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NEWSLETTER

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TABLE OF CONTENTS

RISK DISCLOSURE WITH RESPECT TO TRADING BY INDIVIDUAL TRADERS IN EQUITY, FUTURES AND OPTIONS SEGMENT[1]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated May 19, 2023 ("**Circular"**), introducing risk disclosures in the equity futures and options segment ("**EFO segment**") so as to facilitate informed decision making by the investors. In this regard, the following measures have been set out:

A. Stock Brokers:

- All stock brokers are directed to display all risk disclosures on their website and further inform their clients in the specified manner, which includes inclusion of a prompt (maybe in the form of a pop up) to read the risk disclosures to the clients upon logging into their trading accounts and the client shall be allowed to proceed only after acknowledging the same.
- The risk disclosures must cover at least 50% of the area of the screen.
- All Qualified Stock Brokers are required to maintain the profit and loss data of their clients on a continuous basis in the specified format.

B. Stock Exchanges and Depositories:

- All Stock Exchanges and Depositories must bring to the notice of their members the provisions of the Circular and display the same on their websites.
- They are further required to publish the risk disclosures on their websites with a link to study conducted by SEBI.

In the study conducted by SEBI in January, it was revealed that 89% of the individual traders and 90% of the active traders encountered net losses in the EFO segment. Furthermore, the top 1% accounted for almost 51% of total net profit earned by all active investors. The circular will come into force with effect from July 01, 2023.

DEMATERIALIZATION OF SECURITIES OF HOLDCOS AND SPVS HELD BY REAL ESTATE TRUSTS[2]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated May 22, 2023, providing for mandatory dematerialization of securities held by holding companies and special purpose vehicles ("**SPVs**") held by Real Estate Investment Trusts ("**REITs**"). The managers of the REITs have been entrusted with the task of ensuring that the aforementioned is complied with. Furthermore, the managers of the REITs were also instructed to ensure that existing securities held in physical form should be dematerialized on or before June 30, 2023.

DEMATERIALIZATION OF SECURITIES OF HOLDCOS AND SPVS HELD BY INFRASTRUCTURE INVESTMENT TRUSTS[3]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated May 22, 2023, providing for mandatory dematerialization of securities held by holding companies and special purpose vehicles ("**SPVs**") held by Infrastructure

[1]https://www.sebi.gov.in/legal/circulars/may-2023/risk-disclosure-with-respect-to-trading-by-individual-traders-in-equity-futures-and-options-segment_71426.html
[2]https://www.sebi.gov.in/legal/circulars/may-2023/dematerialization-of-securities-of-hold-cos-and-spvs-held-by-real-estate-investment-trusts-reits-_71448.html
[3]https://www.sebi.gov.in/legal/circulars/may-2023/dematerialization-of-securities-of-hold-cos-and-spvs-held-by-infrastructure-investment-trusts-invits-_71449.html

Investment Trusts ("**InvITs**"). The investment managers of the InvITs have been entrusted with the task of ensuring that the aforementioned is complied with. Furthermore, the investment managers of the InvITs were also instructed to ensure that existing securities held in physical form should be dematerialized on or before June 30, 2023.

REVISION IN COMPUTATION OF CORE SETTLEMENT GUARANTEE FUND IN COMMODITY DERIVATIVE SEGMENT[4]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated May 23, 2023 ("**Circular"**), revising the computation of core settlement guarantee fund ("**CSGF**") in the commodity derivatives segment ("**CDS**") based on the recommendations received by Risk Management Review Committee and deliberations with the clearing corporations. SEBI decided that the clearing corporations in the CDS can align their CSGF in terms of its circulars dated August 27, 2014 as well as July 11, 2018 and may return the excess contribution to the contributing stakeholders on a pro-rata basis after taking approval from SEBI.

Further, SEBI advised the stock exchanges and clearing corporations to introduce necessary amendments to the relevant bye-laws, rules and regulations, to ensure implementation of the Circular, bring the provisions of the Circular to the notice of stock brokers of the stock exchanges and to disseminate it on their website. Further, SEBI advised the stock exchanges and clearing corporations to communicate to SEBI the status of the implementation of the provisions of the Circular in the monthly development report.

The circular will come into force with effect from July 01, 2023.

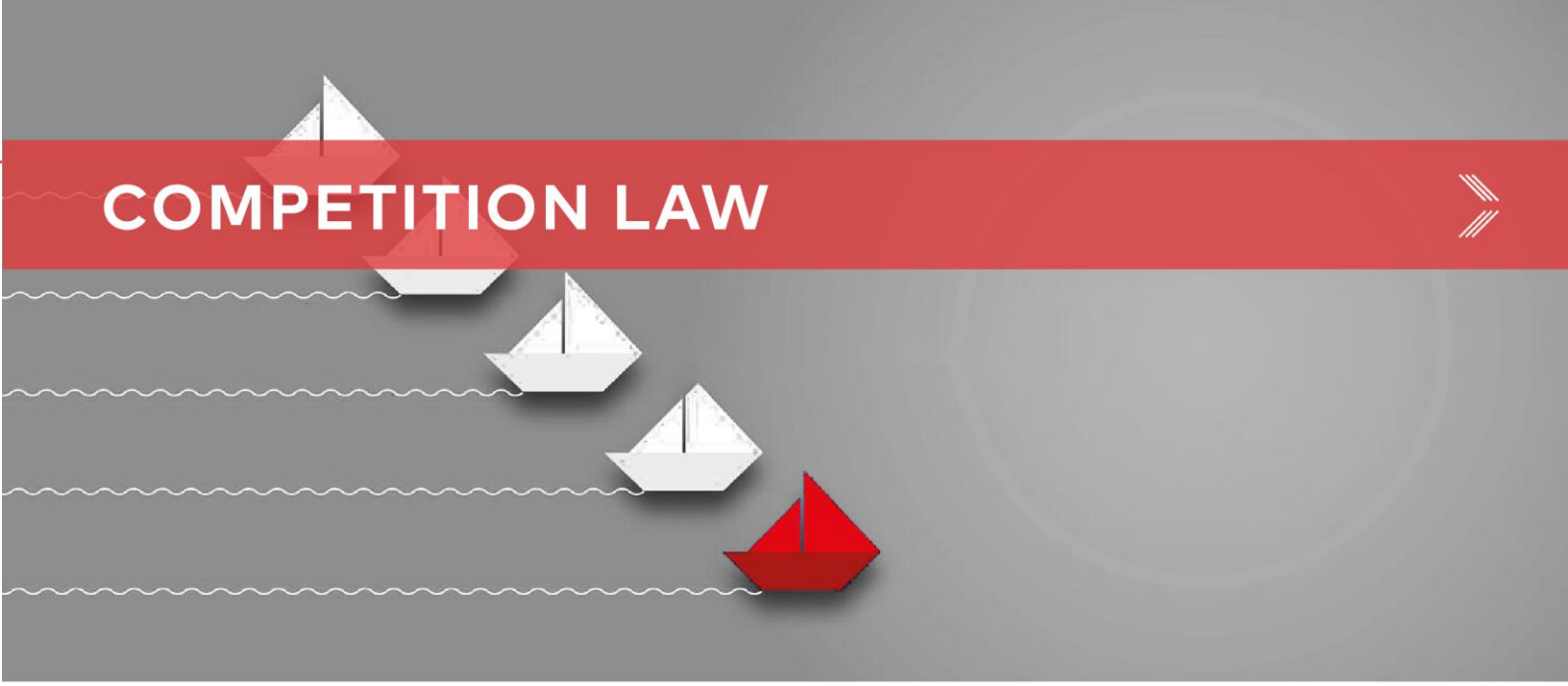
FORMAT FOR A TRIPARTITE AGREEMENT BETWEEN THE ISSUER COMPANY, EXISTING SHARE TRANSFER AGENT AND NEW SHARE TRANSFER AGENT[5]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated May 25, 2023 ("**Circular**") prescribing a format for a tripartite agreement between the issuer company, existing share transfer agent and new share transfer agent according to Regulation 7(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 ("**SEBI (LODR)**"). Regulation 7(4) of SEBI(LODR) provides that in the event that the share transfer agent ("**RTA**") is changed or a new RTA is appointed, then the listed entity must enter into a tripartite agreement between the existing RTA, new RTA and the listed entity.

SEBI advised the RTAs and listed entities to publish the format of the tripartite agreement on their websites, comply with the conditions of the Circular and introduce necessary amendments to the relevant bye-laws, rules and regulations, operational instructions to ensure implementation of the Circular. SEBI further advised RTAs to submit compliance with the Circular by June 01, 2023, along with the link of their website containing the format of the tripartite agreement.

[4]https://www.sebi.gov.in/legal/circulars/may-2023/revision-in-computation-of-core-settlement-guarantee-fund-in-commodity-derivatives-segment_71531.html

[5]https://www.sebi.gov.in/legal/circulars/may-2023/model-tripartite-agreement-between-the-issuer-company-existing-share-transfer-agent-and-new-share-transfer-agent-as-per-regulation-7-4-of-sebi-lodr-regulation-2015_71657.html



With the appointment of the new Chairperson of the Competition Commission of India, it was a busy May in the competition law space. The main highlights are as follows:

HON'BLE SUPREME COURT STAYS CCI ORDER FOR INR 202 CRORES PENALTY ON AMAZON

The Hon'ble Supreme Court via its order dated 08.05.2023, stayed the Competition Commission of India's (**CCI**) order dated 25.04.2023 for INR 202 crore penalty imposed on Amazon for its 2019 purchase of a 49% stake in a Future Group entity. Via the said order, the Hon'ble Supreme Court stated that no coercive steps shall be taken against Amazon until the next date in the case, i.e., 17.07.2023.

The CCI had on 17.12.2021 suspended its approval accorded more than two years back to Amazon to acquire a 49% stake in Future Coupons Private Limited (**FCPL**), following a review of allegations of concealment of information while seeking regulatory approval for the deal. The CCI imposed the penalty for allegedly not being upfront about the actual scope and purpose of the deal. Amazon was required to pay the amount by mid-February 2022.

CCI GIVES DEEMED APPROVAL TO EDELWEISS ALTERNATIVE ASSET ADVISORS LIMITED AND ESOF III INVESTMENT FUND FOR THE ACQUISITION OF COMPULSORILY CONVERTIBLE DEBENTURES ISSUED BY BIOCON BIOLOGICS LIMITED

The parties to the combinations were Edelweiss Alternative Asset Advisors Limited (**Acquirer 1**), ESOF III Investment Fund (**Acquirer 2**), and Biocon Biologics Limited (**Target**).

Acquirer 1 and Acquirer 2 proposed to subscribe to certain compulsorily convertible debentures issued by Target (**Proposed Combination**). The Proposed Combination was notifiable to the Hon'ble CCI under Section 5(a) of the Competition Act, 2002.

The Acquirer 1 is an alternative asset advisor registered with the Securities and Exchange Board of India (**SEBI**) and provides investment management services to alternative investment funds and advisory services with respect to certain offshore funds. Acquirer 2 is engaged in making structured investments through any suitable instruments, including, but not limited to, debt or debt-like securities or instruments and/or equity or equity-linked instruments of listed or unlisted companies.

Target is a global biosimilar company that is engaged in the manufacture and commercialization of pharmaceutical formulations.

The parties' activities did not exhibit any horizontal, vertical, or complementary overlaps in any of the plausible relevant markets in India. Therefore, the Proposed Combination was notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

CCI GIVES DEEMED APPROVAL TO AZK4 LLC TO ACQUIRE ZETWERK MANUFACTURING BUSINESSES PRIVATE LIMITED

AZK4 LLC (**Acquirer**) is an investment vehicle managed by Avenir Management Company LLC. Avenir Management Company LLC is a private equity investment firm that operates under the brand name "Avenir Growth Capital".

Zetwerk Manufacturing Businesses Private Limited (**Target**) is a manufacturing services provider and caters to businesses in the precision parts, capital goods, and consumer goods categories. It provides contract manufacturing services on a B2B basis.

The Acquirer proposed to subscribe to and purchase approximately 2.96% of Target's shareholding through a combination of primary and secondary transactions

(**Proposed Combination**). The Proposed Combination was in the nature of an acquisition within the meaning of Section 5(a)(1)(A) and was notifiable to the Hon'ble Competition Commission of India under Section 6(2) of the Competition Act, 2002.

Given that there were no horizontal overlaps or vertical or complementary linkages between the activities of the parties (including their affiliates), the Proposed Transaction was notified via order dated 19.05.2023 under the green channel route under Regulation 5A(1) read with Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).

RAVNEET KAUR APPOINTED AS THE NEW CHAIRPERSON OF THE COMPETITION COMMISSION OF INDIA

The Appointments Committee of the Cabinet has approved the appointment of Ravneet Kaur as the new Chairperson of the Competition Commission of India (**CCI**). She is the first woman to be appointed as the Chairperson of CCI and will serve for a period of five years or until reaching the age of 65 years. Since the retirement of the last Chairperson, Mr. Ashok Kumar Gupta, in October 2022, the position of the CCI Chairperson has remained vacant. Sangeet Verman had been fulfilling the role of the acting Chairperson in the interim.

MOU APPROVED BETWEEN THE COMPETITION COMMISSION OF INDIA (CCI) AND THE EGYPTIAN COMPETITION AUTHORITY (ECA)

The Union cabinet on 17.05.2023 approved the signing of a Memorandum of Understanding (**MoU**) between the CCI and the ECA. The MoU aims at facilitating the exchange of information, sharing of best practices, and capacity-building initiatives. The MoU also aims at establishing and enhancing linkages between CCI and ECA, allowing both agencies to learn from each other's experiences in enforcing competition law in their respective jurisdictions.

Section 18 of the Competition Act, 2002, empowers CCI to enter into memoranda and arrangements with foreign agencies to fulfill its duties and responsibilities under the Act.

REFERRAL COURT HAS THE DUTY TO CONCLUSIVELY DECIDE THE ISSUE OF THE 'EXISTENCE & VALIDITY OF ARBITRATION AGREEMENT' RAISED AT THE PRE-REFERRAL STAGE

The Hon'ble Supreme Court in ***Magic Eye Developers Private Limited vs. M/s Green Edge Infrastructure Private Limited & Ors***.[6] has held that a referral court has the duty to conclusively decide the issue of the existence and validity of the arbitration agreement raised at the pre-referral stage. In the said case, the Hon'ble Supreme Court was posed with a short question i.e., the jurisdiction of the referral court at the pre-referral stage when the issue is with the existence and validity of an arbitration agreement is raised. The Hon'ble Supreme Court observed that in terms of Section 11(6) of the Arbitration and Conciliation Act 1996 **("Act")**, there is a duty cast upon the referral court to consider the dispute/issue with respect to the existence of an arbitration agreement. The Hon'ble Supreme Court further observed that the pre-referral jurisdiction of the court under 11(6) of the Act is very narrow and inheres two inquiries i.e., **(i)** the primary inquiry is about the existence and validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement; and **(ii)** the secondary inquiry that may arise at the reference stage is concerning the non-arbitrability of the dispute. The Hon'ble Supreme Court observed that the first issue with respect to the existence and validity of an arbitration agreement is concerned, the same has to be conclusively decided by the referral court at the referral stage itself.

In the said case, the Hon'ble Delhi High Court i.e., the referral court had not decided the said issue conclusively, and finally and the said referral court left the issue to be decided by the arbitral tribunal. Thus, the Hon'ble Supreme Court observed that since the referral court had not pronounced anything finally on the existence and validity of the arbitration agreement which ought to have been done by the referral court, the Hon'ble Supreme Court was constrained to quash and set aside the order referring the disputes to arbitration and remitted back the matter to the Hon'ble Delhi High Court to decide the matter afresh in light of the aforementioned principles of law.

COURTS SHOULD NOT ORDINARILY INTERFERE IN MATTERS RELATING TO TENDER OR CONTRACT

The Hon'ble Supreme Court in ***Tata Motors Limited vs. The Brihan Mumbai Electric Supply & Transport Undertaking (Best) & Ors.***[7] has held that courts should not ordinarily interfere in matters relating to tender or contracts. In the said case, BEST floated a tender for the supply, operation, and maintenance of 1400 single-decker buses with the driver, for the purpose of public transport service within the city of Mumbai along with other civil infrastructure development at the BEST depots for a period of 12 years. The tender document provided technical specifications wherein the single-decker buses were required to run 200 km on a single charge without interruption in actual conditions with air conditioning being not more than 80% battery being consumed. Tata submitted its bid guaranteeing an operating range of 200 km with 80% state of charge. However, the same was achieved in standard test conditions and not actual conditions. Similarly, EVEY also submitted its bid without any deviation from the tender conditions including the condition of a minimum operating range of 200 km in a single charge. The tender document provided the mode and manner of submission of the bid proposal. As per the said proposal, only the successful bidder had to provide an undertaking to be given by the operational equipment manufacturer, and the same was submitted by EVEY in its original bid.

[6] SLP (C) Nos. 18339-42 of 2021

[7] Civil Appeal No. 3897 of 2023

The tenders were opened and upon technical suitability evaluation, Tata Motors was found to be technically non-responsive whereas EVEY was found to be technically responsive. The price bids of the eligible bidders were opened and EVEY was declared to be the L1 bidder. Tata's price bid was not opened as it did not qualify technically. Aggrieved by the decision taken by BEST, Tata filed a writ petition before the Hon'ble High Court of Bombay. The Hon'ble High Court of Bombay held that the requirement for the operating range to be more than 200 km in a single charge in actual conditions was unambiguous and the rejection of Tata's bid by BEST was upheld by the Hon'ble High Court of Bombay. However, the Hon'ble High Court of Bombay went further and held that the bid of EVEY should also be rejected as it submitted an undertaking of an operational equipment manufacturer along with its technical bid which was not required and thus, held EVEY to be also an unsuccessful bidder. The short question which came before the Hon'ble Supreme Court was whether the High Court after upholding the disqualification of Tata Motors from the tender was justified in undertaking a further exercise to ascertain whether EVEY also stood disqualified and that BEST in its discretion may undertake a fresh tender process. The Hon'ble Supreme Court by relying on several judicial precedents observed that courts should not ordinarily interfere in matters relating to tender or contracts and set aside the decision of the Hon'ble High Court of Bombay by which the decision of BEST to accept the tender of EVEY was set aside and it was left to the discretion of BEST to undertake a fresh tender process.

HOME BUYERS HAVE NO RIGHT TO FILE AN INTERVENTION APPLICATION BEFORE ADMISSION OF THE SECTION 7 PETITION

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi in the case of ***Vikash Kumar Mishra & Ors. Vs. Orbis Trusteeship Service Pvt. Ltd. & Anr***[8] held that an intervention application ("**I.A.**") filed by the homebuyers in a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") is not maintainable before such petition gets admitted and the right to file such application would accrue after admission of the Section 7 petition. In this case, M/s. Orbis Trusteeship Service Pvt. Ltd. ("**Financial Creditor**") filed a petition under Section 7 of the Code seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**") against M/s. Kindle Infraheights Pvt. Ltd ("**Corporate Debtor**"), the developer of a residential project called 'Sikka Kaamna Greens' in Uttar Pradesh, for alleged default of Rs. 268 Crores approximately. Four homebuyers ("**Appellants**") who had booked their flats in the Corporate Debtor's aforementioned residential project filed an I.A. before the Hon'ble National Company Law Tribunal ("**NCLT**") supporting the claim of the Corporate Debtor. However, Hon'ble NCLT dismissed the aforementioned I.A. on the ground of maintainability vide order dated 01.02.2023. Aggrieved by the order dated 01.02.2023, the Appellants filed an Appeal before Hon'ble NCLAT. The Hon'ble NCLAT relied on their judgement in *Surinder Pal Singh & Ors. vs. Spaze Towers Pvt. Ltd.*,[9] wherein the Hon'ble Appellate Tribunal had declined to entertain a similar I.A. filed by the homebuyers on the ground of maintainability as the I.A. was filed before the Section 7 Petition was admitted by the Hon'ble NCLT. The Hon'ble Bench also placed their reliance on *Prayag Polytech Pvt. Ltd. vs. Hind Tradex Ltd.*[10] wherein an I.A. field by the Directors of the corporate debtor in that case was dismissed on the ground that the IA was filed before the admission of Section 7 Petition. In view of the aforesaid, the Hon'ble NCLAT dismissed the appeal.

DELAY IN FILING OF APPEAL UNDER SECTION 42 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 IS CONDONABLE UNDER SECTION 5 OF THE LIMITATION ACT, 2016

The National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi in the case of ***Canara Bank vs. Commercial Tax Department Circle 09, Indore, Madhya Pradesh & Anr.***[11]**,** held that the delay in filing the Appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") is condonable in the exercise of power under Section 5 of the Limitation Act, 1963 ("**Limitation Act**"). In the present case, during the pendency of the Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor, the Commercial Tax Department Circle 09 ("**Department**") had filed its claim and the same was admitted to the tune of Rs. 23,05,11,486/-. Subsequently, the aforementioned Corporate Debtor went into Liquidation and the Liquidator was appointed. Accordingly, as per the provisions of the Code, the Liquidator invited claims for the Corporate Debtor which were to be submitted by 04.09.2022. However, the Department filed its claim along with interest 19 days after the prescribed deadline. Despite the delay in filing the aforementioned claim, the Liquidator admitted the claim to the extent of Rs. 23,05,11,486/- i.e. to the extent it was admitted by the Resolution Professional during the CIRP. The Department filed an appeal against the decision of the Liquidator before the Hon'ble National Company Law Tribunal ("**NCLT**") with a delay 111 days. The Hon'ble NCLT vide order dated 21.04.2023, condoned the delay and directed the Liquidator to reconsider the claim. Aggrieved by the aforementioned order, the Appellants filed the present appeal contending the aforementioned order is in teeth of law as the Appeal herein was filed on the 125th day whereas, Section 42 of the Code provides 14 days for filing an appeal against the decision of Liquidator of either accepting or rejecting the claim. The Appellant further relied on judgement passed by the Hon'ble Apex Court in the *State of Madhya Pradesh &*

[8] Comp. App. (AT) (Ins) No. 246 of 2023
[9] Company Appeal (AT) (Ins) No. 354 of 2023
[10] 2019 SCC Online NCLAT 1029
[11] Company Appeal (AT) (Insolvency) No. 655 of 2023

Ors. vs. Bherulal[12], wherein it was held that inordinate delay by Government or State Authority does not deserve condonation. The Hon'ble Bench noted that in *Bherulal* (supra), the appeal was filed after 663 days of delay whereas in the present case the delay was of just 111 days and accordingly, the Bench upheld the order of the Hon'ble NCLT and dismissed the Appeal.

[12] (2020) 10 SCC 654

EMPLOYEES' STATE INSURANCE CORPORATION CLARIFIES THE PROCEDURE OF ONLINE CASH BENEFIT CLAIM SUBMISSION AND PROCESSING

The Employees' State Insurance Corporation ("**ESIC**"), vide clarification dated May 2, 2023, has informed that an online module for submission of claim requests (cash benefits) through the insured person portal has been developed by the ESIC to facilitate the insured persons in filing a claim for their cash benefits without the requirement of visiting their branch office and a user manual has been issued for the same.

MINISTRY OF LABOUR AND EMPLOYMENT REVOKES THE REQUIREMENT TO CONTRIBUTE 1.16% (ONE POINT ONE SIX PERCENT) OF A MEMBER'S SALARY TO THE PROVIDENT FUND

The Ministry of Labour and Employment, vide press release dated May 3, 2023, has revoked the requirement of the members to contribute at the rate of 1.16% (One Point One Six Percent) of their salary to the provident fund. The Supreme Court of India ("**SC**") in its judgement dated November 4, 2022, in the case of Employees Provident Fund Organization ("**EPFO**") & Anr. etc. v. Sunil Kumar B. and Ors., held that the requirement of the members to contribute at the rate of 1.16% (One Point One Six Percent) of their salary to the extent such salary exceeds INR 15,000 (Rupees Fifteen Thousand) per month as an additional contribution under the amendments made to the Employees' Pension Scheme, 1995 ("**EPS**") is ultra vires of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

The SC directed the authorities to make adjustments to the EPS within a period of 6 (Six) months. Accordingly, it has been decided that 1.16 % (One Point One Six Percent) additional contribution will be drawn from within the overall 12% (Twelve Percent) of the contribution of the employers into the provident fund. This provision is retrospective in nature in line with the directions given by the SC.

EPFO INCREASES CONTRIBUTION RATES FOR EMPLOYERS

The Ministry of Labour and Employment, vide notification dated May 3, 2023, has notified clarifications under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, in order to comply with the judgement of the SC in EPFO and Ors. v. Sunil Kumar B. and Ors., as mentioned above. The following clarifications have been made in this regard and will be deemed to be in force from September 1, 2014:

- In respect of members who have exercised joint option for contributing under the provisions of paragraph 11 of the EPS (*Determination of pensionable salary*) and who are found eligible, the employer's contribution shall be 9.49% (Nine Point Four Nine Percent) of the basic wages, dearness allowance and retaining allowance of each member by increasing 1.16% (One Point One Six Percent) from the extant 8.33% (Eight Point Three Three Percent); and

- The increased contribution shall be applicable to basic wages, dearness allowance and retaining allowance to the extent such basic wages, dearness allowance and retaining allowance exceed INR 15,000 (Rupees Fifteen Thousand) per month.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION (OTHER TERMS AND CONDITIONS OF SERVICE OF OFFICERS AND EMPLOYEES) RULES, 2023

The Department of Consumer Affairs, vide notification dated May 3, 2023, has issued the National Consumer Disputes Redressal Commission (Other Terms and Conditions of Service of Officers and Employees) Rules, 2023 which are applicable to every employee of the National Commission

and pertain to their appointment, pay and allowances and other terms and conditions of service. The said rules also provide for the maintenance of confidentiality of unpublished and sensitive information by the employees of the National Commission.

EPFO INTRODUCES THE FACILITY TO DELETE AN APPLICATION FOR VALIDATION OF OPTION/JOINT OPTION TO EMPLOYEES

The EPFO vide circular dated May 3, 2023, has introduced the facility to delete a filed application. Now, after an application is deleted, the employees can file a fresh application to validate an option/joint option with the correct details. However, it has also been clarified that this option can only be used if the employer has not acted on such an application. If the employer has already acted upon it, then the feature will not be available, but the employee will be given the option to rectify the errors after the scrutiny of the application by the Field officers of EPFO.

MINISTRY OF LABOUR AND EMPLOYMENT ENFORCES CERTAIN PROVISIONS OF THE CODE ON SOCIAL SECURITY, 2020

The Ministry of Labour and Employment vide notification dated May 3, 2023, has enforced the following provisions of the Code on Social Security, 2020 in relation to EPS from May 3, 2023:

- Section 15 (3) pertaining to EPS and any or all of its provisions to take effect either prospectively or retrospectively on and from such date as may be specified in that behalf in the scheme;
- Section 16(1)(a) pertaining to 'Provident Fund Scheme' where the contributions paid by the employer to the fund will be 10% (Ten Percent) of the wages for the time being payable to each of the employees, whether employed by him directly or by or through a contactor. The employee's contribution will be equal to the contribution payable by the employer in respect of him. Further, the employee, if he desires, can also contribute an amount exceeding 10% (Ten Percent) of the wages, subject to the condition that the employer will not be under an obligation to pay any contribution over and above his contribution payable under this section, i.e., 10% (Ten Percent) of the wages.
- The Central Government can modify this section through notification and change the percentage of contribution from 10% (Ten Percent) to 12% (Twelve Percent) and also can specify rates of employees' contributions and the period for which such rates will apply for any class of employee;
- Section 16(1)(b) pertaining to the EPS and establishment of a pension fund and contributions to the same;
- Section 16 (2) pertaining to the Provident/ Pension/ Insurance Fund, which will be administered by the Central Board;
- Part of Section 143 (*Power to exempt establishment*) which applies in giving effect to the provisions of Section 16(1)(b)(ii) in relation to the EPS;
- Section 164(1) repeals the corresponding provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and
- Part of Section 164 (2) (b) which relates to the Employees' Provident Funds Scheme, 1952.

AMENDMENTS UNDER THE ANDHRA PRADESH LABOUR WELFARE FUND RULES, 1988

The Government of Andhra Pradesh, vide notification dated May 4, 2023, has made the following amendments to the Andhra Pradesh Labour Welfare Fund Rules, 1988 ("**AP Labour Welfare Fund Rules**"):

- Insertion of Rule 22A which provides for the appointment of authorities and appellate authorities under Section 25(3) (*Penalty for obstructing inspection or for failure to produce documents, etc.)* and Section 30(3) (*Penalty for non-compliance with the direction of the Board*) of the Andhra Pradesh Labour Welfare Fund Act, 1987;
- Insertion of Rule 22B which provides for appeal on fines (a form of appeal, mode of submission and procedure to be followed by the appellate authority;
- Insertion of Rule 25 providing penalties for violation of the AP Welfare Fund Rules; and
- Insertion of a new form- Form H which provides the format for the register of appeals on fines.

KARNATAKA TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS (REMOVAL OF DIFFICULTIES) ORDER, 2023

The Government of Karnataka, vide notification dated May 6, 2023, has introduced the following amendments to the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 in order to remove difficulties:

- Insertion of new proviso to Section 6A (*Payment of tax in advance*) pertaining to submission of the statement

showing the payment and wages made by an employer, on or before May 31, 2023, for the month of April 2023; and

- Insertion of new proviso to Section 10(2) (*Payment of Tax by enrolled*) pertaining to persons who got enrolled at the commencement of the financial year 2023-2024, can pay the said amount of tax before May 31, 2023.

ENABLING FEATURES TO UPLOAD EMPLOYEES' STATE INSURANCE BENEFICIARY PHOTOGRAPH IN UTI INFRASTRUCTURE TECHNOLOGY AND SERVICES LIMITED PORTAL FOR ALL DIRECT/EMERGENCY CASES ADMITTED IN TIE UP HOSPITALS FOR CASHLESS MEDICAL TREATMENT

The ESIC, vide circular dated May 12, 2023, has informed about the enabled feature to click and upload the real-time photo of Employees' State Insurance ("**ESI**") beneficiary by tie-up hospitals in direct/emergency cases through any equipment has been enabled by the UTI Infrastructure Technology and Services Limited on their portal for ease of identification and verification of admitted beneficiary. As per the circular everyone associated with the approval shall ensure that hospitals upload the photo and identity of the admitted beneficiary while seeking approval.

PERMISSION TO KEEP ALL ESTABLISHMENTS OPEN ON ALL DAYS OF THE YEAR IN TELANGANA

The Labour Employment Training and Factories department of Telangana, vide notification dated May 15, 2023, allowed all establishments, under the Telangana Shops and Establishments Act, 1988, to remain open throughout the year for a further period of 3 (Three) years with effect from June 16, 2022, subject to the following conditions:

- The working hours of the employees shall be 8 (Eight) hours per day and 48 (Forty Eight) hours in a week. Record of overtime will be maintained in the wages register separately in respect of the employees who worked beyond normal working hours. Working hours of the shop shall be between 9:00 A.M. to 11:00 P.M. In case of women employees who are required to work beyond 8:30 P.M., transport arrangements are to be made for them. A notice to this effect in Telugu and English shall be exhibited at the main entrance of the shop indicating the availability of transport.

- Every employee will be allowed to avail a weekly holiday as per the list exhibited (Form 24) at the main entrance of the shop on a rotation basis.

- If the employees are found working on any holiday or after normal duty hours without proper indent of overtime, the exemption granted will be liable for cancellation.

- All employees are to be provided with appointment letters and copies of the same will be furnished to the jurisdiction inspector and acknowledgement shall be preserved in the shop for inspection at any time.

- Visit-book shall be maintained exhibiting a copy of the exemption for verification by the inspector for compliance with the conditions on exemption. The exemption is valid for 3 (Three) years only and subject to compliance with the conditions of exemption and also compliance with the welfare provisions applicable under various labour laws.

- The wages for the employees shall be credited to their saving bank accounts.

- Employees Provident Fund and ESI deductions shall be implemented in respect of the eligible employees.

- The employer shall cooperate in implementing the 'Duties of Inspection' under Rule 28 of the Telangana Shops & Establishments Rules, 1990 especially with regard to the implementation of the conditions and also the provisions of other labour laws for the workers employed in their shops.

- If any statutory violation is committed by the employer of the shop, the exemption will be cancelled before the sanction period.

- The exemption will remain in operation for a period of 3 (Three) years, subject to the fulfilment of conditions as specified above and also subject to any orders/instructions issued from time to time in this regard.

ESIC MANDATE AGAINST ISSUING AN OFFLINE EXTENSION OF STAY IN ESI HOSPITALS

The ESIC, vide notification dated May 18, 2023, has provided for mandatory online approval for extension of stay in ESI hospitals. To bring transparency and avoid issuing/approving the offline extension of stay, the empaneled hospitals and referring/approving ESI authorities in the field have been directed to mandatorily adhere to the online system of seeking and approving the extension of stay.

ENFORCEMENT OF PROVISIONS OF THE EMPLOYEES STATE INSURANCE ACT 1948 IN SOME DISTRICTS OF BIHAR

The Ministry of Labour and Employment, vide notification dated May 23, 2023, has enforced the following provisions of the Employees State Insurance Act, 1948 in all the areas of Arwal, Jamui, Kaimur, Khagaria, Kishanganj, Madhepura, Madhubani, Nawada, Purnia, Sheikhpura and West Champaran, in addition to the already notified areas of the

said districts, in the state of Bihar with effect from June 1, 2023:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV which relates to 'contribution';
- Sections 46 to 73 of Chapter V which relates to 'benefits'; and
- Sections 74, 75, sub-sections (2) to (4) of Sections 76, 80, 82 and 83 of Chapter VI which relates to 'adjudication of disputes and claims'.

ENERGY & INFRASTRUCTURE

ENERGY

THE MNRE VIDE NOTIFICATION MAY 1, 2023 GRANTED TIME-EXTENSION TO SOLAR PV/ SOLAR PV-WIND HYBRID POWER PROJECTS BID OUT ON OR AFTER APRIL 10, 2021 AND UNDER-IMPLEMENTATION SOLAR PV/ SOLAR PV-WIND HYBRID POWER PROJECTS, WHEREIN LAST DATE OF BID SUBMISSION WAS PRIOR TO MARCH 9, 2021

The Ministry of New & Renewable Energy (MNRE), Grid of Solar Power Division through notification dated May 1, 2023 granted time-extension to solar PV/ solar PV-wind hybrid power projects bid out on or after April 10, 2021 and under-implementation solar PV/ solar PV-wind hybrid power projects, wherein last date of bid submission was prior to March 9, 2021. It provided that REIA's (SECI, NTPC & NHPC) shall grant time-extensions in only such cases where the developer has diligently taken steps to complete the project but has not been able to complete the project for reasons beyond his control. Where the developer has taken no steps to implement the project but is merely sitting on the award, such projects shall not qualify for extension; and the consequence of cancellation of project will follow. This policy will apply to all cases of request for grant of extension - the developer must demonstrate that he has taken all possible measures to implement the project - but has not been able to do so for reasons beyond his control. The questions to be asked in such cases will be - Has the land been acquired? Have order been placed for modules/BoP/ BOS, etc.

THE CERC VIDE NOTIFICATION DATED MAY 12, 2023 INSERTED NEW REGULATION 6A AND AMENDED REGULATION 8A(4) OF CENTRAL ELECTRICITY REGULATORY COMMISSION (APPOINTMENT OF CONSULTANTS) REGULATIONS, 2008

The Central Electricity Regulatory Commission (CERC) vide Notification dated May 12, 2023, in exercise of the powers conferred under Section 91(4) read with Section 178 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, amended the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 (hereinafter referred to as the "Principal Regulations"). The following regulation was inserted–

"6A - For consulting assignments of a standard/regular nature in Commission, the CEC with the approval of the Chairperson shall shortlist and prepare a panel of Consultants based on responses received against Expression of Interest through advertising on CERC's official website, newspaper advertisement/CPPP Portal. Enquiry for seeking Expression of Interest shall include in brief, the broad type of consulting assignments, eligibility and the pre-qualification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The number of shortlisted consultants should not be less than three.

The panel prepared by the CEC after approval of Chairperson will be valid for one year. The Chairperson may further extend the validity of the panel for one more year. During the validity of panel, the financial bids shall be invited from the panel of consultants and the consultant shall be engaged on the basis of 'Least Cost System.'

An amendment was brought about in Regulation 8A(4) as under-

"(4) The Staff Consultant shall be engaged with appropriate functional designation, in the following categories, commensurate with the academic qualifications, total experience in number of years, domain expertise and knowledge required for the deliverables."

And monthly fee range and experience of research associate, research officer, senior research officer and principal

research officer has also been amended accordingly as provided under CERC Notification.

THE CERC VIDE NOTIFICATION DATED MAY 29, 2023 HAVE NOTIFIED THE CENTRAL ELECTRICITY REGULATORY COMMISSION (INDIAN ELECTRICITY GRID CODE) REGULATIONS, 2023

The Central Electricity Regulatory Commission (CERC) vide Notification dated May 29, 2023, in exercise of powers conferred under clause (h) of sub-section (1) of Section 79 read with clause (g) of sub-section (2) of Section 178 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, notified the Grid Code as under the newly introduced Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023.

INFRASTRUCTURE

PROPORTIONALITY IN PERFORMANCE SECURITY FOR MULTIYEAR SERVICE CONTRACTS

The Department of Expenditure ("**DoE**"), Ministry of Finance ("**MoF**") has issued an office memorandum bearing number F. 1/6/2023-PPD dated May 24, 2023 ("**O.M.**"), which deals with proportionality in performance security for multiyear service contracts. Where service contracts span over multiple number of years, the right balance must be struck between the interest of procuring entities in case of defaults and avoiding an increase in the tendered price and/or reduced competition.

The O.M. states that Rule 171 (i) of the General Financial Rules, 2017 ("**GFR**"), provides sufficient flexibility to design the performance security in terms of value and duration, while considering the market conditions and commercial practice for procuring specific services.

Further, wherever feasible, the procuring entities may reduce the performance security in proportion to the balance service period. Accordingly, the tender conditions may be suitably modified if it is decided to proportionally reduce the performance security.

MINISTRY OF PORTS, SHIPPING & WATERWAYS RELEASES HARIT SAGAR- GREEN PORT GUIDELINES

The Ministry of Ports, Shipping and Waterways ("**MoPSW**") has issued Harit Sagar Green Port Guidelines vide official memorandum bearing number PD-24015/3/2023 dated May 11, 2023 ("**Guidelines**"). These Guidelines shall be applicable to all major ports of India. The Guidelines provide the framework for major ports to take various green initiatives to reduce carbon emissions and to develop an environment friendly ecosystem at major ports.

Crucial principles in the Guidelines are follows:

- Constructing resilient infrastructure by the adoption of environmentally sound designs in order to ensure sustainability**.**
- Aligning with the concept of 'working with nature' and 'panchamrit commitments' by employment of ecosystem dynamics in port development, operation, and maintenance.
- Maximizing the use of clean / green energy in port operation and ensuring sustainability in port development and operation
- Developing port capabilities for storage, handling and bunkering green hydrogen, green ammonia, green methanol / ethanol etc.
- Minimizing carbon emissions and waste to ensure protection of environment.
- Conducting of environment impact assessments for port projects.
- To develop measurable and identifiable environmental performance indicators to help monitor port projects.
- The ports shall make endeavours to adopt GRI to report accountability for impacts in economy, environment and people.

The main areas of implementation will include electrification of port equipment, increased usage of renewable energy, sustainable resource utilization, promotion of coastal shipping, producing carbon credits, etc.

The ports shall, within a period of 2 (two) months from the date of the launch of Guidelines, develop a monitoring system for environmental performance indicators ("**EPIs**") as entailed in Annexure B of the Guidelines and Action Plan for EPIs as entailed in Annexure D of the Guidelines.

For all doubts and ambiguities, the MoPSW reserves the power to interpret and clarify the Guidelines. Additionally, MoPSW also has the power to relax the Guidelines for public interest in case of difficulties in implementation.

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

The Ministry of Road Transport & Highways ("**MoRTH**") has issued a notification bearing number COVID-19/RoadMap/JS(H)/2020 (183777) dated May 4, 2023 ("**Notification**"), for extending certain relief measures available to the contractors/developers of road sector in view of COVID- 19 pandemic, in light of MoRTH's previous notifications in this regard. The Notification extends the following relief measures, for a period of 01 (one) year from April 01, 2023, to March 31, 2024, as under, (unless withdrawn by MoRTH on a previous date):

- Relaxation as per Schedule H/G to improve the liquidity of funds available with the contractors and concessionaire.
- An arrangement for direct payment to approved sub-contractor through an escrow account, till March 31, 2024, or till the date of completion of works, whichever is earlier.
- Reduction of performance security to 3% (three percent) of the value of contract for all existing contracts and for tenders and contracts concluded till March 31, 2024. However, additional performance security has been recommended by MoRTH in case of abnormally low bids.
- Release of retention money in proportion to the work already executed, and no reduction of retention money may be made from the bills raised by the contractor till March 31, 2024.

Further, for Hybrid Annuity Model (HAM)/ Build-Operate-Transfer (BOT) contracts, the performance guarantee can be released on pro-rata basis in case there is no breach by the concessionaire.

MODEL TENDER DOCUMENT FOR PROCUREMENT OF CONSULTANCY SERVICES ("MTD")

The DoE, MoF has released the MTD on April 21, 2023, to address the gaps existing in the procurement of consultancy services. The MTD will act as a guiding template for Ministries of the Government of India who may amend and customise the same in accordance with their needs. The MTD is divided into the following three parts:

a) Part A - Model Tender Document for Request for Expression of Interest

b) Part B - Model Tender Document for Request for Proposal

c) Part C - Guidance Note for Procuring Entities

- This MTD is advisory in nature and does not intend to replace the alternative tender documents which have been agreed with multilateral development banks (MDBs).
- The documents may be used by the central government ministries/departments and their subordinate offices, state governments, central public sector enterprises and other agencies.
- The MTD has been designed for a 2 (two) stage e-procurement and is not suitable for procurement of consultancy services without the expression of interest stage in procurements below the threshold of Rs 25,00,000 (Rupees Twenty Five Lakh).
- The tender inviting authority must comply with the following regulations (including subsequent revisions, if any):

  (i) Ministry of Finance, Department of Expenditure, Public Procurement Division, Orders (Public Procurement 1, 2 and 3) F.No.6/18/2019-PPD dated July 23rd/24, 2020 (as amended on February 8, 2021).

  (ii) Rule 173 (i) of GFR 2017 and Ministry of Finance, Department of Expenditure, Public Procurement Division Office Memorandum bearing No. F.20\212014-PPD dated July 25, 2016, and subsequent clarifications dated September 20, 2016, July 27, 2019, and June 29, 2020.

  (iii) Public Procurement (Preference to Make in India) Order 2017 (PPP-MII) of the Department for Promotion of Industry and Internal Trade (DPIIT - Public Procurement Section) as revised by notification bearing No. P - 45021/2/2017-PP (BE-II) dated September 16, 2020.

KSHEERAABD CONSTRUCTION PVT. LTD. VS. NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.

Introduction

In the case of *Ksheeraabd Construction Pvt. Ltd. vs. National Highways and Infrastructure Development Corporation Ltd., 2023*[13], a petition was filed under Section 9 of the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**"), seeking an interim stay on the termination notice issued by National Highways and Infrastructure Development Corporation Ltd. (**"NHIDCL**"). However, the single-judge bench of the Delhi High Court ("**the Court**") declined to grant the interim stay and refused to interfere with NHIDCL's action.

Facts

- The dispute arose between Ksheeraabd Construction Private Limited (the **"Petitioner**") and NHIDCL regarding a contract for the construction of Changtongya – Longleng Road in Nagaland.
- The Petitioner was awarded the contract with a completion deadline of June 30, 2022, which was later extended to February 3, 2023, by granting extension of time (**"EOT"**). Despite granting EOT, NHIDCL claimed that the Petitioner achieved only 79.12% (seventy nine point one two percent) of the physical progress targets.
- Consequently, NHIDCL issued a cure notice, but the Petitioner failed to take necessary steps for timely completion within the specified period and NHIDCL issued a termination notice against the Petitioner. In response, the Petitioner sought interim measures and injunctions against the termination notice issued by NHIDCL.

Judgement

- The Court examined the termination notice issued by NHIDCL, which raised concerns about the Petitioner's failure to meet construction milestones.
- Referring to Section 14 of the Specific Relief Act, 1963 ("**SRA**"), the Court determined that contracts that are inherently terminable cannot be specifically enforced. The Court referred to the orders passed previously in the matter of *Turnaround Logistics (P) Ltd. vs. Jet Airways (India) Ltd*[14] and *National Highways Authority of India and another vs. Bumihiway DDB Ltd. (JV) and Ors*[15], wherein it was established that the provisions of Section 14(d) of the SRA would apply to all revocable or voidable contracts, since such contracts are by its nature "determinable".
- The Court stated that as a constitutional court, it should refrain from invoking constitutional powers of judicial review under Section 9 of the Arbitration Act in issues relating to merits of a termination of a contract, since it is the domain of the arbitral tribunal.
- The Court declined to interpret Section 14(d) of the SRA as the same is limited only to contracts allowing termination without cause or in the absence of an event or breach.

ROADWAY SOLUTIONS INDIA INFRA LTD. VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA

Introduction

In the matter of *Roadway Solutions India Infra Ltd. vs. National Highways Authority of India, 2023*[16], Roadway Solutions India Infra Limited ("**Petitioner**") filed a petition before the Court under Section 9 of the Arbitration Act, seeking a stay on the notice of intent to terminate (**"NITT"**) issued by National Highways Authority of India ("**NHAI**"). A single judge bench of the Court expressed the opinion that granting a stay on the NITT would amount to providing final relief, which is not permissible under Section 9 of the Arbitration Act. The Court also noted that Sections 20-A and 41(ha) of the SRA would be applicable in the present case, and granting an injunction would further delay the infrastructure project.

Facts

- The Petitioner was awarded the contract for the construction of a road project in Rajasthan ("**Contract**") by NHAI. The Petitioner was the lowest bidder.
- However, disputes arose when NHAI rejected the Petitioner's proposal to use reclaimed/recycled asphalt pavement (**"RAP"**) and the use of RAP material for dense bituminous macadam works, stating that it was not part of the Petitioner's bill of quantities.
- The Petitioner initiated mediation and disputes resolution processes as per the Contract terms. The Petitioner also submitted an interim payment certificate seeking release of 75% (seventy five percent) of the net payment, but NHAI only released 50% (fifty percent) of the net payment.
- NHAI subsequently issued a termination notice, claiming non-performance by the Petitioner. In

[13] Miscellaneous Petition (I) (Commercial) 128/2023
[14] 2006 SCC Online Del 1872
[15] (2006) 10 SCC 763
[16] O.M.P.(I) (COMM.) 41 of 2023

response to this action, the Petitioner approached the Court.

Judgement

- The Court stated that if the Petitioner had concerns about the Contract and wanted to challenge its validity, they could invoke the arbitration clause to claim damages. The Court also clarified that it could not direct a party to not terminate a contract or to continue with it, under Section 9 of the Arbitration Act.

- The Court opined that it was the right of a party to terminate a contract, and the Court could not force a contract upon someone. The Court held that the present Contract was indeed terminable and relied on previous judgments to support this conclusion.

- The Court emphasized that the legislative intent under Sections 20A and 41(ha) of the SRA is not to grant injunctions to infrastructure projects and cause delays. The Court further mentioned that the Petitioner could not seek to achieve something indirectly which it could not achieve directly.

- The Court noted that a stay on the NITT would effectively prevent NHAI from terminating the Contract. The Court concluded that the Petitioner's request for a stay on the NITT would amount to granting final relief, which could not be done in the current proceedings. The Court found no merit in the Petitioner's case for granting an interim injunction and dismissed the petition.

DSK View: The Court held that the intention of the legislature is clearly stated in Sections 20-A and 41(ha) of the SRA, which indicates that injunctions should not be granted in cases involving infrastructure projects where delay could be caused by such injunctions. Thus, the Court reiterated the principle that the courts have a limited role and should aim to interfere as little as possible to prevent any hindrance or stoppage of public work projects.

TATA MOTORS LTD. VS. THE BRIHAN MUMBAI ELECTRIC SUPPLY AND TRANSPORT UNDERTAKING

Introduction

In the matter of *TATA Motors Ltd. vs. The Brihan Mumbai Electric Supply and Transport Undertaking, 2023*[17], a three-judge bench of the Supreme Court ("**Supreme Court**"), dismissed TATA Motors' ("**Appellant**") appeal and granted the appeals filed by EVEY Trans Private Limited ("**EVEY**") and Brihan Mumbai Electric Supply and Transport Undertaking ("**BEST**"). The Supreme Court overturned the portion of the Bombay High Court's judgment and order that nullified the decision of BEST to accept EVEY's bid.

Facts

- In 2022, BEST floated a tender for the supply, operation, and maintenance of 2100 (two thousand one hundred) single decker AC electric buses with drivers for public transport service within the city of Mumbai for a period of 12 (twelve) years ("**Tender**").

- EVEY and TATA Motors were among the participant bidders. TATA Motors requested the inclusion of specific/standard conditions "AIS 040" in their bid, which BEST rejected.

- BEST preferred references to "actual conditions" rather than "AIS 040" or "Standard Conditions" in the specifications of the Tender. TATA Motors deviated from the Tender specifications in their bid, while EVEY claimed compliance.

- BEST disqualified TATA Motors's bid for technical deviations, but EVEY's bid was considered responsive. TATA Motors then challenged BEST's decision in the Bombay High Court. During the pendency of the proceedings, BEST awarded the Tender to EVEY.

- The Bombay High Court upheld TATA Motors' disqualification and declared EVEY an unsuccessful bidder. Dissatisfied by the decision of the Bombay High Court, all parties filed appeals before the Supreme Court.

- During the proceedings before the Bombay High Court, EVEY supplied 8 (eight) buses before an interim stay was granted by the Supreme Court.

Judgement

- The Supreme Court emphasized the need for restraint in judicial review of contractual or commercial matters and recognized that courts lack expertise in technical contractual issues. It stated that courts should not excessively scrutinize tenders or interfere in commercial matters, as it can cause unnecessary losses.

- The Supreme Court observed that TATA Motors deviated from the Tender requirements and criticized the Bombay High Court for investigating BEST's decision to declare EVEY as the eligible bidder.

- The Supreme Court noted that the Bombay High Court should have been cautious in reversing BEST's decision.

[17] 2023 SCC OnLine SC 671

It stated that interfering with the tender process at an advanced stage would not be in the public interest and could cause financial burdens.

- The Supreme Court referred to previous judgments emphasizing the commercial nature of contract awards and the need to consider public interest. It concluded that judicial review should be exercised cautiously, with public interest as the guiding factor, and not to protect private interests or decide contractual disputes.

- As a result, the Supreme Court overturned the portion of the Bombay High Court's judgment that invalidated BEST's decision to accept EVEY's bid. Instead, the Supreme Court left it to BEST's discretion to proceed with a fresh tender process. Additionally, TATA Motors' appeal was rejected, while EVEY and BEST's appeals were granted.

DSK View: This judgment by the Hon'ble Supreme Court holds significance as it reinforces the established legal position that courts should exercise restraint in judicial review of tender, contractual, or commercial matters. The Supreme Court emphasized that the power of judicial review should not be invoked to protect private interests at the expense of public interest, or to decide contractual disputes.

FINTECH

SECOND EDITION OF FINTECH FESTIVAL INDIA ORGANIZED BY CONSTELLAR

Constellar, the Singapore-based company which co-organises the Singapore FinTech Festival, conducted a three-day FinTech Festival India 2023 ("**FFI**") in Mumbai, Maharashtra from May 16 to May 18, 2023 at the Jio World Centre. With an aim of shaping the future of finance in India, dubbed as 'the world's second-fastest-growing FinTech ecosystem', the theme for this season was anchored around 'Democratising Digital Economy'. Notably, global innovators, leaders and governance stakeholders gathered to discuss the future of FinTech, with delving into topics like Web 3.0, Digital Identity, future of BFSI in the Metaverse, Neobanks, Blockchain, Cybersecurity, Cloud Security, AI revolutionizing BFSI, RegTech, Insurtech, amongst others. The Government of Telangana was the state partner for the event.

DSK View: *The Fintech sector globally is witnessing rapid regulatory intervention. Congregations such as the FFI better prepare the firms involved in the financial sector landscape, by drawing lessons from global FinTech jurisprudence and anticipating the market tendencies and challenges ahead. On one hand where it provides opportunities for the firms in the space to do better risk management and risk mitigation, it also boosts beneficial innovation and competition. Significantly, this also provides for stronger cross-border coordination and sharing of information and best practices, given the supra-national nature of FinTech.*

Source: Second Edition of FinTech Festival India, 2023

AMENDMENT TO THE MASTER DIRECTION - KNOW YOUR CUSTOMER (KYC) DIRECTION, 2016

On May 4, 2023, Reserve Bank of India 'RBI' has issued an amendment to the Master Direction- Know Your Customer (KYC) Direction, 2016 ("**Master Direction**") to introduce new instructions (Para 64) on wire transfer in the Master Direction. In accordance with the amendment, all cross-border wire transfers shall be accompanied by accurate, complete, and meaningful originator and beneficiary information including the account numbers involved in the transaction.

As per the amendment, REs shall ensure that all the information on the wire transfers is immediately made available to appropriate law enforcement and/or prosecutorial authorities as well as the Financial Intelligence Unit (FIU). The Master Direction also prescribes the specific scenarios where the wire transfer instructions will and will not apply on transactions carried out using a credit card, debit card, prepaid payment instrument ("**PPI**").

The Master Direction also lays down that whenever there is an involvement of any unregulated entities in the process, the REs shall be responsible for information sharing, reporting and other requirements, and shall put an agreement in place with such unregulated entities clearly stipulating the obligations under wire transfer instructions.

DSK View: *This amendment is aimed at strengthening the framework for anti-money laundering and combating the financing of terrorism (CFT). This development will enable the RBI to have access to a clear, accessible trail of the flow of money. Such trail may have a significant role in preventing money laundering activities and will hinder ease of monetary access for terrorist financing platforms.*

Source: Amendment to the KYC Directions

RUPAY IS LIVE ON CVV-LESS PAYMENTS FOR TOKENIZED CARDS

RuPay introduced CVV-free (Card Verification Value) payment option for its debit, credit and prepaid cardholders

who have tokenized their cards on the merchant application or webpage with a view to enhance customer experience with secure and faster checkout for RuPay tokenized cards.

Usually, when a cardholder saves their card information for a domestic online purchase, they have to subsequently verify the transaction first, using their card details and later on verify the transaction by entering an OTP for two-factor authentication. On the merchants live for CVV less payments, for future transactions, the customers can complete the payment by just entering the OTP, eliminating the requirement of entering the CVV or other card details again.

DSK View: *The National Payments Corporation of India, since the launch of RuPay in 2014, has been working to promote its use amongst in the Indian e-payment landscape. In a slew of measures, the NPCI is taking pro-active measures to promote the international prevalence of RuPay. Singapore, UAE, Bahrain and Japan have already adopted RuPay in their financial systems. It is evident that NPCI is waging a battle against the dominance of Visa and MasterCard, other payment service systems present in India. It will be interesting to see the impact that it will have on the market share of RuPay and its usage in India.*

Source: NPCI Press Release

RBI AND THE BANK FOR INTERNATIONAL SETTLEMENTS LAUNCH G20 TECHSPRINT 2023

The RBI and the Bank for International Settlements ("**BIS**") Innovation Hub Bank collaborated to organise the fourth edition of the G20 TechSprint on May 04, 2023. G20 TechSprint is a global technology competition aimed at fostering innovation in the development of cross-border payment solutions. The 2023 edition will focus on three problem statements on cross-border payments, *viz* anti-money laundering/countering the financing of terrorism (AML/CFT), sanctions technology solutions to reduce illicit finance risk, forex (FX) and liquidity technology solutions to enable settlement in emerging market and developing economy (EMDE) currencies, and technology solutions for multilateral cross-border central banking digital currency (CBDC) platforms.

DSK View: *Hackathons such as G20 TechSprint provide a competitive platform for churning out the most viable technological solutions to reduce risks associated with illicit finance, offer options for currency settlement, and establish interoperability in multilateral CBDC systems. Previous versions of the G20 TechSprint focussed on the themes of green and sustainable finance, central bank digital currencies (CBDCs), and regulatory compliance (RegTech) and supervision (SupTech).*

Source: RBI Press Release

THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) AMENDMENT RULES, 2023

The Ministry of Electronics and Information Technology 'Ministry' notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 'Amendment 2023' to amend the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 'IT Rules'. A fundamental change in the Amendment is that the terms "social media intermediary and significant social media intermediary" have been replaced with "a social media intermediary, a significant social media intermediary, and an online gaming intermediary." As a result, online gaming intermediaries, who were previously excluded from the prior law, will now be subject to the new regulations.

Rule 4-A has been inserted which provides for 'verification of online real money game'. Under this Rule for the purpose of verifying an online real money game, the Ministry may appoint as many online gaming self-regulatory bodies it deems necessary. The grievance procedure and the contact information for the grievance officer must be prominently displayed on each self-regulatory bodies for online gaming's website and mobile applications. The purpose of this Amendment is to incorporate greater due diligence over social media and online gaming intermediaries to ensure that there are no fabricated or falsely misleading material on such social media about business of central government.

DSK View: *The Ministry of Electronics has notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, to expand the scope of existing obligations of intermediaries, related to online gaming and the spread of false and misleading information about government business, reaffirming its commitment to protect the safety and trust of the online gamers. These amendments have been drafted after holding widespread consultations with multiple stakeholders including parents, school teachers, academics, students, gamers and gaming industry associations, including child rights bodies with an aim to protect the online gamers and their funds from online scams and frauds, encouraging responsible gaming, and protecting young and vulnerable users from online abuse and obscenity.*

Source: Amendment, 2023

MADRAS HIGH COURT HOLDS PAYTM LIABLE FOR UNAUTHORISED DEBIT TRANSACTIONS

The Madras High Court ("**Court**") recently ordered PayTM Mobile Solutions Private Limited ("**PayTM**") to pay

compensation amounting to INR 3,00,000 (Indian Rupees Three Lakh) to Dr. R. Pavithra (Petitioner), a post-graduate medical student, who lost the aforesaid amount to a number of fraudulent transactions.

Upon getting notified of fraudulent transactions being undertaken from her account, the petitioner immediately informed the City Union Bank and the local police. However, when the City Union Bank informed the petitioner that the money was transferred fraudulently to the PayTM account, she called Paytm and registered a complaint. PayTM informed that the money was transferred from her account to six accounts in the State Bank of India (SBI) and Fincare Small Finance Bank at Bangalore. The attempts to break into her bank account continued and despite several requests to get her account blocked with the bank, the City Union Bank blocked her account only on February 16, 2021, and on March 01, 2021, sent a letter denying its liability of refunding the loss. It was then that the petitioner filed a writ petition before the Court.

The Court noted that as per the RBI's mandate, PayTM is required to conduct a periodic system audit to check against any IT system vulnerability, to prevent hacking. The respondent failed in observing its obligation. The Court also noted that upon filing of complaint with the RBI, the RBI requested PayTM to submit its response statement within 90 (Ninety) days thereof, a deadline that the corporate failed to meet. The Court reiterated that as per Para 16.4.10 of the Master Direction on Issuance and Operation of Prepaid Payment Instruments, the burden of proving customer liability in cases of unauthorised electronic payment transactions shall lie on the PPI issuer.

The Court proceeded to ask RBI to issue directions to PayTM, to restore the loss suffered by the petitioner without any reduction, except of the amount that has already been reversed to the account of the petitioner within a period of two weeks.

Source: *Dr. R Pavithra vs. The Commissioner of Police*, Madras High Court

THE DELHI HIGH COURT REITERATES THE COPYRIGHT ACT AND ITS PROVISIONS ON THE FIRST OWNER OF A WORK

The Hon'ble Delhi High Court refused to grant an injunction in favour of RDB and Co. in a suit proceeding initiated by it against HarperCollins Publishers for novelizing the screenplay of the film "Nayak".

Upon a suit moved by R. D. Bansal seeking an injunction against HarperCollins Publishers, the plaintiff being producers of the movie 'Nayak', alleged an infringement of their Copyright as they claimed to be owners of the screenplay in the movie and only upon commission by them, Satyajit Ray wrote the screenplay and directed the movie. While the defendants decided to novelize the screenplay and argued that since the screenplay was written entirely by Satyajit Ray, the copyright vests with him first and upon his death, with his son and the society, from whom it had obtained a license before novelizing the screenplay.

The Hon'ble Court discussed Section 13(4) of the Copyright Act, which distinguishes copyright in a film from a separate copyright in any work in respect of which the film is made. In simple words, if a separate copyright existed in the screenplay of the film, such separate copyright cannot be affected by the copyright held in the cinematographic film. The Hon'ble Court further relied on Section 17 of the Act read with the judgement of ***Sushilaben Indravadan Gandhi vs. New Assurance Co. Ltd.***[18], wherein it was held that the "contract of service" under clause (c) to the proviso of Section 17 of the Act does not apply to cases of a contract between equals but is to be interpreted as an employment contract between master and servant.

It was further observed that the plaintiffs had no role at all in the screenplay of the movie and Satyajit Ray was alone responsible for the screenplay and direction. Hence, Satyajit Ray was held to be the first owner of the copyright in the film and after the demise of Satyajit Ray, the copyright would rightly vest with his son and SPSRA. Therefore, the plaintiff has no right to injunct the defendants from novelizing the screenplay of the movie 'Nayak'.

DSK View: *The Copyright Act distinguishes between the cinematographic film and its underlying works. Therefore, a script, screenplay and still photographs from the film constitute the underlying works. The right of a producer to a film is restricted to the physical form of the film and does not extend to underlying works such as the screenplay and script of the film. This judgment may lead to the disintegration of rights in a film amongst numerous stakeholders for their individual contribution challenging uniformity in law.*

[RDB and Co. vs. HarperCollins Publishers India Private Limited, 2023:DHC:3551]

RECOGNITION OF TRADEMARKS AS WELL-KNOWN MARKS

As per the recent Trade Marks Journal No. 2106 dated 29/05/2023 published by the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), the trade mark 'JK LAKSHMI CEMENT' of JK Lakshmi Cement Limited, has been advertised in the journal for objection from general public, if any, before the determination of the mark as a well-known trademark under Rule 124(4) of the Trade Marks Rules, 2017. The said rule says that before determining a trade mark as "well-known", the Registrar may invite objections from the general public to be filed within thirty days from the date of invitation of such objection.

Further, the Trade Mark Registry by virtue of Rule 124(5) of the Trademark Rules, 2017, has determined the following marks as well-known marks and the same shall be included in the list of "well-known" trademarks maintained by the

[18] (2021) 7 SCC 151

Trade Marks Registry:

S. NO.	WELL-KNOWN MARK	PROPRIETOR
1.	CYCLE	N. Ranga Rao & Sons Private Limited
2.	RPG	RPG Enterprises Limited
3.	GOOD DAY	Britannia Industries Limited
4.	LAKME	Hindustan Unilever Limited
5.	BETNOVATE	Glaxo Group Limited
6.	TITAN	Titan Company Limited

TRADEMARK SQUATTING – AN ACT OF BAD FAITH UNDER THE TRADE MARKS ACT, 1999 HOLDS DELHI HIGH COURT

The Hon'ble Delhi High Court noted that "trademark squatting", though not expressly mentioned in the Trade Marks Act, 1999 ("the Act"), would amount to "bad faith" under Section 11(10)(ii) of the Act. The provision provides for taking into consideration the bad faith involved on the part of either party while considering an application for registration of a trademark or an opposition initiated against it.

A petition seeking rectification of the Register of trademarks by removal of trademark application filed by the mark BPI SPORTS in Class 5 bearing no. 4422891 was filed by the Petitioner, a US based company. The Petitioner held a registration of the word mark BPI SPORTS in respect of dietary and nutritional supplements in the US since 2014 and claimed use of the mark in India since January, 2019. Plaintiff alleged that Respondent No. 1 was an importer of Petitioner's goods under the mark BPI SPORTS and had clearly obtained registration of the said mark, in January 2020, on a "Proposed to be used" basis knowing well about its reputation in global market. Petitioner averred that it was entitled to claim common law rights and that it enjoyed a trans-border reputation in India.

Upon considering the facts and arguments advanced, the Hon'ble Court refused to grant a relief to the Petitioner under sub-section (1) to (3) of Section 11 of the Act on the ground that Petitioner's mark was neither registered in India nor a well-known mark and there was not sufficient evidence to prove trans-border reputation. It was, however, held that the aggrieved was entitled to relief under Section 11(10)(ii) of the Act which requires the Registrar, while registering the mark, to take into consideration the bad faith involved either of the applicant or the opponent.

The Hon'ble Court discussed the concept of trademark squatting and held that the act of the Respondent constituted trademark squatting, an internationally known intellectual property misdemeanour, would amount to bad faith within the meaning of Section 11(10)(ii) of the Act. It was held that matter fell within the scope of the marks that are "wrongly remaining in the register" within the meaning of Section 57 (2) of the Act and hence was liable to be removed from the Trade Marks Register.

DSK View: *The Hon'ble Court has brought the concept of trademark squatting within the ambit of the Trade Marks Act, 1999 and provided a roadmap to trademark owners to protect their interest from entities seeking unjust enrichment. The approach adopted by the Hon'ble Court upholds the spirit of the Act even when no express provision dealing with a mala fide activity exits in the Act.*

[BPI Sports LLC vs. Saurabh Gulati & Anr., 2023:DHC:2920]

BOMBAY HIGH COURT UPHOLDS THE RIGHT OF AUTHORS TO RECEIVE ROYALTY FROM RADIO BROADCASTERS

The Hon'ble Bombay High Court in a landmark case decided in favour of Indian Performing Right Society Limited ("Plaintiff"/"IPRS") and upheld the rights of authors of literary and musical work to claim royalty in respect of its utilisation, while communicating a sound recording to public through radio broadcasting.

It was contended by the Plaintiff that the amendment to the Copyright Act, 1957 ("Act") effective from 21.06.2012 ("2012 Amendment"), which added provisos to Section 17, 18 and 19 of the Act, has reversed the position of law that was erroneously interpreted in the case of ***IPRS vs. Eastern Indian Motion Pictures Association and others***[19] to hold that once the underlying works become a part of cinematograph film, author of the underlying work loses their rights owing to Section 17 (b) and 17 (c) of the Act.

Upon careful consideration of the submissions, legal provisions and judicial precedents, the Hon'ble Court observed that the Plaintiff has made out a strong *prima facie* case in its favour and held that the communication of sound recording to the public on each occasion amounts to utilization of such underlying literary and musical works in respect of which authors have a right to collect royalties and accordingly, the authors of such literary and musical works are entitled to claim royalties on each occasion that such sound recordings are communicated to the public through radio stations. It was held that the words 'with the cinematograph film in a cinema hall' in the proviso added to Section 18(1) made it clear that if works are utilized in any form other than in a cinema hall, the authors are entitled to receive royalties.

The Hon'ble Court observed that the use of the expression 'subject to the provisions of this Act' makes a provision subservient to other provisions and therefore, it becomes

[19] *1977 SCR (3) 206*

clear that Sections 13 and 14 of the Act make reference to all the provisions of the Copyright Act, including Sections 17, 18, 19. The Hon'ble Court observed that the interpretation given in the Eastern Indian Motion Pictures Association case is a departure from the legislative intent and reaffirmed that the provisos added under Section 17 specifically provides that nothing contained in the same shall affect the rights of the authors and their works under Section 13 (1)(a) of the Act.

The Hon'ble Court was pleased to grant an interim injunction restraining Defendants from utilizing Plaintiff's literary and musical works without paying royalty as per the Tariff and directed the Defendants to announce the names of the authors and principal performers of the works with each broadcast of the works.

DSK View: *This landmark judgment brings much-needed clarity on the position of law with respect to underlying works forming part of cinematograph film subsequent to the 2012 Amendment.*

[Indian Performing Right Society Limited vs. Rajasthan Patrika Private Limited and Indian Performing Right Society Limited vs. Music Broadcast Limited, 2023 SCC OnLine Bom 944]

FSSAI'S DRAFT REGULATIONS ON ALCOHOLIC BEVERAGES

The Food Safety and Standards Authority of India ('**FSSAI**') has proposed to amend the Food Safety and Standards (Alcoholic Beverages) Regulations, 2018, vide F. No. STD/SP-21/T(Alcohol-1) dated 11th May 2023 (available here).

As per the text of the draft regulations, ready-to-drink/ low alcoholic beverages and Nitro Craft Beer would also be regulated under the Food Safety and Standards (Alcoholic Beverages) Regulations, 2018. Ready-to-drink/ low alcoholic beverages have been defined as flavoured beverages, having 0.5 to 8.0% alcohol by volume, made from spirit or the mixture of spirit or any alcoholic beverage other than wine and beer as base or fruit/vegetable juice with or without added sugar/salt and with or without carbonation. Nitro Craft Beer has been defined as a craft beer having a mixture of CO_2 and N_2 gas.

Craft Beers have categorised into two headings, regular and strong under Table 3 read with sub-regulation 4.1. Regular craft beer will have alcohol content up to 5% whereas strong craft beer will have alcohol content more than 5% up to 8%. In addition to the above, the draft regulations have inserted "Indian Liquor" alongside country liquor, plain as well as blended, for including the Indian liquor under the ambit of the Regulations.

Further, the draft regulations clarify that wine from agricultural and plant sources ("**WAPS**") has to include alcohol produced by the fermentation of whole grains in addition to juice, sap or other agricultural and plant sources with or without the addition of sugar or jaggery. Additionally, honey wine/ mead must include the fermentation of an aqueous solution of honey by yeasts without addition of any other carbohydrate source.

Furthermore, Wine-Based Beverages may or may not be carbonated; however, they have to comply with the standards of table wine, except the characteristic relating to ethyl alcohol content.

DSK View: *The Proposed amendment seeks to add clarity to the comprehensive central-level policy regulating alcoholic beverages. Country liquor is the largest consumed alcohol type in India and is produced in local distilleries and hence, the addition of Indian Liquors in the regulating section for the term 'country liquor' would enable better identification of liquor with their agricultural origin. The categorisation of craft beer would enable different standards of production, distribution and consumption. The proposed amendment also seeks to define honey wine, wine from agricultural and plant sources which were not previously defined. Overall, the insertions and substitutions add better clarity by removing superfluity in the regulating sections.*

CBAM NOTIFIED BY THE EUROPEAN COMMISSION

The Carbon Border Adjustment Mechanism ("**CBAM**"), an ambitious climate change measure, was brought into force by the European Commission on May 16, 2023 (available here). It is an instrument which would adjust carbon leakage by putting a fair price on the carbon emitted during the production of carbon-intensive goods imported into the European Union ('EU'). CBAM is planned to be implemented in a phased manner from October 1, 2023 onwards and will be fully implemented by 2026.

The text of the measure states that carbon leakage occurs when certain industries move their carbon-intensive production units to countries with relatively less stringent climate policies or imports from those countries replace equivalent products that are less intensive in terms of greenhouse gas emissions. Such situations increase the total

global emissions and jeopardise the global climate ambition of reducing greenhouse gas emissions.

The CBAM envisages the calculation of the carbon price of the imported product, assuming that the product has been produced in the EU, and subsequently, the importer would have to buy carbon certificates corresponding to the calculated carbon price. The burden of such a financial levy would fall on the importers; however, if the producers in the third countries have already paid the carbon tax in accordance with their domestic regimes, then the same would be deducted from the importers in EU to avoid the double incidence of such taxes. It is pertinent to note that the carbon price of domestic production in the third countries must be equivalent to the carbon price of imports.

The CBAM will initially apply to imports of Cement, Iron and Steel, Aluminium, Fertilisers, Hydrogen and Electricity due to the high carbon leakage that these sectors entail.

DSK View: *The transition to CBAM will impact Indian exporters, especially steel exporters, and burden them with a higher incidence of tax. However, India has taken steps to develop its own carbon market in order to achieve its goal of reducing carbon emissions by 45% by 2030.*

Under the proposed Carbon Credit Scheme, the greenhouse gas emissions would be priced and traded through carbon credit certificates covering the energy sectors. One Carbon certificate would represent a reduction of one tonne of carbon dioxide equivalent. Such a system would protect Indian exporters as the sectors to which the CBAM would apply are heavily traded sectors, and Indian exporters in such sectors would come under critical audit and inquiry and consequently be burdened with higher incidences of tariffs. In light of the same, India has asked the European Union to recognise the Carbon Credit Trading System and is likely to undertake further negotiations for the same.

MEDIA & ENTERTAINMENT

BOMBAY HC GRANTS INJUNCTION AGAINST INSTAGRAM ACCOUNTS SHOWING CLIPS OF SCAM 1992: THE HARSHAD MEHTA STORY

In a commercial suit filed by Applause Entertainment Pvt. Ltd. ("Plaintiff") against Meta Platforms Inc. and others ("Defendants"), alleging copyright infringement by various Instagram handles, the Bombay High Court ("Court") has granted a dynamic *ad-interim* injunction against the 33 Instagram handles and Ashok Kumar (John Doe/unknown persons), restraining them from using clips/parts of the series "*Scam 1992: The Harshad Mehta Story*" to promote their businesses. The Plaintiff submitted before the Court that being the copyright assignee of the adaptation rights of the book "Scam 1992", on which the web-series is based on, the Plaintiff is the sole owner of the publicity and character rights of the web-series and the cast members. The alleged Instagram handles were using clips and other substantial parts of the web-series to promote their business activities.

The Court observed that the Plaintiff is the owner of the copyright in the web-series and the same can only be watched through the OTT platform Sony Liv. Any other communication to the public, such as the one made by the Defendants, would be construed to be violation of the rights which belongs to the Plaintiff in relation to the series. Therefore, the Court held that a *prima facie* case for an *ex-parte ad-interim* injunction order has been made out by the Plaintiff. The Court directed Instagram to remove the infringing posts and accounts and disclose the contact details, IP addresses and physical locations/addresses etc. of the infringing accounts with the Plaintiff. The Court issued further directions to Instagram to remove any infringing posts shared with it by the Plaintiff in future. The injunction will operate till June 19, 2023, the next date of hearing.

THE KERELA STORY ROW – WEST BENGAL AND TAMIL NADU

In a writ petition filed by the makers of the film "The Kerala Story" ("Petitioners") challenging the decision of West Bengal's state government to ban the film and the 'shadow' ban being faced by the film in Tamil Nadu ("Respondents"), the Supreme Court of India ("Court") had issued notices to the state governments of West Bengal and Tamil Nadu to file an affidavit in relation to the same.

The Petitioners submitted before the Court that on the day of the release of the film, a statement against the same was made by the Chief Minister of the West Bengal, Mamta Banerjee, stating that the film is against a community and the exhibition can cause law and order problems. However, the state placed a ban on the film after it completed 3 (three) days of screening without any problems. Further, the Petitioner submitted that similarly a "*de facto ban*" has been placed on the film in the state of Tamil Nadu, as the exhibitors have refused to screen the film after threats. In response to the Petitioner's submissions, the counsel appearing on behalf of the state of West Bengal submitted that they have received intelligence reports regarding threats of law and order problems.

The Court, however, commented on the above submissions of the state of West Bengal stating, "*If it can run on other parts of the country, why should the State of West Bengal ban the film? If the public does not think that the film is worth seeing, they will not see it. It is running in other parts of the country which have similar demographic profile as West Bengal. Why should you not allow a film to run?*" The Court refused to grant the interim injunction order sought by the Petitioners, without hearing the state. The state of Tamil Nadu in its affidavit submitted that the state exercises no control in the decisions of the multiplex owners and screening of the film. The affidavit further stated that multiplex owners themselves took the decision to stop the

screening of the film from May 07, 2023, in view of the "*criticism received by it/ lack of well-known actors/ poor performance/ poor audience response*".

SIRF EK BANDA KAAFI HAI – REEL VS REAL

Sant Shri Asaramji Ashram Charitable Trust ("Trust") has sent a legal notice to the producers of the upcoming film "*Sirf Ek Banda Kaafi Hai*" starring actor Manoj Bajpayee. The film is being said to be inspired by real-life events and is based on the real-life character of Advocate P.C. Solanki who was the prosecution counsel for the victim in the Asaram case. The Trust had alleged that the content of the film is "*highly objectionable and defamatory*" towards Asaram and has the potential to "*tarnish his reputation and hit sentiments of his devotees*". The Trust has further asked the courts to issue prohibitory orders against the promotion and release of the film. The producers of the film in response to the notice have stated that "*the film is a biopic on PC Solanki and the rights for the same were brought from him to make this film*". The film has released on May 23, 2023.

12 FILMS OF DADA KONDKE – WHO IS THE OWNER OF THE NEGATIVES?

In an intellectual property right suit filed by Everest Entertainment Ltd. ("Plaintiff") against Shahir Dada Kondke Pratishthan and others ("Defendants") contending that the copyrights in 12 films of the Marathi actor-filmmaker Dada Kondke were assigned to the Plaintiff by Kondke's heir, Manik Padmakar More, through an assignment deed dated August 12, 2022, the Bombay High Court ("Court") has temporarily restrained the Defendants from claiming rights over the films and seeking the negatives lying with the Bombay Film Enterprises Private Limited and National Film Development Corporation Ltd.

The Court observed that it was *prima facie* satisfied that Manik Padmakar More had acquired the rights in the said films under Kondke's Will dated January 02, 1998, which was probated in 2008. The Court held that, "*The prayers made for grant of ad-interim reliefs for the present, appear to be reasonable and the balance of convenience is clearly in favour of the plaintiff. If such limited ad-interim reliefs are not granted, there is every possibility of further complications arising in the matter and the plaintiff suffering grave and irreparable loss*". The Court further restrained the aforesaid two organisations from dealing with the negatives in any manner.

MEITY BACKS FM RADIO SERVICES OVER PHONES

The Ministry of Electronics and Information Technology (MeitY) has issued an advisory to mobile phone manufacturing companies' associations, the Indian Cellular and Electronics Association and the Manufacturers' Association for Information Technology stating that phones with frequency modulation (FM) receivers and tuners should not have the feature disabled as a default setting.

The advisory has been issued in the wake of the drastic fall in the FM tuners feature, affecting the ability of the poor to receive free FM radio services over phones. Further, the advisory stated that due to the said disabling feature the central government's ability of disseminating real-time information has been impacted.

ED SHEERAN FREE FOR THINKING OUT LOUD

In a lawsuit filed by Kathryn Townsend Griffin ("Plaintiff"), the daughter of Ed Townsend who was the co-creator of the song "Let's Get It On", along with Marvin Gaye, against Ed Sheeran ("Defendant") alleging the Defendant of stealing the key components of the said song to create the Defendant's hit song "Thinking Out Loud", the federal jury at the downtown Manhattan Court found that the Defendant did not copy the said song. It was alleged that the two songs share a similar syncopated chord patten.

The Plaintiff further contended that even if the elements like chords might not be under copyright individually, their selection and arrangement as on the said song was original and distinctive enough to have protection. However, the Defendants had submitted that the "*chords are commonplace musical building blocks that have turned up in dozens of other songs*".

NETFLIX SUSPENDS FIRST LOOK DEALS IN WAKE OF THE WGA STRIKE

Netflix has joined other major studios and streamers such as Amazon, HBO, Warner Bros. TV, Disney, CBS Studios etc. in suspending some first look and overall deals in pursuance to the ongoing strike of the writers under the banner of the Writers Guild of America (WGA).

The strike has been called upon by the WGA after it failed to sign a new deal with the Alliance of Motion Picture and Television Producers (AMPTP). For the deals which are not in production, Netflix will be informing the representatives of the writers and producers about the suspension / postponement of the overall deals. However, Netflix will cover the pay for the assistants working on these said projects for a period of 30 days.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

AMENDMENT TO COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) RULES, 2016

The Ministry of Corporate Affairs ("**MCA**"), had earlier *vide* notification dated April 17, 2023 (accessible *here*), notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 ("**Amendment Rules**") to streamline the process for removal of names of companies from the records of the register of companies ("**ROC**"). The Amendment Rules amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 ("**Removal of Name Rules**") wherein all functions relating to the processing and disposal of applications relating to removal of names of companies have been delegated to the Centre for Processing Accelerated Corporate Exit ("**C-PACE**"), the key provisions of which have been summarised below:

1. The Registrar, Centre for Processing Accelerated Corporate Exit ("**Registrar C-PACE**"), established under sub-section (1) of section 396 of the Companies Act, 2013 ("**Act**") has been appointed as the jurisdictional registrar of companies for the purposes of exercising functional jurisdiction over processing and disposal of applications made in Form STK-2 *(Application by company to ROC for removing its name from register of companies)* and all matters related thereto under section 248 of the Act. The Registrar C-PACE has been given territorial jurisdiction all over India for processing and disposal of applications made in Form STK-2.

2. New formats for Form STK-2 (*Application by company to ROC for removing its name from register of companies*), Form STK-6 (*Public Notice*) and Form STK-7 (*Notice of Striking Off and Dissolution*) have been prescribed.

The Amendment Rules have come into force from May 1, 2023.

Subsequently, the MCA *vide* notification dated May 10, 2023 (accessible *here*) has now notified the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 ("**Second Amendment Rules**") to incorporate the following changes in the proviso of sub rule (1) of Rule 4 the Removal of Name Rules:

1. A company cannot file an application in Form STK-2, unless it has filed all overdue financial statements and annual returns under Section 137 and Section 92 of the Act respectively.

2. In case an action for removal of name has been initiated against a company by the ROC under Section 248(1) of the Act, and the company wishes to file an application in Form STK-2, the company is required to file all pending financial statements and annual returns prior to the filing of such Form STK-2. However, if a notice for publication has been issued by the ROC pursuant to action for removal of name initiated by the ROC, then an application for removal of names can no longer be filed by the company.

The Second Amendment Rules have come into force on May 10, 2023.

AMENDMENT TO COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) RULES, 2016

The MCA, *vide* notification dated May 15, 2023 (accessible *here*) has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 ("**CAA Amendment Rules**") to amend Rule 25 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 ("**CAA Rules**") which lays down the procedure to be followed in case a scheme of merger or amalgamation is being entered into between two or more start-up companies or between one or more start-up company with one or more small company. The following amendments have been incorporated in sub rule (5) and (6)

of Rule 25 of the CAA Rules:

1. Sub-rule (5) of Rule 25 of the CAA Rules has been amended to stipulate the timelines and concept of deemed approval by providing that in case no objection or suggestion is received on the scheme of merger from the ROC and Official Liquidator ("**OL**") within 30 (thirty) days of filing with them, and if the Regional Director is of the opinion that the scheme is in the public interest or the interest of creditors, it may issue a confirmation order within 15 (fifteen) days of the expiry of the aforesaid 30 (thirty) day period. Further, if the Regional Director does not issue a confirmation order within 60 (sixty) days, it is deemed that the Regional Director has no objection to the merger scheme.

2. Further, Sub-rule (6) of Rule 25 of the CAA Rules has been amended to provide that if the objections/suggestions are received from ROC and OL within 30 (thirty) days, the Regional Director can take following actions:

   (a) Issue a confirmation order within 30 (thirty) days of the elapse of the aforesaid 30 (thirty) days period, if the objections/ suggestions are deemed unsustainable, and the Regional Director thinks that the scheme is in the public interest or the interest of creditors; or

   (b) File an application with the National Company Law Tribunal stating the objections/opinion to the scheme with a request to consider scheme under section 232 of the Act before the Tribunal within 60 (sixty) days of receipt of the scheme of merger, if the Regional Director believes that the scheme is not in the public interest or the interest of creditors.

The CAA Amendment Rules shall come into force on June 15, 2023.

RBI & FEMA

MASTER CIRCULAR – BASEL III CAPITAL REGULATIONS

The Reserve Bank of India ("**RBI**") notified the Master Circular on Basel III Capital Regulations vide reference no. RBI/2023-2024/31DOR.CAP.REC.15/21.06.201/2023-24 dated May 12, 2023, as applicable to all scheduled commercial banks (excluding small finance banks, payments banks and regional rural banks) ("**Master Circular**").

The Master Circular has been amended to include certain additions, some of which are highlighted below:

(i) The RBI circular specifies eligible domestic credit rating agencies for risk weighting banks' claims for capital adequacy purposes. The listed agencies include *Acuite, CARE, CRISIL, ICRA, India Ratings, and INFOMERICS*. The circular also states that ratings from Brickwork Ratings India Private Limited should not be obtained, as per Press Release 2022-2023/1033. Banks are required to adhere to this guidance until further notice.

(ii) Banks can derive risk weights for unrated exposures based on specific rated debt, subject to conditions. Banks cannot use External Credit Assessment Institutions' ratings without the required disclosures, treating those exposures as unrated.

(iii) Banks can apply a zero percent risk weight for claims on Credit Guarantee Fund Trust for Micro and Small Enterprises, Credit Risk Guarantee Fund Trust for Low Income Housing, and individual schemes under National Credit Guarantee Trustee Company Ltd.

(iv) The exemption for short-term foreign exchange contracts applies only to entities not using bilateral netting. Other entities are no longer eligible for this exemption.

AMENDMENT TO THE MASTER DIRECTION (MD) ON KYC – INSTRUCTIONS ON WIRE TRANSFER

RBI vide notification no. RBI/2023-2024/25 DOR.AML.REC.13/14.01.001/2023-24 notified the amendment to the Master Direction on KYC – Instructions on Wire Transfer dated May 4, 2023, ("**Amendment**") which shall be applicable to all Regulated Entities ("**REs**").

Some of the key provisions of the Amendment are listed below:

(i) Listing out the specific information requirements for wire transfers, including originator and beneficiary information, unique transaction reference number, etc.

(ii) Giving access to law enforcement authorities to the wire transfer information by the REs when requested.

(iii) Excluding certain types of payments including transfers using a credit card/debit card/prepaid payment instrument. *However, REs shall have to continue to comply with applicable reporting requirements under the Prevention of Money Laundering Act, 2022 and the rules made thereunder or any other statutory requirement.*

(iv) Detailing the responsibilities of ordering, intermediary and beneficiary REs.

(v) Requirement of complying with the instructions when engaging or involving unregulated entities in the wire transfer process.

The Amendment further prohibit REs from processing cross-border transactions of designated persons and entities.

DSK View: *The Amendment is directed towards entities regulated by the RBI and requires all money transfers to contain complete information about the originator and beneficiary to prevent them from being used as a channel for money laundering and terrorist financing platforms. The Amendments also contain recommendation of the Financial Action Task Force. The Amendment aims to enhance transparency and traceability with respect to online wire transfers.*

LIBOR Transition

RBI notified the circular on LIBOR Transition dated May 12, 2023, bearing reference no. RBI/2023-2024/30CO.FMRD.DIRD.01/14.02.001/2023-24 ("**Circular – LIBOR**"), which shall be applicable to all commercial and co-operative banks, all India financial institutions, non-banking financial companies including housing finance companies and standalone primary dealers.

The provisions under the Circular – LIBOR, aims to facilitate a seamless transition from LIBOR to alternative reference rates, reducing reliance on LIBOR and mitigating risks associated with the cessation of LIBOR settings.

Some of the key provisions of the Circular - LIBOR are highlighted below:

1. Banks and financial institutions ("**FI**") have been encouraged to cease entering into new financial contracts that reference LIBOR and instead use widely accepted alternative reference rates ("**ARRs**") by December 31, 2021.
2. Banks and FIs urged to incorporate robust fallback clauses in contracts referencing LIBOR.
3. Use of ARRs such as Secured Overnight Financing Rate ("**SOFR**") and Modified Mumbai Interbank Forward Outright Rate ("**MMIFOR**") has increased in new transactions, while fallback clauses are being inserted into legacy contracts.
4. After June 30, 2023, the remaining five US$ LIBOR settings will permanently cease to be published. Synthetic LIBOR settings will continue to be published but should not be used in new financial contracts. The MIFOR benchmark will also cease to be published after June 30, 2023.
5. Banks/FIs are advised not to undertake new transactions or price contracts using US$ LIBOR or MIFOR. They should ensure the insertion of fallbacks in all remaining legacy contracts referencing US$ LIBOR, including transactions referencing MIFOR, well before the June 2023 deadline.
6. Banks/FIs are expected to have developed systems and processes to manage the complete transition away from LIBOR by July 1, 2023.

RBI will continue to monitor the efforts of banks/FIs to ensure a smooth transition from LIBOR.

DSK View: *The Circular – LIBOR, has been issued to lay down the provisions of ensuring a smooth and complete transition away from LIBOR and towards more widely accepted ARRs. This step is an important event in global financial markets and seems to be a step towards reducing operational risks and ensuring an orderly transition from LIBOR to other ARRs.*

RERA

UP RERA EMBARKS ON AI INTEGRATION FOR ADVANCED COURTROOM MANAGEMENT SYSTEMS

The Uttar Pradesh Real Estate Regulatory Authority ("**UP RERA**") has issued a tender inviting several companies for the implementation of artificial intelligence (AI) in their court management systems. The Authority aims to create smart courts using AI, machine learning, and natural language processing to improve the processing of complaints in a fair, efficient, and timely manner. For the same, the UP RERA plans to use AI for smart complaint filing, case filtering and prioritization, and case tracking, reducing human intervention and creating a digital framework within the authority.

VALIDITY OF OPEN CAR PARKING AREA CHARGES IMPOSED BY UP RERA

The Uttar Pradesh Real Estate Authority ("**UP RERA**") has ruled in favour of the Kanpur Development Authority ("**KDA**"), confirming that KDA is entitled to collect charges for the open car parking spaces for flat owners in the Signature City Scheme. In the said matter, a complaint was filed by the resident individual before the Chairman, UP RERA challenging the validity of charges imposed by KDA for the designated open car parking charges.

K-RERA LAUNCHES REVAMPED WEBSITE TO PROVIDE BUYERS WITH PRECISE DETAILS ON REAL ESTATE PROJECTS

The Kerala Real Estate Regulatory Authority ("**K-RERA**") has revamped its official website to provide accurate information about real estate projects situated in Kerala. The revamped website introduces new features such as GIS technology and a property exploration tool. This new exploration tool will enable potential buyers to locate properties in any district of Kerala easily. The said website allows buyers to monitor the progress of projects and provides insights into property developers and any legal disputes.

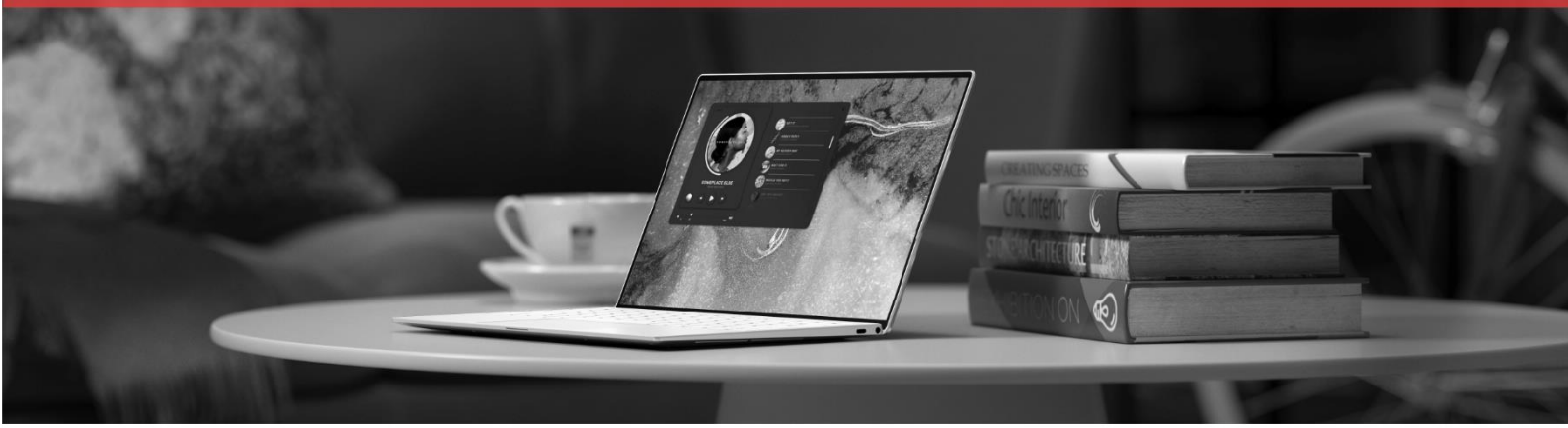
LOCAL HOUSING LAWS IN ODISHA NOW COMPLIANT WITH THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The state government has passed the Odisha Apartment (Ownership and Management) Ordinance, 2023, repealing the Odisha Apartment Ownership Act of 1982. The said ordinance aligns the local housing laws with the Real Estate (Regulation and Development) Act, 2016. This move aims to facilitate the registration of apartments in the state which was stalled since May 17, 2022. The state government acknowledges that the introduction of new legislation was necessary to resolve issues faced by apartment buyers, including revenue losses resulting from the lack of registration of apartment sale deeds.

MAHARERA NOTIFIES CA'S AND REQUESTS ICAI TO ADDRESS VIOLATIONS OF RULES REGARDING CONFLICT OF INTEREST

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") has expressed concerns over the conflict of interest caused by Chartered Accountants ("CAs"). The MahaRERA stated that the CAs, who are responsible for ensuring compliances with real estate regulations, are themselves in violation of the law. As per the stance of MahaRERA, the said group of professionals has been found to be simultaneously handling both the project's operational examination and its legal audit, which is not permitted. The law requires developers to maintain an escrow account for project funds and for various professionals, including the project's CA, to verify the progress of the project for the release of funds. The developer is also required to provide biannual updates of the Statutory Audit report to MahaRERA to ensure proper expense alignment and document any discrepancies. As a result, distinct individuals must be assigned for different responsibilities to avoid conflicts of interest. The MahaRERA has issued show-cause notices to such CAs and has also reached out to the Institute of Chartered Accountants of India (ICAI), recommending

training for the CAs to educate CAs on the rules set by the Real Estate (Regulation and Development) Act, 2016.



UIDAI PROPOSES AMENDMENTS TO THE AADHAAR (SHARING OF INFORMATION) REGULATIONS, 2016

The Unique Identification Authority of India ("**UIDAI**") vide its notification dated May 8, 2023, and in exercise of its powers under Section 54 read with Section 23 and Section 29 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016, has proposed amendments ("**Amending Regulations**") (accessible here) to the Aadhaar (Sharing of Information) Regulations, 2016.

Some of the proposed amendments purported to be introduced by the Amending Regulations are, *inter alia*: (i) UIDAI can share demographic information and a photograph of an individual with a requesting entity (i.e., an agency or a person which submits information of an individual to the Central Identities Data Repository (CIDR) for authentication) for e-KYC data authentication if the Aadhaar holder consents to the authentication process; (ii) UIDAI can verify supporting documents of an individual submitted at the time of enrolment for or during updation of their Aadhaar; and (iii) requesting entities will be prohibited from storing 'core biometric information' of individuals for purposes other than that of 'buffered authentication' as specified in the Aadhaar (Authentication and Offline Verification) Regulations, 2021, and from sharing such information with anyone for any reason whatsoever.

SEBI RELEASES CONSULTATION PAPER FOR REGULATING FRACTIONAL OWNERSHIP PLATFORMS AS MICRO, SMALL, AND MEDIUM REAL ESTATE INVESTMENT TRUSTS

The Securities and Exchange Board of India ("**SEBI**") on May 12, 2023, released a consultation paper inviting comments from stakeholders for formulating a regulatory framework for web platforms providing fractional ownership ("**FOPs**") of real estate assets (accessible here). According to the proposed framework, such FOPs are proposed to be regulated as micro, small, and medium real estate investment trusts ("**MSM REITs**") under the SEBI (Real Estate Investment Trusts) Regulations, 2014. Fractional investment or ownership of real estate through FOPs is an investing strategy in which the cost of acquisition of real estate is split among several investors, who invest in securities issued by a Special Purpose Vehicle ("**SPV**") which purchases such real-estate and is established by the FOP.

Under the extant framework, Real Estate Investment Trusts ("**REITs**") are set up as trusts and are registered with SEBI. While REITs can invest either directly or through holding companies and/or SPVs and are required to hold a controlling interest and at least 50% of the equity share capital or interest in the holding company and/or SPV, MSM REITs will have to hold 100% of the equity share capital in the SPV, provided however that the assets in case of both REITs and MSM REITs are situated in India.

TRAI ISSUES DIRECTIVES ON THE FORMAT OF CONTENT TEMPLATES FOR COMMERCIAL COMMUNICATION

The Telecom Regulatory Authority of India ("**TRAI**") on May 12, 2023, issued directions prescribing measures to be undertaken by access providers to curb misuse of headers and content templates to send spam messages to consumers in exercise of the powers conferred upon it under Sections 11 and 13 of the Telecom Regulatory Authority of India Act, 1997, and under the Telecom Commercial Communications Customer Preference Regulations, 2018. ("**Directives**") (accessible here).

Under the existing regime, there was a prohibition of three variables due to the risk of misuse and tweaking of variables to send spam messages to consumers. In this context, variables refer to the parts of a commercial message that companies can modify to tailor communications to different recipients with similar subjects. TRAI has now, through the Directives, directed all the access providers that the use of more than three variable parts in the contents shall be

permitted only with proper justification and additional checks. TRAI has further mandated that access providers shall have to designate a separate authority for approving such content templates.

The Directives also mandate, *inter alia*, that the content templates: (i) are to be pre-tagged for the touted purpose and no information other than the one defined in the pre-tagging can be included in the variables; (ii) must have at least 30% of their content fixed; and (iii) only have whitelisted URLs, links, call-back numbers.

TRAI RELEASES RECOMMENDATIONS FOR EASE OF DOING BUSINESS IN THE TELECOM AND BROADCASTING SECTOR

The Telecom Regulatory Authority of India ("**TRAI**") on May 2, 2023, released its recommendations on 'Ease of Doing Business in Telecom and Broadcasting Sector' ("**EoDB Paper**") following a comprehensive consultation process (accessible here). TRAI had previously published a consultation paper on ease of doing business in December 2021.

The EoDB Paper has, *inter alia*, proposed the following recommendations for the telecom and broadcasting sectors: (i) establishment of a standing committee to focus on ease of doing business; (ii) a single window clearance system for end-to-end inter-departmental online processes; (iii) the Ministry of Information and Broadcasting, Department of Space (DoS), Department of Telecommunications (DoT), Ministry of Electronics and Information Technology and other agencies specifying clear timelines for all processes; (iv) giving 'infrastructure status' to broadcasting sector; (v) a single window portal for website blocking requests; (vi) DoS publishing a list and details of Indian satellites, their capacity availability, approved foreign satellites/satellite systems, their orbital locations, transponders and frequency availability and their other technical and security parameters on the single window portal; and (vii) updating on the terms and conditions of the DoT unified license so that the monitoring and interception of their services take place at one central licensed service area.

TRAI RELEASES CONSULTATION PAPER ON THE DEFINITION OF 'INTERNATIONAL TRAFFIC'

The Telecom Regulatory Authority of India ("**TRAI**") on May 2, 2023, released a consultation paper, inviting comments from stakeholders on the definition of international traffic (accessible here). The consultation paper was received after a request by the Department of Telecommunications (DoT) was sent to TRAI for definitions of 'international SMS' and 'domestic SMS', in August, 2022.

Telecommunication Traffic refers to the load that is transmitted on a telecommunication network. TRAI has observed that the unified license does not provide a clear definition of 'international traffic' and considers 'international SMS' as a form of such traffic. TRAI believes that rather than specifically defining 'international SMS' in the unified license agreement, it would be more suitable to define the broader term 'international traffic'. A proposal has been made to define international traffic as "international long-distance traffic originating in one country and terminating in another country, where one of the countries is India".

KARNATAKA HC HOLDS GAME OF SKILLS TO BE OUT OF AMBIT OF 28% GST RATE AS AN ACTIONABLE CLAIM

In its order dated May 11, 2023, the Karnataka High Court in the matter of *Gameskraft Technologies Private Limited vs. Directorate General of Goods and Services Tax Intelligence & Ors.*[20], held that games of skill like rummy, as actionable claims under Entry 6, Schedule III of the Central Goods and Services Tax Act, 2017, are not taxable as betting and gambling at the prescribed rate of 28%.

The reason for the abovementioned is that 'actionable claims' are not considered "supply" of goods and services. Relying on the judgement in the matter of *All India Gaming Federation vs. State of Karnataka & Ors* [21], the Karnataka High Court also held that a game of skill, whether in online or offline format, with or without stakes, is not to be considered gambling. It is noteworthy that the GST Council is also expected to make a conclusive decision on taxation policies for online gaming in its next meeting in the coming months.

FINANCE MINISTRY ISSUES GUIDELINES ON CALCULATING TDS ON NET WINNINGS UNDER GAMING TAX REGIME

The Ministry of Finance's Central Board of Direct Taxes ("**CBDT**") has on May 22, 2023, issued the Income-Tax (Fifth Amendment) Rules, 2023 which are in the nature of guidelines on government's taxation regime for net winnings in online gaming ("**Guidelines**") (accessible here).

The Guidelines, *inter alia*, mandate online gaming companies to deduct tax deducted at source ("**TDS**") on every rupee earned from winning an online game under the newly introduced Section 194BA of the Income Tax Act, 1961. It is noteworthy that the TDS chargeable on winnings from online games is 30% under Section 194BA and is deducted either at the time of withdrawal or, if there is no withdrawal, at the end of the financial year in which it is earned. The CBDT has also clarified that GST will not be included for calculating winnings from online games for TDS.

[20] WP No. 19570/2022

[21] 2022 SCC Online KAR 435 (DB)

THE FREEZING OF A COMPANY'S BANK ACCOUNT DUE TO A CRIMINAL INVESTIGATION INVOLVING AN UNRELATED PARTY IS NOT PERMISSIBLE

The Supreme Court in the case of ***M/s. Jermyn Capital LLC Dubai vs. Central Bureau of Investigation & Ors.***[22]**,** has held that the freezing of a company's bank account due to a criminal investigation involving an unrelated party is not permissible. The facts of the present case were that the Appellant company, a Foreign Institutional Investor, was allowed to trade in India by the Securities and Exchange Board of India but it ceased trading in 2006 due to certain litigations. The company had shares and funds in its bank account with ICICI bank at that time. Two freeze orders were subsequently imposed on the company under Section 102 of the Code of Criminal Procedure, 1973 ("**CrPC**.") one in 2006 and the other in 2010, as part of an investigation into an alleged crime involving another individual named Dharmesh Doshi, who in no way was connected to the Appellant company. The first freeze order was partially lifted by the Supreme Court, allowing the company to sell shares and repatriate funds without a bank guarantee. However, the second freeze order prevented the company from repatriating an amount of Rs. 38.52 crores. When the company approached the trial court, the trial court ordered the release of the funds but with a condition to furnish a bank guarantee. The High Court upheld the imposition of the bank guarantee. On an appeal before the Supreme Court, it was noted that the freeze orders and bank guarantee were based on alleged criminal proceedings against Dharmesh Doshi, who had already been discharged of the alleged offences. The Court also noted that Dharmesh Doshi was never an employee/shareholder/director or a key managerial person in the Appellant company and was in no way connected to the company. Further, the Appellant company was not connected to the investigation or the alleged crime, its name did not appear in the FIR or chargesheet and no criminal proceedings were pending against it. Therefore, Supreme Court while setting aside the condition to furnish a bank guarantee permitted the Appellant company to withdraw the amount along with 4% simple interest.

FILING OF CHARGESHEET IN PREDICATE OFFENCES CANNOT BE A GROUND FOR BAIL FOR SCHEDULED OFFENCES UNDER THE PMLA ACT

The Supreme Court in the case of ***Directorate of Enforcement vs. Aditya Tripathi***[23]**,** has held that filing of the chargesheet in predicate offences cannot be a ground for bail for scheduled offences under the Prevention of Money Laundering Act, 2002 ("**PMLA**"). In the present case appeal was filed by the Directorate of Enforcement ("**ED**") against the High Court's decision to grant bail to the Respondent, who was accused in a case related to offenses under the PMLA. The ED had initially filed a chargesheet against the Respondent for offences under sections 120-B, 420, 468 and 471 of Indian Penal Code, 1860 ("**IPC**"), Section 66 of the Information Technology Act, 2000 and Section 7(c) read with Section 13(2) of the Prevention of Corruption Act, 1988. As it was found that certain offences mentioned in the chargesheet were also scheduled offences under the PMLA, an investigation for money laundering was also initiated against the Respondent. The High Court granted bail to the Respondent, considering that the investigation was completed and chargesheet was filed. However, the investigation by the ED under the PMLA was still ongoing. The Supreme Court in its decision held that merely because, the chargesheet for the predicated offences had been filed cannot be a ground to release the Respondent on bail in connection with the scheduled offences under PMLA. The Supreme Court held that investigation for the predicated offences and the investigation by the ED for the scheduled offences under the PMLA are different and distinct. Moreover, the Court observed that the High Court did not consider Section 45 of the PMLA and the nature of offences

[22] SLP (Crl.) No. 9134 of 2023

[23] Criminal Appeal No. 1401 Of 2023

and allegations and therefore, quashed the bail granted to the Respondent and remitted the case back to the High Court for reconsideration.

DSK View: *In this case the Supreme Court has emphasised on the embargo of granting bail under Section 45 of the PMLA, where the offences alleged are scheduled offences under the PMLA. The court further held that merely because a chargesheet is filed in a predicate offence cannot be a ground for bail, particularly when the investigation is still on.*

ANTICIPATORY BAIL FILED BY PROCLAIMED OFFENDER IS MAINTAINABLE

The Allahabad High Court in the case ***Udit Arya vs. State of U.P.***[24]**,** held that a proclaimed offender is not barred from filing an anticipatory bail application. In the present case anticipatory bail was sought by the Applicant for an FIR registered under Sections 498-A, 304B of IPC and Dowry Prohibition Act, 1961. The prosecution's contention was that the Applicant had solemnized marriage with the daughter of the informant and that the Applicant, and his family members had subjected her to cruelty for demand of 60 lakhs and a car as dowry. Further, it was submitted that the daughter of the informant was pregnant and underwent abortion sometime in September 2022. Subsequently, in October, during Diwali when the Applicant took daughter of the Informant to his house, the Applicant and his family members had allegedly beaten her up, and on October 21, 2022, the condition of the daughter deteriorated, and she succumbed to injuries. The prosecution in this case argued that the anticipatory bail application was not maintainable as the same was filed after the proceedings under section 82 of CrPC were initiated against the Applicant. The High Court while rejecting the prosecution's argument held that neither the proceedings under section 82 of CrPC nor section 438 of the CrPC impose any restriction in the filing of anticipatory bail application by a proclaimed offender. The Court further observed that the deceased had expired as a result of "septicaemia due to chronic illness of multiple organs involvement", which could not be termed as "not under normal circumstances" as envisaged under Section 304-B of IPC and granted anticipatory bail to the Applicant.

DSK View: *In this case the Allahabad High Court has taken a liberal view of the judgment of the Supreme Court in the case of Lavesh vs. State (NCT of Delhi)*[25]*. The High Court observed that the said judgment which held that a proclaimed offender is not entitled to file an anticipatory bail, was passed using the expression "normally" and where the accused had absconded or concealed himself to avoid the execution of warrant.*

PROVISIONS OF SECTION 202 CRPC ARE MANDATORY EVEN IN GOVERNMENT COMPLAINT CASES

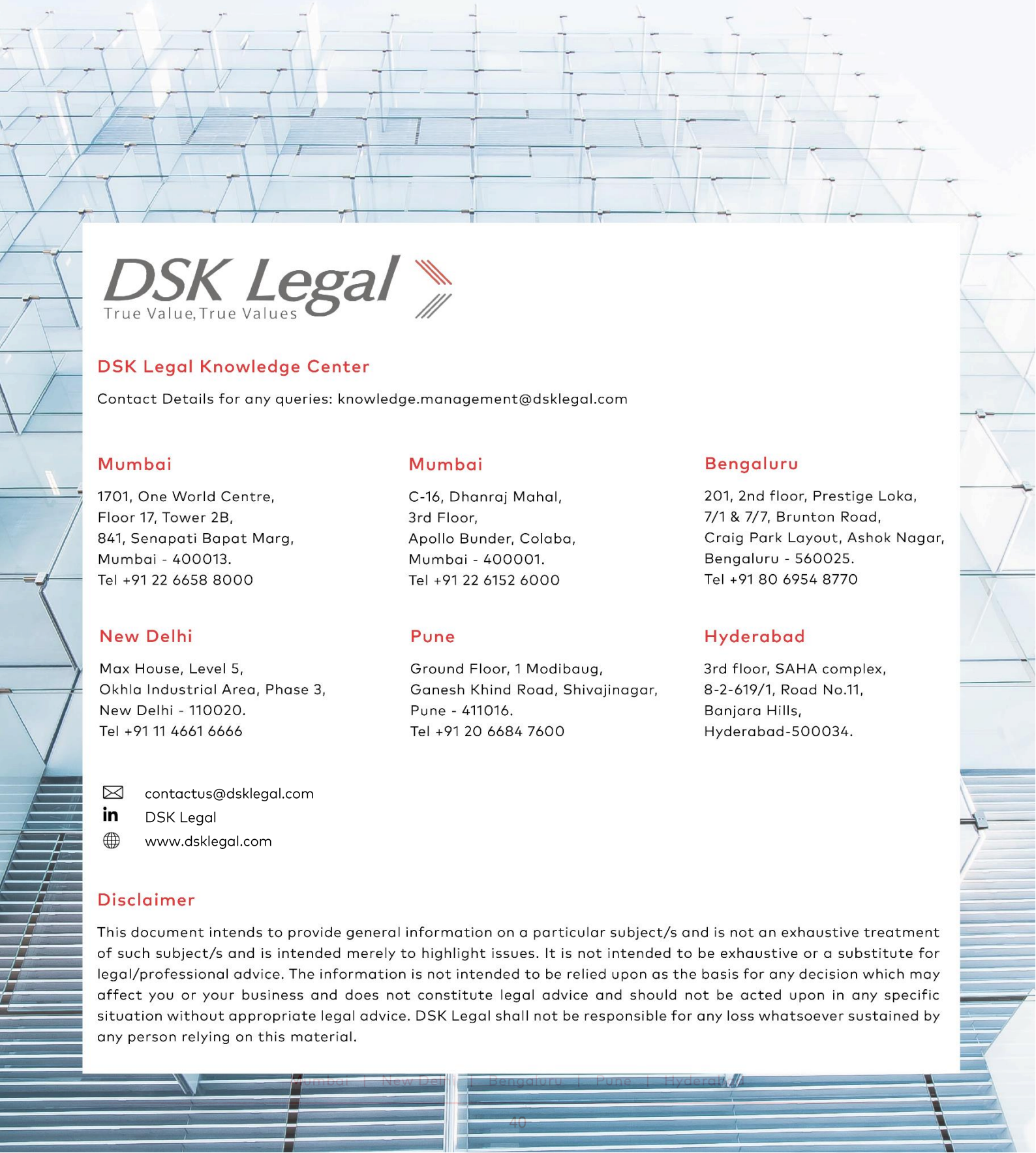
The Jharkhand High Court of in the case of ***Krishna Nand Shastri & Ors. vs. State of Jharkhand***[26], held that there is no exception to mandatory requirement under section 202 CrPC, even in Government complaint cases, where the accused resides beyond the territorial jurisdiction. In the present case the petitioners had filed a petition to quash criminal proceedings against them after the trial court had taken cognizance based on a complaint filed by the Drug Inspector. The said complaint alleged that the petitioners, who were directors of a company, sold a drug (Ciprofloxacin Hydrochloride) labelled as a nutritional supplement without obtaining the required drug manufacturing license under Sections 18(a) and (c) of the Drugs and Cosmetics Act, 1940. The complaint also stated that the drug is a potent antibacterial agent categorized under schedule-H of the Drugs and Cosmetics Rules, 1945. The High Court observed that the complaint did not contain any averment that the petitioners were involved in the day-to-day affairs of the business. Referring to Section 34 of the Drugs and Cosmetics Act, 1940 the court concluded that only the person in charge of the company's affairs at the time of the offense could be prosecuted. Further, the Court observed that the petitioners were stationed in Delhi and emphasized on the mandatory nature of Section 202 CrPC regarding postponement of issuance of process even in cases where the Government is a complainant, and the accused resides beyond territorial jurisdiction of the concerned Magistrate. Therefore, observing that the petitioners were not involved in day-to-day activity of the business and that the mandatory provisions of Section 202 CrPC were not complied with, the cognizance order and the entire criminal proceeding against the petitioners were quashed.

DSK View: *In this case the Jharkhand High Court has reiterated that compliance with the provision of section 202 CrPC is mandatory where the accused resides beyond the jurisdiction of the concerned Magistrate even without exception to the cases where the complaint is filed by the Government.*

[24] Criminal Misc. Anticipatory Bail Application u/s 438 CrPC No. 4560 of 2023

[25] (2012) 8 SCC 730: AIROnline 2012 SC 323

[26] Cr.M.P. No. 1525 of 2014



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