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NEWSLETTER

January 2023

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EXTENSION OF TIMELINE FOR IMPLEMENTATION OF STANDARDIZED INDUSTRY CLASSIFICATION BY CREDIT RATING AGENCIES ("CRAS")

SEBI *vide* circular[1] dated April 01, 2022, had advised CRAs to implement standardized industry classification by September 30, 2022. However, these guidelines were subsequently revised and the timeline for implementation was extended till November 30, 2022, by circular[2] dated September 30, 2022.

The date of applicability of the standardized industry classification has now been extended till December 15, 2022, *vide* SEBI circular dated December 01, 2022.

UPDATED OPERATIONAL CIRCULAR FOR LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS FOR NON-CONVERTIBLE SECURITIES, SECURITIZED DEBT INSTRUMENTS AND/OR COMMERCIAL PAPER

SEBI has issued an operational circular dated December 01, 2022[3] ("**Operational Circular**"), that is a compilation of relevant existing circulars on listing obligations and disclosure requirements for issuers of listed non-convertible securities, securitized debt instruments and commercial paper.

The Operational Circular *inter alia* provides:

(i) the format of submission of statement indicating the utilization of proceeds of listed non-convertible securities to the stock exchanges by the listed entities as required under regulation 52(7) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**");

(ii) Chapter XI, containing the format for review of rating obtained by the listed entity with respect to its non-convertible securities from CRAs registered with SEBI and formats for submissions to be made by listed entity to stock exchanges for interest/ dividend/ principal under regulation 57(1), 57(4) and 57(5) of the LODR;

(iii) Chapter X, containing the provisions applicable to issue of securitized debt instruments under the under the SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.

AMENDMENT TO THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI *vide* notification dated December 05, 2022[4], has amended the LODR by inserting regulation 102 (1A), pursuant to which SEBI may after due consideration of the interest of the investors and the securities market and for the development of the securities market, relax the strict enforcement of any of the requirements of the LODR if an application is made by the Central Government in relation to its strategic disinvestment in a listed entity.

CLARIFICATION – SCHEME(S) OF ARRANGEMENT BY ENTITIES WHO HAVE LISTED THEIR NON-CONVERTIBLE DEBT SECURITIES ("NCDS")/ NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES ("NCRPS") ("DEBT LISTED ENTITIES")

SEBI *vide* circular dated December 09, 2022[5], provides a clarification with respect to circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156 dated November 17, 2022, on "*Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities*

[1] SEBI/HO/MIRSD/CRADT/CIR/P/2022/42
[2] SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2022/134
[3] SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/0000000103
[4] SEBI/LAD-NRO/GN/2022/109
[5] SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/170

(NCDs)/ Non-convertible Redeemable Preference shares (NCRPS)" ("**November 17 Circular**"). It is clarified that the provisions of the November 17 Circular shall not apply to a scheme of arrangement which solely provides for an arrangement between debt listed entity and its unlisted wholly owned subsidiary. However, such debt listed entity shall file the draft scheme of arrangements with stock exchanges for the purpose of disclosure. Chapter XII of the LODR Operational Circular dated July 29, 2022, will accordingly stand modified.

CIRCULAR ON FOREIGN INVESTMENTS IN ALTERNATIVE INVESTMENT FUNDS ("AIFS")

SEBI *vide* circular dated December 09, 2022[6] provides that in terms of regulation 10(a) of the SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**"), AIFS may raise funds from any investor whether Indian, foreign or non-resident Indians by way of issue of units. In this regard, the following is specified:

At the time of on-boarding investors, the manager of an AIF shall ensure the following:

(a) Foreign investor of the AIF is a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A signatory) or a signatory to the bilateral Memorandum of Understanding with SEBI. Further, AIFs may accept commitment from an investor being Government or Government related investor, who does not meet the aforementioned condition, if the investor is a resident in the country as may be approved by the Government of India.

(b) The investor, or its underlying investors contributing twenty-five percent or more in the corpus of the investor or identified on the basis of control, is not the person(s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as –

(i) A jurisdiction having a strategic anti-money laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

(ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the financial action task force to address the deficiencies.

In case an investor who has been on-boarded to scheme of an AIF, subsequently does not meet the conditions specified at above, the manager of the AIF shall not drawdown any further capital contribution from such investor for making investment, until the investor again meets the said conditions. The same shall also apply to investors already on-boarded to existing schemes of AIFs, who do not meet conditions specified above.

AMENDMENT TO THE SEBI (PROCEDURE FOR BOARD MEETINGS) REGULATIONS, 2001 ("BOARD MEETING REGULATIONS")

SEBI *vide* notification dated December 09, 2022[7], has amended regulation 4 of the Board Meeting Regulations to provide for participation of members in meetings through video conferencing or any other audio visual means. Further, Schedule I (Procedure for allowing Members to participate in Board meetings through video conferencing or other audio visual means), has been inserted to the Board Meeting Regulations.

PERFORMANCE BENCHMARKING AND REPORTING OF PERFORMANCE BY PORTFOLIO MANAGERS

SEBI on December 16, 2022, released a circular[8] in order to help investors in assessing the performance of a Portfolio Manager.

As per the circular, in addition to the investment approach IA, an additional layer of broadly defined investment themes called "Strategies" shall be adopted by portfolio managers. These broad strategies would be equity, debt, hybrid and multi-asset. Each IA will be tagged to only one strategy from the specified strategies and this tagging would be at the discretion of the concerned portfolio manager.

The Association of Portfolio Managers in India ("**APMI**") would prescribe a maximum of three benchmarks for each strategy. These benchmarks would reflect the core philosophy of the strategy. While tagging an IA to a particular strategy, the portfolio manager shall select one benchmark from those prescribed for that strategy to enable the investor to evaluate the relative performance of the portfolio managers.

Further, the board of the portfolio managers would be responsible for ensuring the appropriate selection of strategy and benchmark for each IA.

Once an IA is tagged to a strategy or a benchmark, the tagging can be changed only after offering an option to

[6] SEBI/HO/AFD-1/PoD/P/CIR/2022/171
[7] SEBI/LAD-NRO/GN/2022/110
[8] SEBI/HO/IMD/IMD-PoD-2/P/CIR/2022/172

subscribers to the IA to exit without any exit load. The performance track record prior to the change would not be used by the portfolio manager for performance reporting.

The changes in strategy and benchmark would be recorded with proper justification and would be verified as part of the annual audit.

Further, the APMI would prescribe standardised valuation norms for portfolio managers, same as the corresponding norms applicable to mutual funds. Further, the valuation of the portfolio debt and money market securities by portfolio managers would be carried out in accordance with the standardised valuation norms prescribed by APMI. It would empanel valuation agencies for the purpose of providing security-level prices to portfolio managers.

Portfolio managers would mandatorily use valuation services obtained from such empanelled agencies for the purpose of valuation of debt and money market securities in portfolios managed by them.

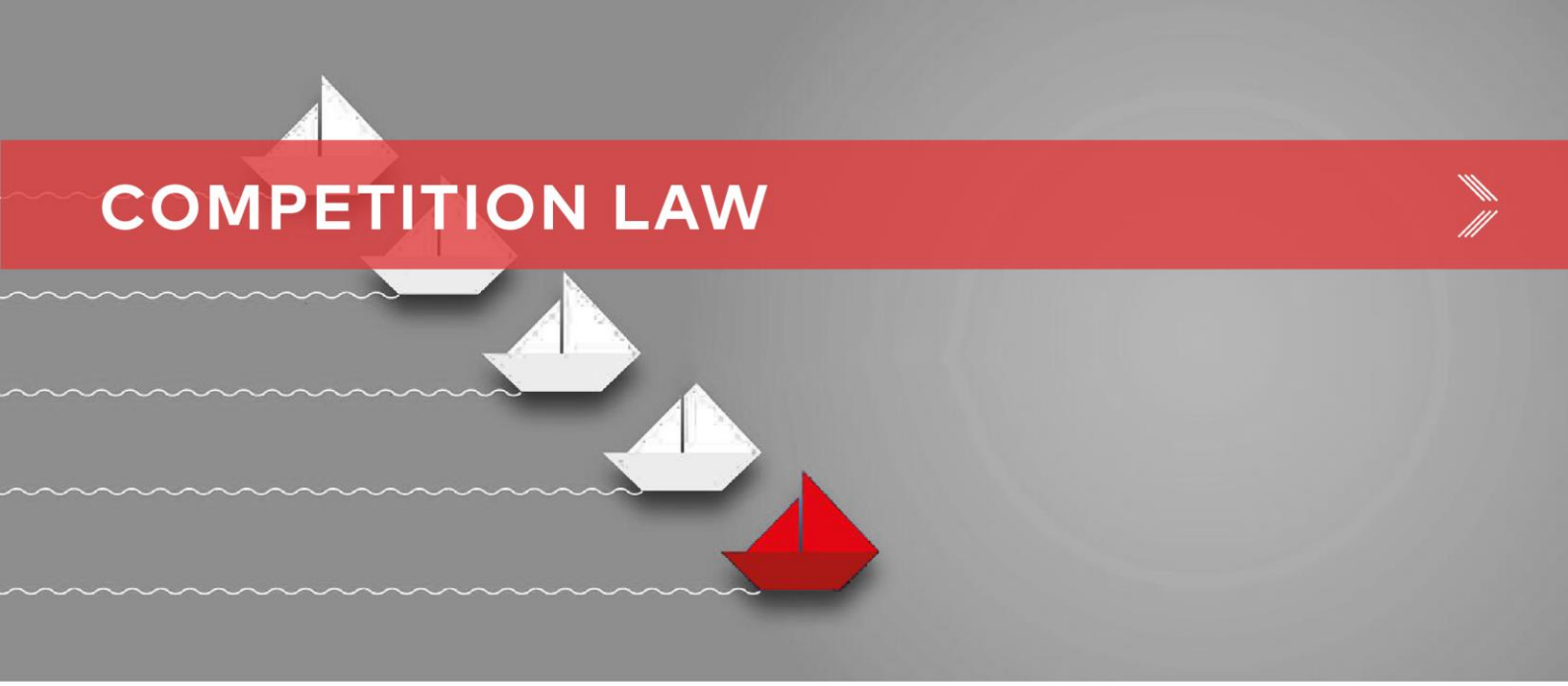
Further, portfolio manager will present the time-weighted rate of return ("**TWRR**") of the IA along with the trailing return of the selected benchmark when advertising or publishing performance of an IA.

The portfolio manager would disclose relative performance of its investment approach in all the marketing material where performance of the concerned investment approach is being presented. Such disclosure of relative performance would include the performance relative to the selected benchmark as well as performance relative to other portfolio managers within the selected strategy.

In addition to Sebi, portfolio managers would submit the monthly reports to APMI within 7 working days from the end of each month. APMI would make available the monthly reports of the portfolio managers on its website in a user-friendly manner facilitating ease of comparison so as to provide access to portfolio level, investment approach level, portfolio manager level and industry level information to all the stakeholders.

Further, APMI would also make available relative performance of each investment approach within the strategy to concerned portfolio manager and also disclose the same on its website.

The new framework would be applicable from April 1, 2023.



PARLIAMENTARY STANDING COMMITTEE ON COMPETITION AMENDMENT BILL, 2022

The Parliamentary Standing Committee on Finance has suggested that the government extend the provisions of settlement under the Competition Amendment Bill, 2022 ("the Bill") to cartels so as to make the initiative more pragmatic. It recommended some changes to the transaction value threshold prescribed in the draft bill to prevent certain mergers and acquisitions (M&As) from coming under the ambit of the Competition Commission of India (CCI). However, it did not suggest any change in the value of the threshold set at Rs. 2,000 crores. The Bill makes it mandatory to notify the CCI of any transactions with a deal value in excess of Rs. 2,000 crores and if either party has 'substantial business operations in India'.

The Standing Committee on Finance has also approved the standard required for establishment of "control" over a target to be the ability to exercise "material influence". However, for more certainty, it has recommended that the CCI must specify what would constitute "material influence" through its regulations. On the CCI approval timelines, the standing committee rejected the proposal to make them more aggressive, and suggested sticking with the current timelines, which are more realistic.

To ensure faster market corrections and to save resources, the bill had proposed a mechanism to settle certain ongoing CCI cases. The committee has now proposed to expand the scope of the settlement mechanism to include cartels. The bill had excluded cartels because these are considered the most pernicious violation of competition law and there already exists a leniency regime for whistle-blowers who are willing to cooperate with the CCI.

The standing committee on finance also made certain recommendations on: (i) limiting the scope of hub-and-spoke cartels to exclude those who did not intend to actively participate in the furtherance of a cartel, such as online platforms acting only as intermediaries or entities merely facilitating the organization of meetings; (ii) not raiding or recording statements under oath made by external legal counsels or independent advocates, which would compromise the principle of attorney-client privilege; (iii) using the rule-of-reason (instead of 'per se') approach to assess an abuse of a dominant position; and (iv) allowing a dominant company to impose reasonable conditions necessary to protect its intellectual property rights. On the issue of a judicial member being a necessity at the CCI, the committee did not make any comment, as the matter is currently pending before the Supreme Court.

DELHI HIGH COURT STAYS CCI ORDER FOR RECOVERY OF ₹223 CRORE PENALTY FROM MAKEMYTRIP

The Delhi High Court on Wednesday stayed the recovery of a ₹223.48 crore penalty imposed by the Competition Commission of India (CCI) on MakeMyTrip (MMT) for abuse of its dominant position in the hotel bookings sector as directed under *MakeMyTrip India Pvt Ltd & Anr v. Competition Commission of India and Ors*.

The Court has granted interim relief to MMT subject to the company depositing 10% of the fine amount. The CCI had in October imposed penalties on Goibibo-MakeMyTrip (Go-MMT) and OYO for anti-competitive behavior. In its information to the CCI, the Federation of Hotel and Restaurant Associations of India had alleged that MMT was giving preferential treatment to OYO on its platform and was restricting access to other competitors.

MMT approached the National Company Law Appellate Tribunal (NCLAT) against the order. However, the NCLAT directed the company to deposit 10% of the penalty as a condition for admission of the appeal. This order was then challenged before the High Court, with MMT arguing the Appellate Tribunal has not granted any interim protection as

regards the remaining 90% of the penalty but directed it to pay 10% of fine merely as a pre-condition for admission of appeal. After hearing the arguments, the High Court observed that a pre-deposit of 10% of the penalty amount could not have been made for mere admission of the appeal. The Court directed the CCI to not recover the whole amount, if 10% of it is deposited.

CCI APPROVES BHARAT BIOTECH INTERNATIONAL-EASTMAN EXPORTS DEAL

The proposed combination related to the acquisition of shares of Eastman Exports Global Clothing Pvt. Limited ("Target Company") by Bharat Biotech International Limited ("Acquirer") which was implemented by way of the share subscription agreement, share purchase agreement ("Proposed Combination"). The Proposed Combination was pursued purely from an investment perspective.

The Acquirer is a public unlisted company and is engaged in the activity of manufacturing of human vaccines and bio-therapeutics. It has a single reportable business segment and is engaged in product-oriented research, development and manufacturing of vaccines and bio-therapeutics. The Target Company is a private limited company and, through its affiliates, is engaged in the business of sourcing and buying (including from India and abroad), designing, manufacturing, marketing, distribution, sales and retailing of yarn, fabric and apparels in the domestic and international markets.

The Proposed Combination exceeds the thresholds prescribed by way of the 'Parties Test' under Section 5(a)(i)(A) of the Competition Act, 2002 ("the Act"). Accordingly, the Proposed Transaction became notifiable to the Competition Commission of India ("CCI") under Section 6(2) of the Act.

The CCI noted in its order that the Proposed Transaction will not cause appreciable adverse effect on competition as there are no horizontal overlaps, vertical and/or complementary links between the activities of the Acquirer and the Target, in India. Thus, the Proposed Transaction was notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).

CCI APPROVES WOODHALL HOLDINGS LIMITED ("WHL") AND UPL SUSTAINABLE AGRI SOLUTIONS LIMITED ("UPL") DEAL

The proposed combination relates to WHL's minority acquisition of certain equity shareholding of UPL SAS (Proposed Transaction). The Proposed Transaction was notifiable to the Hon'ble Competition Commission of India ("CCI") under Section 5(a) of the Competition Act, 2002 ("the Act").

WHL is a newly incorporated special purpose vehicle which is part of the Brookfield Global Transition Fund. UPL is an Indian agro-chemical company engaged in the manufacture, marketing, and sales of various agro-chemicals such as insecticides, herbicides, and anti-sprouting agents, etc. UPL also provide farm mechanization services, insurance and facilitates credit solutions to farmers and retailers respectively, e-commerce services, etc.

The CCI in its order observed that there are no, (a) horizontal overlaps; and/ or (b) vertical/ complementary links between the activities of the Parties (and their respective groups/ affiliates) in India. Accordingly, absent any horizontally overlapping, and/ or vertically/complementary business activities of the Parties in India, the relevant market was not defined by the CCI. Therefore, the Proposed Transaction was notified under the green channel route, in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011 (as amended).

GOOGLES MOVES NCLAT AGAINST CCI'S ORDER ON UNFAIR PRACTICES

Google has approached the appellate tribunal NCLAT challenging the CCI's order on unfair business practices in Android mobile device ecosystem, the company spokesperson said on Friday. The CCI in October, 2022 slapped a steep penalty of Rs. 1,337.76 crore on Google for abusing its dominant position in multiple markets in relation to Android mobile devices and ordered the internet major to cease and desist from various unfair business practices.

According to Google, the CCI's order exposes Indian users to unprecedented security risks, apart from making Android devices in India more expensive, less functional and less safe than they are today. As per the company's petition, not just Google, but even Indian phone manufacturers disagree with the CCI's remedies, given its adverse implications. Sources said that Google has argued that that phone manufacturers like Micromax, Karbonn and others recognize that the CCI's decision makes Android devices more expensive for users, puts Indian users at the risk of malware and makes the Android platform less attractive for app developers to write apps for.

Google has sought a stay, adding that the company believes that CCI failed to appreciate strong evidence on record from OEMs, developers, and users demonstrating that the open Android business model supports competition for the benefit of all stakeholders, including in India specifically.

ORDER REJECTING APPLICATION FOR IMPLEADING THIRD PARTY IS NOT AN INTERIM ARBITRATION AWARD

The Hon'ble High Court of Delhi in **National Highways Authority of India v. Lucknow Sitapur Expressway Ltd.**[9] has held that an order of the Hon'ble Arbitral Tribunal rejecting the application for impleading a party to the arbitration is not an interim award but merely a procedural order, therefore, the same cannot be challenged under Section 34 of the Act. In the said case, the Petitioner has challenged the Impugned order of the Hon'ble Arbitral Tribunal under section 34 of the Arbitration and Conciliation Act 1996. The said order rejected the application for impleading the State of U.P. as a party to the arbitration. The Respondent contended that the petition is not maintainable for the reason that the impugned order is merely a procedural order that fails to satisfy the requirement of an award as given under section 31 of the Arbitration and Conciliation Act 1996.

The Hon'ble High Court of Delhi observed that an arbitral tribunal, during the continuance of arbitral proceedings, passes many orders and for an order to fall within the rubric of interim award it has to necessarily have certain features. The Court further held that for an order to be understood as an award, it has to be a decision on the merits of the dispute that conclusively determines a substantive claim, issue or question that exists between the parties. Accordingly, the Court rejected the petition as non-maintainable.

AFTER PARTICIPATING IN THE ARBITRAL PROCEEDINGS WITHOUT ANY PROTEST, A PARTY CAN'T OBJECT TO JURISDICTION LATER

The Hon'ble High Court of Madhya Pradesh in **State of Madhya Pradesh v. Nathuram Yadav**[10] has held that a party which has participated in the arbitration proceedings without any protest or challenge as to the jurisdiction of the tribunal cannot for the first time challenge the jurisdiction of the tribunal under Section 37 of the Arbitration & Conciliation Act, 1996. In the case, the Respondent approached the Hon'ble High Court for the appointment of the arbitrator. The Court appointed the arbitrator under Section 11 of the Arbitration & Conciliation Act, 1996. The arbitrator awarded a sum in favour of the Respondent. Aggrieved by the award, the Appellant unsuccessfully challenged it under Section 34 of the Arbitration & Conciliation Act, 1996 on the ground that the award has been passed without jurisdiction as the contract between the parties is a works contract which provides that only the tribunal constituted therein can adjudicate a dispute, therefore the tribunal didn't have the jurisdiction to preside over the matter. The Respondent contended that any objection regarding the non-jurisdiction is to be raised at the earliest opportunity, however, the Appellant has raised it for the first time at the belated stage of appeal, therefore, the objection must be rejected.

The Hon'ble High Court of Madhya Pradesh observed that the Appellant has never raised the issue of non-jurisdiction either before the arbitral tribunal or before the Court. It also observed that the Appellant has never challenged the decision of the High Court in appointing the arbitrator nor the decision of the arbitral tribunal provided under the special act which had returned the parties' application on the ground that the dispute can be settled under the Arbitration & Conciliation Act, 1996 as the parties have an independent arbitration agreement. The Court also observed if no objection to the jurisdiction of the arbitration was taken at the relevant stage, the award may not be annulled only on that ground. Accordingly, the Court dismissed the appeal.

[9] O.M.P. (Comm) 477/2022

[10] Arbitration Appeal No. 11 of 2017

CRIMINAL PROCEEDINGS CANNOT BE INITIATED FOR RECOVERY OF THE AMOUNT DUE UNDER AN ARBITRATION AWARD

The Hon'ble High Court of Calcutta has held in **Oil India Limited v. Ashok Kumar Bajoria**[11] that initiating a criminal proceeding to recover part of the non-paid amount settled pursuant to the Arbitration Award by giving civil dispute colour of a criminal proceeding, is an abuse of the process of law. In the said case, a complaint was filed pertaining to an arbitral award passed in the favour of the Respondent. It was alleged there that arbitral proceedings were initiated at the instance of the complaint against the petitioner for non-payment of his dues in respect of the contract executed between the parties. The parties entered into a post-award settlement agreement and the award was not put into execution. Accordingly, the respondent raised a tax invoice keeping the base amount as Rs. 7,18,87,644/-. As per the mandatory amount of the Central Goods and Services Tax Act, 2017 and the West Bengal Goods and Services Tax Act, 2017, 9% was charged in the said tax invoice. In reply, the Petitioners refused to pay the GST over and above the awarded amount and stated that the base amount would be inclusive of the GST costs as well. Due to the disagreement between the parties, the Respondent intimated to the Petitioners to consider the tax invoice as withdrawn. However, on 10.01.2020, the Petitioner deposited in the account of the Respondent company an amount of Rs. 6,09,21,732.20 as the base amount after deducting the GST amount of Rs. 1,09,65,912/-. Aggrieved by the deduction made by the Petitioners, the Respondent issued a legal notice for the return of deducted amount along with penal interest. On failure of the Petitioners to comply with the demand, the Respondent filed a criminal complaint on which the Metropolitan Magistrate took cognizance and issued process against the petitioners under Sections 120B/406/420/465/468/471/477A of IPC. Aggrieved with the issue of process, the Petitioners filed the revision petition before the High Court.

The Hon'ble High Court of Calcutta noted that after an overall assessment of the factual aspects of the case, the present case was initiated with a view to recover a part of the non-paid amount by giving a civil dispute the colour of a criminal proceeding which according to the opinion of this court was an abuse of the process of law.

[11] CRR 1177 of 2021.

EMPLOYMENT LAW

EMPLOYEES' STATE INSURANCE CORPORATION ISSUES GUIDELINES FOR DISPOSING OF GRIEVANCES ON CENTRALISED PUBLIC GRIEVANCE REDRESS AND MONITORING SYSTEM PORTAL

The Employees' State Insurance Corporation ("**ESIC**"), vide its notification dated December 1, 2022, has directed its officers that all grievances should be settled qualitatively within the time frame of 30 (Thirty) days. ESIC has also directed to take appropriate action against the erring officers for non-adherence to the instructions issued with respect to the grievance redressal.

In view of the above, the officers have been advised to comply with the following points while disposing of grievances on Centralised Public Grievance Redress and Monitoring System Portal ("**CPGRAMS Portal**"):

- CPGRAMS Portal should be monitored daily and not pertaining cases should be returned on the same day. Appropriate reply to the complainant should be given through letter/email before disposing of the grievance.
- The satisfaction of the complainant should be confirmed telephonically and the same should be recorded at CPGRAMS Portal while disposing the case.
- One line reply should be avoided in the CPGRAMS Portal and instead summary of contents of the reply received from the branch / subordinate office should be written while attaching the relevant document. Lines such as "Please find the attachment" should not be used.
- Inter-branch communication should not be posted in the reply forwarded by Public Grievance Officer ("**PGO**"). PGO should reply on the CPGRAMS Portal on behalf of the office/region/hospital. Details of PGO should be updated immediately on the CPGRAMS Portal in case of change of PGO.
- Inappropriate language / authoritative language should not be used in the reply given to the complainant. Hindi language must be used to answer / reply to grievances received in Hindi.
- While settling reimbursement cases, complete details of the amount claimed, rate, deduction made as per Central Government Health Scheme, amount disbursed etc. should be informed to complainant properly to avoid recurrence of grievances.
- While replying to complainant or giving comments on the CPGRAMS Portal, abbreviations should be avoided, and instead full forms are to be used.
- Senior most administrative officer posted in the office/region/hospital should be nominated as PGO. A link officer may also be nominated to ensure everyday availability of PGO in the office.
- Special attention may be given to the cases pending for more than 20 (Twenty) days on the CPGRAMS Portal and immediate necessary action should be taken for resolution of such cases so that the case can be disposed within the prescribed time limit of 30 (Thirty) days.

ESIC OFFICE OF HARYANA GOVERNMENT ISSUES INSTRUCTIONS ON COMPLIANCE WITH EMPLOYEES' STATE INSURANCE ACT, 1948

The Haryana Regional Office of ESIC has issued a notification, dated December 1, 2022, on online registration through Ministry of Corporate Affairs ("**MCA**") portal and inspection of units. MCA registered companies/ establishments/units/ factories must ensure compliance with various applicable provisions of the Employees' State Insurance Act, 1948 ("**ESI Act**") from the date they reach the threshold limit of employees. Companies registered through MCA portal that do not fall under the purview of the statutory provisions of

the ESI Act have been given certain exemptions. Such companies do not need to undertake compliance for the next 6 (Six) months or till they reach the threshold of ESIC coverage, whichever is earlier. If these companies do not reach the threshold in these 6 (Six) months, they will have to login in the ESIC website and extend their dormant mode. If they fail to extend their dormant mode, the registration will automatically be activated, and the company will have to comply with the ESI Act. All concerned units must comply with the above notification or may face legal action in default.

GOVERNMENT OF TAMIL NADU ENHANCES RATES OF CONTRIBUTION TO THE LABOUR WELFARE FUND

The Government of Tamil Nadu, vide its notification dated December 2, 2022, has further amended the Tamil Nadu Labour Welfare Fund Rules, 1973. According to the amendment, every employee shall contribute INR 20 (Rupees Twenty) per year to the labour welfare fund. The government shall also contribute to the fund, INR 20 (Rupees Twenty) per year and every employer will contribute INR 40 (Rupees Forty) per year to the fund in respect of each employee.

CLARIFICATION REGARDING "MAJOR AND MINOR CORRECTIONS" IN MEMBERS' PROFILES BY EMPLOYEES' PROVIDENT FUND ORGANISATION

The Employees' Provident Fund Organisation, vide its letter dated December 7, 2022, has issued a clarification pertaining to "major" and "minor" corrections in members' profiles as requested by joint applicants (employers and employees).

Minor corrections include:

- expanding the name/surname from abbreviation to full name or vice versa without changing the first letters;
- If father's/ husband's name is inserted as middle name in Aadhar;
- If there is only change in surname of female employees after marriage.

Major corrections, on the other hand, include:

- Any case not falling in minor corrections, or a change leading to complete change in names, or where correction is required in more than 2 (Two) fields. Such corrections shall not be done online, but only by obtaining proper documentary evidence.
- The employer will also have to produce original records of services and wages on the basis of which such change request is being certified.
- For closed establishments, where employer is not traceable, the attesting authority like Gazette Officer, Magistrate, Member of Parliament, etc. shall make such attestation after exercising due care and caution and ensuring proper verification.
- Further, for closed establishments, the applicant will be required to produce evidence such as appointment letter, etc. to correct name in Form 23.

CHANGE OF DOMAIN NAME OF ESIC WEBSITE

The ESIC, vide its letter dated December 7, 2022, has informed that the domain name of ESIC websites, i.e., "www.esic.nic.in" and "www.esic.in" have been changed to "www.esic.gov.in" which is a new unified website and all information related to ESIC and its schemes can now be accessed through it.

ENFORCEMENT OF PROVISIONS OF THE ESI ACT ACROSS CERTAIN DISTRICTS IN MADHYA PRADESH, HIMACHAL PRADESH AND TAMIL NADU

The Ministry of Labour and Employment has enforced the following provisions of the ESI Act, effective from January 1, 2023:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV (*provisions pertaining to contributions*) of ESI Act;
- Sections 46 to 73 of Chapter V (*provisions pertaining to benefits)* of ESI Act; and
- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI (*provisions pertaining to adjudication of dispute and claims*) of ESI Act;

In all the areas of Sehore, Shajapur and Guna districts in the state of Madhya Pradesh vide its notification dated December 15, 2022; and in all the areas of Chamba, Kullu, Hamirpur, Kinnaur and Lahaul & Spiti districts in the state of Himachal Pradesh as well as all the areas of Thiruvallur district, in addition to the already notified areas of the said district, in the state of Tamil Nadu, vide its notifications dated December 23, 2022.

THE REVISION OF MINIMUM WAGES IN THE STATE OF KERALA

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

REGISTRATION AND LICENSING SERVICES THROUGH SINGLE WINDOW 'SILPASATHI' PORTAL IN WEST BENGAL

The Government of West Bengal vide its notification dated December 27, 2022, has mandated that all applications for registrations and licenses under various labour legislations should be made through a single state window 'Silpasathi'

portal (www.silpasathi.wb.gov.in). This portal will have the provisions for investors to obtain licenses/registrations/approvals/no-objection certificates online for setting up industries and operation of business in the state. The following 13 (Thirteen) services shall exclusively be integrated with the portal:

(i) License under the Factories Act, 1948;
(ii) Auto renewal of license under the Factories Act, 1948;
(iii) Approval of plan and permission to construct/extend/or take into use any building as a factory under the Factories Act, 1948;
(iv) Registration of boilers manufactures under the Boilers Act, 1923;
(v) Renewal of registration of boilers manufactures under the Boilers Act, 1923;
(vi) Registration of boilers under the Boilers Act, 1923;
(vii) Renewal of registration of boilers under the Boilers Act, 1923;
(viii) License for contractors under the provision of the Contracts Labour (Regulation and Abolition) Act, 1970;
(ix) Auto renewal of license for contractors under provision of the Contract Labour (Regulation and Abolition) Act, 1970;
(x) Registration under the Shops and Establishment Act, 1963;
(xi) Registration of principal employer's establishment under provision of the Contract Labour (Regulation and Abolition) Act, 1970;
(xii) Registration under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and
(xiii) Registration of principal employer's establishment under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

All applications must be submitted through the portal from January 1, 2023, and any registrations/licenses/approvals before January 1, 2023, will be issued from the respective departmental portals.

EXEMPTION UNDER THE HIMACHAL PRADESH SHOPS AND COMMERCIAL ESTABLISHMENT ACT, 1969

The Government of Himachal Pradesh (Department of Labour and Employment) vide its notification dated December 28, 2022, has exempted all shops and establishments from the operation of Section 8 (*provision pertaining to 'intervals for rest or meals'*), Section 9 (*provision pertaining to 'opening and closing hours'*), and Section 10 (*provision pertaining to 'close-day'*) under the Himachal Pradesh Shops and Commercial Establishment Act, 1969. This exemption is effective from December 28, 2022, till 12.00 A.M. (midnight) of January 2, 2023.

ENERGY & INFRASTRUCTURE

ENERGY

THE ENERGY CONSERVATION (AMENDMENT ACT), 2022

The Energy Conservation (Amendment) Act, 2022 was notified on December 19, 2022.

The key amendments introduced are:

- Energy has been defined to mean any form of energy derived from fossil fuels or non-fossil sources or renewable sources;
- Contemplates mandatory consumption of a minimum share of non-fossil sources by 'designated consumers' towards their energy demands;
- Confers power on the Central Government to specify the carbon credit trading scheme and also the minimum share of consumption of non-fossil sources by designated consumers as energy or feedstock, provided different share of consumption may be specified for different types of non-fossil sources for different designated consumers;
- Any other person, other than the designated consumer whose energy consumption is more than the prescribed norms and standards, has been allowed to purchase energy saving certificate or carbon credit certificate on voluntary basis;
- The Central Government, or any agency authorised by it can issue carbon credit certificate to the registered entity which complies with the requirements of the carbon credit trading scheme. The said registered entity will be able to purchase or sell the carbon credit certificate in accordance with carbon credit trading scheme so specified by the Central Government;
- of section 14;
- Provides for the energy conservation and sustainable building code to be notified;
- Confers power on the Central Government to specify equipment/appliances or class of equipments or appliances as well as vehicle, vessel, industrial unit, building, building or establishment or class thereof, for the purpose of the Act
- Provides for establishment of fund by the Stat Government for the promotion of efficient use of energy and its conservation within the State

MINISTRY OF POWER ISSUES ORDER FOR WAIVER OF ISTS CHARGES ON TRANSMISSION OF ELECTRICTY GENERATED FROM NEW HYDRO-POWER PROJECTS

In order to realise the Government of India's commitment to achieve its power requirement from renewable energy sources, the Ministry of Power ("**MoP**"), on December 2, 2022, issued an order for the waiver of Inter-State Transmission system ("**ISTS**") charges on transmission of electricity generated from new hydro-power projects. The said waiver is already available to solar and wind power projects.

The Government of India aims to achieve 500 GW of generation capacity from non-fossil energy based sources by 2030. Hydro power projects, being clean, green and sustainable and also essential for the integration of solar and wind power, the Government of India had in March, 2019 declared hydro power projects as renewable sources of power. However, waiver of inter-state transmission charges, provided to solar and wind projects had not been extended to hydro power projects.

INFRASTRUCTURE

ACCEPTANCE OF E-BANK GUARANTEE ("E-BG") AND PHYSICAL BANK GUARANTEE AS BID SECURITY AND PERFORMANCE SECURITY

National Highways Authority of India ("**NHAI**") vide policy circular bearing number 3.1.36/2022 dated December 05, 2022 ("**Policy Circular**") amended the relevant clauses of the standard documents of the engineering procurement and construction ("**EPC**"), hybrid annuity model ("**HAM**") and build operate transfer (toll) ("**BOT (Toll)**") projects to accept bid security and performance security in the form of e-BG from the date of the Policy Circular, in addition to account payee demand draft and banker's cheque.

This move was effected in light of the amendment to rules 170(i) and 171(i) of the General Financial Rules, 2017 ("**GFRs**") related to bid security and performance security. Accordingly, the Ministry of Roads Transport and Highways ("**MoRTH**") had also requested all the implementing agencies of MoRTH and Public Works Departments of states and union territories dealing with national highways to accept only e-BG in place of physical bank guarantees from August 31, 2022.

Subsequently, in light of the limited number of banks issuing e-BG, NHAI, vide policy circular bearing number 3.1.38/2022 dated December 23, 2022 ("**NHAI Policy Circular**") has decided to accept physical bank guarantee as bid security and performance security till March 31, 2023, for HAM, BOT(Toll) and EPC projects.

RELIEF FOR CONTRACTORS AND DEVELOPERS OF ROAD SECTOR IN VIEW OF THE COVID-19 PANDEMIC

NHAI, vide circular bearing number 18.85/2022 dated December 05, 2022, reiterated the extension of relief measures provided by MoRTH ("**NHAI Circular**"). MoRTH, vide circular bearing number COVID-19/RoadMap/JS(H)/2020(183777) dated December 01, 2022 ("**Circular**"), has provided further extension of the following relief measures for 5 (five) months from November 01, 2022, to March 31, 2023:

- To improve the liquidity of funds available with the contractors and concessionaires, the relaxation in Schedule H/G (which pertain to contract price weightages for the particular agreement) of model concession agreements for road projects has been extended till March 31, 2023.

- The arrangement, with respect to the direct payment to the approved sub-contractor through escrow account, may be continued till March 31, 2023, or till the completion of the work of the sub-contractor, whichever is earlier.

- Reduced performance security of 3% (three percent) of the value of the contract for all existing contracts (excluding contracts under dispute where arbitration or court proceedings have started or been completed) will be applicable to all tenders/contracts issued/concluded till March 31, 2023.

- Retention money can be continued to be released in proportion to the executed work and no reduction of retention money may be made from the bills raised by the contractor till March 31, 2023.

- For HAM/BOT contracts, if the concessionaire is not in breach of the contract, the performance guarantee may be released on pro-rata basis in terms of such contract.

AMENDMENT TO SCHEDULE H OF THE STANDARD EPC AGREEMENT FOR NATIONAL HIGHWAYS AND CENTRALLY SPONSORED ROAD WORKS

MoRTH, vide circular bearing number RW/NH-33044/88/2021-S&R(P&B)/DNT(215840) dated December 19, 2022 ("**Amendment Circular**"), made certain amendments to the standard EPC agreement for National Highways and Centrally Sponsored Road Works ("**EPC Agreement**").

Payments under EPC projects are made in accordance with the weightages stipulated under Schedule H of the EPC Agreement. In order to improve the cash flow and liquidity situation of the contractors, the Amendment Circular introduced sub-stages in Schedule H of the EPC Agreement for making payments against casting of precast items like bridge girders and reinforced earth wall facia panels or blocks.

The following amendments were introduced in relation to minor bridges and underpasses/ overpasses as well as major bridge works, ROB/RUB and structures (collectively "**construction structures**").

- Payment of super-structures in relation to the construction structures: The payment for super structures for the above-mentioned construction structures shall be made on a pro-rata basis, on the completion of a stage. As per the amendment, if precast girders or segments used, on casting of all such girders and segments for at least one span, 40% (forty percent) of the actual cost of such precast girders/segments determined based on the schedule of rates ("**SoR**") prevalent on the base date within 30 (thirty) days of

submission of the bill for the same shall be excluded. The contractor shall be required to submit an indemnity bond for the same. Moreover, it is stipulated that if contract price is lower or higher than the estimated project cost in terms of the request of proposal ("**RFP**"), then the SoR rates shall be reduced or increased in the same proportion accordingly. Balance payment shall be made after erection or launching of these elements as per stage payment stipulations.

Payment of approaches in relation to the construction structures: The payment for approaches for the aforementioned construction structures, shall be made on a pro-rata basis on completion of both approaches. Any payment made in pursuance to use of reinforced earth wall with facia panels or blocks, 40% (forty percent) of the actual cost of such precast girders/segments determined based on SoR prevalent on the base date within 30 (thirty) days of submission of the bill for the same shall be excluded. The contractor must submit an indemnity bond for the same. In case the contract price is lower or higher than the estimated project cost as per the RFP, then the SoR shall be reduced or increased in the same proportion accordingly. Balance payment shall be made after erection of or launching of these elements as per stage payment stipulations.

CLARIFICATION REGARDING APPLICABILITY OF GOODS AND SERVICES TAX ("GST") ON CONSTRUCTION OF ROADS UNDER HAM

NHAI, vide circular bearing number 3.3.27/2022 dated December 23, 2022 ("**NHAI GST Circular**"), issued certain clarifications in relation to applicability of GST on HAM projects. The key clarifications issued in the NHAI GST Circular are provided hereinbelow:

GST under change in law on the EPC portion of the HAM project: Taking into consideration the views of various stakeholders involved, NHAI has decided that payment for change in law impact or amount attributable to EPC cost shall be paid at the time of completion of construction work. The balance amount of change in law impact shall be paid from the annuity. The said annuity shall be calculated in accordance with the procedure prescribed under the NHAI GST Circular.

Clarification in respect of change in GST rate from 12% (twelve percent) to 18 % (eighteen percent) vide circular number NHAI/F&A/GST-2021-22/SM-Vol.IV dated September 20, 2022 ("**GST Circular**"): The applicability of change of rate from 12% (twelve percent) to 18% (eighteen percent) shall be governed according to time of supply under section 14 of the Central Goods and Services Tax Act, 2017.

THE INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS ("FIDIC") ANNOUNCES WORK ON DELIVERING NEW ENGINEERING PROCUREMENT AND CONSTRUCTION MANAGEMENT ("EPCM") CONTRACT

FIDIC publishes standardized contracts which are used in the global construction and engineering industry. Over the years, FIDIC model contracts have been used to all over the world by various contractors for several successful and major projects.

FIDIC, in its ninth issue of the 'Contract Users' Newsletter' released in December 2022, announced that a new FIDIC task group will soon start work on the development of a new EPCM contract. The new EPCM contract is expected to be launched around the end of 2023.

PAYMENTS FRAUD REPORTING FEATURE MIGRATED TO DAKSH

Earlier forming a part of the Central Payments Fraud Information Registry (CPFIR), the Electronic Data Submission Portal (EDSP) is being migrated to DAKSH which is the RBI's advanced supervisory monitoring system, with effect from January 01, 2023. The step has been taken to streamline reporting, enhance efficiency and automate the payments fraud management process. While the reporting format remains unchanged, the user entities will not be able to report any payment frauds via EDSP, once the migrated portal on DAKSH goes live.

DSK View: *Consolidation of the payment fraud reporting mechanism from CPFIR to DAKSH is a welcoming move, predominantly with respect to the wide range of facilities that DAKSH provides in comparison to CPFIR. Apart from the bulk upload facility for the purpose of reporting payment frauds, DAKSH also provides the maker-checker facility, online screen-based reporting, bandwidth for requesting additional information, facility to issue alerts or advisories, generation of dashboards and reports, amongst others.*

RELEASE OF MEDIUM-TERM STRATEGY FRAMEWORK FOR 2023-25

The RBI released the Medium-term Strategy Framework for 2023-2025 (*Utkarsh 2.0*) on December 30, 2022. The report covers the objectives for the period of 2023-25 which aims to focus on taking steps which will help companies in adapting to change in socio-economic environment of India. The objectives of the Utkarsh 2.0 policy are as follows:

a. Excellence in performance of its functions;
b. Strengthened trust of citizens and Institutions in the RBI;
c. Enhanced relevance and significance in national and global roles;
d. Transparent, accountable and ethics-driven internal governance;
e. Best-in-class and environment-friendly digital and physical infrastructure; and
f. Innovative, dynamic and skilled human resources.

One of the core visions recorded in its report are 'development of an appropriate framework for management of the FinTech ecosystem in the country,' apart from 'phased introduction of the Central Bank Digital Currency' and 'strengthening the resilience, integrity, and efficiency of the financial market infrastructure with a focus on the deepening digital payments'. The report further records that the framework has been developed with the objective of increasing the transparency and infrastructure which is most likely to be achieved with the use of technology in data analytics, research based decision-making process and integration of information.

DSK View: *Utkarsh 2.0 is largely based on the principles of Utkarsh 1.0 itself where the RBI inter alia aspired to focus on improvement of digital payment mechanism and enhance use of artificial intelligence and machine learning tools for data analytics. It, thus, becomes critical to analyse what was the impact, public response, and the scope of improvement that Utkarsh 1.0 has. Public consultation could become an effective tool to gauge the general sentiment of society vis-à-vis the digital ecosystem of the county. One of the primary difficulties being faced by companies is to adapt to the ever-changing regulatory landscape. However, the key responsibility areas listed under the framework does not specify any steps to address this issue. Utkarsh 2.0 is boosted with the fuel of digitalizing the India landscape of fintech but it remains to be seen how it impacts the dynamically fluctuating economy of the present time, which looms in the precariousness of another COVID-19 wave.*

"INSTRUCTED EYE" AND NOT "AVERAGE INTELLIGENCE OF A CONSUMER", IS THE TEST FOR DESIGN PIRACY

By way of a detailed order, the Delhi High Court had refused to grant interim relief to the Plaintiff, Diageo Brands BV, in respect to its registered design for a bottle shape. Concurring with the submissions of the Defendants, the Court held that sweep of infringement analysis in a design matter cannot exceed the sweep of the novelty, as claimed in the design and on the basis of which the design was granted registration. Heavily relying upon the judgment passed in the case of *B. Chawla v. Bright Auto Industries* [AIR 1981 Del 95 (DB)], the Court observed that

(i) Trivial changes would not render the design new or original.
(ii) Infringement and novelty are both to be tested by the instructed eye, which is aware of prior art.
(iii) Introduction of ordinary trade variants did not render a design new or original.
(iv) The court was required to strike a balance, by recognising the competing interests of novelty and originality being required to achieve statutory recognition and the interest of the trade and the rights of the person engaged in the trade, both of which were required to be protected.

Among several important observations, the Court had observed that in order to establish its claim to registration, the suit design has to be shown as being novel and original vis-à-vis prior art. Familiarity with prior art, of the instructed eye, therefore, necessarily presages familiarity of the points on which the suit design is novel and original vis-à-vis prior art. An ignorant observer, who is uninformed of the state of prior art and is merely comparing the design of the plaintiff with the product of the defendant, cannot, therefore, be the person from whose view point the aspect of infringement is examined. The Court clarified that If the aspects of novelty and originality, on the basis of which the plaintiff claims that the suit design is novel and original vis-à-vis prior art also serve to distinguish the impugned design from the suit design, the impugned design cannot, prima facie, be regarded as infringing in nature.

DSK View: *The Judgment supports fair competition based on legitimate copying of designs which are common to trade or are prior art. The Court has reaffirmed the judicial point of view that design piracy is not similar to trademark infringement and hence the test of average intelligence does not apply in design matters.*

[Diageo Brands B.V. & Anr. v. Alcobrew Distilleries India Private Limited, 2022/DHC/005661]

FABRICATION OF COURT/ TRIBUNAL ORDERS, A CONTEMPT TO JUSTICE

The Delhi High Court has initiated criminal contempt proceedings against defendants in a suit when the Registrar (Vigilance)'s inquiry revealed that the Defendants placed a fabricated IPAB order on record as part of a compilation of documents.

Learned counsel for the Plaintiff questioned the genuineness and authenticity of the order and submitted that the order sought to be produced is a fabricated document, since no record of the order or any proceedings relating thereto exists before the erstwhile IPAB. Pursuant to the same, Court directed Registrar (Vigilance) to conduct an inquiry into the genuineness/authenticity of the IPAB order and noted that the order submitted by the defendant is not a genuine/authentic order.

After pursuing the complete report, the Delhi High Court observed that any person who takes recourse to deflect the course of judicial proceedings and interferes with

administration of justice, must be dealt with a heavy hand, and filing of such forged and fabricated documents in a Court to obtain relief is interference with administration of justice. It was further stated that the Contempt of Courts Act is one of the several ways by which process of law can be saved from being hindered or thwarted so as to further the cause of justice.

[Ab Mauri India Private Limited v. Vicky Aggarwal & Ors. (CS (COMM) 810/2022)]

IMPORTANCE OF A PROPER REASONING IN ANY ORDER

While quashing a patent rejection order, the Calcutta High Court has reminded the administrative authorities the importance of 'Ratio Decidendi'. The Controller was asked to rehear the matter and pass a reasoned order after granting a right of hearing to the appellant.

The Court stressed upon the need to meet the twin tests of "why" and "what". It is the "why" which sustains the "what". Reasons are the safeguard against the *ipsi dixit* of the decision-making process. They discuss how the mind has been applied to the matter in issue and convey the nexus between the matters which have been considered and the conclusion based thereon. The justification and the reasonableness of a conclusion can only depend on the reasons given in support thereof.

DSK View: *The presence of a proper reason most necessarily suggests application of mind in any case. More so the ratio decidendi helps the appellate court understand the circumstances under which the order was passed and aids the holding party in getting it swiftly executed.*

[Toyo Engineering Corporation v. The Controller General of Patents Designs and Trade Mark and Anr (Aid/17/2022)]

ONLINE GAMING AND E-SPORTS GETS RECOGNITION UNDER THE AMENDED GOVERNMENT OF INDIA (ALLOCATION OF BUSINESS) RULES, 1961

The Central Government vide notification dated December 23, 2022 (accessible here) amended the Government of India (Allocation of Business) Rules, 1961 ("Amendment") to include 'Matters relating to online gaming' as a subject under the Ministry of Electronics and Information Technology ("MeitY"). The notification further added 'e-Sports as part of multi-sports events' as a subject under the Ministry of Youth Affairs and Sports.

Pursuant to the said notification, the Ministry of Electronics and Information Technology (MEITY) and the Ministry of Youth Affairs and Sports (MYAS) have been appointed as the nodal ministry and given the charge to draft laws, implement law post enactment, frame rules and formulate the policy for matters relating to online gaming and e-sports as part of multi-sports events, respectively.

DSK View: *While matters relating to gaming continues to be dealt by the Sports Ministry, online gaming would be regulated by the MEITY.*

FIRST AWARD ISSUED UNDER THE PLURILATERAL MPIA ARRANGEMENT

In 2019, the European Union ('EU') brought a WTO dispute (WT/DS591/R) against Columbia challenging the imposition of anti-dumping duties by Columbia on imports of frozen fries from Belgium, Germany and the Netherlands. Subsequently, the WTO Panel issued its report in October 2022 (available here) wherein it ruled in EU's favour and stated that the investigation, conducted by the Columbia was flawed and the imposition of anti-dumping duties was not consistent with the obligations provided under the WTO covered agreements.

In normal circumstances, a member country not satisfied with a Panel report has an option to file an appeal before the WTO Appellate Body. However, as this body is currently dysfunctional, few member countries which includes Columbia as well as the EU had come forward to create Multi-Party Interim Appeal Arbitration Arrangement ('MPIA'). The MPIA is an alternative mechanism, under Article 25 of the WTO Dispute Settlement Understanding ('DSU'), for resolving WTO disputes that are appealed by a member country in the absence of a functioning WTO Appellate Body. The MPIA embodies the WTO Appellate Review Rules. Hence, in cases involving a dispute between the Members, it will supersede the previous appeal processes and apply to future disputes between Members. Readers may refer to the October edition of our monthly newsletter wherein this issue has been covered in greater detail.

In the present dispute, Columbia being not satisfied with the Panel report invoked the process of appeal under MPIA pursuant to Article 25 of the DSU. Thus, the frozen fries dispute between the EU and Colombia became the first-ever trade dispute appealed before the MPIA. The appeal arbitrators governing the dispute under the MPIA were drawn at random from a standing pool of ten individuals having recognised authority and demonstrated expertise. Subsequently, the hearing in this MPIA Arbitration was held on 15 November 2022 pursuant to the Agreed Procedures for Arbitration under Article 25 of the DSU which were notified by the parties (WT/DS591/3/Rev.1) and the Additional Procedures for Arbitration adopted by the Arbitrators.

On 21 December 2022, the Award of the Arbitrators (WT/DS591/ARB25) was notified to the WTO Dispute Settlement Body, the Council for Trade in Goods, and the Committee on Anti-Dumping Practices and circulated to Members (available here). The issuance of the Award was well within the 90-day deadline set out in the MPIA, which would have fallen on 4 January 2023.

The final and binding Award of the Arbitrators confirmed that Colombia's anti-dumping investigation concerning imports of frozen fries was flawed in several respects, including the calculation of the dumping margin and the injury analysis. Colombia would have to bring its measures in compliance with the Award, either immediately or within a time limit agreed with the EU or set by the MPIA arbitrators. In the event, Colombia does not comply with the Award, the EU can get WTO authorisation to adopt countermeasures.

***DSK View**: Even though the WTO Appellate Body is currently limped by a long-running blockage on its appointments, Appeals can now be adjudicated in accordance with WTO rules under the MPIA. The extant Award is a clear example that WTO Appeals can be resolved quickly and efficiently as per the arbitration procedures agreed by the participating WTO Members. The MPIA Arrangement also safeguards the Member's right to binding, two-tier and independent dispute settlement and provides an interim back-up for the multilateral rules-based trading system by avoiding*

situations wherein appeals by the Members were going into the void.

AMENDMENT OF THE ENERGY CONSERVATION ACT, 2001

During the COP-26 summit, India made commitments on reducing total projected carbon emissions by one billion tonnes by 2030 and reducing the carbon intensity of the economy by 45% by 2030. Additionally, it also aimed to meet 50% of its energy requirements from renewable energy.

Against this backdrop, the Energy Conservation (Amendment) Bill, 2022 was introduced before the Parliament in August 2022. The Bill sought to amend the Energy Conservation Act, 2001 to facilitate the achievement of COP-26 goals and to introduce carbon credit trading to ensure faster decarbonisation of the Indian economy.

On 19 December 2022, the Energy Conservation (Amendment) Act, 2022 ('Amended Act') was notified (available here). As per the text of Notification, the following amendments have been made:

1. As per Section 14(a) of the Amended Act, the Central Government in consultation with the Bureau of Energy Efficiency shall specify the norms for processes and energy consumption standards for any equipment, appliance, vehicle, vessel, industrial unit, building or establishment which consumes, generates, transmits or supplies energy.

2. As per Section 14(b) and 14(c) of the Amended Act, the manufacturing, sale, purchase or import of any equipment, appliance, vehicle or vessel is prohibited unless it conforms to the norms for processes and/or energy consumption standards as set in Section 14(a) of the Amended Act.

3. Section 14(w) empowers the Central Government to specify a carbon trading scheme. In furtherance of such scheme, the Central Government would issue carbon trading certificates to the registered entities as per Section 14AA of the Amended Act.

4. As per Section 14A of the Amended Act, the Central Government would issue energy savings certificate to Designated Consumers, listed in the Schedule to the Energy Conservation Act, 2001 whose energy consumption is less than the prescribed norms. In this regard, the designated consumer whose energy consumption is more than the prescribed norms shall be entitled to purchase the energy savings certificate.

5. Section 15 of the Amended Act empowers the Central Government to specify the Energy Conservation and Sustainable Building Codes for commercial, office and residential buildings.

6. If any person fails to comply with the above-mentioned provisions, he shall be liable to a penalty not exceeding ten lakh rupees under Section 26 of the Amended Act.

7. As per Section 16 of the Amended Act, every State shall constitute 'State Energy Conservation Fund' for the promotion of efficient use of energy and its conservation within the State.

The Ministry of Power has further issued a Notification S.O. 6064(E) dated 26 December 2022 (available here) stating that the all the provisions of the Amended Act shall come into force on 1 January 2023.

***DSK View**: The Amended Act has sought to consolidate multiple aspects and regulations related to energy transition, efficiency, and conservation under one legislation to avoid overlap and confusion between multiple legislations. However, the key concern arising out of the Amended Act is that it does not give clarity on how carbon credit certificates will be traded, or who will regulate such trading. Essentially, it has given legislative teeth to the carbon trading scheme without divulging on its operational and market-related aspects. Similarly, there might also be an overlap between the existing policies of Energy Saving Certificates, Renewable Energy Saving Certificates, and the amended policy of trading of Carbon Credit Certificates. It can be expected that these aspects and subsequent implementation challenges would be addressed in the near future.*

MEDIA & ENTERTAINMENT

COPYRIGHT ROW OVER THE AUDIOBOOK TITLED *"MOSSAD: THE GREATEST MISSION OF THE ISRAELI SECRET SERVICE"*

In a suit filed by Mebigo Labs, which operates the online audio content platform "*KuKu FM*" ("Plaintiffs") before the Delhi High Court ("Court"), against the operators of a similar audio content platform "*Pocket FM*" ("Defendants") alleging the Defendants of violating Plaintiff's exclusive copyright in the Hindi translation of the audiobook titled "*Mossad: The Greatest Mission of the Israeli Secret Service*", the Defendants have taken down the book from its platform. The Plaintiffs submitted before the Court that the Hindi translation of the audiobook, authored by Michael Bar-Zohar and Nissim Mishal, was licensed to it by Manjul Publishing House through a Publisher Assignment Agreement. In response to the same, the Defendants submitted that the audiobook was published by them on the *bona fide* assumption that the book is a part of the public domain and out of the purview of copyright. The Court has directed that, during the pendency of the suit or the term of the copyright of the book, the Defendants shall ensure that "*the audiobook is not made available or communicated on its platform in any manner without authorisation or license*". The matter will now be heard on February 10, 2023.

PARLE G V. BRITANNIA: BRITANNIA ALLEGEDLY PUBLISHED DEROGATORY VIDEO AND PRINT ADVERTISEMENTS DISPARAGING THE PRODUCT SOLD BY PARLE-G

In a suit filed by Parle Products Private Limited ("Plaintiff"), before the Delhi High Court ("Court"), against Britannia Industries Limited ("Defendant"), alleging the Defendant of disparaging the product sold by the Plaintiff under the brand name "*Parle-G*" by publishing derogatory video and print advertisements in support of Defendant's product "*Britannia Milk Bikis*", the Court has referred the case to its Mediation and Conciliation Centre, directing the parties to report the outcome of the mediation by December 14, 2022. The Plaintiff submitted before the Court that the alleged advertisements have been created by the Defendants in such manner so as to reflect the Plaintiff's product in a bad light by suggesting that the products "*gives adhoora poshan*" and are "*sadharan biscuits*". The Court while taking the advertisements into consideration observed that, the terms "*G-Nahi*", "*adhoora poshan*", clearly makes a reference to the Plaintiff's product. The Court further directed that while the mediation proceedings are in place, the Defendants shall be restricted from re-publishing the alleged advertisements.

APARNA PUROHIT, HEAD OF INDIA ORIGINALS AT AMAZON PRIME INDIA FINALLY RECEIVES AN INTERIM ANTICIPATORY BAIL OVER THE TANDAV CONTROVERSY

In the suit filed against Head of India Originals at Amazon Prime Video, Aparna Purohit ("Defendants") regarding the 2021 web-series "*Tandav*", the Supreme Court of India ("Court") has granted her an interim anticipatory bail. The Defendant has been booked for commission of offences under sections 66 (Computer-related offences), 66F (Punishment for cyber terrorism) and 67 (Transmitting obscene material) IT Act, 2008 (as amended) apart from Sections 153-A (Promoting enmity between different groups), 295 (Defiling place of worship with intent to insult the religion), 505(1)(b) (Public mischief), 505(2) (Statements promoting hatred between classes), 469 (Forgery for purpose of harming reputation) of IPC. The Court while granting the bail noted the submission of the State of Uttar Pradesh that the Defendant has been cooperating in the investigation and the interim order granting anticipatory bail may be confirmed.

MIB'S ADVISORY FOR GOOGLE TO STOP DISPLAYING DIRECT AND SURROGATE ADVERTISEMENTS OF OVERSEAS BETTING COMPANIES

The Ministry of Information and Broadcasting (MIB) has asked Google to stop displaying direct and surrogate

advertisements of overseas betting companies such as Fairplay, PariMatch, Betway and 1xBet in its search results and on YouTube. The government had noticed that these overseas betting platforms use news websites as a surrogate product to advertise their platforms on digital media. However, even the logos of these surrogate news websites have a noticeable resemblance with their betting counterparts. Earlier the MIB has also issued an advisory to TV channels and digital news publishers to refrain from publishing or broadcasting advertisements from such betting platforms or their surrogate counterparts.

THANK GOD: SETTLEMENT OF RS. 3.75 CRORES OVER THE REMAKE RIGHTS OF THE DANISH FILM "*SORTE KUGLER*" ON THE BASIS OF WHICH THE MOVIE "THANK GOD" WAS PRODUCED

In the commercial suit filed before the Bombay High Court ("Court") by Azure Entertainment ("Plaintiff") against Maruti International and its partners ("Defendants") against the release of the film "Thank God", the parties have settled the matter for Rs. 3.75 Crore to be payable to the Plaintiff by the Defendants. The settlement has come 6 weeks after the Court had refused to grant an *ad-interm* relief to the Plaintiff. The Plaintiff had claimed that it had acquired the remake rights of the Danish film "*Sorte Kugler*" on the basis of which the movie "Thank God" was produced under a co-production deal between the Plaintiff and the Defendant. Further, pursuant to the same the Defendants had to pay to the Plaintiffs a sum of Rs. 4.50 Crore prior to the release of the domestic theatrical prints of the film however, the Defendants defaulted in the same. The Court in its order observed that a settlement has been entered into by the parties however, if the Defendants defaulted even in a single installment, the Plaintiff would be entitled to execute the decree for the entire amount of Rs. 4.50 Crore along with the interest and GST.

TRAI TO SUGGEST A SUITABLE MECHANISM INCLUDING ISSUES RELATING TO SELECTIVE BANNING OF OTT SERVICES

In a petition filed by World Phone Internet Services Pvt. Ltd. ("Petitioner") against the Union Government and the Department of Telecommunications ("Respondents"), alleging that the companies like the Petitioner have to pay license fee for internet services including internet telephony, whereas platforms like WhatsApp and Facebook Messenger are not regulated and do not pay any such amounts to the government, the Delhi High Court ("Court") has directed the Telecom Regulatory Authority of India (TRAI) to expeditiously hold consultations with the stakeholders for giving its recommendations to the Union Government on the proposed regulatory framework for OTT services. The Respondents submitted before the Court that TRAI's recommendation suggesting that the regulatory framework for OTT services is not required, was not accepted and the matter has been referred back to TRAI to suggest a suitable mechanism including issues relating to "*selective banning of OTT services*".

BOMBAY CITY CIVIL COURT REJECTS THE SUIT FILED BY THE DAUGHTER AND SON-IN-LAW OF ABDUL TELGI AGAINST THE MAKERS OF THE WEB-SERIES "*SCAM 2003: THE CURIOS CASE OF ABDUL KARIM LALA TELGI*"

The Bombay City Civil Court has rejected the suit filed by the daughter and son-in-law of Abdul Telgi ("Plaintiffs") against the makers i.e., director Hansal Mehta, producer Applause Entertainment and SonyLiv ("Defendants") of the web-series "*Scam 2003: The curios case of Abdul Karim Lala Telgi*". The suit was filed by the Plaintiffs on the ground that no consent has been taken from her for the web-series and is based on a book that contain factual discrepancies. Further, the Plaintiffs claimed that the streaming of the series will be a violation of the family's right to privacy, dignity and self-respect. In response, the Defendants had submitted before that Court that in addition to the book, there is a lot of material available in the public domain related to the "*Telgi Scam*", which has been referred to by the Defendants while making the series. The counsel appearing for the Defendants also submitted that "*Defamation is a private right. It cannot be pre-emptive in nature. Unless there is publication, it cannot be defamation".* After a brief hearing, the Court reserved the matter for orders on the application for urgent relief.

SUIT FILED BY A SCREENWRITER ARRMANN SHHARMA AGAINST BEAR GRYLLS, HOTSTAR, NAT GEO INDIA AND WALT DISNEY ALLEGING COPYRIGHT INFRINGEMENT OF THE LITERARY WORK TITLED "*AAKHRI DUM TAK – TILL THE LAST BREATH*" BY THE TV SHOW "*GET OUT ALIVE WITH BEAR GRYLLS*"

In a suit filed by a screenwriter Arrmann Shharma ("Plaintiff") against Bear Grylls, Hotstar, Nat Geo India and Walt Disney ("Defendants") alleging copyright infringement of the Plaintiff's literary work titled "*Aakhri Dum Tak – Till the Last Breath*" by the TV show "*Get Out Alive with Bear Grylls*", the Delhi High Court has issued summons to Warner Brothers Discovery, National Geography and Hotstar. The Plaintiff has submitted before the Court that the literary work "*Aakhri Dum Tak*" is his original creation which is duly registered under his name on January 10, 2011. In March 2022, he came to know that his copyrighted work was being infringed by the Defendants by broadcasting the alleged show being streamed on Disney+ Hotstar. The Plaintiff further submitted that the show is an "*exact replica*" of the Plaintiff's script and has been created and filmed in the manner as was drafted in the original copyrighted work. The suit thus seeks permanent injunction against the broadcasting of the show. The Court, on the request made by the counsel appearing for Bear Grylls has referred the matter to mediation in Delhi High Court Mediation Centre.

The matter is now listed for meditation on January 17, 2023 and for hearing before the Court on February 22, 2023.

MINISTRY OF INFORMATION AND BROADCASTING (MIB) RELEASES DRAFT NATIONAL AND STATE LEVEL POLICIES TO BOOST INDIA'S DOMESTIC CAPACITY AND DEVELOP JOB OPPORTUNITIES IN THE ANIMATION, VISUAL EFFECTS, GAMING AND COMICS - EXTENDED REALITY (AVGC-XR) SECTOR

The Ministry of Information and Broadcasting (MIB) has released a draft national and state level policies to boost India's domestic capacity and develop job opportunities in the Animation, Visual Effects, Gaming and Comics - Extended Reality (AVGC-XR) sector. The policy aims at framing a new curriculum at the school and college levels and has recommended for the establishment of a National Centro of Excellence (COE) for the AGVC sector. Further, as per the policy, regional CEOs will also be instituted in collaboration with the state governments to "*provide access to local industries and promote local talent and content*". The draft policy has also recommended launching a "Create in India" campaign with exclusive focus on Indian content. The policy has been released by the MIB on the basis of the recommendations provided to it by a task force set up last year to decide the roadmap for the sector.

VIACOM18 MEDIA PRIVATE LIMITED SECURES AN INJUNCTION ORDER AGAINST 4,750 PIRATE WEBSITES, INTERNET SERVICE PROVIDERS (ISPS) AND JOHN DOES/UNKNOWN DEFENDANTS RESTRAINING THEM FOR UNAUTHORIZED DIGITAL STREAMING/ HOSTING/ DOWNLOADING/ EXHIBITING/ TRANSMITTING OF THE TATA IPL 2023

In a commercial suit filed before the Madras High Court ("Court"), Viacom18 Media Private Limited ("Plaintiff") has secured an injunction order against 4,750 pirate websites, Internet Service Providers (ISPs) and John Does/unknown defendants ("Defendants") restraining them for unauthorized digital streaming/ hosting/ downloading/ exhibiting/ transmitting of the Tata IPL 2023 as well as its players' auction event. The Court observed that a prima facie case for interim injunction was made out and further held that "*the grant of an injunction would be necessary to avoid irreparable loss/ injury/ damage from being caused to Vaicom18*". The interim order is effective for a period of 4 weeks and the matter is listed for further hearing on January 19, 2023.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

RELAXATION IN HOLDING OF ANNUAL GENERAL MEETING THROUGH VIDEO CONFERENCING OR OTHER AUDIO-VISUAL MEANS

The MCA, *vide* its general circular dated December 28, 2022 (accessible here), has stated that the companies whose annual general meetings ("**AGM**") are due in the year 2023, can conduct the same through video conferencing ("**VC**") or other audio-visual means ("**OAVM**") on or before September 30, 2023, in accordance with the requirements laid down by MCA under general circular dated May 5, 2020 (accessible here).

It is clarified in the aforesaid circular that the relaxation in holding the AGM through VC or OAVM shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013 ("**Act**") and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

RELAXATION IN HOLDING EXTRAORDINARY GENERAL MEETINGS (EGM) THROUGH VC OR OVAM

The MCA had earlier issued general circular dated December 8, 2021 (accessible here) and general circular dated May 5, 2022 (accessible here) wherein companies were allowed to conduct extraordinary general meetings ("**EGM**") through VC or OAVM or transact items through postal ballot till December 31, 2022, in accordance with the framework provided under the general circular dated April 8, 2020 (accessible here).

Now, the MCA, *vide* its general circular dated December 28, 2022 (accessible here), has further extended the aforesaid timeline for allowing companies to conduct EGMs through VC or OVAM or transact items through postal ballot till September 30, 2023.

RBI & FEMA

INSTRUCTIONS TO INDIAN BANKS AND ALL INDIA FINANCIAL INSTITUTIONS ("AIFIS") ON THE COMPLIANCE WITH STATUTORY/REGULATORY NORMS BY THEIR BRANCHES/SUBSIDIARIES OPERATING OUTSIDE INDIA

The Reserve Bank of India ("**RBI**") vide notification bearing reference number RBI/202223/145DOR.MRG.REC.8700-00-020/2022-23 dated December 1, 2022 ("**Regulatory Framework**"), issued a framework, permitting foreign branches/foreign subsidiaries of all RBI regulated banks (excluding co-operative banks, Regional Rural Banks and Local Area Banks) and All India Financial Institutions (including those operating in Gujarat International Finance Tec-Cities and International Financial Services Centers ("**IFSCs**").

The Regulatory Framework specifies conditions which the parent Indian entity is required to ensure while allowing their foreign branch/subsidiaries to operate and also states that any financial product that has been dealt by the foreign branches and its subsidiaries as well as IFSCs, shall follow the prudential norms set forth by RBI, including capital adequacy, exposure norms, periodical valuation, etc.

DSK View: *The RBI had earlier, vide separate circulars issued in 2008 and subsequently in 2014, issued by it in the matter, instructed Indian Banks and All India Financial Institutions on the issue of dealing in financial products by their branches/subsidiaries operating outside India. The Regulatory Framework is a welcome move, which repeals earlier circulars issued in the matter and puts in place a structure within which the branches/subsidiaries could undertake activities which were earlier not specifically permitted in the Indian domestic market.*

MASTER DIRECTION – RESERVE BANK OF INDIA (SECURITISATION OF STANDARD ASSETS) DIRECTIONS, 2021 ("MASTER DIRECTION - SECURITISATION")

The RBI will no longer permit the securitization of loans with residual maturities of shorter than 365 (Three Hundred Sixty Five) days, as per an amendment dated December 5, 2022 to its Master Direction - Securitization. These guidelines were first released on September 24, 2021, replacing the previous RBI circulars issued in August 21, 2012 and May 07, 2012. The disallowance will apply to securitization of common assets by scheduled commercial banks, all India term financial institutions, small finance banks, non-banking financial companies, and home finance companies. The Master Direction - Securitization forbids securitization of loans with residual maturities of less than 365 (three hundred sixty-five) days through the pass-through certificate ("**PTC**") route.

DSK View: *Securitization involves pooling loans and redistributing them into securities which can be traded or sold to investors. The assets are pooled and repackaged depending on the risk profile (high, medium, low) of the investor. The amendment to the MD – Securitization, will restrict securitization of loans which have a residual maturity less than 365 (Three Hundred Sixty-Five) days. While this may work well for ensuring the quality of securitized assets or tradeable securities in the market, it may likely affect gold loan, microfinance and personal loan portfolios.*

MODIFICATION IN RBI MASTER DIRECTION ON TRANSFER OF LOAN EXPOSURES, 2021

The RBI made certain amendments to the Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 ("**Master Direction – Transfer of Loan Exposures**") on December 05, 2022 ("**Amendment**").

RBI has, vide the Amendment, modified several terms of the Master Direction – Transfer of Loan Exposures, including

applicability, minimum holding period, valuation, transfer of assets to Asset Reconstruction Company ("**ARCs**") etc. The Amendment clarifies that registration of a security interest for the purposes of computing the minimum holding period only refers to registration with CERSAI.

***DSK View**: The Master Direction – Transfer of Loan Exposures is a unified and singular framework for the sale of loan exposures by banks and other financial institutions. The Amendment has clarified many issues including points pertaining to registration of security interest, types of loan exposures that can be acquired by overseas branches of RBI regulated banks, AIFIs and NBFCs.*

CLARIFICATION WITH RESPECT TO PROVISIONS OF SCHEME OF ARRANGEMENT BY ENTITIES WHO HAVE LISTED THEIR NON-CONVERTIBLE DEBT SECURITIES ("NCDS")/ NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES ("NCRPS")

SEBI, had issued certain guidelines in relation to "*Scheme(s) of Arrangement by entities who have listed their NCDs/ NCRPS*" vide its circular bearing reference no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156 dated November 17, 2022 ("**Principal Circular**"). According to the Principal Circular, an entity that has listed its non-convertible debentures or NCRPS and that intends to implement a scheme of arrangement or is currently engaged in a scheme of arrangement, must first file the draft scheme with the designated stock exchange and obtain a no-objection letter from the stock exchanges before filing the scheme with any court or tribunal.

In this regard, SEBI had, vide circular bearing no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/170, dated December 09, 2022 ("**Clarification**"), clarified that a scheme of arrangement between a debt-listed organization and its unlisted wholly-owned subsidiary will not be subject to the requirements of the Principal Circular. However, for the purpose of disclosure, such debt listed entity needs to file the proposed scheme of arrangement with the concerned stock exchange(s), who shall make the scheme documents available on their websites.

***DSK View**: Previously, SEBI had amended rules with respect to schemes of arrangement, involving mergers, and amalgamation, by entities whose non-convertible debt securities or NCRPS were listed. Vide the Clarification, SEBI has clarified that the framework pertaining to 'schemes of arrangement' is for entities that have only listed their debt securities.*

CLARIFICATION - SEBI CIRCULAR DATED AUGUST 04, 2022 ON ENHANCED GUIDELINES FOR DEBENTURE TRUSTEES AND LISTED ISSUER COMPANIES ON SECURITY CREATION AND INITIAL DUE DILIGENCE

SEBI vide circular bearing reference number SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/176 dated December 19, 2022 ("**Circular**") has clarified, that a new International Securities Identification Number ("**ISIN**") is not required to be allocated by the depository if there is: (i) a change in underlying security; (ii) creation of additional security; or (iii) creation of security in case of unsecured debt securities. SEBI further clarified that the abovementioned categories will not result in any modification in the structure of non-convertible debenture ("**NCDs**"), provided there are no other modifications in the terms/ nature of the issue of NCDs (e.g. maturity date, coupon rate, face value, redemption schedule, etc.). However, where there is a change in the basic security, the debenture trustee shall make sure that the same is in compliance with the provisions of Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993.

***DSK View**: The Circular has been issued following several queries from stakeholders including issuers and stock exchanges, on the matter of issuance of a fresh ISIN. By giving specific instances, SEBI has provided much needed clarity on the matter.*

RERA

SUPERTECH DELIVERED 9,705 FLATS TO HEEDLESS ALLOTTEES

Supertech approached National Company Law Appellate Tribunal ("**NCLAT**") vide an appeal against the order dated March 25, 2022, passed by the National Company Law Tribunal ("**NCLT**") under which the NCLT initiated insolvency proceedings against the company. According to a status report prepared and filled by Mr. Hitesh Goel, appointed Interim Resolution Professional ("**IRP**") to NCLAT on May 31, 2022, it was divulged that Supertech provided a total sum of 9,705 units to the heedless allottees across a vast number of 18 (Eighteen) residential developments situated across Uttar Pradesh, Haryana, and Uttarakhand without acquiring occupancy permits from the concerned development authorities.

The status report clearly stated relying on the information received from the management of Supertech, that approximately 10,000 houses/units were allotted and delivered to the allottees without acquiring the occupational certificate. The report also revealed that 9,705 units that are in possession of the allottees does not have occupational certificate. Heavily indebted developer has a mountain of debt worth INR 2,062 crores as outstanding with respect to Greater Noida Industrial Development Authority and Yamuna Expressway Industrial Development Authority in Uttar Pradesh.

HRERA DIRECTS PAREENA LAXMI INFRA TO CLEAR DELAYED POSSESSION CHARGES

Haryana Real Estate Regulatory Authority (Gurugram Bench) ("**HRERA**") has directed Pareena Laxmi Infrastructure Private Limited to clear and settle the delayed possession costs against the allottees after the developer failed to deliver housing units in the agreed timeline. HREREA had further directed the developer vide an order dated December 9, 2022, to settle the outstanding dues towards the delayed possession costs for every month of delay from the due date of possession till the date of offer of possession to the allottees is provided as per section 19(10) of the RERA Act. The HRERA order would provide relief to 51 allottees of the Pareena Laxmi Affordable Group Housing Society in Sector 99, Gurugram. A group of 51 Pareena Laxmi awardees petitioned RERA for late possession penalties after the builder failed to deliver the apartments within the four-year timeframe provided in the builder-buyer agreement in 2016.

The deadline to pay the arrears provided by the authority to the developer is 90 (Ninety) days from the date of the order i.e., December 9, 2022, as per rule 16(2) of the RERA Rules.

HON'BLE DELHI HIGH COURT SUMMONS DIRECTORS OF ANSAL PROPERTIES AND INFRASTRUCTURE

The Hon'ble High Court of Delhi has summoned the directors of real estate company, Ansal Properties and Infrastructure and has directed then to remain personally present in court on January 23, 2023, to record their statements in regard of the "concealment of facts" from the court and an attempt to "thwart" their decisions. The Hon'ble High Court of Delhi held that the developer has concealed the material facts and misled the court in a wrong direction.

The Hon'ble High Court of Delhi has further directed the counsel of the Ansal Properties and Infrastructure to file a list of the directors within two weeks from the order. The said directions were passed against the suit filed by Suresh Kumar Kakkar and others based on a cooperation agreement signed in October 2010 between them and Ansal Properties and Infrastructure for the development of roughly 3,575 acres of property in Gurgaon.

The developer failed to oblige the corporation agreement, as per which the developer was supposed to develop the site by constructing a residential/group housing/commercial colony after receiving the necessary approvals from the authorities. The corporation had the right to sell "its share" of the project's built-up land.

HON'BLE SUPREME COURT DISMISSES SUPERTECH PLEA OVER 'SETTLEMENT' ORDER

The Hon'ble Supreme Court dismissed Supertech Realtors' appeal against the order of the Hon'ble High Court of Delhi holding that the Single Agreement ("**OTS**") entered among the consortium of banks and the relator is entirely a contract and that any modification of its terms by the borrower is void and can only be done with mutual agreement.

The company's account was classified as a non-performing asset (NPA) in 2018 after it failed to repay a Rs. 678 crore loan expended by the consortium of lenders namely, The Union Bank of India, Bank of Maharashtra, Central Bank of India, and Oriental Bank of Commerce for the 'Supernova Project' in Noida, Uttar Pradesh. Hon'ble Justice Abhay S. Oka, declined to challenge the ruling that the estate agent had failed to pay the first instalment of Rs. 4.66 crore in full by the moratorium's expiration date of September 15, 2022. It was also noted that the bank has the authority to decide whether to prolong this term.

The Hon'ble High Court of Delhi further ruled that, in accordance with the Indian Contract Act, 1872, only mutual consent may be used to change the terms of a private contract and that the court is not permitted to do so. In addition to arguing that the three-month moratorium period should be calculated from the August 18, when the OTS was amended, rather than the 15th of June, which was the date of the original OTS, Supertech had approached the Hon'ble High Court of Delhi to challenge the consortium of lenders led by Union Bank of India's cancellation of the OTS scheme.

MAHARASHTRA RERA ASKS 13 DISTRICTS TO ENSURE BUYERS GET RS 730 CRORE IN COMPENSATIONS

The Maharashtra Real Estate Regulatory Commission ("**Maha RERA**") has directed 13 district collectors to ensure that compensation payments worth Rs 730 crore granted to property purchasers duped by developers reach the impacted areas.

According to an official release, the Maha RERA has also hired a retired additional district collector to follow up on cases where dues have been pending. Accordingly, the organization, during the last five years, it has issued 733 decisions requiring developers to pay Rs 729.68 crore in compensation payments to homeowners who petitioned Maha RERA after developers failed to keep their commitments.

According to the application, the 13 districts include Mumbai city, Mumbai suburbs, Thane, Pune, Raigad, Palghar, Aurangabad, Nagpur, Nashik, Chandrapur, Sindhudurg, Satara, and Ratnagiri. According to the statement, compensation has been paid for shortcomings such as not giving over ownership on time, abandoning a project midway, or poor building quality.

NCLT REJECTS CLAIMS OF FOUL PLAY IN INSOLVENCY OF RADIUS ESTATES

The National Company Law Tribunal (**"NCLT"**) has dismissed charges of foul play in the settlement process of Mumbai estate firm Radius Estates, for which Adani group company Adani Good Homes was declared to be the winner of the bid. Debenture holders of the firm controlled by ICICI Prudential, and the Beacon Trusteeship had petitioned the NCLT to reject Adani Good Homes' offer for Radius Estates on the grounds that the company had breached bidding restrictions. Debenture Holders alleged that by inserting in their offer a clause that the accounts receivable, once recovered by the company, would be accumulated in Adani, Adani Good Homes' resolution plan for the Mumbai estate agent had unfairly attempted to take Rs. 800 crores receivable from the company. The debenture holders argued that the accounts receivable recoveries had to be divided among the creditors in accordance with the bidding conditions.

The NCLT stated that because Adani modified the requirement, the debenture holders' objection to its resolution plan is no longer admissible. The principal creditor, HDFC, was accused of conspiring with the company's resolution expert, Jayesh Sanghrajka, to influence the resolution procedure in order to benefit from its dual roles as a financial creditor and a homebuyer with inventory in the project due to a mortgage on apartments, according to the holders of debentures. As a financial creditor, they had stated that HDFC did not mind the cut because its inventory in the project will be finished and was valued.

NCLT also rejected those allegations, citing that "suspicion, however strong, is not a substitute for proof." The only bidder for Radius Estates is Adani Good Homes Private Limited. The company's financial creditors, who have unpaid claims totaling over Rs. 1700 crores would receive Rs. 76 crores as part of their resolution plan. This translates to a haircut for financial creditors of over 96%. However, it is constructing the owners' flats at no additional expense to them and has permitted the company's residential projects to resume construction.

The ICICI Prudential VC fund has filed a claim for Rs. 150 crores against an insolvent estate agent on behalf of 1810 investors who contributed to his property investment plan and afterwards bought Radius Estates bonds. The company has an outstanding loan from HDFC Limited of Rs. 1000 crore. In its 65-page petition, NCLT noted that homeowners had pushed for the insolvency procedure to be expedited because stopping the project's construction would have a negative impact on its financial viability. Radius Estates' only asset, according to homeowners who also established a

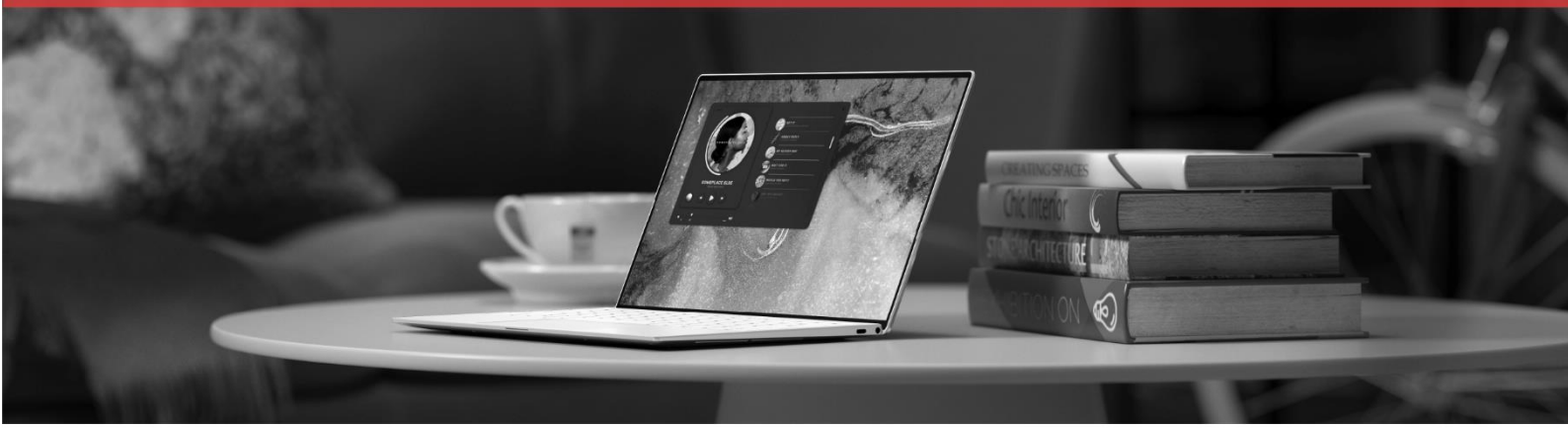
partnership, was a development agreement to erect high-rise structures on land given to the company by the Mumbai urban development authorities.

TS FAILED TO APPOINT AN APPELLATE TRIBUNAL AFTER FIVE YEARS

For the past five years, the state government of Telangana has violated the provisions of the Real Estate (Regulation and Development) Act, 2016, by failing to appoint a regulatory authority and an appellate tribunal, putting buyers and sellers at risk, while the central government passed the Real Estate (Regulation and Development) Act, 2016 to regulate and promote the real estate industry. The RERA was formed to protect consumer interests and ensure that real estate developments were offered in an ethical and transparent way. Section 20 (1) of the Act requires the state government to establish a RERA with a chairman and at least two members within a year of the Act's adoption.

Furthermore, while the authority is constituted, the state government should select a secretary-level person as an interim remedy. Telangana Government Order No. 6, issued January 11, 2018, named the Special Chief Secretary for Revenue as the regulating authority.

Chief Secretary Somesh Kumar has worked as a regulatory authority as a governing body for roughly three years. Furthermore, under Section 43 (1) of the Real Estate Act, the state government must establish an appellate tribunal within a year.



GOVERNMENT AMENDS ALLOCATION OF BUSINESS RULES TO INCLUDE ONLINE GAMING AND E-SPORTS

The Central Government has amended the Government of India (Allocation of Business) Rules, 1961 ("**Amendment**") vide its notification dated December 23, 2022 (accessible here) to allocate: (a) 'Matters relating to online gaming' to the Ministry of Electronics and Information Technology ("**MeitY**") and (b) 'e-Sports as part of multi-sport events' to the Department of Sports under the Ministry of Youth Affairs and Sports. Pursuant to the Amendment, MeitY has been appointed as the nodal ministry for regulating and making rules on all matters relating to online gaming, and e-sports has officially been recognised as a multi-sports event in India and is to be regulated by the Ministry of Youth Affairs and Sports.

SEBI PUBLISHES CONSULTATION PAPER ON ONLINE DISPUTE RESOLUTION MECHANISM

The Securities and Exchange Board of India ("**SEBI**") has published a consultation paper dated December 19, 2022 (accessible here) for the purposes of streamlining the procedure for grievance redressal mechanism for investors and to further strengthen it by way of adoption of online dispute resolution mechanism. SEBI intends to make the entire dispute resolution process efficient by proposing to conduct end-to-end dispute resolution online, using the capacity and technology of other online dispute resolution institutions.

In this regard, SEBI has invited comments and suggestions from the public stakeholders and the same can be submitted till January 9, 2022.

GOVERNMENT REGISTERS PRINT AND DIGITAL MEDIA ASSOCIATION AS A SELF-REGULATORY BODY FOR PRINT, DIGITAL NEWS OUTLETS

The Ministry of Information & Broadcasting, vide notification dated December 2, 2022 (accessible here), communicated the registration of Print and Digital Media Association ("**PADMA**") as a Level-II Self-Regulatory Body for publishers of news and current affairs content body, in terms of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**Rules**"). Rule 12 of the said Rules provides that entities that are registered as self-regulatory bodies shall *inter alia* oversee and ensure adherence by publishers to the code of ethics; provide guidance to publishers; hear appeals filed by complainants; and issue guidance or advisories to such publishers for ensuring compliance with the code of ethics appended to the Rules.

In terms of the said notification, the association will be led by Mool Chand Garg (former Justice of the High Court of Delhi) and have journalist Manoj Kumar Mishra and Ashok Kumar Tandon as members. The CEO of PADMA, Jitendra Mehta said that the organisation will primarily look at grievances related to content on digital media platforms pertaining to current affairs that have not been addressed at the level of the platform and will ensure that member publishers agree to adhere to the provisions of the Rules.

TRAI INVITES COMMENTS ON ISSUES RELATED TO REGULATION OF DATA COMMUNICATION SERVICES BETWEEN AIRCRAFTS AND GROUND STATIONS

The Telecom Regulatory Authority of India vide its consultation paper dated December 10, 2022 (accessible here), has invited comments on data communication services between aircrafts and ground stations provided by organizations other than Airports Authority of India. The consultation paper inter alia seeks inputs on the need and

broad terms and conditions of the licensing framework for data communication services between aircrafts and ground stations. Comments on the issues are invited by January 9, 2023, and counter comments by January 23, 2023.

THE NATIONAL HEALTH AUTHORITY RELEASES CONSULTATION PAPER ON THE MARKET RULES GOVERNING THE UNIFIED HEALTH INTERFACE

The National Health Authority of India ("**NHAI**") vide its consultation paper dated December 14, 2022, has sought comments on 'Operationalising Unified Health Interface ("**UHI**") in India' and, in particular, on the market rules that will govern the UHI (accessible here). UHI is proposed to be a foundational layer of the Ayushman Bharat Digital Health Mission ("**ABDM**") and is envisioned to enable interoperability of health services in India through open protocols. ABDM (portal accessible here) was released in response to the National Health Policy of India being published (accessible here), with an objective to digitise the Indian healthcare. The aim of ABDM is to develop the backbone necessary to support the integrated digital health infrastructure of the country.

The consultation paper focuses on the following aspects of the UHI: (a) search and discovery; (b) service booking; (c) service fulfillment; (d) payment and settlement; (e) reschedule and cancellation; (f) grievance redressal; (g) metrics; (h) UHI's common taxonomy; and (i) scoring.

NHAI has invited comments from the public, which may be submitted until January 13, 2023, at https://abdm.gov.in/operationalising-uhi-consultation-form.

GOOGLE APPROACHES NCLAT AGAINST CCI'S ORDER ON ABUSE OF DOMINANT POSITION

Google has appealed to the National Company Law Appellate Tribunal against the order dated October 20, 2022 passed by the Competition Commission of India ("**CCI**") wherein the CCI levied a penalty of Indian Rupees 1,337.76 crore on Google for abusing its dominant position in the android mobile devices sector. Google has based its appeal primarily on the fact that the CCI has failed to consider the fact that the policies and practices of Google has benefited a large chunk of stakeholders, including Indian users. Further, Google has also contended that the penalties imposed will have a significant impact on the policies which have enabled Indian users to afford its services at a low cost.

KERALA HIGH COURT ALLOWS DELETION OF PERSONAL IDENTITIES IN FAMILY & MATRIMONIAL MATTERS

A division bench of the High Court of Kerala ("**Court**"), vide its judgement dated December 22, 2022 has ruled that, if the parties to a case so wish, personal information about the parties should not be published in the Court's public records in family, matrimonial, custody and adoption matters. The Court observed that right to be forgotten is derived from the broader right to privacy. While holding that the right to be forgotten is not an absolute right, the Court observed that in the absence of any legislation to this effect, the Court may have to recognise the right to be forgotten and direct the removal of such content available online on a case-to-case basis. The Court further held that right to be forgotten cannot be relied on to prevent the uploading of judgments in the Court's public records in current or recently concluded criminal proceedings. The Court further directed the registry of the Court to publish privacy notices on its website and further held that the registry of the Court is bound to publish privacy notices on its website in both English and vernacular languages.

UNREASONABLE DELAY IS A CRUCIAL FACTOR FOR CONSIDERATION IN MATTERS RELATED TO QUASHING OF A CRIMINAL COMPLAINT

The Supreme Court of India in the case of ***Hasmukhlal D. Vora & Anr. v. The State of Tamil Nadu*** (Criminal Appeal No. 2310 of 2022) observed that an unexplained inordinate delay could be construed as a 'very crucial factor' when it comes to quashing a criminal complaint. The present case is an appeal against a decision of the Madras High Court, wherein a complaint was filed by the Drug Inspector against the appellants for alleged contravention of section 18(c) of the Drugs and Cosmetics Act 1940 read with Rule 65(5)(1)(b) of the Drugs and Cosmetics Rules 1945, four years after the inspection was conducted. The High Court dismissed the same application on the grounds that a trial was necessary to ascertain the facts of the case, and it requires an appreciation of the evidence. The Supreme Court, however, observed that the Respondent had provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings. The Court held that while inordinate delay in itself may not be a ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint. The court while quashing the order of Madras High Court observed that, the Courts does not expect a full-blown investigation at the stage of a criminal complaint but expects bare-minimum evidence from the investigating authorities.

DSK View: *The Supreme Court in this case rightly highlighted the importance of considering inordinate delay to avoid abuse of the process of law. The Court in this case has also observed that although the powers conferred under Section 482 of the Code of Criminal Procedure, 1973 ("**CrPC**") is used only in the rarest of rare cases, it is the duty of the court to look into the minute details of every case to prevent a miscarriage of justice.*

ABSENCE OF DRAWER'S CONSENT WHILE ADDING A DATE ON THE CHEQUE, RENDERS IT VOID UNDER NEGOTIABLE INSTRUMENTS ACT, 1881

The Bombay High Court, in the case of ***Pinak Bharat and Company v. Anil Ramrao Naik and Anr.*** (Criminal Appeal Nos. 1630 and 1631 of 2011), recently held that in absence of the drawer's consent, adding a date on the cheque becomes void. In the present case the appellant was a partnership firm, and the complainant is one of the partners. It is the case of the complainant that they had advanced a loan of Rs 1 crore to the accused in 2003 and entered into a Memorandum of Understanding ("**MoU**") for repayment. At the time of execution of said MoU, the accused issued 2 cheques to the complainant with no mention of the date or name of payee. When the complainant deposited the two cheques, they were returned unpaid, and the complainant thereafter filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**"). The accused were acquitted by the magistrate court, pursuant to which the present appeal was filed. The issue posed before the Court was whether the complainant was justified in putting the name of the payee and date on the cheques, which was answered in the negative. The Court held that if the complainant has unilaterally put the dates without the authority of the accused it amounts to a material alteration of the cheque and thus the negotiable instrument becomes void and proceedings under Section 138 of NI Act cannot be initiated.

AN INDIVIDUAL CANNOT BE TRIED FOR THE SAME OFFENCE, OR ANOTHER OFFENCE BASED ON THE SAME FACTS, OWING TO THE PROTECTION UNDER SECTION 300 OF THE CRPC

The Supreme Court, in the case ***T.P. Gopalakrishnan v. State of Kerala*** (Criminal Appeal Nos. 187-188 of 2017) held that

Section 300 of CrPC prohibits the trial of a person for not only the same offence, but also for any other offence on the same facts. The Appellant in this case was a Public Servant. The Trial Court had convicted the appellant for offences under Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 and section 409 of the Indian Penal Code, 1860 ("**IPC**"). The two convictions were directed to run simultaneously. The High Court of Kerala upheld the order of the Trial Court, which was being challenged in the present appeal. The case of the appellant was such that previously three cases were registered against him on similar facts and that he had already faced trial in the previous three cases and further that the present two cases challenged in the present appeal pertain to the same period as these previous cases. The Supreme Court observed that the present two cases arise out of the same set of facts and the same transaction as that in the previous three cases wherein the appellant was tried and convicted/acquitted respectively and that the previous charge as well as the present charge was for the same period of misappropriation. In view of the said facts, the Court allowed the appeals and held that the Trial Court as well as the High Court were not right in convicting and sentencing the appellant.

DSK View: *The Court has observed that as per Section 300(2) of the CrPC, when the charge of the second trial is for a distinct offence, the trial is not barred. The Court has through this judgement upheld an important principle of natural justice and safeguarded the rights of a citizen.*

COURTS CANNOT INTERFERE WITH THE INVESTIGATIONS OF THE CENTRAL AGENCIES UNLESS THERE IS MISUSE OF POWERS

In the case of ***Southern Agrifurane Industries Private Ltd v. The Assistant Director (Directorate of Enforcement)*** (W.P. No. 28140 of 2022 and WMP No. 27428 of 2022), the Madras High Court held that the Court cannot act as stumbling block in central agency investigations unless there is misuse of powers. In the present case a Writ Petition was filed by the Petitioner challenging the Enforcement Case Information Report registered by the Directorate of Enforcement ("**ED**") against them. The contention of the Petitioner is that ED was acting beyond its jurisdiction, as the provisions of Foreign Exchange Management Act, 1999 ("**FEMA**") have not been made a schedule offences and the ED is indirectly conducting the investigation by taking advantage of the FIR registered in Crime No. 161 of 2022, based on the complaint given by AXIS bank and a reading of the entire complaint will show that what has been alleged against the petitioner was only contravention of the provisions of FEMA and there is no IPC offence involved in this case. The Court dismissed the petition and held that unless there is a misuse of power of investigation, or such investigation is an abuse of process of law, the Courts cannot stall the investigations conducted by the investigating agency.

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