambit of patent illegality. It further observed that the threshold for determining patent illegality is high. It involves more than just an erroneous application of law or contractual terms requires an egregious error that is blatant and fundamental to the issues being dealt with and accordingly dismissed the said Petition.

A PARTY CANNOT INSIST ON THE FULFILLMENT OF PRE-ARBITRAL STEPS AFTER TERMINATING THE CONTRACT

The Hon'ble High Court of Delhi in ***Mr. Gajendra Mishra vs. Pokhrama Foundation & Anr***.[14] has held that a party cannot insist on the fulfillment of pre-arbitral steps after terminating the contract. In the present case, the parties entered into an agreement dated 13.11.2021 for the construction/setting up of a school. A dispute arose between the parties in the context of certain bills raised by the Petitioner for the work carried out in terms of the agreement. The agreement was terminated by the respondent vide letter dated 13.11.2022. Aggrieved by the rejection of its claim and the termination of the agreement, the petitioner invoked the arbitration clause and approached the Court for the appointment of the arbitrator. In reply, the main contention of the Respondent was that the said application is not maintainable as the pre-arbitral steps have not been complied with by the Petitioner in terms of clause 52 of the agreement.

The Hon'ble High Court observed that the Respondent had terminated the agreement *vide* a letter dated 13.11.2022 and before taking such an action, it did not refer the matter to the project manager, it went on to hold that once a party itself proceeded to terminate the agreement without approaching the Project Manager for conciliation it cannot object to the maintainability of the petition seeking appointment of the arbitrator on the ground of non-fulfillment of pre-arbitral steps and accordingly, allowed the petition for the appointment of an arbitrator.

OPTIONALLY CONVERTIBLE DEBENTURES ARE FINANCIAL DEBT UNDER SECTION 5(8)(c) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The Hon'ble National Company Law Tribunal ("**NCLAT**") *vide* an order dated January 10, 2024 passed in Company Appeal (AT) (Ins) No. 1575/2023 titled *'Santosh Kumar vs. ASK Trusteeship Services Pvt. Ltd. and Anr.'* upheld the order dated November 24, 2023 passed by the Hon'ble National Company Law Tribunal ("**NCLT**") admitting the application

[12] Company Appeal (AT) (Insolvency) No.32 of 2024
[13] O.M.P. (Comm) No. 456 of 2022
[14] Arb. P. 969/2023 & I.A. 24445/2023

under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") against the Corporate Debtor ("**Application**").

The dispute between the parties was based on the subscription of unlisted optionally convertible cumulatively secured debentures ("**OCDs**") of the Corporate Debtor by the Financial Creditor, aggregating to Rs. 1,25,00,00,000/-, which were to be redeemed by the Corporate Debtor on or before July 31, 2021. However, the Corporate Debtor failed to redeem the OCDs, as a result the Application came to be filed before the Hon'ble NCLT and was admitted subsequently.

The suspended director of the Corporate Debtor preferred the appeal before the Hon'ble NCLAT, *inter-alia*, alleging that the OCDs issued by the Corporate Debtor were in the nature of 'equity' and hence cannot be classified as a 'financial debt' within the meaning of Section 5(8) of the IBC. The suspended director of the Corporate Debtor pressed that the order dated November 24, 2023 passed by the Hon'ble NCLT admitting the application is bound to be set aside.

The Hon'ble NCLAT took note of the observations of the Hon'ble Supreme Court in the case of *'IFCI Limited vs. Sutanu Sinha'* in Civil Appeal No.4929/2023, wherein the Hon'ble Supreme Court held that a compulsorily convertible debenture was not a 'financial debt' since the same are fully and compulsorily convertible into shares are regarded as 'Equity', and not a 'Loan' or 'Debt'.

The Hon'ble NCLAT further relying on the order dated April 23, 2019 passed by the coordinate bench in the case of *Maif Investments India Pte. Ltd. vs. Ind-Barath Energy (Utkal) Limited in* Company Appeal (AT) (Insolvency) No. 597 of 2018, wherein the Hon'ble NCLAT held that the amount raised against OCD is a 'financial debt' under Section 5(8)(c) of the IBC since the OCDs were not converted into shares, upheld the order dated November 24, 2023 passed by the Hon'ble NCLT.

DEBT OF A GUARANTOR OR THIRD PARTY DOES NOT AUTOMATICALLY STAND EXTINGUISHED UPON APPROVAL OF THE RESOLUTION PLAN OF THE PRINCIPAL BORROWER

The Hon'ble National Company Law Tribunal ("**NCLAT**") *vide* an order dated January 24, 2024 passed in Company Appeal (AT) (Insolvency) No. 975 of 2022 titled *'UV Asset Reconstruction Company Ltd. vs. Electrosteel Castings Ltd.'* upheld the order dated June 24, 2022 passed by the Hon'ble National Company Law Tribunal, Cuttack bench ("**NCLT**") dismissing the application filed by the Appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") against the Respondent (Electrosteel Castings Ltd.).

The Appeal was based on the premise that the Respondent stood as a guarantor against the loan facilities availed by Electrosteel Steels Ltd. ("**ESL**") from SREI Infrastructure Finance Ltd. ("**SREI**") therefore the Appellant being an assignee of SREI can file an application under Section 7 of the IBC against the respondent for the financial facility since the same is not extinguished upon approval of the resolution plan of ESL.

The brief background leading to the filing of the appeal is that ESL had availed financial assistance from the SREI for a sum of Rs. 500 crores vide a rupee Loan agreement dated July 26, 2011. Subsequently, a Deed of Undertaking ("**DoU**") dated July 27, 2011 was executed between the SREI, Respondent (being the promoter of ESL) and ESL wherein the Respondent had undertaken to 'arrange for infusion of such amount of fund' in order to allow the ESL to comply with the financial covenants of the DoU. Further, *vide* Supplementary Agreement dated November 21, 2011 a mortgage was created on the land situated in Ponneri, Tamil Nadu belonging to the respondent.

On July 21, 2017 the Hon'ble NCLT admitted the application under Section 7 of the IBC filed against ESL and approved the resolution plan submitted by Vedanta Limited on March 29, 2018 which *inter alia* provided that *'all rights/ remedies of the creditors against ESL shall stand permanently extinguished except any rights against any third party (including the Existing Promoter) in relation to any portion of Unsustainable Debt secured or guaranteed by third parties'*.

As per the Resolution Plan, the total admitted financial debt of the SREI was Rs.577.90 crores, out of which, the SREI received an amount of INR 241.71 crores as upfront payment and the remaining unsustainable debt of ESL was converted into 67,23,710 new equity shares of ESL having a face value of INR 10/- each and issued to SREI.

Subsequently, SREI assigned the loans (including the loan obtained by ESL) to the Appellant. Respondent upon receiving the information regarding the said assignment apprised the appellant that the entire debt owed by ESL to SREI stood discharged in terms of the approved Resolution plan. Consequently, a number of proceedings were filed by the parties before the DRT, DRAT, Madras High Court and the Hon'ble Supreme Court apart from the application filed by the appellant before the Hon'ble NCLT against the Respondent under Section 7 of the IBC.

The Hon'ble NCLT, upon observing the terms of the rupee loan agreement, supplementary agreement, DoU and a letter dated July 26, 2011 (wherein SREI had confirmed that it shall not require any corporate guarantee with respect to the loan documents) observed that Respondent No.1 cannot be held to be guarantor against the Financial Facilities extended by Financial Creditor to the ESL. Further, the Hon'ble NCLT held that approval of the resolution plan had led to extinguishment of the entire debt of ESL.

Aggrieved by the order passed by the Hon'ble NCLT, the Appellant filed the appeal before the NCLAT. The Hon'ble NCLAT upheld the observation of the Hon'ble NCLT that the Respondent is not a guarantor for the financial facility availed by ESL, *inter alia*, observing that neither the sanction letter nor the information memorandum of ESL contemplates any corporate guarantee from the Respondent.

Regarding the issue of extinguishment of debt upon approval of the Resolution Plan, the Hon'ble NCLAT took note of the judgement passed by the Hon'ble Supreme Court in the case of *Lalit Kumar Jain vs. Union of India and Ors.,* reported in (2021) 9 SCC 321, wherein the Hon'ble Supreme Court held that approval of resolution plan does not ipso facto discharge a personal guarantor (of a Corporate Debtor) of his/her liabilities under the contract of guarantee. In this premise, the Hon'ble NCLAT upon perusal of the contents of the Resolution plan noted that the Resolution Plan did not contain any provision for extinguishment of the rights/remedies of the creditors against third parties. Based on the said understanding, the Hon'ble NCLAT upheld the order passed by the Hon'ble NCLT modifying the language therein to reflect that the debt/liability of ESL was only extinguished with respect to the debt of the Appellant.

GOVERNMENT OF HARYANA NOTIFIES THE FIRST ROUND SCHEDULE FOR ENGAGEMENT OF THE TRADE APPRENTICES UNDER THE APPRENTICES ACT 1961

The Skill Development and Industrial Training Department, Haryana, vide notification dated January 2, 2024, notified the first round schedule for engaging trade apprentices in designated trades in all government departments and State Public Service Commission. The schedule includes phases 1 to 4, with the last date for creating vacancies on the apprentice's portal and the cut-off date for applications. The apprentices are advised to engage in various types, including those in directorate of departments and their field offices, technical trades, and technical trades. Further, as per the aforementioned notification, only qualified candidates who are domicile of Haryana or have passed class 10 from any recognized school of Haryana are eligible for re-engagement.

GOVERNMENT OF PUDUCHERRY NOTIFIES THE PUDUCHERRY FACTORIES (AMENDMENT) RULES, 2023

The Labour Department, Government of Puducherry, vide notification dated January 2, 2024, has notified the Puducherry Factories (Amendment) Rules, 2023, thereby amending the Puducherry Factories Rules, 1964. Vide the aforesaid amendment, various changes have been brought which have been highlighted below:

- Under Rule 4 (which relates to registration of license for a factory and schedule of the license fees), the present schedule has been substituted with a new schedule.

- Under Rule 5, (which relates to amendment of license) and Rule 7 (which relates to transfer of license), the fees for amendment has been changed from INR 50 (Rupees Fifty) to INR 200 (Rupees Two Hundred) and the fees for transfer has been changed from INR 100 (Rupees Hundred) to INR 200 (Rupees Two Hundred). Further, under Rule 9 (Loss of license) and Rule 105 (2-A) (which relates to fees for medical examinations of workers), the fees for loss of license have been changed from INR 100 (Rupees Hundred) to INR 200 (Rupees Two Hundred) and the fees for medical examination has been revised from INR 50 (Rupees Fifty) to INR 200 (Rupees Two Hundred), per year per worker.

The said rules have come into effect from the date of their publication, i.e. January 2, 2024.

SUSPENDED EMPLOYEE NOT REQUIRED TO MARK DAILY ATTENDANCE FOR SUBSISTENCE ALLOWANCE: BOMBAY HIGH COURT

The High Court of Bombay in the case of *M/s. Hindustan Level Employees Union vs. M/s. Hindustan Unilever Limited* held that an employee is entitled to receive subsistence allowance during suspension without any condition imposed by the employer requiring the employee to mark daily attendance at the workplace, as per Section 10A of the Industrial Employment (Standing Orders) Act, 1946.

While rejecting the arguments of M/s. Hindustan Unilever Limited that requiring daily attendance was a customary practice to ensure the suspended employee was not working elsewhere and that holding this could not override the provisions of the Industrial Employment (Standing Orders) Act, 1946 the High Court of Bombay stated that the law requires the suspended employee to inform the employer that he is not gainfully employed elsewhere and nothing more.

EMPLOYEES STATE INSURANCE CORPORATION ISSUES PROVISIONS FOR SEEDING AND AUTHENTICATION OF AADHAAR NUMBERS OF INSURED PERSONS

The Employees State Insurance Corporation ("**ESIC**"), vide notification dated January 8, 2024, notified the provisions for seeding and authenticating AADHAAR numbers of insured

persons, ESIC employees, and pensioners. The notification contains the following guidelines:

- The insured persons portal and the employer portal, where insured persons can seed their numbers and employers can generate new insurance numbers, respectively, have been developed by the ESIC.
- The "AAA" mobile app, which allows users to seed their numbers through one time password or face authentication has also been introduced.
- In addition to the above, the insured persons can visit the designated kiosks in ESIC hospitals for seeding of AADHAAR.

GOVERNMENT OF KARNATAKA NOTIFIES THE KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024

The Government of Karnataka, vide notification dated January 10, 2024 notified the Karnataka Compulsory Gratuity Insurance Rules, 2024. The aforesaid rules contain provisions which relate to the following:

- Obtaining insurance for payment of gratuity;
- Recovery of the amount of gratuity;
- Continuation of approved gratuity fund; and
- Incorporation of gratuity trust.

The aforementioned rules also contain the form for application for registration of establishments under the Payment of Gratuity Act, 1972. The said rules have come into effect on the date of publication of the aforementioned notification in the official gazette i.e. January 10, 2024.

ESIC RELEASES USER MANUAL FOR AADHAAR SEEDING USING AAA MOBILE APPLICATION

The ESIC has released a user manual, vide notification dated January 10, 2024, making changes to the application process to speed up the AADHAR seeding process. The new feature allows insured persons to seed AADHAAR for themselves and their families using face-authentication. The Proof of Concept (POC) of the Biometric Authentication Device ATS300 has been successfully implemented in employer and ESIC staff portals for AADHAR seeding. Additionally, a provision has been deployed in branch office login for "AADHAAR Seeding and ABHA Generation of permanent disability benefit/dependants benefit beneficiary." As per the aforesaid notification, field offices have been requested to promote this new feature to expedite AADHAR seeding and achieve daily targets.

CORRIGENDUM REGARDING WRITTEN CONSENT FROM FEMALE WORKERS WHO ARE WILLING TO WORK AFTER 7:00 P.M

The Department of Labour, Employment and Skill Development of Meghalaya released a corrigendum on January 10, 2024. As per the corrigendum, if female employees are required to work after 7:00 PM then their written consent in this regard shall be taken. Additionally, adequate safety and security arrangements of female employees shall be made during the working hours and it shall be ensured that they reach home safely after their work is over.

ALLAHABAD HIGH COURT HOLDS THAT AN ORDER PASSED IN APPEAL UNDER SECTION 17 (1) OF THE PAYMENT OF WAGES ACT, 1936 CAN BE CONSIDERED FOR REVISION UNDER SECTION 115 OF THE CIVIL PROCEDURE CODE, 1908

The Allahabad High Court vide order dated January 11, 2024 in the case of *Jayant Srivastava vs. Additional Labour Commissioner and Ors.*, noted that an order passed in an appeal under Section 17(1) of the Payment of Wages Act, 1936 can be considered for revision under Section 115 of the Civil Procedure Code, 1908. The High Court in the aforesaid order noted that an order passed by the district court or the small causes court, being courts subordinate to the high court in the hierarchy, would not lie outside the scope of Section 115 of the Code of Civil Procedure, 1908, which empowers the high court to interfere with the orders of any court subordinate to it.

In light of the above, the Allahabad High Court also noted that Court of Small Causes or the District Court while exercising powers under Section 17(1) of the Payment of Wages Act, 1936 function as Civil Courts and not as *persona designata*. The Court also reiterated that where a judge is appointed purely in his individual capacity by name, he acts as a *persona designata*, but where he is appointed by his designation alone, he acts as a court and not as a *persona designata*. Thus, any order passed by exercising the powers under Section 17(1) of the Payment of Wages Act, 1936, would be an order passed by a court and is amenable to revision under the Civil Procedure Code, 1908.

THE GOVERNMENT OF KARNATAKA NOTIFIES THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (KARNATAKA) (AMENDMENT) RULES, 2024

The Government of Karnataka, vide notification dated January 12, 2024, has notified the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Karnataka) (Amendment) Rules, 2024 ("**Amendment Rules**"). The aforementioned rules amend the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Karnataka) Rules,

2006 ("**Karnataka Rules**"). The Amendment Rules bring forth the following changes:

- The term "Competent Person" has been substituted. Further, a new rule for recognising a competent person has been inserted as Rule 54A.
- Under the table appended to Rule 49-C of the Karnataka Rules, the words "six months" has been substituted with the words "one year".
- The Amendment Rules also amend rule 225, wherein certificate of tests for using pressure plant, equipment etc., are to be obtained under Form – XXIV-D.
- Under rule 231 of the Karnataka Rules, the words "safe manner" has been replaced with "as stipulated under applicable standards"
- The Amendment Rules also add new Forms including Form XXIV-A, XXIV-B etc to the Karnataka Rules.

The Amendment Rules have come into force from January 12, 2024.

EMPLOYEES PROVIDENT FUND ORGANISATION REMOVES AADHAAR FROM THE LIST OF ACCEPTABLE DOCUMENTS AS A DATE OF BIRTH PROOF

The Employees Provident Fund Organization ("**EPFO**"), vide notification dated January 16, 2024, has removed Aadhaar as a proof of the date of birth from the list of acceptable documents for correction in the date of birth. Earlier, AADHAAR cards/e-AADHAAR were being considered as acceptable documents for proof of date of birth prior to the aforementioned notification. Vide letter dated December 22, 2023, the Unique Identification Authority of India had removed AADHAAR from the list of acceptable documents as a proof of date of birth. The said letter also notes that various high courts in India have highlighted that AADHAR is a proof of identity, and not a proof of date of birth. Basis this letter, the EPFO has also deleted the same from the list of acceptable documents.

ESIC RELEASES STATE WISE UPDATED LIST OF NOTIFIED/NON-NOTIFIED DISTRICTS

The ESIC has released an updated list of notified and non-notified districts vide notification dated January 17, 2024. As per the aforementioned notification:

- the entire area of 17 (Seventeen) states/union territories have been notified;
- the number of states/union territories where the Employees State Insurance Scheme has been partially notified is 19 (Nineteen); and
- out of a total list of 778 (Seven Hundred Seventy Eight) districts, 661 (Six Hundred Sixty One) districts have been notified and 117 (One Hundred Seventeen) districts remain non-notified districts under the Employees State Insurance Scheme as of January 11, 2024.

KARNATAKA HIGH COURT HOLDS THAT ANY DISPUTE FOR REGULARISATION OR ABSORPTION OF WORKMEN CAN ONLY BE RAISED BY LABOUR UNION ON BEHALF OF THE WORKMAN

The Karnataka High Court, vide order dated January 18, 2024, in the case of the management of *Tata Advanced System Limited vs. Government of Karnataka*, noted that any dispute for regularisation or absorption of workmen can only be raised by Labour Union on behalf of the workman. The main question before the Karnataka High Court was whether an individual workman seeking regularization can raise an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947.

The Karnataka High Court herein answered the same and stated that it is well settled that if an individual workman can raise a dispute, it can only be for removal, termination or dismissal and if the workman wants to raise a dispute with regard to absorption and regularization, that can only be done by a union, which can raise a dispute on behalf of the workman. The court noted that Section 2A the Industrial Disputes Act, 1947 carves an exception to the definition of individual dispute as given in Section 2(k) of the Industrial Disputes Act, 1947, in relation to industrial disputes and individual disputes. The Karnataka High Court thus allowed the writ petition filed by the petitioners.

GAUHATI HIGH COURT SETS ASIDE AWARD OF COMPENSATION DUE TO LACK OF ASSESSMENT BY A MEDICAL PRACTITIONER UNDER THE WORKMEN'S COMPENSATION ACT, 1936

The Gauhati High Court, vide judgement dated January 24, 2024, in the case of *National Insurance Co. Ltd. vs. Md. Safiur Rahman & Ors.*, set aside an order passed by the Commissioner of Workmen's Compensation, Dhubri, on the ground that an employer cannot make compensation unless and until the adjudication is made. In the present case, the Commissioner had awarded compensation to a driver who allegedly lost vision in one eye in an accident.

The Gauhati High Court herein noted that in case of a non-scheduled injury, employer and even the insurance company, cannot determine the quantum of compensation, which can only be made by the commissioner on the basis of the opinion of the qualified medial practitioner. Further the Gauhati High Court also noted that in case of non-scheduled injury, the due date to pay compensation shall be within the period of 1 (One) month from the date of adjudication in terms of Section 4(a)(ii) of the Workmen's Compensation Act, 1923. The Gauhati High Court herein noted that the Commissioner of Workmen's Compensation, Dhubri in the present case erred in granting compensation without having

a medical practitioner assess the loss of earning capacity, as provided under Section 4(1)(c) of the Workmen's Compensation Act, 1923. Basis this, the award of compensation was set aside, and the appeal was allowed by the Gauhati High Court.

EPFO RELEASES ADDITIONAL GUIDELINES OF REGULATION EMPLOYEE PENSION SCHEME SETTLEMENT OF MEMBERS HAVING MULTIPLE ACCOUNT NUMBERS

EPFO, vide notification dated January 29, 2024, has released guidelines for Employee Pension Scheme members possessing multiple account numbers for concurrent employment. The aforesaid notification notes that in such cases, pension from each establishment has to be worked out on the date of exit, and shall be aggravated, subject to certain conditions. The minimum pension criteria shall be applied to the aggregated pension i.e. total pension amount. Further, when a member joins another establishment, without exiting the first one, the regional office of the other establishment shall be responsible for ensuring that the total contribution does not exceed the amount payable on ceiling of INR 15,000 (Rupees Fifteen Thousand).

The aforesaid notification notes that members shall not be eligible for the membership if the wages in a single establishment or aggregate wages in multiple establishments exceed INR 15,000 (Rupees Fifteen Thousand) and in such cases, the full 24% (Twenty Four Percent) shall be retained.

EPFO NOTIFIES THE IMPLEMENTATION OF DIGITAL JOINT REQUEST UNDER THE EMPLOYEES' PROVIDENT FUND SCHEME, 1952

The EPFO, vide notification dated January 30, 2024, has notified the implementation of digital joint request under the Employees' Provident Fund Scheme, 1952. The Joint request and permission is a prerequisite for an employee to contribute on a pay more than statutory limit. In order to reduce time and paper consumption, the format can be filed and processed in digital mode now. Further, in cases where the employees have contributed more than the limit, and the employer has also paid the administrative charges, but the employee has left the employment or died till October 31, 2023, it is deemed that such cases had been allowed more than the statutory limit to avoid hassles. Further, employees and employers in such cases where existing members are paying more than the limit will not be required to file their joint requests immediately.

ENERGY & INFRASTRUCTURE

ENERGY

MINISTRY OF NEW & RENEWABLE ENERGY VIDE ORDER DATED JANUARY 12, 2024, FOR SETTING UP A DISPUTE RESOLUTION MECHANISM TO CONSIDER THE UNFORESEEN DISPUTES BETWEEN RENEWABLE ENERGY POWER DEVELOPERS/ EPC CONTRACTORS AND SECI/ NTPC/NHPC/ SJVN/ ANY OTHER RENEWABLE ENERGY IMPLEMENTING AGENCY (REIA), DESIGNATED BY MNRE: NODAL OFFICERS- REGARDING

In response to the Order dated 07.06.2023, the Ministry of New & Renewable Energy **("MNRE")** established a Dispute Resolution Mechanism (DRM) to address unforeseen disputes between Renewable Energy Power Developers/EPC Contractors and designated Renewable Energy Implementing Agencies (REIA) such as SECI, NTPC, NHPC, SJVN, or others designated by MNRE. The order outlines procedures for handling disputes beyond contractual agreements. RE Power Developers/EPC Contractors must submit disputes to the relevant REIA within the stipulated time, with the REIA providing a decision within 21 days. If dissatisfied, an appeal to the Dispute Resolution Committee (DRC) can be made within 21 days, accompanied by the specified fee. It also provides the details of Secretary (DRC) for each REIA. DRC meetings are proposed to be held at Atal Akshay Urja Bhawan, New Delhi.

CENTRAL ELECTRICITY REGULATORY COMMISSION VIDE NOTIFICATION DATED JANUARY 20, 2024 RELEASED PROCEDURES/GUIDELINES ON UNDER THE CENTRAL ELECTRICITY REGULATORY COMMISSION (COMMUNICATION SYSTEM FOR INTER-STATE TRANSMISSION OF ELECTRICITY) REGULATIONS, 2017

The Central Electricity Regulatory Commission (CERC) has issued orders approving various procedures and guidelines under the Central Electricity Regulatory Commission (Communication System for inter-State transmission of electricity) Regulations, 2017. The orders include the approval of the "Procedure on Maintenance and testing of Communication System," submitted by the Central Transmission Utility (CTU), in accordance with Regulation 9. The second order approves the "Procedure on Centralized supervision for quick fault detection and restoration," also submitted by CTU under Regulation 7.2. The third order grants approval to the "Guidelines on Interface Requirements," submitted by the National Load Dispatch Center (NLDC) as required by Regulation 7.4 and Regulation 14.2. Lastly, the fourth order approves the "Guidelines on Availability of Communication System," submitted by the National Power Committee (NPC) in compliance with Regulation 7.3. These approvals aim to streamline communication systems for inter-State electricity transmission and ensure effective fault detection, restoration, and system availability.

MINISTRY OF NEW & RENEWABLE ENERGY VIDE CIRCULAR DATED JANUARY 16, 2024, RELEASED SCHEME GUIDELINES FOR IMPLEMENTATION OF STRATEGIC INTERVENTIONS FOR GREEN HYDROGEN TRANSITION (SIGHT) PROGRAMME COMPONENT-II: INCENTIVE FOR PROCUREMENT OF GREEN AMMONIA PRODUCTION (UNDER MODE-2A) OF THE NATIONAL GREEN HYDROGEN MISSION

The President of India approved the Scheme for Procurement of Green Ammonia under Mode-2A, a component of the Strategic Interventions for Green Hydrogen Transition (SIGHT) Programme. The scheme aims to maximize Green Ammonia production, enhance cost-competitiveness, and promote large-scale utilization. The Ministry of New and Renewable Energy (MNRE), through Solar Energy Corporation of India Limited (SECI), plans to implement the scheme to meet the aggregating demand and make calls for competitive bids. The guidelines, covered by budget provisions under the National Green Hydrogen Mission Head, have been approved, exercising the Ministry's conferred powers and with the concurrence of the Internal

Finance Division (IFD). This program, with a budget of Rs. 17,490 crores, incentivizes domestic Green Ammonia production. Mode 2A involves aggregating demand, calling for bids, and providing incentives over three years. The Ministry of New and Renewable Energy (MNRE) and Solar Energy Corporation of India Limited (SECI) will oversee the implementation, ensuring compliance and disbursement.

MINISTRY OF NEW & RENEWABLE ENERGY VIDE ORDER DATED JANUARY 17, 2024, RELEASED COMPREHENSIVE GUIDELINES FOR IMPLEMENTATION OF PRADHAN MANTRI KISAN URJA SURAKSHA EVAM UTTHAAN MAHABHIYAAN (PM-KUSUM) SCHEME

The Ministry of New & Renewable Energy (MNRE) has issued an order regarding guidelines for implementation of PM-KUSUM Scheme. The Scheme was launched to provide energy and water security to farmers and enhance their income, de-dieselize the farm sector and reduce environmental pollution. The Scheme has three components. Component-A includes setting up of 10,000 MW of decentralized ground/ stilt mounted grid connected solar or other renewable energy base power plants by the farmers on their land. Component-B includes installation of 14 lakh stand-alone solar agriculture pumps. Lastly, Component-C includes solarisation of 35 lakh grid connected agricultural pumps including feeder level solarization. All the three components aim to add solar capacity of about 34,800 MW by March 2026 with the total Central financial support of Rs. 34,422 crores.

MINISTRY OF NEW & RENEWABLE ENERGY VIDE ORDER DATED JANUARY 4, 2024, RELEASED A NEW SOLAR POWER SCHEME FOR PARTICULARLY VULNERABLE TRIBAL GROUPS (PVTG) HABITATIONS/VILLAGES UNDER PM JANMAN

The Ministry of New & Renewable Energy (MNRE) issued an order regarding guidelines for implementation of a New Solar Power Scheme for PVTG Habitations/Villages under Pradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan (PM JANMAN). The Scheme will cover electrification of one lakh households in PVTG areas identified by the Ministry of Tribal Affairs (MoTA) located in 18 states by provision of 0.3 kW off-grid solar systems where electricity supply through grid is not techno-economically feasible. The scheme also includes a provision for providing solar lighting in 1500 Multi-Purpose Centres in PVTG areas where electricity through grid is not available. The funds would be met from the Development Action Plan for Scheduled Tribes (DAPST) allocation of the MNRE with an overall approved financial outlay of Rs. 515 Crores and a separate budget line “PM JANMAN”.

INFRASTRUCTURE

AMENDMENT TO RULE 171(I) OF THE GENERAL FINANCE RULES, 2017

The Public Procurement Division (“**PPD**”) Department of Expenditure (“**DoE**”), Ministry of Finance, *vide* office memorandum bearing number F.1/2/2023-PPD dated January 01, 2024 (“**Amendment OM**”), has issued an amendment in the General Financial Rules, 2017 (“**GFRs**”).

Rule 171(i) of the GFRs deals with the provisions in relation to performance security.

As per the Amendment OM, the performance security in respect of procurement only of goods/consultancy services/non consultancy services would now be an amount of 3% (three percent) to 5% (five percent) of the value of the contract as specified in the bid documents instead of an amount equivalent to 3% (three percent) to 10% (ten percent) of the value of the contract as specified in the bid documents.

The Amendment OM clarified that the amount of performance security plus security deposit/retention money for procurement of works would continue to be an amount of 3% (three percent) to 10% (ten percent) of the value of the contract as provided in the bid documents.

SETTLEMENT OF CONTRACTUAL DISPUTES- CLARIFICATION ON RECOVERY AGAINST DUES OF THE NATIONAL HIGHWAYS AUTHORITY OF INDIA FROM SETTLEMENT AMOUNT UNDER THE VIVAD SE VISHWAS-II SCHEME

The National Highways Authority of India (“**NHAI**”) *vide* policy circular bearing number 2.1.69/2024 dated January 11, 2024 (“**Policy Circular**”) has issued certain clarifications on recovery against dues of NHAI from the settlement amount under the Vivad Se Vishwas Scheme (“**Scheme**”).

NHAI had observed that while settling claims under the Scheme, technical divisions were proposing deductions in the same on account of several outstanding dues.

In this regard, NHAI clarified the following:

- For build operate and transfer (“**BOT**”) and hybrid annuity model (“**HAM**”) projects, deductions can be made from the escrow accounts as per the water fall mechanism in the respective concession agreements.

- The following dues that have priority over debt service shall be recovered from the escrow account:

  (i) dues against premium including interest; and
  (ii) expenses made by NHAI at its own risk and cost (including damages chargeable over such expenses)

- In case of engineering procurement and construction ("**EPC**") projects, only the deductions specified as 'dues' in the contract agreement shall be made.

- The settlement amount shall be offered without making any deductions thereto. The proposed deductions shall be specified in the calculation sheet with the tentative amount. It must be clearly mentioned therein that the deductions shall be made from the escrow account without prejudice to the rights of NHAI for the recovery of other dues on account of damages arising out of performance of contracts.

- The settlement agreement must explicitly specify the right of NHAI to recover the said amount from the escrow account, making the same binding on the concessionaire.

RBI ISSUED DRAFT NORMS ON FINTECH SELF-REGULATORY ORGANISATIONS (SROS)

The Reserve Bank of India (RBI), on January 15, 2024, issued a press release the 'Draft Framework for Self-Regulatory Organisations(s) in the Fintech Sector' ("**Draft Framework**"). This framework envisions self-regulation in the fintech sector and highlights the significant role of FinTech in revolutionizing financial services through enhanced efficiency, accessibility, and cost reduction.
Key highlights of the framework are outlined below. RBI has extended an invitation for comments and feedback from stakeholders and the public, open until the end of February 2024. Key highlights of the Draft Framework are as follows:

(a) SRO-FT:

Incorporation of Fintech SRO ("**SRO-FT**") which will have formal recognition of RBI will a provide regulatory comfort.

(b) Characteristics of SRO-FT

(i) It will derive its strength from membership. It will gain legitimacy by way of membership agreement. It will frame baseline standards, rules of conduct codes and effectively enforce them;

(ii) It will be development oriented, actively contributing to growth and evolution of the industry;

(iii) It will operate independently, free from the influence of any independent member;

(iv) It will act as legitimate arbiter of disputes; and

(v) It will maintain repository of information of its members' activities.

(c) Key Responsibilities of the SRO towards the regulator

(i) Collaboration with RBI to enhance regulatory compliance and sector development.

(ii) Regularly inform RBI about sector developments and report member violations.

(iii) Submit an Annual Report and provide data/information as advised by RBI.

(d) Key Eligibility Criteria for recognition as SRO-FT

(i) The applicant should be set up as a not-for-profit company;

(ii) The applicant should have sufficient net worth and demonstrate the capability of establishing the necessary infrastructure to fulfil the responsibilities of SRO-FT effectively, and consistently;

(iii) The applicant should be domiciled/registered in India;

(iv) The applicant should be professionally managed, it should have independent board and should be compliant with RBI Regulations.

(v) At least one-third of members in the Board, including the chairperson, should be independent, and without any active association with a FinTech entity.

DSK View: *The draft SRO Framework shows the shift in RBI's approach in Fintech regulation from feather touch to light touch to finally combination of RBI regulation & self-regulation. While the Draft Framework is open for public*

consultation and a lot of gaps are yet to be fulfilled, the aim seems to ensure responsible innovation and adherence to regulations.

Source

MAJOR UPI APPS ENABLED TO RECEIVE REMITTANCES FROM SINGAPORE VIA UPI-PAYNOW LINKAGE

In a significant development, the integration of the Unified Payments Interface ("**UPI**") with Singapore's PayNow is opening avenues for Indians to receive remittances swiftly, securely, and cost-effectively from the Indian diaspora in Singapore. This seamless process facilitates the direct transfer of funds into recipients' bank accounts, enhancing efficiency. The collaboration between the RBI and the Monetary Authority of Singapore has achieved a notable interoperability milestone and is poised to expand further, incorporating additional Third-Party Application Providers (or TPAPs) and banks, thereby offering users an extended array of choices. As this integration broadens its scope to encompass more banks and apps, it is positioned to play a crucial role in influencing the trajectory of India's digital economy. Currently, only users of BHIM, PhonePe, and Paytm apps, along with several banks including Axis Bank, DBS Bank India, ICICI Bank, Indian Bank, Indian Overseas Bank, and State Bank of India, can access this facility.

Source

GOOGLE PAY INDIA SIGNS MOU WITH NPCI INTERNATIONAL FOR GLOBAL EXPANSION OF UPI

Google India Digital Services and NPCI International Payments Limited ("**NPIL**"), on January 17, 2024, signed a Memorandum of Understanding that will help expand UPI payments to countries beyond India. The deal signed between the two entities has the following objectives: (i) to expand the utilization of UPI payments for travelers beyond India, facilitating convenient transactions abroad; (ii) to aid in the establishment of UPI-like digital payment systems in various other countries; and (iii) to enable cross-border money transfers by leveraging the existing UPI infrastructure. This collaboration will expedite the worldwide acceptance of UPI, granting foreign merchants access to Indian customers which will also eliminate the need for customers to depend solely on foreign currency, credit cards, or forex cards for digital payments. NIPL, as the international arm of NPCI, aims to deploy UPI and RuPay (card payment network) outside India, offering technological assistance to other countries in building real-time payment systems.

Source

THE RBI BANS PAYTM PAYMENTS BANK LTD FROM TAKING FRESH DEPOSITS AND CREDIT TRANSACTIONS ACROSS ITS SERVICES

The RBI *vide* its order dated January 31, 2024, barred Paytm Payments Bank Limited ("**PPBL**") from accepting fresh deposits and carrying out transactions in customer accounts, prepaid instruments, wallets, FASTags, National Common Mobility Card, etc. from February 29, 2024. This action is based on "*persistent non-compliance*" and "*material supervisory concerns*" by PPBL. The RBI has also banned PPBL from providing other banking services such as transfer of funds, Aadhaar Enabled Payment System, Immediate Payment Service, Bharat Bill Payment Operating Unit, and the UPI facility. The order further directs that the Nodal Accounts of One97 Communications Ltd and Paytm Payments Services Ltd. are to be terminated at the earliest, and in any case not later than February 29, 2024. As per the media reports, this order is stemming from violation of Know Your Customer anti-money laundering rules and multiples instances of false compliances reports being submitted by PBBL. The order however clarifies that the users of PPBL will be permitted to withdraw or utilize their balances without restrictions.

Source

DELISTING OF OFF-SHORE CRYPTO APPS FROM GOOGLE PLAY STORE AND APPLE APP STORE

The Financial Intelligence Unit – India ("**FIU-IND**") took significant regulatory action against 9 off-shore cryptocurrency exchanges, including major players like Binance and Kraken. The FIU-IND's action involved issuing show cause notices to these exchanges for conducting unauthorized operations in India and operating in contravention with the provisions of Prevention of Money Laundering Act, 2002 ("**PMLA**"). These notices triggered a subsequent request to the Ministry of Electronics and Information Technology ("**MeitY**") to block the URLs of these identified exchanges within India which prompted Google and Apple to remove these apps from the Play Store and App Store, respectively.

Virtual digital asset service providers ("**VDA SPs**"), whether operating domestically or abroad, are required to register with the FIU-IND as 'Reporting Entities' pursuant to PMLA. However, certain foreign entities operating as VDA SPs in India have managed to avoid registration, thereby operating outside the Anti Money Laundering (AML) and Counter Financing of Terrorism (CFT) framework.

The MeitY is considering further actions, including a complete ban on all such VDA SPs which operate in India in contravention with the applicable laws including PMLA.

The 9 crypto exchanges which were removed by Google and Apple are Binance, Kucoin, Huobi, Kraken, Gate.io, Bittrex, Bitstamp, MEXC Global, and Bitfenex.

***DSK View**: India has, historically, maintained strict regulatory positions on cryptocurrencies, including a temporary ban on crypto exchanges in the past. Indian Government intends to keep stricter norms on crypto activities and any relaxation in this sector will be light years ahead. Till then, a slight non-compliance may have high repercussions on entities involved in cryptocurrencies.*

Source

INDIA'S QUEST FOR FOOD SECURITY AT WTO'S MC13

The World Trade Organization ('**WTO**') is scheduled to hold its 13th Ministerial Conference ('**MC13**') at Abu Dhabi, in February 2024 in order to assess the performance of the multilateral trading system and determine its future action steps (available here).

India's top priorities for the MC13 include securing a permanent solution for its public stockholding programme ('**PSH**'), which is a policy tool through which the Indian Government procures crops such as rice and wheat from farmers at a minimum support price ('**MSP**'), and stores and distributes foodgrains to the needy. The said programme seeks flexibility in food procurement and pricing based on India's food security needs and also plans to adopt a special safeguard mechanism for imposing temporary import restrictions to protect local farmers in response to surges in imports or price declines.

The Agreement on Agriculture ('**AoA**') categorises domestic support as –

- Green Box support – no, or minimal trade distortive effect, such as R&D support. Green Box measures are exempt from reduction commitments.
- Amber Box support - any support that clearly distorts trade, these often include price support measures, input subsidies, and other forms of support that are directly linked to production quantities. MSP, in principle, is largely considered to be such support. The aggregate monetary value of Amber Box is subject to member-specific reduction commitments.
- Blue Box – similar to amber box but with some conditions. Aims to provide a more decoupled form of assistance to farmers, meaning that it is less directly linked to production levels.

India aims to push for a comprehensive and durable solution during MC13, by ensuring explicit categorization of its PSH as 'Green Box' support as it would provide legal assurance for implementing these programmes without breaching WTO limits on domestic support. A solution is crucial since WTO members have been raising questions over India's MSP programme for grains and rice since the subsidy has breached the prescribed limit thrice.

While some developed countries, such as the US, Australia, Canada, have argued that public procurement at subsidised rates and storage distorts global agriculture trade, India has maintained its stance stating that it aims to protect the interest of the poor and vulnerable farmers, besides taking care of the food security needs of a large section of the population. Accordingly, it invoked the 'peace clause' under WTO norms to protect its food procurement programme against any action from member nations in case the limit is breached. However, this is merely a temporary relief until a permanent solution is reached.

It has been emphasized time and again by India, that measures supporting the vulnerable section, by way of input subsidies and direct transfers, are non-negotiable. As we push for a resolution at MC13, the outcomes will not only shape our agricultural policies but will also contribute to the broader discourse on global trade practices and food security. The conference marks a crucial juncture for finding common ground and fostering understanding among WTO members to address the challenges posed by diverse national interests within the multilateral trading system.

DSK View: *The issue of public stockholding for food security requires a delicate balance between trade liberalization demanded by the developed countries and ensuring food security, particularly for vulnerable populations in developing countries. Notably, the WTO operates on principles such as*

trade without discrimination, predictability and the promotion of fair competition among member states.

*The WTO Agreement on Agriculture ('**AoA**') in its Preamble, recognises the need to take into account food security and provides a set of rules governing agricultural trade, domestic support, and market access. However, the implementation of these rules often intersects with broader developmental objectives, especially concerning food security policies in developing countries.*

India's emphasis on seeking a permanent solution to public stockholding at MC13 underscores its commitment to addressing its food security concerns. In order to overcome such concerns, there is a need for constructive dialogue, flexibility, and compromise. Achieving a mutually acceptable solution to the issue of public stockholding requires careful consideration of the diverse needs and priorities of the WTO members alongside the usage of WTO principles of fairness, equity, and sustainable development. Finding a durable solution to this complex issue will require sustained engagement, pragmatic approaches, and a commitment to upholding the fundamental principles of the multilateral trading system.

MEDIA & ENTERTAINMENT

KOODATHAYI CASE ACCUSED FILES PETITION AGAINST NETFLIX'S 'CURRY & CYANIDE'

The second accused in the well-known Koodathayi serial killings, M.S Mathew, has filed a lawsuit against Netflix's documentary series "Curry & Cyanide: The Jolly Joseph Case" before the Kozhikode Special Additional Sessions Court (Marad cases) ("**Kozhikode Court**"). M.S Mathew, in his petitions has accused the series of disseminating false information about the case, which is currently pending before the Kozhikode Court. Mathew's challenge brings the discussion of the media's impact on ongoing Court procedures front and centre. On January 29, the Kozhikode Court will consider this petition in addition to the bail requests of Jolly Joseph and others.

TELANGANA HC CANCELS VYOOHAM'S CENSOR CERTIFICATE

The censor certificate for Ram Gopal Varma's film "Vyooham" ("**Film**") has been revoked by the Telangana High Court. The film is accused of supporting the Yuvajana Shramika Rythu Congress Party's personal agendas and maligning political personalities such as Pawan Kalyan, Lokesh, and Chandra Babu. The revocation was made in response to a complaint made by Nara Lokesh, who alleged that the Film attempted to sway the results of the 2024 general elections in India. The censor board has been directed by the Telangana High Court to reevaluate the Film's certification and provide a report in three weeks. The Telangana High Court dismissed the concerns of the producers' including with respect to financial loss and delays in the distribution of the movie due to such reevaluation of the film by the censor board.

CINE1 AND T-SERIES SETTLE A DISPUTE REGARDING 'ANIMAL' MOVIE PAVING THE WAY FOR THE FILM'S OTT RELEASE

Cine1 Studios Private Limited ("**Cine1**"), a key producer of the blockbuster movie Animal ("**Film**"), alleged that Super Cassettes Industries Private Ltd. ("**T-Series**") breached their agreement, denying Cine1 its rightful profit share and intellectual property rights. The suit alleges that T-Series incurred expenses and received revenues without Cine 1's approval, violating the profit-share agreement.

On January 22, 2024, the Delhi High Court was notified that Cine1 and T-Series had settled their legal dispute over the purported breach of contractual duties concerning the Film. A settlement agreement has been struck and will be entered into the record, according to the attorneys for Cine1 and T-Series who appeared before the Court.

ISAMRA SIGNS A BILATERAL AGREEMENT WITH PPL UK FOR PERFORMANCE ROYALTIES FROM & TO INDIA

Under a bilateral agreement, PPL UK, which is the organisation that grants licences for the use of recorded music for public performance and broadcast in the UK, will collect royalties on behalf of Indian Singers' and Musicians' Rights Association's ("**ISAMRA**") performer members in the UK, and ISAMRA (formerly known as ISRA), will collect royalties on behalf of its performer members in India.

Due to ISAMRA and PPL UK's recent cooperation, members of ISAMRA will now begin to receive royalties from PPL UK for the UK Territory. UK musicians will now begin getting paid under the terms of the bilateral agreement for the usage of their recorded music in India via PPL UK.

NETFLIX AND OTHER BROADCASTERS FACE CONTEMPT PROCEEDINGS IN KARNATAKA HC FOR INCORPORATING A 22-SECOND CLIP FROM 'WILD KARNATAKA' INTO THEIR SERIES 'LIFE IN COLOUR WITH DAVID ATTENBOROUGH'

The documentary 'Life in colour with David Attenborough''s transmission, has previously been prohibited by the Karnataka High Court (**"KHC"**) for including portions of the film 'Wild Karnataka'. Previously, Wild Karnataka was prohibited by the KHC from using, publishing, broadcasting, reproducing etc. as the makers of the documentary were alleged to have had colluded with the state government functionaries and did not pay the monies due for filming the wildlife in the state of Karnataka.

The OTT platform said that it had responded quickly to delete the controversial 22-second clip from the docuseries in its application before the Supreme Court. It was argued that, considering this, the KHC's decision to name it as an accused in the contempt of Court trial procedures was not motivated by purposeful violation of the order.

However, the Supreme Court pointed out that the KHC had more important issues than pursuing contempt for such a fleeting inclusion and recommended that the OTT platform and others make donations to the Tiger Conservation Fund instead.

EY INDIA REPORT STATES THAT INDIA'S MUSIC PUBLISHING BUSINESS IS HELD BACK BY A LACK OF COPYRIGHT COMPLIANCE

The Indian music business has grown 2.5 times in the past three years, according to research issued by Ernst & Young India ("**EY India**"), and it has the potential to double its sales by 2026–2027. This is only feasible, though, if the sector can overcome the obstacles preventing it from progressing. The problems are a lack of understanding of music rights and legal clarity, as well as inadequate copyright compliance.

The Indian Performing Right Society (**"IPRS"**) has issued licenses to less than 1% of retail stores, lodging facilities, and dining venues. Of the 905 TV channels, 796 do not have an IPRS license, while 1033 of the 1035 radio stations do not have a license.

MUMBAI POLICE FILE AN FIR AGAINST THE FILM "ANNAPOORANI" FOR PROMOTION OF "LOVE JIHAD"

"Annapoorani," has stirred controversy upon its digital release on Netflix. According to a complaint filed at Mumbai's LT Marg Police Station, the film promotes Love Jihad. Actor Jai is accused of violating religious beliefs by portraying Lord Ram as a meat eater in the lawsuit. The Hindu IT Cell accused the movie of attacking Lord Ram and misrepresenting Valmiki's Ramayana in a complaint filed with the Mumbai police.

The people named in the complaint are the film's director, debutant Nilesh Krishnaa; Nayanthara; producers Jatin Sethi and R. Ravindran; Zee Entertainment Enterprises CEO Punit Goenka; Zee Studios chief business officer Shariq Patel; and Netflix India chief Monika Shergill. The film was removed from the platform until the edit was made to delete the portions which lead to the controversy.

DELHI HIGH COURT REJECTS PIL AGAINST FILM 'AANKH MICHOLI'

A public interest litigation was filed alleging that the November 2018 release of the film "Aankh Micholi" has violated the rights of many individuals and/or groups of individuals who have disabilities and is derogatory to such individuals, including those with hearing, visual, and speech impairments, has been dismissed by the Delhi High Court (**"DHC"**) to minimise censorship and protect creative freedom in India.

A division bench made up of Acting Chief Justice Manmohan and Justice Manmeet Pritam Singh Arora stated that when a movie receives a certificate from the Central Board of Film Certification (**"CBFC"**), Courts typically do not interfere.

DELHI HIGH COURT RESTRAINS GUJARAT-BASED COMPANY 'AAJ TAK WATCH NEWS' FROM USING 'AAJ TAK' TRADEMARK

After prominent Hindi news station Aaj Tak filed a lawsuit for trademark infringement, the Delhi High Court ("**DHC**") stopped a Gujarat-based news platform, operating under the name "AAJ TAK WATCH NEWS," from using the "Aaj Tak" trademark or any other confusingly similar mark.

After considering the case, the DHC held that a *prima facie* case was made out in favour of Aaj Tak and, therefore, passed the interim order. The DHC made it clear that the domain name registrar would suspend or ban the defendant's websites and the social media platforms would delete the allegedly infringing accounts/channels if the defendant did not comply with the order within two weeks.

BOMBAY HIGH COURT IN A LANDMARK DECISION RULED THAT PPL AND NOVEX CAN ISSUE LICENSES WITHOUT BEING REGISTERED COPYRIGHT SOCIETIES UNDER SECTION 33 OF THE COPYRIGHT ACT

The Bombay High Court (**"BHC"**) held that music rights holders like Phonographic Performance Ltd ("**PPL**") and Novex Communications ("**Novex**") who are not registered as copyright societies under Section 33 of the Copyright Act are copyright owners and can issue licenses. The court disagreed with the Madras HC's view in *Novex Communications vs. DXC Technology Pvt. Ltd.* and distinguished between granting licenses in an individual capacity and carrying on the business of licensing.

Accordingly, BHC has issued an injunction against over 100 establishments, including hotels, pubs, and bars across Maharashtra, preventing them from publicly playing music from more than 400 music labels without obtaining proper licenses from Novex and PPL respectively for the music forming part of their repertoire.

ZEE-SONY MERGER SAGA COMES TO AN END

On January 22, 2024, Sony Group Corporation announced the cancellation of its $10 billion merger with Zee Entertainment Enterprises ("**ZEEL"**). As per reports, ZEEL is the target of a Singapore arbitration suit filed by Sony Group Corporation, which claims that ZEEL breached the terms of their failed merger agreement.

ZEEL announced on January 24 that it has filed a complaint against Sony's decision to scrap the planned merger with the National Company Law Tribunal ("**NCLT**"). Additionally, it has filed a lawsuit against Sony, challenging its claims of $90 million (about ₹748.5 crore) in termination fees.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

COMPANIES (LISTING OF EQUITY SHARES IN PERMISSIBLE JURISDICTIONS) RULES, 2024

The MCA, *vide* its notification dated January 24, 2024 (accessible *here*), has notified the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 ("**Listing Rules**"), facilitating the direct listing of equity shares of Indian companies in International Financial Service Centres in India (IFSC). As per the Listing Rules, presently, only two exchanges, namely, India International Exchange and NSE International Exchange in Gujarat International Finance Tech City, Gandhinagar (GIFT-IFSC), under the regulatory oversight of International Financial Services Centres Authority (IFSCA), are recognized as permitted international stock exchanges.

Applicability: The Listing Rules apply to *(a)* unlisted public companies; and *(b)* listed public companies which are in compliance with the regulations and directions issued by the Securities and Exchange Board of India (SEBI) and IFSCA.

Ineligibility: A company shall be ineligible for listing of equity shares under the Listing Rules, if such company:

(a) is incorporated under Section 8 (formation of companies with charitable objects) of the Companies Act, 2013 ("**Act**");

(b) is a Nidhi company;

(c) has outstanding deposit collected from public;

(d) has a negative net worth;

(e) has defaulted in payment of dues to any bank, public financial institution, non-convertible debenture holder or secured creditor;

(f) has made an application for winding-up under the Act or for resolution or winding up under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under IBC is pending; or

(g) has defaulted in filing of annual returns or financial statements within the period prescribed under the Act.

Conditions for listing: An eligible unlisted public company can issue shares for the purposes of listing on a stock exchange in an International Financial Service Centre in India, and is required to:

(a) comply with the requirements of *"Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme"* (which provides an overarching framework for issuing and listing of equity shares of public Indian companies on international exchanges) specified in Foreign Exchange Management (Non-debt Instruments) Rules, 2019;

(b) file the prospectus in e-Form LEAP-1 with the Jurisdictional Registrar of Companies along with the prescribed fees within a period of 7 (seven) days after the same has been finalised and filed in the permitted stock exchange;

(c) comply with the regulation specified by SEBI in case it intends to list its equity shares in any other stock exchange recognised by the Indian government; and

(d) comply with Indian Accounting Standards in preparation of its financial statements.

RBI & FEMA

MASTER DIRECTION - COMMERCIAL PAPER AND NON-CONVERTIBLE DEBENTURES

The Reserve Bank of India (**"RBI"**) on January 3, 2024, notified revised master directions on commercial papers and non-convertible debentures of original or initial maturity upto one year (**"MD on CP and NCDS"**).

Accordingly, with effect from April 1, 2024, the directions shall be applicable to all persons/agencies dealing in commercial paper and/or non-convertible debentures of original or initial maturity upto one year and all commercial paper and non-convertible debentures issued before such date shall be governed by the earlier regulations until their maturity.

These Directions establish a comprehensive framework for the issuance, trading, and governance of commercial paper and non-convertible debentures of tenor up to 1 year. Market participants are expected to align with these directions, and any deviations may result in regulatory actions by the RBI.

The MD on CP and NCDs will supersede the Master Direction on Money Market Instruments: Call/Notice Money Market, Commercial Paper, Certificates of Deposit and Non-Convertible Debentures (original maturity up to one year), 2016 (Money Market Directions) and the Reserve Bank Commercial Paper Directions, 2017 (CP Directions).

DSK View: *The master directions are a step to ensure transparency and to streamline the regulatory framework governing money market instruments. They come into effect from April 1, 2024.*

AMENDMENT TO MASTER DIRECTION ON KYC

The RBI issued the Master Direction – Know Your Customer on February 25, 2016 ("**KYC Master Direction**"). This was subsequently amended by RBI vide Amendment to the Master Direction on Know Your Customer dated January 04, 2024 ("**KYC Master Direction Amendment**").

Specifically, Section 3 (a) (xvii) of KYC Master Direction is removed and the explanation for definition of "Politically Exposed Persons" (PEPs) is included in Section 41 of the KYC Master Direction.

DSK View*: The Amendment has eliminated the definition of PEPs making it easier for such persons to undertake banking transactions including availing loans.*

RBI ACTION AGAINST PAYTM PAYMENTS BANK LTD UNDER SECTION 35A OF THE BANKING REGULATION ACT, 1949

RBI vide press release dated January 31, 2024, issued specific directives to Paytm Payments Bank Ltd ("**PPBL**"), following the Comprehensive System Audit report and subsequent compliance validation report from external auditors, which identified persistent non-compliances and material supervisory concerns. Earlier in March 11, 2022, the RBI had, vide a press release, instructed PPBL to cease the onboarding of new customers with immediate effect.

PPBL is prohibited from accepting new deposits, credit transactions, or top-ups in various customer accounts, including prepaid instruments, wallets, FASTags, and NCMC cards, after February 29, 2024. However, crediting of interest, cashbacks, or refunds continue to be permitted.

Customers will retain the liberty to withdraw or use balances from their accounts viz. savings bank accounts, current accounts, prepaid instruments, FASTags, National Common Mobility Cards, etc., without any constraints, up to the available balance. Post February 29, 2024, PBPL is restricted from offering additional banking services beyond those

specified above, such as fund transfers (regardless of service names like AEPS, IMPS, etc.), BBPOU, and UPI facility.

Additionally, the Nodal Accounts of One97 Communications Ltd and Paytm Payments Services Ltd. are mandated to be terminated promptly, with a deadline set for February 29, 2024. Furthermore, all pipeline transactions initiated on or before February 29, 2024, including those involving nodal accounts, must be settled by March 15, 2024, with no further transactions permitted thereafter.

DSK Note: *This RBI action has restricted PBPL from undertaking several operations, however, it has not cancelled the license issued to PBPL. Customers will still be permitted to utilize Paytm for digital payments as long as their account remains connected to an external bank.*

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY TAKES DECISIVE ACTION AGAINST THE PRACTICE OF REGISTERING A SINGLE PROJECT MULTIPLE TIMES

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**"), *vide* order dated January 10, 2024, bearing order no. 50/2024 ("**Order**"), has introduced a new policy with the objective of preventing developers from acquiring multiple registrations for the same project, a practice that could potentially lead to confusion and delays.

As per the Order, it was noticed by MahaRERA that promoters apply for the registration of real estate project on the particular land even when an application for registration is subsisting for a real estate project (by whatever name called) on the same project land or any part thereof or such registration has already been granted by the MahaRERA for a project (by whatever name called) to be constructed on same project land or any part thereof.

In terms of the Order, the promoter while applying for registration of a real estate project, shall upload a Declaration-cum-Undertaking on the letterhead of the promoter in the form as prescribed under the Order. Furthermore, the Order provides for 2 (two) formats for Declaration-cum-Undertaking, *first,* shall be applicable when the real estate project for standalone building/ buildings where MahaRERA registration is sought under a single project registration number and *second,* shall be applicable for the real estate projects in the layout development where the MahaRERA registration is sought for the respective building(s) under different project registration numbers. In the event, it comes to the knowledge of MahaRERA that wrong/false/misleading statements are made in the Declaration-cum-Undertaking submitted by the promoters, MahaRERA could take appropriate actions against such promoters.

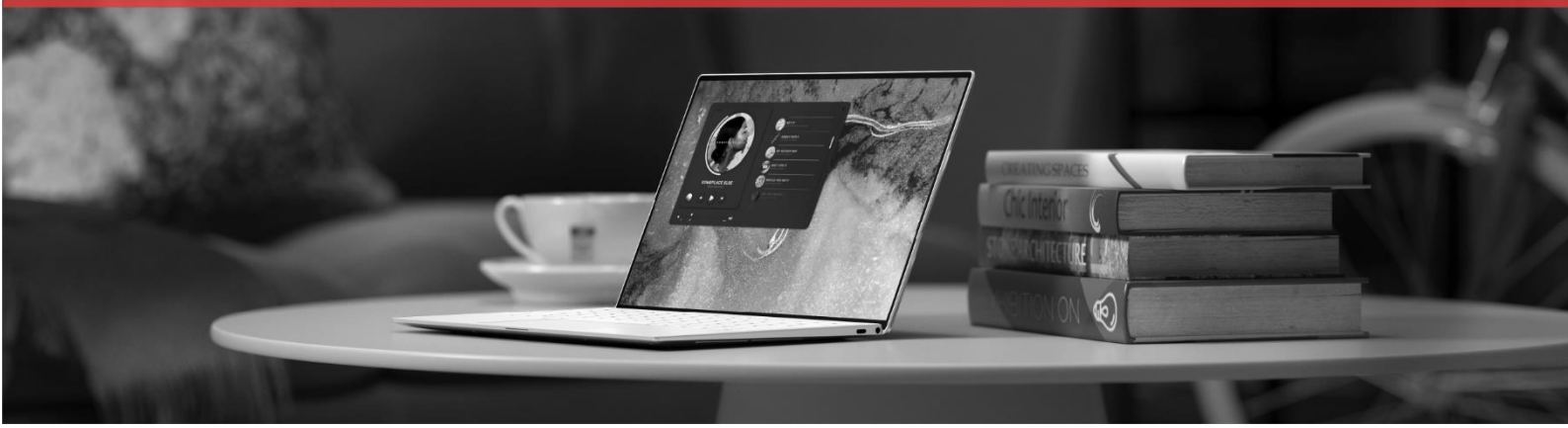
STAMP DUTY IN WEST BENGAL NOW BASED ON CARPET AREA INSTEAD OF SUPER BUILD UP AREA

The state of West Bengal has finally aligned its registration process with the Real Estate (Regulation and Development) Act, 2016, ("**RERA Act**"). The stamp duty in this state was paid on the basis of super built-up area of the property as opposed to the provisions of RERA Act which provides for the stamp duty to be paid on carpet area of the same. The Inspector General of Registration has now directed to commence the registration of properties based on carpet area, with effect from January 17, 2024.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY TO LAUNCH UPGRADED WEBSITE 'MAHARERA-CRITI'

Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") is gearing up to launch its new website, expected to be titled 'MahaRERA-CRITI', whereby, CRITI stands for Complaint and Regulatory Integrated Technology Implementation. The upgraded platform is set to become fully operational by the end of February. MahaRERA has implemented substantial improvements to its existing website, which was originally launched in May 2017, at the time of establishment of MahaRERA.

The impending modifications are aimed at providing a more user-friendly experience. The significant features of the forthcoming website include streamlined processes for lodging complaints, section of 'Project Health Summary' which shall offer comprehensive insights into ongoing projects, etc. For developers, the new platform aims to simplify the submission of statutory information required under Forms 1, 2, and 3, including the submission of Quarterly Progress Reports and Form 5 on an annual basis. During the transition from the current system to the new one, owing to the technical adjustments, the existing website may be unavailable for a few days.



ECONOMIC ADVISORY COUNCIL TO THE PRIME MINISER RELEASED A WORKING PAPER ON REGULATING THE ARTIFICIAL INTELLIGENCE

Economic Advisory Council to the Prime Minister ("**EAC**") has released a working paper on regulating Artificial Intelligence ("**Working Paper**"). EAC is an independent body, incorporated to directly advise the Prime Minister on economic related issues. The Working Paper has been released in the month of January 2024 and comprises of the governing principles which should be taken into consideration by the legislature while formulating regulations concerning artificial intelligence. Following are the governing principles which have been specifically discussed in the Working Paper:

- Guardrails and Partitions/ Fire Breaks & Choke Points;
- Circuit Breakers/ Manual Overrides;
- Transparency & Explainability;
- Distinct Accountability; and
- Specialized, Agile Regulatory Body.

The Working Paper can be accessed by clicking here.

RESERVE BANK OF INDIA EXTENDS PAYMENTS INFRASTRUCTURE DEVELOPMENT FUND SCHEME TO DECEMBER 2025

The Payments Infrastructure Development Fund Scheme ("**PIDF Scheme**") has been extended by the Reserve Bank of India ("**RBI**") until December 31, 2025. The PIDF Scheme was initially introduced in the month of January 2021 and was supposed to be in effect for 2 (two) years only. The PIDF Scheme was introduced to subsidize the deployment of digital payment acceptance infrastructure, particularly in Tier-3 and Tier-6 cities, and the North Eastern states. Further, the amount of subsidy for devices deployed in special focus areas, viz., North Eastern States, Union Territories of Jammu & Kashmir and Ladakh, has been increased from 75% to 90% of the total cost, irrespective of the type of device, for installations made from October 01, 2023 onwards.

The RBI notification on the extension of the PIDF Scheme can be accessed by clicking here.

RBI RELEASES DRAFT FRAMEWORK FOR SELF-REGULATORY ORGANISATIONS IN FINTECH SECTOR

On January 15, 2024, RBI has released the draft framework for 'Self-Regulatory Organisations(s)' ("**SRO**") in the fintech sector ("**SRO Framework**"), SRO Framework enlists the eligibility criteria for the SROs and a fit and proper criteria for the board of directors and key managerial personnel of the applicant SRO. In addition to the eligibility criteria the SRO Framework also outlines the characteristics, functions, and responsibilities of the SROs. According to the RBI, self-regulation is a "preferred approach" for achieving a balance between facilitating innovation in the fintech sector and protecting consumers against risks. It encourages SROs to set industry standards, codes of conduct, and benchmarks for transparency, disclosure, and data privacy. The RBI has been encouraging fintechs to self-regulate, and the draft framework provides guidelines for this process. The SRO Framework is open for public feedback until the end of February 2024.

The SRO Framework can be accessed by clicking *here*.

DPIIT

MINISTRY OF FINANCE NOTIFIED THE FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) AMENDMENT RULES, 2024

On January 24, 2023, Ministry of Finance notified the Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2024 ("**NDI Amendment Rules**") which

amended the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. NDI Amendment Rules have been introduced to allow Indian unlisted public companies to list their securities directly on international exchanges located in Gujarat International Finance Tec-City ("**GIFT City**"). Also, please note in line with the NDI Amendment Rules, Ministry of Corporate Affairs also issued Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024. Further, please note, as of now there are only two international exchanges located in the Gift City i.e. (i) "*NSE International Exchange*" and (ii) "*Indian International Exchange*".

The NDI Amendment Rules can be accessed by clicking here.

ORALLY INFORMING GROUNDS OF ARREST TO PMLA ACCUSED SUFFICIENT FOR ARRESTS MADE BEFORE PANKAJ BANSAL VERDICT

In *Pankaj Bansal vs. Union of India (2023 SCC OnLine SC 1244),* the Supreme Court held that the grounds of arrest must be communicated in writing to a person arrested under Section 19 of the Prevention of Money Laundering Act, 2002 (**PMLA**). Subsequently, in *Ram Kishore Arora vs. Directorate of Enforcement* (2023 SCC OnLine SC 1682), the Supreme Court held that the law laid down in the *Pankaj Bansal* was applicable prospectively. Based on these two cases, the Delhi High Court has held that oral communication of "grounds of arrest" to the accused amounts to proper compliance with Section 19(1) of the PMLA for arrests made before the Supreme Court's verdict in *Pankaj Bansal*.

Case- *Neeraj Singhal vs. Directorate of Enforcement (2024 SCC OnLine Del 64)*

EXISTENCE OF A CIVIL DISPUTE DOES NOT BAR CRIMINAL PROCEEDINGS

Courts refrain from entertaining criminal proceedings when the matter is purely a civil dispute. However, criminal proceedings cannot be quashed merely because the allegations may also disclose a civil dispute between the parties. Upholding this principle, the **Allahabad High Court** refused to quash a chargesheet on the basis of existence of a civil dispute as the allegations made out cognizable offences.

Case – *Keshav Ugan Jha vs. State of Uttar Pradesh Thru. Prin. Secy. Home Lko. and Anr (2024 SCC OnLine All 141)*

PUBLIC SERVANTS CAN BE PROSECUTED WITHOUT SANCTION FOR UNOFFICIAL ACTS

Under Section 197 of the CrPC, Government's prior sanction is required for prosecution of judges and public servants. However, this is restricted to acts or omissions of such persons in the discharge of their official duties (and not all their acts during service). This has again been clarified by the **Supreme Court of India** in a case where prosecution was initiated for creation of fake property documents. The Court held that the same was not part of the accused's official duty and the chargesheet against him could not be quashed on the ground that the sanction to prosecute was unavailable.

Case- *Shadakshari vs. State of Karnataka & Anr. (2024 SCC OnLine SC 48)*

COURTS SHOULD GIVE THE BENEFIT OF DOUBT TO THE ACCUSED IF A DIFFERENT VIEW IS POSSIBLE

Setting aside a conviction, the Supreme Court held that where the evidence on record indicates that prosecution has failed to prove the accused's guilt beyond reasonable doubt and if a different plausible view can be taken from the one taken by the convicting court, then the appellate court should not shy away from giving the benefit of doubt to the accused.

Case- *Jitendra Kumar Mishra @ Jittu vs. The State Of Madhya Pradesh (2024 SCC OnLine SC 20)*

SC DISMISSES PLEA FOR INCREASE IN NUMBER OF PRISON VISITS BY FAMILY MEMBERS, LAWYERS

The **Supreme Court of India** dismissed a PIL seeking to increase the number of permitted visitations for jail inmates by family members or advocates. Under the current mandate, two visitations per week are allowed for each inmate due to over-crowding in prisons.

Case- *Jai A. Dehadrai and Anr. vs. Government of NCT of Delhi & Anr. (SLP (C) Diary No. 35777 of 2023)*

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