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NEWSLETTER

March 2023

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TRANSACTION IN CORPORATE BONDS THROUGH REQUEST FOR QUOTE ("RFQ") PLATFORM FOR ALTERNATIVE INVESTMENT FUNDS ("AIFS")

The Securities and Exchange Board of India ("**SEBI**") has issued a circular dated February 1, 2023[1], regarding transactions in Corporate Bonds through the RFQ platform by AIFs. SEBI has in the past prescribed stipulations for transactions on the RFQ platform by mutual funds, portfolio management services and stockbrokers in order to increase the liquidity on the RFQ platform of stock exchanges and to enhance the transparency and disclosure pertaining to trading in the secondary market in Corporate Bonds. Considering the aforesaid stipulations as well as the recommendations of the Alternative Investment Policy Advisory Committee it is stipulated that AIFs shall undertake at least 10% (Ten Percent) of their total secondary market trades in Corporate Bonds by value in a month by placing/seeking quotes on the RFQ platform. In addition to the above, according to a circular issued by SEBI dated October 19, 2022, quotes on the RFQ platform can be placed to an identified counterparty ("**One-to-One Mode**") or to all participants ("**One-to-Many Mode**"). In this regard, it is clarified that all transactions in Corporate Bonds wherein AIF(s) is on both sides of the trade shall be executed through the RFQ platform in One-to-One Mode. However, any transaction entered by an AIF in corporate Bonds in One-to-Many Mode which can be executed by another AIF shall be counted in One-to-Many Mode. The said requirement shall come into force with effect from April 1, 2023.

CHANGES TO THE FRAMEWORK TO ENABLE VERIFICATION OF UPFRONT COLLECTION OF MARGINS FROM CLIENTS IN CASH AND DERIVATIVES

SEBI has issued a circular dated February 1, 2023[2], regarding changes to the framework to enable verification of upfront collection of margins from clients in cash and derivative segments ("**Framework**"). SEBI issued a circular dated July 20, 2020, in which they prescribed the Framework. In addition to this SEBI issued another circular dated December 16, 2021, in which they modified the Framework prescribed in the circular dated July 20, 2020, by providing additional snapshots for the commodity derivatives segment. Subsequently, SEBI issued another circular dated May 10, 2022, in which they modified the Framework by specifying that the margin requirements to be considered for the intra-day snapshots, in derivatives segments (including commodity derivatives), shall be calculated based on the fixed Beginning of Day ("**BOD**") margin parameters. It was also specified therein that there shall be no change in the methodology of determination and collection of End of Day ("**EOD**") margin obligation of the client. Considering the representations received from market participants and based on deliberations with various stakeholders, it has now been decided that EOD margin collection requirements from clients, in derivatives segments (including commodity derivatives), shall also be calculated based on the fixed BOD margin parameters.

SEBI has also clarified that the above-mentioned change is only for the purpose of verification of upfront collection of margins from clients. The margin parameters applicable for the collection of margin obligation by Clearing Corporations shall continue to be updated on an intra-day and EOD basis, as per the extant provisions.

Circulars dated July 20, 2022, December 16, 2021, and May 10, 2022, shall accordingly be modified to the aforesaid extent and all other provisions of the above-mentioned circulars shall continue to remain applicable. This circular shall come into effect from May 1, 2023, onwards.

[1] SEBI/HO/AFD/PoD/P/CIR/2023/017

[2] SEBI/HO/MRD/MRD-PoD-2/P/CIR/2023/016

DOS AND DON'TS RELATING TO GREEN DEBT SECURITIES TO AVOID OCCURRENCES OF GREENWASHING

SEBI has issued a circular dated February 3, 2023[3], regarding dos and don'ts relating to green debt securities to avoid occurrences of greenwashing. Regulation to 2(1)(q) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**") defines "green debt security" and Chapter IX of the Operational Circular for the issue and listing of Non-Convertible Securities ("**NCS**"), Securitised Debt Instruments, Securities Receipts, Municipal Debt Securities and Commercial Paper dated August 10, 2021, as amended from time to time ("**Operational Circular**") provides the initial and continuous disclosure requirements for entities issuing/proposing to issue green debt securities. The extant framework of 'green debt security' was reviewed recently and consequential changes were brought in the NCS Regulations vide gazette notification dated February 02, 2023. In the process of consulting the stakeholders, comments/ representations from the market participants, particularly investors, were also received to address the concerns of 'greenwashing'. While there are no universally accepted taxonomies on greenwashing, the generally accepted definition of 'greenwashing' is, 'making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation'.

Therefore, to address the concerns of market participants, regarding greenwashing, an issuer of green debt securities shall ensure the following to avoid its occurrence:

i. While raising funds for the transition towards a greener pathway, it shall continuously monitor to check whether the path undertaken towards a more sustainable form of operations is resulting in the reduction of the adverse environmental impact and contributing towards a sustainable economy, as envisaged in the offer document.
ii. It shall not utilize funds raised through green bonds for purposes that would not fall under the definition of 'green debt security' under the NCS Regulations.
iii. In case any such instances mentioned in (ii) above came to light regarding the green debt securities already issued, it shall disclose the same to the investors and, if required, by the majority of debenture holders, undertake early redemption of such debt securities.
iv. It shall not use misleading labels, hide trade-offs or cherry-pick data from research to highlight green practices while obscuring others that are unfavourable in this behalf.
v. It shall maintain the highest standards associated with the issue of green debt security while adhering to the rating assigned to it.
vi. It shall quantify the negative externalities associated with the utilization of the funds raised through green debt security.
vii. It shall not make untrue claims giving a false impression of certification by a third-party entity.

These changes shall come into force with immediate effect and these changes shall be appended as new Chapter IX-A of the Operational Circular.

MANNER OF ACHIEVING MINIMUM PUBLIC SHAREHOLDING

SEBI has issued a circular dated February 3, 2023[4], regarding the manner of achieving Minimum Public Shareholding ("**MPS**"). SEBI had issued a circular dated February 22, 2018, regarding the manner of achieving MPS in which they had permitted different methods that may be used by listed entities to achieve compliance with the MPS requirements mandated under Rules 19(2)(b) and 19(A) of Securities Contract (Regulation) Rules, 1957 ("**SCRR**"), read with Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). SEBI has been receiving representations from listed entities and other stakeholders requesting relaxation from compliance with the conditions specified in the existing methods and approval for using non-prescribed methods to achieve MPS compliance. In view of the above and to facilitate listed entities achieve MPS compliance, a few of the existing methods have been reviewed and rationalized and two additional methods have been introduced. Accordingly, a listed entity shall adopt any of the methods detailed in circular SEBI/HO/CFD/PoD2/P/CIR/2023/18 in order to achieve compliance with the MPS requirements mandated under Rules 19(2)(b) and 19A of the SCRR read with Regulation 38 of the LODR Regulations. The stock exchange(s) shall monitor the methods adopted by listed entities to increase their public holding and comply with MPS requirements in terms of circular SEBI/HO/CFD/PoD2/P/CIR/2023/18. Non-compliance, if any, observed by the stock exchange(s) with respect to the method(s) and/or conditions prescribed herein, shall be reported to SEBI on a quarterly basis.

AMENDMENTS TO OPERATIONAL CIRCULAR FOR CREDIT RATING AGENCIES ("OCCRA")

SEBI has issued a circular dated February 3, 2023[5], regarding the amendments to the OCCRA. SEBI had issued an OCCRA dated January 6, 2023. Amendments made to the OCCRA are

[3] SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020
[4] SEBI/HO/CFD/PoD2/P/CIR/2023/18
[5] SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2023/19

detailed in the circular SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2023/19 dated February 3, 2023.

UPDATED OPERATIONAL CIRCULAR FOR CREDIT RATING AGENCIES

SEBI has issued a circular dated February 3, 2023[6], to update the OCCRA. SEBI (Credit Rating Agencies) Regulation, 1999 provides the guidelines for registration/general obligations/manner of inspection and investigation and code of conduct applicable to Credit Rating Agencies ("**CRAs**"). Therefore, to enable the industry and other users have access to all the applicable circulars/ directions in one place, OCCRA has been prepared. The operational circular is a compilation of the existing circulars as on February 3, 2023, with consequent changes. The stipulations contained in these circulars have been detailed chapter-wise in circular SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2023/6. Accordingly, the list of existing circulars for CRAs which have been superseded by operational circulars is placed in Annexure A of SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2023/6.

GUIDELINES ON ANTI-MONEY LAUNDERING ("AML") STANDARDS AND COMBATING THE FINANCING OF TERRORISM ("CFT")/ OBLIGATIONS OF SECURITIES MARKET INTERMEDIARIES UNDER THE PREVENTION OF MONEY LAUNDERING ACT 2002 ("PMLA") AND RULES FRAMED THEREUNDER

SEBI has issued a master circular dated February 3, 2023[7], regarding guidelines on AML standards and CFT/ obligations of securities market intermediaries under the PMLA and rules framed there under.

The PMLA and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 ("**Maintenance of Records Rules**"), as amended from time to time and notified by the government of India, mandate every reporting entity which includes intermediaries registered under Section 12 of the Securities and Exchange Board of India Act, 1992, and stock exchanges, to adhere to client account opening procedures, maintain records and report such transactions given to the relevant authorities. The Maintenance of Records Rules, inter alia, empowers SEBI to specify the information required to be maintained by the intermediaries and the procedure, manner and form in which such information is to be maintained. It also mandates the reporting entities to evolve an internal mechanism having regard to any guidelines issued by the regulator for detecting the transactions specified in the Maintenance of Records Rules and for furnishing information thereof, in such form as may be directed by the regulator.

The guidelines enclosed in the Master Circular stipulate the essential principles for combating money laundering and terrorist financing and provide detailed procedures and obligations to be followed and complied with by all the registered intermediaries. The guidelines shall also be applicable to the branches of the stock exchanges, registered intermediaries, and their subsidiaries situated abroad, especially, in countries which do not apply or insufficiently apply the recommendations made by the Financial Action Task Force, to the extent local laws and regulations permit. When the local applicable laws and regulations prohibit the implementation of these requirements, the same shall be brought to the notice of SEBI. SEBI has, from time to time, issued circulars/directives in relation to Know Your Client, Client Due Diligence, AML and CFT specifying the minimum requirements. It is emphasized that the registered intermediaries may, according to their requirements, specify additional disclosures to be made by clients to address concerns of money laundering and suspicious transactions undertaken by clients. After SEBI issued the Master Circular, the earlier circulars issued by them pertaining to AML and CFT listed in the appendix of the guidelines shall stand rescinded. Notwithstanding such rescission, anything done, or any action taken or purported to have been done or taken under the circulars specified in the appendix of the guidelines enclosed in the Master Circular shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

REVISED DISCLOSURE REQUIREMENTS FOR ISSUANCE AND LISTING OF GREEN DEBT SECURITIES

SEBI has issued a circular dated February 6, 2023[8] ("**February 06 Circular**") regarding the review of Chapter - IX which deals with the green debt securities of the Operational Circular. SEBI had issued a dated August 10, 2021, which specified the following with reference to issuers of green debt securities:

(i) Additional disclosure requirements in the offer document;
(ii) Continuous disclosure requirements in the annual report and financial results; and
(iii) Responsibilities of the issuer.

In the backdrop of increasing interest in sustainable finance in India as well as around the globe and with a view to align the existing framework for green debt securities with updated Green Bond Principles recognized by the International Organization of Securities Commission, SEBI undertook a review of the regulatory framework for green debt securities.

[6] SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2023/6
[7] SEBI/HO/MIRSD/MIRSD-SEC-5/P/CIR/2023/022
[8] SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023

Therefore, Chapter IX of the Operational Circular shall be replaced with the provisions detailed in this February 06 Circular.

ENHANCED OBLIGATIONS AND RESPONSIBILITIES ON QUALIFIED STOCK BROKERS ("QSBS")

SEBI has issued a circular dated February 6, 2023[9], regarding enhanced obligations and responsibilities on the Qualified Stock Brokers ("**QSBs**"). SEBI through various circulars issued from time to time has given all the necessary directions/guidelines to stock brokers, to ensure the orderly functioning of the securities market and to protect the interest of investors in the securities market. Over time there have been significant developments in the securities markets such as advancements in technology, investor penetration and awareness, the concentration of activity among few stock brokers and increase in risk including, on account of possibility of cyber-attacks. Certain stock brokers, due to various factors like their size, trading volumes and amount of clients' funds handled by them, have come to occupy a significant position in the Indian securities market which is leading to a concentration of activity among few stock brokers. Such stock brokers cater to the needs of a large number of investors and therefore, it is imperative for such stock brokers, inter-alia, to adhere to the regulatory guidelines, provide satisfactory services to investors and resolve investor complaints. The failure of such stock brokers has the potential to cause disruption in the services they provide to a large number of investors causing widespread impact in the securities market.

Hence, in order to further strengthen the compliance and monitoring requirements relating to stock brokers and to ensure the efficient functioning of the securities market, SEBI, vide Gazette Notification dated January 17, 2023, amended the SEBI (Stock Broker) Regulations, 1992 for designating certain stock brokers, having regard to their size and scale of operations, likely impact on investors and securities market, as well as governance and service standards, as QSBs, on the basis of certain parameters and appropriate weightages thereon. The stock broker designated as a QSB shall be required to meet enhanced obligations and discharge responsibilities to ensure appropriate governance structure, appropriate risk management policy and processes, scalable infrastructure and appropriate technical capacity, framework for orderly winding down, robust cyber security framework, and investor services including online complaint redressal mechanism. This SEBI circular details the parameters which shall be considered for designating a stock broker as QSB, enhanced obligations and responsibilities which shall be cast on such QSBs and guidelines on enhanced monitoring of QSBs which shall be carried out by Market Infrastructure Institutions.

AMENDMENT TO THE SEBI (BUY-BACK OF SECURITIES) REGULATIONS 2018 ("BUY-BACK REGULATIONS")

SEBI *vide* gazette notification dated February 07, 2023[10] ("**Buy-Back Amendment**") has amended the Buy-Back Regulations**.**

Following are the key highlights of the amendment:

(i) The definition of 'frequently traded shares' has been introduced to the Buy-Back Regulations. Frequently traded shares shall have the same meaning as assigned to them under the SEBI (Substantial Acquisition of Shares and Takeovers), Regulations 2011;

(ii) The definition of 'secretarial auditor' has been inserted in the Buy-Back Regulations;

(iii) Buy-back limits were earlier based on both standalone *and* consolidated financial statements of the company; this has now been substituted by 'based on the standalone *or* consolidated financial statements of the company, whichever sets out a lower amount';

(iv) SEBI has prescribed the new limits for buyback from the open-market through stock-exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, it shall be less than:

- (a) 15% of the paid up capital and free reserves of the company till March 31, 2023;
- (b) 10% of the paid up capital and free reserves of the company till March 31, 2024;
- (c) 5% of the paid up capital and free reserves of the company till March 31, 2025

SEBI has also clarified that buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.

(v) Further, an amendment has also been notified in regulation 17(i), now the buy-back offer shall open not later than four working days from the record date and shall close:-

- (a) within six months, if the buy-back offer is opened on or before March 31, 2023;
- (b) within 66 working days, if the buy-back offer is opened on or after April 1, 2023 and till March 31, 2024; and

[9] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24

[10] SEBI/LAD-NRO/GN/2023/120

(c) within 22 working days, if the buy-back offer is opened on or after April 1, 2024 and till March 31, 2025.

(vi) Earlier, a company could buy-back its shares from the open market through (a) book building process; (b) stock exchange; (c) from odd-lot holders. Now, regulation 4(iv) of Buy-Back Regulations has been amended and SEBI has eliminated buy-back from odd-lot holders, from the allowed methods to carry out buyback;

(vii) As per the Buy-Back Amendment, SEBI has amended and introduced regulation 5 (via), that allows the board of directors of the company, till one working day prior to the record date, increase the maximum buy-back price and decrease the number of securities proposed to be bought back, such that there is no change in the aggregate size of the buy-back.

(viii) New regulations 22A (*Disclosures, filing requirements and timelines for public announcement*), 22B (*Offer procedure*), 22C (*Payment to holders of shares or other specified securities*) 22D (*Retail and Promoter Participation*) and 22E (*Methodology of acceptance of bids*) have been inserted with respect to buy-back through the book-building process.

GRANT OF EXTENSION OF TIME TO ENTITIES OPERATING/DESIROUS OF OPERATING AS ONLINE BOND PLATFORM PROVIDERS ("OBPPS") FOR MAKING AN APPLICATION TO OBTAIN CERTIFICATE OF REGISTRATION AS A STOCK BROKER UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (STOCK BROKERS) REGULATIONS, 1992 ("STOCK BROKERS REGULATIONS")

SEBI has issued a circular dated February 7, 2023[11], regarding the grant of extension of time to entities operating/ desirous of operating as OBPPs for making an application to obtain a certificate of registration as a stockbroker under the Stock Brokers Regulations. Regulation 51-A of SEBI (Issue and Listing of Non-Convertible Securities) Regulation 2021, inter-alia, requires that a person acting as an OBPP without the certificate of registration on or before November 9, 2022, may continue to do so for a period of 3 (Three) months from November 9, 2022, or such other time period as may be specified by the board, or if it has made an application for grant of certificate of registration within the specified period, till the disposal of such application by SEBI.

According to Para 5.1 of the SEBI circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/154 dated November 14, 2022, registration and regulatory framework for OBPPs requires entities desirous of operating as OBPPs to be companies incorporated in India. SEBI is in receipt of representation from the market participants, wherein they have informed that the upgradation of the electronic filing portal (version 3) of the Ministry of Corporate Affairs ("**MCA**") for submission of various forms including forms necessary for the incorporation of companies is still under the process of stabilisation and they continue to face technical difficulties in electronic filing of such forms. Further, owing to the stabilisation of the process of filing electronic forms on account of the upgradation of the electronic filing portal from version 2 to version 3, MCA vide general circular number 03/2023 dated February 7, 2023, has inter-alia provided additional time of 15 (Fifteen) days for filing of various electronic (including those required in the process of registration of users on MCA-21), forms without additional fees.

Considering the difficulties faced by the entities operating/ desirous of operating as OBPPs, it has been decided to grant an additional time period of 3 (Three) weeks commencing from February 9, 2023 (i.e., the end of three months from November 9, 2022) for making an application to obtain a certificate of registration as a stockbroker under the SEBI (Stock Brokers) Regulations, 1992. Accordingly, the application for registration by OBPPs as stockbrokers shall be made by March 1, 2023.

ENTITIES ALLOWED TO USE E-KYC AADHAAR AUTHENTICATION SERVICES OF UIDAI IN SECURITIES MARKET AS SUB-KYC USER AGENCIES ("SUB-KUA")

SEBI, vide its circular dated February 8, 2023[12], has allowed entities in the securities market for Resident Investors to use e-KYC Aadhaar Authentication services of UIDAI in the securities market as sub-KYC user agencies ("**sub-KUA**") to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets. As per the previously issued SEBI circulars issued in this regard, the KYC user agencies ("**KUA**") shall allow SEBI registered intermediaries to undertake the Aadhaar Authentication of their clients as sub-KUA for the purpose of KYC.

Such entities seeking to be sub-KUA shall enter into an agreement with a KUA registered with SEBI and get themselves registered with UIDAI as sub-KUAs. The agreement in this regard shall be as prescribed by UIDAI. Further, the Sub-KUAs shall follow the process as detailed in SEBI circular dated November 5, 2019, and as may be prescribed by UIDAI from time to time. The KUAs shall facilitate the onboarding of these entities as sub-KUAs to provide the services of Aadhaar authentication with respect to KYC.

[11] SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/025

[12] SEBI/HO/MIRSD/SEC-5/P/CIR/2023/0026

CLARIFICATION WITH RESPECT TO ISSUANCE AND LISTING OF PERPETUAL DEBT INSTRUMENTS, PERPETUAL NON-CUMULATIVE PREFERENCE SHARES AND SIMILAR INSTRUMENTS UNDER CHAPTER V OF THE SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) REGULATIONS, 2021 ("NCS REGULATIONS")

SEBI, vide its circular dated February 8, 2023[13], has issued a clarification with respect to issuing and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under chapter V of the NCS Regulations. Chapter V of NCS regulations prescribes the condition for the issuance and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments.

Clarification was sought by market participants, including issuers and merchant bankers, on the applicability of the provisions of Chapter V of NCS Regulations, where securities are proposed to be issued for a fixed maturity which shall not have features *viz.* option of conversion to equity, write-off, etc. Accordingly, SEBI has clarified that only securities which have characteristics as stated below, shall necessarily be required to comply with the provisions for issuing and listing as specified under Chapter V of NCS Regulations:

(i) The issuer is permitted by the Reserve Bank of India ("**RBI**") to issue such instruments.
(ii) The instruments from part of non-equity regulatory capital.
(iii) The instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature.
(iv) The instruments contain a discretion with the issuer/ RBI for events including but not restricted to all or any of the below events: conversion into equity; write off of interest/ principal; skipping/ delaying payment of interest/principal; making an early recall; changing any terms of issue of the instrument.

CLARIFICATION IN RESPECT OF THE COMPLIANCE BY THE FIRST-TIME ISSUERS OF DEBT-SECURITIES UNDER SEBI NCS REGULATIONS WITH REGULATION 23(6)

SEBI, vide its circular dated February 9, 2023[14], has issued a clarification in respect of compliance by the first-time issuers of debt securities with the provisions of the NCS Regulations under Regulation 23(6) therein. Regulation 23(6) read with Regulation 2(1)(r) of the NCS Regulations, requires articles of association of an issuer to include the provisions with respect to requirements for the board of directors nominated by the debenture trustee in terms of Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations 1993. The said regulation provides that the existing debt-listed issuers amend their articles of association on or before September 30, 2023.

SEBI was in receipt of representations from certain first-time issuers who are in the process of preparing for their first listed privately placed Non-Convertible Debentures ("**NCDs**") or public issue of NCDs with respect to compliance with Regulation 23(6) of the NCS Regulations, including in relation to the timelines for amending their articles of association. Accordingly, SEBI has clarified that the Stock Exchanges are advised to take an undertaking from such first-time issuers that they will ensure that their articles of association are amended within a period of 6 (Six) months from the date of the listing of the debt securities. This undertaking may be obtained at the time of granting the in-principle approval. The issuer shall, within such time, comply and report compliance to Stock Exchanges, which shall periodically monitor/ remind such issuers on doing the needful.

INTRODUCTION OF ISSUE SUMMARY DOCUMENT ("ISD") AND DISSEMINATION OF ISSUE ADVERTISEMENTS

SEBI introduced ISD in XBRL format, vide its circular dated February 15, 2023[15], to make available relevant information/data points at the Stock Exchanges and Depositories in a structured manner.

The ISD has been introduced for (i) public issue of specified securities (initial public offer / further public offer); (ii) further issues preferential issue, qualified institutions placement (QIP), rights issue, issue of American Depository Receipts (ADR), Global Depository Receipts (GDR) and Foreign Currency Convertible Bonds (FCCBs); (iii) buy-back of equity shares (through a tender offer or from the open market); (iv) open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; and (v) voluntary delisting of equity shares where exit opportunity is required under SEBI (Delisting of Equity Shares) Regulations, 2021.

The ISD shall be filed in 2 (Two) stages – (i) ISD will be filed containing pre-issue /offer field, and (ii) post-issue/offer fields/after allotment/offer is completed. Details in the ISD will be filed as per the prescribed format and provides timelines for submission of the same and also casts certain responsibilities on the entity responsible for the submission.

MAINTENANCE OF A WEBSITE BY STOCKBROKERS AND DEPOSITORY PARTICIPANTS

SEBI, vide its circular dated February 15, 2023[16], has mandated stockbroker(s) ("**SB**") and depository participant(s) ("**DP**") to maintain websites with the objective

[13] SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/027
[14] SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/028
[15] SEBI/HO/CFD/PoD-1/P/CIR/2023/29
[16] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/30

to bring advancement in technology and also provide better services to all the investors. The website shall mandatorily display information such as basic details of SB/DP such as registration number, registered address of head office and branches, names & contact details of all key managerial personnel including compliance officer, step by step procedure for opening an account - filing a complaint on designated email and finding out the complaint status, details of the authorized person.

MASTER CIRCULAR FOR THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 ("TAKEOVER REGULATIONS")

SEBI issued the circular on February 16, 2023[17], to provide for formats of various documents, procedural changes, and to provide a one stop solution for such instructions, to rescind some of the earlier circulars mentioned specifically in annexure 5 of the master circular.

This master circular provides for the following:

1. Format of documents for activities pertaining to open offers.
2. Format of disclosure documents/reports.
3. Automation of disclosure requirements pursuant to introduction of system driven disclosures.
4. Procedure for tendering of shares and settlement through stock exchange.
5. Online filing system for submission of documents under the Takeover Regulations.
6. Payment of fees.
7. Tendering by shareholders holding securities in physical form.
8. Exemption application for cases involving Trust as acquirer.
9. Standard format of application under Regulation 11(1) of the Takeover Regulations.
10. Publication of investor charter and disclosure of complaints by Merchant Bankers on their websites.

[17] Master circular for SAST

ORDER PASSED UNDER SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT 1996 CANNOT BE REVIEWED

In ***Sarada Construction v. Bhupendra Pramanik & Ors***.[18], the Hon'ble High Court of Calcutta held that an Order passed under Section 11 of the Arbitration and Conciliation Act 1996 **("Act")** cannot be reviewed. In the instant matter, the said High Court passed an Order dated 18.08.2022 for the appointment of an arbitrator under the Act. Aggrieved by the said orders, Panch Leaf Developer Private Limited and it's 2 (two) directors filed a review petition before the said High Court primarily on the ground that the Order dated 18.08.2022 was passed without considering the arbitrability in the said matter and that the review applicants were not represented before the High Court.

The Hon'ble High Court dismissed the review petition of the review applicants and held that the Act is a complete code in itself, containing no provision or mechanism for permitting review. It further held that being a holistic Act, it is appropriate that no review should be entertained by the High Court in the absence of an enabling provision. The Hon'ble High Court relied upon numerous judicial precedents to identify that the power to review is a creature of the statute and unless a procedural irregularity exists, it cannot be permitted and thus concluded by holding that as far as High Courts are concerned, they are without jurisdiction and have no power to review an application under section 11 of the Act.

FORMER CLAUSE IN THE AGREEMENT WILL PREVAIL OVER THE LATTER CLAUSE IN CASE OF INCONSISTENCY

In ***Sunil Kumar Chandra v. M/s Spire Techpark Private Limited***[19], the Hon'ble High Court of Delhi has held that the former clause in an agreement will prevail over the latter clause in case of inconsistency. In the said case, the Petitioner filed a petition under Section 11 of the Arbitration and Conciliation Act 1996 **("Act")** *qua* the dispute arising out of an agreement dated 26.08.2013 vide which Petitioner was allocated a lockable unit bearing Unit No. (office no.) 730, on 7th floor, admeasuring about 525 Sq. Feet in Tower T-02 **("Unit")**. The Petitioner had paid the entire consideration amount of the said Unit to the Respondent, however, the Respondent raised another demand of Rs. 5,78,643/- on the Petitioner subject to which it would hand over possession to the Respondent. Thus, when the Petitioner approached the Respondent to pay the aforementioned demand, he learnt that the Respondent had already leased the said Unit to Vivo Company and was being offered a different unit altogether and subsequently the Respondent even stopped making the assured return payments.

Since the Petitioner and Respondent were unable to resolve their disputes, the Petitioner invoked the arbitration clause i.e., clause 18.2 wherein all disputes arising out of the agreement were to be adjudicated by the courts of New Delhi. Clause 18.3 of the same agreement provided that the courts of Gautam Buddha Nagar shall also have jurisdiction to resolve disputes. After examining both clauses 18.2 and 18.3, the Hon'ble High Court observed that where there exists any iota of inconsistency between two provisions of the same instrument, the former clause shall prevail over the latter one.

INCOME TAX DUES ARE 'GOVERNMENT DUES' AND INCOME TAX AUTHORITIES ARE SECURED CREDITORS

The Hon'ble National Company Law Appellate Tribunal ("NCLAT") in the case of *Principal Commissioner of Income Tax & Anr. v. M/s Assam Company India* Limited (Company Appeal (AT) (Insolvency) No. 243 of 2022) held that Income Tax dues are Government dues and Income Tax Authorities are a secured creditor. Seri Infrastructure Pvt. Ltd.

[18] IA No. GA 1 of 2022, RVWO 32 of 2022 in AP 731 of 2019

[19] Arb Petition No. 1102 of 2022 & OMP (I) (Comm) No. 328 of 2022

("**Financial Creditor**") had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Assam Company India Ltd. ("**Corporate Debtor**"). Ld. Adjudicating Authority initiated CIRP against the Corporate Debtor. After the initiation of the CIRP, the Income Tax Department, the appellant in the present case, filed their claim before the Resolution Professional ("**RP**") for the Assessment Years 2013-14 and 2014-15. The RP rejected the claim of the Income Tax Department citing the pendency of appeal before the Commissioner of Income Tax (Appeals) for both the concerned Years. RP justified his decision by claiming that that once appeals get decided, the new promoter of the Corporate Debtor would pay the demand. The IT Department contented that mere filing of an appeal would not grant immunity to the Corporate Debtor from recovery of tax dues. In the meanwhile, Resolution Plan was approved for the Corporate Debtor. However, the Successful Resolution Applicant approved only part claim of the IT Department and paid the same.

Aggrieved by the actions of the Corporate Debtor, 15 months after the approval of the Resolution Plan, the Income Tax Department issued an Attachment Order on 28.01.2020 against the Corporate Debtor. Subsequently, the Corporate Debtor filed an application before Hon'ble National Company Law Tribunal ("**NCLT**"), seeking setting aside of the Attachment Order passed by the IT Department. The NCLT held claims of IT Department cannot be entertained after the approval of the Resolution Plan and hence, *vide* order dated 20.01.2021, set aside the aforementioned Attachment Order. The Income Tax Department filed an appeal before Hon'ble NCLAT against the order dated 20.01.2021. Hon'ble NCLAT, while deciding the case, relied on the on the judgement passed by the Hon'ble Supreme Court in *State Tax officer v. Rainbow Papers Limited (Civil Appeal No. 1661 OF 2020)* wherein it held that delay in filing a claim cannot be the sole ground for rejecting the claim and Hon'ble Apex Court noted that if a Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan. Further, Hon'ble Supreme Court noted that a security interest can be created by the operation of law. Relying of the aforementioned Apex Court Judgement, The Hon'ble NCLAT opined that the dues of the Income Tax dues are 'Government dues' and Income Tax Authorities are Secured Creditors and accordingly, quashed the Hon'ble NCLT's order dated 20.01.2021.

EMPLOYMENT LAW

CERTIFICATE OF ENLISTMENT THROUGH E-DISTRICT PORTAL IN WEST BENGAL

The Urban Development and Municipal Affairs Department, West Bengal vide notification dated February 1, 2023, has stated that the certificate of enlistment (trade license) will be obtained exclusively from the e-district portal with effect from February 2, 2023, instead of the Silpasathi portal due to problems faced by common citizens in obtaining the certificates from the Silpasathi portal until further orders and till the problem is fixed.

EMPLOYEES PROVIDENT FUND ORGANISATION ISSUES A REMINDER FOR THE ADMISSIBILITY OF ASSURANCE BENEFITS FOR BENEFICIARIES OF THE EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME

- The Employees' Provident Fund Organisation ("**EPFO**"), vide its notification on February 3, 2023, has reminded about the admissibility of assurance benefits payable to the beneficiaries of the Employees' Deposit Linked Insurance Scheme ("**EDLI Scheme**").
- The Ministry of Labour and Employment had issued a circular dated October 18, 2022, ("**Guidelines**") providing directions on the admissibility of benefits payable to the beneficiaries of the EDLI Scheme.
- However, it had been observed that the Guidelines were not being followed as per grievances and right to information(s) received.
- Therefore, all Zonal Offices ("**ZO**") and Regional Offices ("**RO**") have been advised to strictly settle the claims in accordance with the provisions of the EDLI Scheme. Due verification will have to be done within 7 (Seven) days and the family members should not be harassed in carrying out the same.
- In cases where the employer states that the member is on the muster rolls and the enforcement officer says otherwise, the reason why the employer's version is not acceptable to the EPFO should be clearly listed out and examined at the office.
- All ROs must ensure that the persons entitled to receive EDLI Scheme benefits are not deprived of their rightful claims. ZOs are requested to review this issue periodically so that eligible beneficiaries get the due benefits.

CIRCULAR MANDATING THE DISPLAY OF NAME BOARDS IN PUNJABI

The office of the Deputy Commissioner, Patiala vide circular dated February 3, 2023, has mandated that the name boards of all public and private shops, commercial establishments and other institutions are to be displayed in Punjabi in Gurumukhi script by February 21, 2023.

THE HIMACHAL PRADESH BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) FIRST AMENDMENT RULES, 2023

The Department of Labour and Employment, Himachal Pradesh vide notification dated February 8, 2023, has amended Rule 266, pertaining to documents to be filed with the application of registration under the Himachal Pradesh Building and Other Construction Workers Rules, 2008.

EMPLOYEES' STATE INSURANCE ACT 1948 SHALL BE APPLICABLE TO ESTABLISHMENTS IRRESPECTIVE OF THE NUMBER OF EMPLOYEES

The Employees State Insurance Corporation ("**ESIC**") vide notification dated February 8, 2023, has published the judgement of the Supreme Court in *ESIC v. M/s. Radhika*

Theatre dated January 20, 2023, wherein the Supreme Court had ordered that on and after October 20, 1989, irrespective of the number of employees working in a factory or establishment, it shall be governed by the Employees' State Insurance Act, 1948 ("**ESI Act**"). The notification has directed the ESIC officers to enforce the order.

CLARIFICATION ON EMPLOYMENT OF WOMEN ON NIGHT SHIFTS

- The Minister of state for Labour and Employment vide press release dated February 13, 2023, has stated that the Code on Occupational Safety, Health & Working Conditions 2020 has special provisions relating to the employment of women.

- As per this press release, women shall be entitled to be employed in all establishments for all types of work, with their consent, before 6:00 a.m. and beyond 7:00 p.m. subject to conditions relating to safety as may be prescribed by the appropriate Government, holidays and working hours or any other conditions being observed by the employer.

- Further, to enhance the employability of female workers, the government is providing training to them through a network of women's industrial training institutes, national vocational training institutes and regional vocational training institutes.

- Further, in a written reply to a question in Lok Sabha, it was informed by the Ministry that the Government has increased paid maternity leave from 12 (Twelve) weeks to 26 (Twenty Six) weeks of which not more than 8 (Eight) weeks shall precede the date of expected delivery. Depending upon the nature of work assigned to a woman, Section 5(5) of the Maternity Benefit (Amendment) Act, 2017 provides for work from home for such period and on such conditions as the employer and the woman may mutually agree.

THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITION OF SERVICE) (GUJARAT) (AMENDMENT) RULES, 2023

The Labour, Skill Development and Employment Department, Sachivalaya, Gandhinagar vide notification dated February 20, 2023, has amended the Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) (Gujarat) Rules, 1981. According to the amendment a timeline of 45 (Forty Five) days has been provided for the grant of registration and license under the Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) (Gujarat) Rules, 1981.

THE CONTRACT LABOUR (REGULATION AND ABOLITION) (GUJARAT) (AMENDMENT) RULES, 2023

The Gujarat Labour Department, vide notification dated February 20, 2023, has amended the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972. According to the amendment, a timeline of 45 (Forty Five) days has been provided for the grant of registration and license under the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972.

ENFORCEMENT OF PROVISIONS OF THE ESI ACT IN IMPHAL EAST AND IMPHAL WEST DISTRICTS OF MANIPUR

The Ministry of Labour and Employment vide notification dated February 21, 2023, has enforced the following provisions of the ESI Act effective from March 1, 2023:

- Sections 38 to 43 and Sections 45A to 45H of Chapter IV of the ESI Act (*provisions pertaining to Contribution*);

- Sections 46 to 73 of Chapter V of the ESI Act (*provisions pertaining to Benefits*) and;

- Sections 74, 75, Sub-Sections (2) to (4) of Sections 76, 80, 82 and 83 of Chapter VI of the ESI Act (*provisions pertaining to Adjudication of Disputes and Claims*).

in all the areas of Imphal East and Imphal West districts, in addition to the already notified areas of the said districts, in the state of Manipur.

THE FACTORIES (KARNATAKA AMENDMENT) BILL, 2023

The Government of Karnataka, vide notification dated February 22, 2023, has proposed amendment to various provisions of the Factories Act, 1948 including Section 54 (*daily hour*), Section 55 (*interval of rest*), Section 56 (*spread over*), Section 59 (*extra wages for overtime*), Section 65 (*power of government to make exempting orders*) and Section 66 (*restriction on employment of women*).

DECLARATION OF AUTHORITY FOR SHOPS AND ESTABLISHMENTS IN MAHARASHTRA

The Government of Maharashtra, vide notification dated February 22, 2023, has declared Panchayats to be the local authority for enforcement of provisions under the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

ENERGY & INFRASTRUCTURE

ENERGY

REVISED SANCTION TO GUJARAT UNDER INTRA-STATE TRANSMISSION SYSTEM GREEN ENERGY CORRIDOR PHASE-II SCHEME

Vide order no. F. No. 367-12/4/2022-GEC, dated 13.02.2023, the Ministry of New and Renewable Energy ("**MNRE**") has revised its sanction for projects under the 'Intra-State Transmission System Green Energy Corridor Phase-II (InSTS GEC-II scheme)' for Gujarat. Under the said scheme, a total of 5138 ckm of transmission lines and 5880 MVA substations were sanctioned to Gujarat for evacuation of 4000 MW RE power. The project cost was Rs.3636,00,00,000.73 (Rupees Three Thousand Six Hundred Thirty Six point Seven Three Crores) with Central Financial Assistance (CFA) at 33% of project cost, i.e. Rs. 1200,00,00,000.12 (Rupees Twelve Thousand point One Two Crores).

The implementation agency, Gujarat Energy Transmission Corporation Ltd. (GETCO), vide its letters dated 03.09.2022 & 27.09.2022 and email dated 12.10.2022 had requested for revision of projects under the scheme. Accordingly, MNRE has accorded its revised sanctioned to GETCO under the InSTS GEC-II scheme, in accordance with the scheme guidelines annexed to MNRE order dated 04.03.2022.

The revised project is for setting up 2470 ckm transmission lines and 7460 MVA capacity of substations for evacuation of around 5100 MW of RE power. The revised project cost, as per the CEA's report, is Rs. 3667,00,00,000.29 (Rupees Three Thousand Six Hundred Sixty Seven point Two Nine Crores). However, the CFA would be limited to the amount sanctioned to Gujarat, i.e. Rs. 1200,00,00,000.12 (Rupees Twelve Thousand point One Two Crores). Any additional costs will be borne by GETCO.

GUIDING/HELPING STANDARD OPERATING PROCEDURE (SOP) FOR IMPLEMENTATION OF VIRTUAL NET METERING AND GROUP NET METERING MECHANISM ISSUED BY THE MINISTRY OF NEW AND RENEWABLE ENERGY

The MNRE on 23.02.2023 issued the *Guiding/Helping Standard Operating Procedure (SOP) for Implementation of Virtual Net Metering (VNM) and Group Net Metering Mechanism (GNM)* to help the stakeholders to develop their own documents based on State Regulations and to facilitate penetration of rooftop solar in the rural households in India.

Brief Background:

1. Despite governments various initiatives to promote rooftop solar across India, there has been lukewarm response in the rural areas. In rural areas, rooftop solar installations are limited because of the households not having sufficient strength to house rooftop solar structure. Another factor for low installation of rooftop solar is the lower electricity tariff and consumers are in the lower income group, and not having sufficient resources for initial investment of rooftop solar.

2. To overcome these challenges, after inviting comments from the stakeholders, the MNRE has issued the SOP that instead of households individually installing solar systems, they can be aggregated and installed at a single place, either taken on lease or belonging to the panchayats. The plants can be developed with the facility of net metering available to individual households, with the solar generation proportionately adjusted in the electricity bill on either VNM or GNM mode.

3. The objective behind this SOP is also to improve the electricity supply in rural areas, reduce T&D losses, improve financial position of Discoms (as consumption towards subsidized category will reduce), etc.

EXTENSION FOR INSTALLATION OF GRID-CONNECTED SOLAR POWER PLANTS UNDER COMPONENT-A OF PM-KUSUM SCHEME

Vide office memorandum dated 17.02.2023, the MNRE has granted final extension for sanctions issued by the Ministry for projects under Component-A of PM-KUSUM during financial year 2019-20. The MNRE has also clarified that no further extension will be provided for the projects under any circumstances. The extension was granted in view of the difficulties faced by the farmers in accessing financing under Component-A in the initial phase, and the fact that the banks have not started lending to farmers and loans in a number of cases are under process. The extension has been granted till 30.09.2023, to complete the projects sanctioned under the said component. The MNRE has also clarified that the extension will be available to projects where financial closure is reported by the beneficiary to the State Implementing Agencies on or before 31.03.2023. The balance capacity which does not meet the deadlines will be withdrawn and re-allocated to the states based on fresh proposals.

The PM-KUSUM scheme has been introduced to help install off-grid solar pumps in rural areas and reduce dependance on grid. The objective of the scheme is to enable farmers set up solar power generation capacity on their arid land and sell it to the grid. This seeks to increase the income of farmers by allowing them to sell surplus solar power to the grid.

The scheme aims to add solar capacity of 30,800 MW with central financial support to the implementing agencies. Component A aims to add 10,000 MW of solar capacity through installation of small solar power plants of individual plants of capacity upto 2 MW.

PM-GATI SHAKTI NATIONAL MASTER PLAN RELATED TO RENEWABLE ENERGY

The Pradhan Mantri Gati Shakti National Master Plan is a central government project, aimed to revolutionize infrastructure in India. Vide order (no. F No. 149/6/2023) dated 15.02.2023, the MNRE notified the following decisions with respect to the plan:

1. Sati Shakti Cell: A Cell has been created in the Ministry for all the works related to PM-Gati Shakti. All communications to be done through the Head of the Cell.
2. Mapping of RE Projects: RE projects of capacity 50 MW and more are to be mapped on the PM-Gati Shakti portal. The projects taken up by the Renewable Energy Implementing Agencies (REIA) (tenders / EPC mode) would be mapped on National Portal by Gati Shakti Cell. The projects taken up by the States' schemes & tenders would be mapped by States on the respective State's portal with linkage to National Portal.
3. Mapping of Transmission Projects: The State Transmission Utilities would map all the Intra-State transmission infrastructure on the State's portal in coordination with Ministry of Power. To avoid duplication with the Green Energy Corridor (GEC) infrastructure, the concerned transmission projects of GEC would be mapped by States with a distinct color coding.
4. Colour Coding of projects on both National & States' Portals: DPIIT has suggested that colour coding and symbols be used for segregating the projects on the portal.
5. Uploading on the National Portal: After verification of data by Gati Shakti Cell, the data would be sent to BISAG-N for uploading the data on the portal. BISAG-N shall upload the data and inform Gati Shakti Cell when uploading is completed. Further, BISAG-N will link the States' portals to the National Portal in coordination with Gati Shakti Cell.
6. Validation of Data on National Portal: As suggested by DPIIT, the validation mechanism will follow the maker, checker & approver stages.
7. Cleaning of Data: The Gati Shakti Cell in coordination with Renewable Energy Implementing Agencies (REIA) and National Institute of Wind Energy (NIWE) will check the data uploaded on the portal and delete the unnecessary ones with approval of MNRE.
8. Uploading of Upcoming Projects: After all the existing projects are mapped, the above procedure of uploading, verification and approving the data would be done every month so as to update upcoming projects on the portal.

INFRASTRUCTURE

EXECUTION OF SUPPLEMENTARY AGREEMENTS FOR DIVESTMENT AND/OR REFINANCING OF HIGHWAY PUBLIC-PRIVATE PARTNERSHIP ("PPP") PROJECTS

The National Highways Authority of India ("**NHAI**"), vide policy circular bearing number 8.4.38/2023 dated February 13, 2023 ("**Policy Circular 1**"), has directed that pursuant to 100% (one hundred percent) equity divestment or refinancing of any project highway, the outgoing promoters will not have any accrued claims (and that the same shall vest with the new promoter), and that verification of any works or outstanding issues will be required to be taken up by the transferee.

Further, vide this Policy Circular 1, NHAI has directed that in cases of divestment and/or refinancing, applicable supplementary agreements will be required to be executed with NHAI. NHAI has provided drafts of such supplementary agreements with the Policy Circular 1, the highlights of which are briefly covered as follows:

S. No.	Particulars	Supplementary agreement in case of divestment	Supplementary agreement in case of refinancing
1.	Parties	The supplementary agreement is bipartite in nature and is to be executed between NHAI and the outgoing concessionaire.	The supplementary agreement is tripartite in nature and is to be executed among NHAI, the concessionaire, and the lender.
2.	Obligations	The concessionaire will be required to undertake that: (i) The transfer will not involve the transfer of any benefit or ownership to any entity or person situated in a country sharing a land border with India. (ii) No subcontractor or operations and maintenance agency shall be appointed or replaced with one that shares a land border with India. (iii) All punch list items and maintenance activities are to be completed as per the time stipulated by the independent engineer. (iv) Concessionaire shall comply with all statutory requirements. (v) Provisions of the concession agreement shall not be impacted, including those pertaining to the termination payment and any other liability of the Authority.	The concessionaire will be required to undertake that: (i) The transaction shall not have any effect of increasing any financial liability on NHAI and shall not jeopardize its interests in any manner. In case of any financial liability on NHAI due to the transaction, the concessionaire will be required to indemnify NHAI. (ii) All the proceeds of refinancing shall flow from the existing senior lenders through the escrow account. (iii) Provisions of the concession agreement shall not be impacted, including those pertaining to the termination payment and any other liabilities of NHAI. (iv) The draft documents will be required to be verified by NHAI for assuring adherence to the terms of the concession agreement. (v) Concessionaire shall comply with all statutory requirements.
3.	Provisions relating to accrued claims	On and from the date of acquisition of the shares, the outgoing concessionaire shall not have any accrued claims thereof on NHAI, and that the same shall rest solely with the transferee.	N/A
4.	Certificates to be obtained	(i) A no-objection certificate from the senior lenders in relation to the transaction. (ii) A no-objection certificate from NHAI in relation to the transaction.	(i) A no-dues and no-objection certificate from the existing senior lenders in relation to the transaction. (ii) A no-objection certificate from NHAI in relation to the transaction.

RELIEF FOR MICRO, SMALL, AND MEDIUM ENTERPRISES DUE TO COVID-19

The Department of Expenditure ("**DoE**"), vide office memorandum bearing number F.1/1/2023-PPD dated February 6, 2023 ("**OM 1**"), has provided certain reliefs to contractors/ suppliers (who have contracted with the procuring entities, as mentioned hereinbelow) who:

(i) are registered as micro, small, and medium enterprises as on March 31, 2023; and

(ii) had delivery periods/ completion periods between February 19, 2022, and March 31, 2022.

In this regard, the reliefs provided by the DoE are as follows:

(a) 95% (ninety five percent) of the performance security forfeited from such firms shall be refunded;

(b) 95% (ninety five percent) of the bid security forfeited from such firms in tenders opened between February 19, 2020 and March 31, 2022 shall be refunded;

(c) 95% (ninety five percent) of the liquidated damages deducted from such firms shall be refunded, given that the liquidated damages so refunded shall not be more than 95% (ninety five percent) of the performance security under the contract;

(d) in case such entities have been debarred only due to default in execution of such contracts, such debarment shall be revoked by issuance of appropriate orders to this effect; and

(e) no interest shall be paid on refunded amounts.

The OM 1 also specified that the government e-marketplace shall separately provide an online portal for implementation of the measures. The DoE has further stated that the date of commencement of these measures shall be notified in due time.

DRAFT SCHEME FOR THE SETTLEMENT OF CONTRACTUAL DISPUTES

In line with the Union Budget for FY 2023-24, which announced that a graded settlement mechanism shall be provided for settlement of contractual disputes, the DoE, vide office memorandum bearing number F.1/7/2022-PPD dated February 8, 2023, has provided a draft scheme for such settlement of such disputes ("**Draft Settlement Scheme**") to encourage investments in the construction sector. The key highlights of the Draft Settlement Scheme are as follows:

(i) Applicability of the Draft Settlement Scheme

The Draft Settlement Scheme shall be applicable to disputes where one of the parties is:

- The Ministries / Departments of the Government of India; or
- an autonomous body of the Government of India; or
- a public sector bank and public sector financial institution; or
- a central public sector enterprise;
- a union territory, or the national capital territory of Delhi and any agency or undertaking thereof; or
- any organisation where the Government of India has a shareholding of 50% (fifty percent), provided that such an organisation may decide to opt out of the Draft Settlement Scheme with the prior approval of its board of directors.

In relation to the non-governmental party to the dispute, the Draft Settlement Scheme states that all contractors or suppliers who have contracted with the abovementioned procuring entities shall be eligible to participate.

Finally, with regard to the nature of the disputes, the Draft Settlement Scheme only includes disputes having financial claims against the abovementioned procuring entities (provided that claims for proceedings regarding such disputes have been submitted prior to September 30, 2022, including counter claims submitted by the procuring entities up to December 31, 2022), and excludes disputes relating to specific performance of a contract. That being said, the Draft Settlement Scheme is limited to domestic arbitrations only and does not include cases where international arbitration has been invoked.

(ii) Settlement amount

The Draft Settlement Scheme provides the following settlement amounts, which can be offered to the contractors, depending on the stage of the dispute:

S. No.	Stage of dispute	Settlement amount
1.	The relevant court has passed its order with net amount payment to the contractor.	80% (eighty percent) of the net amount awarded to the contractor. In case such order has upheld the order of the arbitral tribunal, interest as stipulated in the arbitral award shall also be paid. Additionally, in case of delayed payment pursuant to the order of the court, additional simple interest at 6% (six percent) shall be paid basis the date of the order from the court till the date of acceptance of claim by the procuring entity under this Draft Settlement Scheme.
2.	The arbitral tribunal has passed the award with net amount payment to the contractor.	60% (sixty percent) of the net amount awarded to the contractor, including interest.
3.	On-going litigation/arbitration/conciliation in relation to contracts where (a) either the entire physical progress has been achieved; or (b) no further physical progress is anticipated; or (c) contract has been terminated	30% (thirty percent) of the net claims (i.e., claim by the contractor as deducted by the counter-claim of the procuring entity), excluding interest.
4.	On-going litigation/arbitration/conciliation in relation to contracts where physical activity is ongoing	20% (twenty percent) of the net claims, excluding interest.

(iii) Procedure for submission of claims

A separate portal shall be enabled on the government e-marketplace for the purposes of settlement under the Draft Settlement Scheme.

(iv) Execution of the settlement agreement

A draft settlement agreement will be signed between the parties in case the contractor agrees to a settlement under the Draft Settlement Scheme. However, it further states that the procuring authority shall have the liberty to alter the terms of the settlement agreement. In this regard, the OM 1 also states that if the total claim amount is more than INR 500 crores (Rupees five hundred crores), the procuring entity shall have the liberty to not accept the settlement request from the contractor post recording its reasons for such denial and obtaining approval for such denial from the Secretary concerned or the chief executive officer (in case of a central public sector enterprise).

RESTRICTIONS ON PROCUREMENT FROM BIDDERS IN COUNTRIES SHARING A LAND BORDER WITH INDIA

In supersession of the earlier directions with regard to restrictions on procurement from bidders in countries sharing a land border with India, the DoE, vide order bearing number F.&/10/2021-PPD(1) dated February 23, 2023 ("**Order**"), has inter alia ordered the following:

(i) Only entities from countries sharing a land border with India, who have registered itself with the competent authority, shall be eligible to bid for procurement of goods, services, and/or works, and includes entities who may have specified transfer of technology arrangements with Indian bidders. The requirement of such registration further extends to the following entities:

- subsidiary of an entity in countries sharing a land border with India;
- an entity substantially controlled by other entities in countries sharing a land border with India;
- an entity whose beneficial owner is situated in countries sharing a land border with India;
- a natural person who is a citizen of any country sharing a land border with India;
- a consortium where any member of such a consortium falls within any of the abovementioned categories.
- sub-contractors in cases of turnkey contracts where such a sub-contractor is in a country sharing a land border with India.

(ii) The requirement of a prior registration shall be incorporated in all tender documents, and an undertaking certifying compliance with the requirement of this Order, shall be required to be submitted by the bidders.

In addition to the foregoing, the Order also specified certain model clauses and model certificates that may be included in tender documents or may be obtained from the bidders in this regard.

FINTECH

BOOSTING THE ADAPTABILITY OF FINTECH: BUDGET 2023

On February 01, 2023, the Finance Minister Nirmala Sitharaman presented the Union Budget for the year 2023-24.

The Government has proposed to expand the services of DigiLocker to Fintech businesses as well to enhance the ease of doing business for the Fintech businesses and boost the adaptability and innovation in the sector. Steps will be taken for enabling the use of DigiLocker and Aadhaar to offer a one-stop solution for the reconciliation and updating of a person's identity and address. Fintech entities will get to set up DigiLockers for their use in order to facilitate secure online document sharing and storage within corporate ecologies.

DSK View: *Year on year, the Government is taking steps to boost the financial services sector with a focus on Fintech businesses. This coming year will see a number of policies which will largely be aiming at combining multiple aspects of digital lending, co-branding arrangement, KYC verification. Expanding the ambit of DigiLocker will aid the Fintech companies to efficiently conduct the KYC verification and verify the authenticity of the KYC documents provided by the customers. This will be a critical step towards enabling a unified framework for KYC. This will also enable the financial services sector, especially the payments industry to extend their value propositions and increase outreach, thus contributing to financial inclusion of people from all the sections of the society. If implemented appropriately, this may also be a cost-effective measure for Fintech companies in terms of KYC compliance.*

Source: Budget Speech 2023-24

ISSUANCE OF PPIS TO FOREIGN NATIONALS / NON-RESIDENT INDIANS (NRIS) VISITING INDIA

Pursuant to its circular dated February 10, 2023, the RBI decided to allow access to Unified Payments Interface (UPI) to foreign nationals and NRIs visiting India. Initially, this facility will be extended only to travellers from G20 countries, at selected international airports (i.e., Bengaluru, Mumbai and New Delhi). Eligible travellers would be issued Prepaid Payment Instruments (PPI) wallets linked to UPI for making payments at merchant outlets. Delegates from G20 countries can also avail this facility at various meeting venues. To begin with, ICICI Bank, IDFC First Bank and two non-bank PPI issuers, Pine Labs Private Limited and Transcorp International Limited will issue UPI linked wallets. Travellers visiting India can now experience the convenience of UPI payments at over five crore merchant outlets across India, that accept QR Code-based UPI payments. Further, the Government has also made a provision for the unutilized balances in such PPIs to be encashed in foreign currency or transferred 'back to source' (payment source from where the PPI was loaded), in compliance with foreign exchange regulations.

DSK View: *Albeit a welcome move, but there are some practical challenges which needs to be addressed before the implementation. Issuance of PPI wallet and its utilisation include appropriate KYC verification. Physical verification of passport and visa, bank account confirmation and other critical aspects involved with the issuance of PPI wallet will have to be undertaken at the airport. The customers must be aware of the procedure and the documents that they need to be carrying to complete the KYC verification; which may be comparatively easier for NRIs but will again be a challenge for foreign nationals. Nonetheless, once these issues are ironed out, it will be a relief for the international travellers.*

Source: RBI Notification

REAL-TIME PAYMENT SYSTEMS LINKAGE BETWEEN INDIA AND SINGAPORE

On February 21, 2023, the Prime Minister of India and the Prime Minister of Singapore witnessed the launch of cross-border linkage between India and Singapore using their respective Fast Payment Systems i.e., UPI and PayNow. The facility was launched through token transactions by the RBI Governor, Shri Shaktikanta Das and MD of Monetary Authority of Singapore, Mr. Ravi Menon using the UPI-PayNow linkage.

The UPI-PayNow linkage will enable users of the two fast payment systems in either country to make convenient, safe, instant, and cost-effective cross-border funds transfers using their respective mobile apps. Funds held in bank accounts or e-wallets can be transferred to/from India using just the UPI ID or mobile number or Virtual Payment Address (VPA). Initially, the State Bank of India, Indian Overseas Bank, Indian Bank and ICICI Bank will facilitate both inward and outward remittances while Axis Bank and DBS India will facilitate inward remittances. For Singapore users, the service will be made available through DBS-Singapore and Liquid Group (a non-bank financial institution). The initial limit for transfer of funds using this facility for an Indian user is INR 60,000 (Indian Rupees Sixty Thousand only) per day (equivalent to around SGD 1,000), which may get increased to a higher amount in future. The RBI has also issued some basic FAQs in this regard for the convenience of the users.

DSK View: *The partnership between the UPI and PayNow marks the world's first feature on cloud-based infrastructure and participation by non-bank financial institutions. As it directly links payment systems of two countries, it will be exciting to think of the plausible partnership ventures that could come in the domain of e-payments in the coming time. It is likely to augment the instantaneous and low-cost transfer of money from Singapore to India and vice-versa for Fintech businesses as well, amongst other users.*

Source: UPI-PayNow Linkage – Press Release; FAQs

QR CODE BASED COIN VENDING MACHINE - PILOT PROJECT

On February 08, 2023, the RBI, in its Statement on Developmental and Regulatory Policies, announced the launch of the pilot project on QR Code based Coin Vending Machine (QCVM) in 19 locations across 12 cities. These vending machines will dispense coins against debit to the customer's account using UPI instead of physical tendering of banknotes. This will enhance the ease of accessibility to coins. Once the project takes a concrete shape, the RBI intends to issue detailed guidelines on this aspect to regulate this project with further credibility.

DSK View: *In contrast to the traditional ATMs, QCVM would eliminate the dependency on cash notes. Even though vending machines that exchange cash notes for coins can be found in some places, soiled notes and damaged notes pose a problem for the users. Further, this has aggravated the instances of the users exchanging fake cash notes for coins. This move is going to cut down on the cropping issue of currency adulteration. This will solve the issue of dearth of coins in rural areas. This is a unique step towards integrating the financial payments and technology in India with an innovative mindset.*

Source: Statement on Development and Regulatory Policies

CLARITY ON DIGITAL LENDING GUIDELINES

On February 14, 2023, the RBI released the digital lending guidelines, providing clarifications on several aspects including aspect of services by lending service providers, flow of funds in co-lending transactions, role of payment aggregators in digital lending, etc. These FAQs have provided clarity to many queries which were raised by industry participants after the release of the Digital Lending Guidelines in September, 2022.

Source: FAQ on Digital Lending Guidelines

NO INJUNCTIVE RELIEF IN AN ACTION FOR PASSING OFF WHERE THERE IS INSUFFICIENT EVIDENCE TO ESTABLISH TRANS-BORDER REPUTATION IN THE CLASS OF GOODS/SERVICES OF THE DEFENDANT

The Delhi High Court, while deciding an interlocutory application seeking interim injunction against the Defendant from passing off their goods and services under the mark 'BOLT' as those of the Plaintiff, held that for establishing the claim of passing off, it has to be established that the Plaintiff's mark has a goodwill and reputation in India or that its goodwill and reputation, though garnered abroad, is so considerable that it has spilled over to India.

While the Plaintiff, which is largely a taxi aggregator and food and grocery delivery service provider, had not commenced commercial operations in India, it contented that the worldwide goodwill it commands has percolated into India as well. This submission of the Plaintiff was supported by articles in the CNBC and the Economic Times reporting *inter alia* Plaintiff's launch of its electric kick-sooter-sharing service and the number of customers catered; the number of times Plaintiff's App offering taxi aggregator services have been accessed in India; and a driver survey conducted in five Indian cities.

Applying the "first in the market" principle, the court observed that there was nothing on record to indicate that Plaintiff was in the EV-charging market at all, the market in which the Defendant was operating, and had merely installed some EV charging stations in a handful of locations for charging its own vehicles. The Plaintiff did not also have any trademark registration for their mark in India. The Court opined that the intent of the Plaintiff to venture into Indian market cannot substitute the necessity of spillover of trans border reputation and in absence of any evidence of market exposure in India and spillover of trans-border reputation, the application for interim injunction was dismissed.

DSK View: *The elements of knowledge amongst consumers and territorial goodwill are indispensable requirements to establish the tort of passing off.*

[Bolt Technology OU v. Ujoy Technology Private Limited & Anr., 2023/DHC/001312]

VALIDITY OF "INITIAL INTEREST CONFUSION" AS A TEST OF DECEPTIVE SIMILARITY: OREO VS. FAB!O

The Hon'ble Delhi High Court has granted an injunction restraining the Defendant from using the impugned "FABIO" or "FAB!O" (pronounced as "*fab-ee-yo*") marks for its vanilla cream filled chocolate biscuits on account of it being capable of causing confusion in the mind of the customer with the Plaintiff's well-known "OREO" trademark.

The Court while arriving at this decision, analysed the veracity of the "First Syllable Dissimilarity" principle as introduced by the Defendant whereby it was stated where the first syllable in the competing marks is different, the marks cannot be treated as phonetically similar. The first syllable in the Plaintiff's mark being "O" and the first syllable in the Defendant's mark being "Fa", the Defendant submitted that the marks cannot be termed as phonetically similar. This plea was rejected as the Court analysed binding precedents wherein marks have been held to be phonetically similar even when first syllables are different.

Deliberating on the aspect of deceptive similarity, the Court accepted the Plaintiff's contention of "Initial Interest Confusion". The Court saw substance in this argument and noted that while determining deceptive similarity, what counts is the immediate effect that the impugned packing would have on the unwary customer of average intelligence and imperfect recollection. If, at first glance, a consumer is likely to be confused, and evinces interest in the product, the test of initial interest confusion stands satisfied, and the

mark loses distinctiveness. For ready reference, a comparative depiction of the two packages is shown below:

Plaintiff's product packaging	Defendant's product packaging
	

After considering the principle laid down in *Slazenger & Sons v. Feltham & Co*., the Court finally held that given the phonetic similarity in the "OREO" and "FAB!O" with the strategic terminal "O", the blue colour of the packs used by the Defendant only for their vanilla cream filled chocolate sandwich biscuits, and the pictures of black cookies with white vanilla filling, there is every likelihood of an average intelligence and imperfect recollection presuming an association between the "FAB!O" and "OREO" marks.

DSK View: *Malafide adoption and use of similar marks / packaging, are strong grounds for grant of such discretionary relief. The Court has reaffirmed the judicial point of view that if an unwary customer of average intelligence and imperfect recollection is to feel confusion at a first instance, the infringing mark becomes devoid of distinctiveness. Further, the Court has rightly considered that the overall structural and phonetic similarity of the two names is to be given more importance than first syllables alone.*

[Intercontinental Great Brands v. Parle Product Private Limited, 2023 SCC Online Del 728]

SPORADIC USE OF TRADEMARK WILL NOT QUALIFY AS "CONTINUOUS USE" UNDER SECTION 34 OF THE TRADEMARKS ACT

The Delhi High Court has restrained the Defendants from manufacturing, selling, offering for sale, exporting, advertising, in any manner, gas stoves or any kitchenware and cookware under the mark PRESTIGE.

While the Plaintiff had adopted the mark PRESTIGE in 1949 in relation to goods *inter alia* knives, non-electric cooking and kitchen utensils, it expanded its business over the years and filed an application for the mark PRESTIGE in relation to 'installations for cooking' on a 'Proposed to be used' basis in June, 1981. Plaintiff instituted the suit for permanent injunction and other ancillary reliefs against the Defendant which was also engaged in the business of 'gas stoves' under the mark PRESTIGE and had filed a trademark application for its PRESTIGE mark in relation to 'gas stoves' in 2018, with a user claim of January 1, 2018.

The Defendant argued to be a prior user of the mark PRESTIGE in relation to gas stoves and had filed a total of three invoices from the year 1982 along with few statutory registrations, none of which could prove the Defendant's claim. Upon review of the documents on record, the Court opined that if the Defendant claimed to be "continuous user" under Section 34 of the Trade Marks Act, 1999, a provision which holds the rights of a prior user on a higher ground than that of the registered proprietor, it should have filed documents evidencing such continuous use since the year 1981. At this instance, the Defendant sought further time to file documents showing use of the mark from 1981 however, the same was denied by the court citing relevant rules under Order XI of the Code of Civil Procedure, 1908 (as applicable to commercial suits).

[TTK Prestige Ltd. v. KK and Company Delhi Pvt. Ltd. and Ors., 2023/DHC/001280]

US COPYRIGHT OFFICE REFUSES REGISTRATION TO AI GENERATED ART WORK ON ACCOUNT OF LACK OF HUMAN AUTHORSHIP

In its response to the Artist's letter, the US Copyright Office has clarified its stand that while the Office recognises and thus protect the Work's text as well as the selection, coordination, and arrangement of the Work's written and visual elements, as the Artist's copyright, the Office rejects proprietary claims on the images that were generated by the Midjourney technology as the same are not the product of human authorship. The Office relied upon various US precedents to conclude that some element of human creativity is required in order for a work to be copyrightable. The Copyright Office has observed that the AI, Midjourney, generates work in an unpredictable way and since such creation is not in control of the human users, the said users cannot claim authorship in the AI generated work.

DSK View: *While the US Copyright Office has clarified its stand that AI generated works are not copyrightable, it is unclear if the said work can be protected by any other means. In view of this decision, it would be pertinent to introduce the element of "human control" in creation of such work, to claim authorship.*

ANALYSIS OF THE CONSULTATION PAPER ON ESG DISCLOSURES, RATINGS AND INVESTING ISSUED BY SEBI FOR RECEIVING PUBLIC COMMENTS

With the ever-increasing emphasis being laid by investors on Economic, Social and Governance ('**ESG**') aspects of businesses and the pressing need for accountability of corporations towards all stakeholders, the Securities and Exchange Board of India ('**SEBI**') recognised a need to strengthen the regulatory mechanisms for ensuring compliance in this domain. Therefore, it constituted an ESG Advisory Committee ('**EAC**') in May 2022 for providing recommendations towards streamlining the rules governing ESG Disclosures, ESG Rating and ESG Investing. Consequently, SEBI has issued a consultation paper for seeking public comments (available here).

A. ESG Disclosures

In furtherance of the mandatory disclosures to be made by top 1000 listed companies by market capitalization, in accordance with the Business Responsibility and Sustainability Reporting ('**BRSR**') framework, the EAC has developed the BRSR Core (Annexure 1 of the Consultation Paper) for companies to provide reasonable assurances pertaining to Key Performance Indicators ('**KPIs**') under the 'E', 'S' and 'G' attributes of the report. These KPIs aim to use relevant quantifiable and outcome oriented metrics to ensure ease of comparison of all the attributes of one company with another. By way of illustrations, these KPIs may include percentage of male-to-female wages, Green-House Gas (GHG) emission intensity, volume of water consumption, kilograms of waste generated, capex of sustainable technology etc.

Since investors are increasingly seeking ESG disclosures for the entire supply chain of the company in order to get a complete picture of the ESG risks, the BRSR Core would also include metrics of the supply chains of the listed companies. However, it is recognized that tracking and monitoring the compliances of several small, unlisted firms in the supply chain would be complex and therefore, it is proposed that BRSR Core may be implemented in a gradual manner and on a "comply or explain" basis. Thus, the BRSR Core may be mandated for the top 250 companies in FY 2023-24 and then gradually for the top 1000 companies by FY 2025-26.

B. ESG Ratings

In order to streamline the process of the providing of ESG Ratings by ESG Rating Providers ('**ERPs**'); the EAC has proposed to develop 15 basic minimum ESG parameters (Annexure 2 of the Consultation Paper) pertaining to energy, water, waste management, land use, CSR, inclusive development, diversity, compliance monitoring, related party transactions etc. The ERPs may use the above-mentioned parameters to factor in the ESG attributes of a company.

Additionally, the EAC has proposed that the ERPs shall also provide a Core ESG rating which would be based on the information audited and verified by them.

C. ESG Investing

The EAC along with Association of Mutual Funds in India ('**AMFI**') has deliberated on the norms for ESG schemes of Mutual Funds to make several proposals with respect to ESG Investing. It has been proposed that AMFI must empanel ERPs under each of the three pillars, Environment, Social and Governance. Subsequently, the ESG Schemes are required to use scores arrived at by the AMFI-empanelled ERPs to publish scheme wise scores in their monthly portfolio disclosures. It is also proposed that the Asset Management Companies ('**AMCs**') must provide details and reasoning for the votes casted by them for or against the resolutions for

ESG schemes and non-ESG schemes. Such voting disclosures may be mandated from FY 2023-24, i.e., for annual general meetings held on or after 01 April 2023.

Further, to mitigate the possibility of risk of greenwashing, the SEBI has proposed the following:

i. The top 250 companies would be required to mandatorily provide assurance of disclosure in the BRSR Core from FY 2023-24.

ii. The AMCs relating to ESG funds shall invest more than 65% of their Assets Under Management ('**AUM**') on companies reporting under the BRSR Core as well as provide assurances on such disclosures.

To have increased transparency, it is proposed to require the AMCs to include the name of the particular ESG strategy in the name of the concerned fund/scheme. This requirement too, may be made mandatory from 01 April 2023.

***DSK View**: The BRSR Core aims to improve credibility and limit the cost of compliance, by - mandating the verification of the quantifiable KPIs disclosed by the listed companies through an assurance provider; requiring disclosure of supply chains; developing a system of core ESG Ratings and regulating ESG funds of AMCs. In this regard, the BRSR shouldn't be viewed simply as a paper exercise for the purposes of legal compliance as the listed companies would be required to make reasonable quantifiable disclosures of their entire supply chains and company process.*

MEDIA & ENTERTAINMENT

DELHI HIGH COURT REFUSES TO STAY RELEASE OF 'FARAAZ', DIRECTS FILMMAKERS TO 'SCRUPULOUSLY ADHERE' TO DISCLAIMER

The Delhi High Court on 02.02.2023 refused to stay release of filmmaker Hansal Mehta's movie **Faraaz** which is based on the terrorist attack that took place on July 01, 2016, at Holey Artisan, Dhaka, Bangladesh. A division bench of Justice Siddharth Mridul and Justice Talwant Singh directed the filmmaker and producers to "scrupulously adhere to the disclaimer which states that the film is inspired by the attack and elements contained in it are pure works of fiction. The court was hearing an appeal moved by two women, who lost their daughters in the attack, against the order of the single judge who had refused to grant interim relief against release of the movie. Hansal Mehta and producers had given the disclaimer in an affidavit before the single judge. Refusing to stay the film's release, the bench observed that the disclaimer takes care of the concerns of the mothers. The court also took note of the categorical submission made on behalf of the respondents that the pictures or images relating to the daughters do not feature in the film.

PARESH RAWAL GETS BREATHER IN 'ANTI-BENGALI' JIBE CASE, CALCUTTA HC SAYS POLICE CAN'T TAKE COERCIVE ACTION

BJP leader and Bollywood actor Paresh Rawal had moved to the Calcutta High Court over FIR filed against him for allegedly making 'anti-Bengali remarks'. That on 02.02.23, the Calcutta High Court Single bench ordered that no coercive action can be taken against Bollywood actor Paresh Rawal by the Kolkata Police and he can be questioned via video conferencing. The Background of the remark takes us back to the 2022-Gujarat elections, where Rawal had said "Gas cylinders are expensive, but the prices will come down. People will get employment too. But what will happen if Rohingya migrants and Bangladeshis start living around you, like in Delhi? What will you do with gas cylinders? Cook fish for the Bengalis?" His remarks sparked nationwide outrage, prompting the actor to apologise on Twitter for his take on the subject. Rawal subsequently went on to say that his statement was in reference to illegal "Bangladeshis and Rohingyas". When the video of this speech went viral, Paresh faced the wrath of the netizens. A complaint was lodged at the Taltala police station in Kolkata by CPM State Secretary Mohammad Salim. Subsequently, a case was registered against Rawal under sections 153 (provocation with intent to cause riot), 153A (promoting enmity between different groups), 153B (propagates denial of rights to linguistic or racial groups), 504 (Intentional insult with intent to provoke breach of the peace) and 505 (statements intending public mischief) of the Indian Penal Code (IPC).

After the Kolkata Police had summoned Paresh, he was asked to appear on December 12 at 2pm. But at the appointed time Paresh told the investigating police officer that he was very busy with work and asked for at least six weeks to appear at the police station. Later, BJP MP and Bollywood actor Paresh Rawal, subsequently, approached the court challenging the summons notice.

MADRAS HIGH COURT DISMISSES PLEA BY AR RAHMAN, GV PRAKASH AND SANTHOSH NARAYAN CHALLENGING GST DEPARTMENT'S ORDER CLAIMING SERVICE TAX

The Madras High Court has recently dismissed the pleas filed by music composers AR Rahman, GV Prakash and Santhosh Narayan challenging the proceedings initiated by the Commissioner of the GST Department levying service tax on transfer of copyright in musical work for the period between 2013 and 2017. The department had asserted that the music composers were not the owner of the musical work composed and hence no copyright as contemplated under Section 13(1)(a) under the Copyright Act vested in them. The petitioner composers on the other hand claimed exemption in respect of receipts from temporary transfer or permitting to the use or enjoyment of a copyright in terms of clause (15)

of Notification No.25 of 2012 Relying on Section 658(44) of the Finance Act 1994, the petitioners further contended that they were exempt as they came within the purview of services.

Justice Anita Sumanth noted that to adjudicate the issue, it was necessary to look into the factual nature of the agreements between the petitioners and the third parties, and the authority was better equipped to took to the matter. The court added that the writ court could not go into interpretation of contractual clauses. The petitioners had also challenged the jurisdiction of the Director General of GST Intelligence for issuing the show cause notice under the Finance Act 1994 read with Section 174(2) of the CGST Act. The petitioners argued that the power through which the DGGI could issue show cause notices emanated from Notifications issued prior to the GST regime. According to the petitioner, these notifications were not explicitly saved with the enactment of GST and thus the source of power itself was invalid in law and falls foul of statutory mandate.

However, looking into the proviso to Section 174 (2) (c) which states that repeal shall not affect the rights, privileges, obligations or liability acquired, accrued or incurred under the old Act, the High Court held that the assumption of jurisdiction by the DGGI was valid.

IAMAI SLAMS DRAFT IT RULES ON ONLINE GAMING SAYS, "RIGHT ON INTENTION, POOR ON SCOPING"

The Internet and Mobile Association of India (IAMAI) in a statement released on 2nd February, 2023 said that the draft IT Rules on online gaming are right on intention, but poor on scoping. The IAMAI gave three reasons as to why the proposed Rules are a very positive development for the online gaming industry ecosystem:

- That they would create a legal framework for orderly and accelerated development of the industry.
- That they will provide for very strong consumer safety measures
- That they will allow the industry to be self-regulated. These measures, by bringing in recognition and regulatory certainty, will allow for innovations and investments in the industry.

However, IAMAI members have also pointed out in a submission to the Union Ministry of Electronics and Information Technology (MeitY) that the scoping of the rules has been done poorly and the following aspects need a major re-look.

- That the definition of gaming and what is sought to be regulated needs to be defined in a better manner, since the definition of online gaming is too broad and vague and would unnecessarily bring under regulation and expensive compliance a set of firms that do not need to be regulated or need to be very lightly regulated.
- Further, that certain provisions of the draft also seem to imply that service providers or partners that advertise, publish or host online games will have to comply with the Rules by verifying each game with the self-regulatory body (SRB) on an ongoing basis making it impractical. Intermediaries must not be obligated to ascertain and verify the registration of online games.
- Most importantly, the scoping of the SRB is not strong enough. The industry has asked for a retired Judge since ultimately the role of the SRB would be adjudication and the industry has asked for common principles by which gaming SRBs are governed.

NETFLIX UNVEILS FIRST DETAILS OF NEW ANTI-PASSWORD SHARING MEASURES

Netflix has unveiled the details of its new anti-password-sharing policy, detailing a suite of complex gymnastics that customers will be expected to undergo if their living arrangements trigger Netflix's automated enforcement mechanisms. Netflix says that its new policy allows members of the same "household" to share an account. This policy comes with an assumption: that there is a commonly understood, universal meaning of "household," and that software can determine who is and is not a member of your household.

This is a very old corporate delusion in the world of technology. Their term of art for this was the "authorized domain": a software-defined family unit whose borders were privately negotiated by corporate executives from media companies, broadcasters, tech and consumer electronics companies in closed-door sessions all around the world, with no public minutes or proceedings. Netflix has estimated that over 100 million users worldwide are using the service through the login credentials of someone else. It hopes that by putting an end to account sharing, it will bring a new infusion of revenue to the company. It's essentially the only way that Netflix can make meaningful subscriber additions.

PPL & NOVEX VS STATE OF RAJASTHAN- RAJASTHAN HIGH COURT STAYS OPERATION OF LETTER ISSUED BY THE ADDITIONAL POLICE COMMISSIONER-I, JAIPUR IN RELATION TO INTERPRETATION OF SECTION 52(1)(ZA) OF THE COPYRIGHT ACT

In connected writ petitions filed by PPL and Novex, respectively against a letter dated 7.12.2022 issued by the Additional Police Commissioner-I, Jaipur in relation to interpretation of Section 52(1)(za)* of the Copyright Act,

1957, the Rajasthan High Court has stayed the operation of the letter to the extent that this letter would not be treated as permission to any person hoteliers/event managers/DJs to play music/sound recordings for commercial purposes without obtaining license/permission from the registered copyright holders. The Court noted that the impugned letter will not deprive the petitioners to initiate legal proceedings, civil and criminal, as envisaged under the Act of 1957 against the persons who infringes copyrights of petitioners.

The Court took into account the decision by the Punjab & Haryana High Court in Novex Communications Pvt. Ltd. Vs. Union of India and another where the Court had quashed the public notice issued by the Government of India with observation that such notice is without jurisdiction as respondents have no jurisdiction to interpret Section 52(1)(za) of the Act of 1957 in their own manner.

KERELA HC STAYS COPYRIGHT INFRINGEMENT PROCEEDINGS AGAINST PRITHVIRAJ SUKUMAR'S KANTARA

In the alleged copyright infringement case against the song "Varaharoopam" in the film "Kantara", the Kozhikode Police had registered an FIR against the producer, director and actor of the film on basis of the complaint filed by Thaikkudam Bridge and Mathrubhumi Printing and Publishing Company Limited, the creators and copyright holder of the alleged original song "Navarasam" respectively, invoking offence under section 63 of the Copyright Act, 1957. However, in pursuance to the petition filed by the actor before the Kerala High Court, seeking quashing of the FIR filed against him, the Court granted a stay on the proceedings against the actor for a period of 7 days while observing that the actor, being a mere distributor of the film in Kerala was "*unnecessarily being dragged into*". While the actor was granted a stay on the proceedings, the producer and director of the film filed an anticipatory bail plea before the Kerala High Court. After hearing the arguments of the advocates appearing on behalf of the producer and the director, the Kerala High Court granted the bail to the petitioners on the specific condition that, "*the petitioners shall not exhibit the film `Kantara' along with the music `Varaharoopam' in the film till an interim order or final order after addressing infringement of copyright in this matter will be passed by a competent civil court*". However, in a subsequent appeal filed before the Supreme Court of India, by the producer and the director of the film, the Supreme Court granted a stay on the specific condition imposed by the Kerala High Court while observing that "*a copyright suit cannot be decided in an anticipatory bail*".

PLAGIARISM CASE AGAINST AJITH'S VALIMAI FILED AFTER YEAR OF RELEASE:

A police complaint has been filed by a short film director named Rajesh Raja ("Complainant") with the Police Commissioner's office in Chennai against the team of the film titled "Valimai" ("Defendants") which was released on February 24, 2022. The Complainant in his complaint has claimed that 10 scenes from his short film titled "Thanga Sangili", which was released in the year 2019, are similar to a few scenes of the film "Valimai". A similar plagiarism suit was filed by a Tamil director against the film, last year accusing the film's team of stealing the director's idea and using the character and story without his consent. However, the Madras High Court rejected the suit while refusing to grant any injunction on the release of the film on OTT platforms.

CENTRE BLOCKS MORE THAN 200 OFFSHORE GAMBLING PREDATORY LOAN PLATFORMS

The Ministry of Electronics and Information Technology (MeitY) has issued orders to block 138 online betting and gambling websites/platforms including but not limited to Betway and Dafabet and 94 money lending apps. The orders have been issued by the ministry in furtherance to the instructions received by it from the Ministry of Home Affairs against these websites/platforms having links to China and containing such "*materials which are prejudicial to the sovereignty and integrity of India*". The websites/platforms will be banned under the purview of Section 69A of the Information Technology Act, 2000 which allows the government to issue blocking order to online intermediaries such as Internet Service Providers, telecom service providers, web hosting services, search engines, online marketplaces etc. against such websites/platforms/information/content which is deemed to be a threat to India's national security, sovereignty or public order.

KERELA HC TO HEAR CABLE OPERATORS PLEA AGAINST BROADCASTERS

A case has been filed before the Kerala High Court ("Court") by the All India Digital Cable Federation ("Plaintiffs") against various broadcasters including but not limited to Disney Star, Sony and Zee and the Telecom Regulatory Authority of India (Respondents") seeking immediate interim relief against the disconnection of the signals by the broadcasters since last week. The blackout of the channels came in wake of the ongoing clash between cable operators and broadcasters over television channel pricing, following the implementation of the New Tariff Order 3.0. ("NTO") since February 01, 2023. While the broadcasters submitted that the hike in the channel prices will be to the extent of 10-15 per cent only, the cable operators have however alleged that depending on the channel and network, the price hike could go up to 60 per cent, which in turn could affect the domestic cable and satellite market. The AIDCF in a statement further submitted that "*even during NTO 1.0, implemented in the calendar year 2019, broadcasters had increased the prices of some of their channels by 400 per cent*". TRAI has however submitted an affidavit before the Court in response to the

alleged claims of the Plaintiffs contending that it has not been clarified by the Plaintiffs as to how it was affected by the regulation or tariff order and thus have no locus standi to challenge the same.

HERMES' SEEKS TRADEMARK INFRINGEMENT OVER NFT'S OF THE BIRKIN BAG

In a lawsuit filed by Hermes against an NFT creator and artists, Mason Rothschild ("Defendant"), alleging trademark infringement and dilution over the NFTs created by the Defendant, which are digital images of Hermes coveted "Birkin Bag". The question before the court of law was whether the NFTs are more akin to commercial goods or artistic appropriations shielded by the First Amendment. Hermes further submitted before the jury that "*the title of 'artist' does not confer a license to use an equivalent to the famous Birkin trademark in a manner calculated to mislead consumers and undermine the ability of that mark to identify Hermès as the unique source of goods sold under the Birkin mark*". The Defendant however claimed that the NFTs are work of art and hence falls under the exception provided in the First Amendment regarding free speech protection. However, the jury agreed with Hermes contentions that the said NFTs are commercial products subject to intellectual property laws that bar the sale of imitations and awarded the company $133,000 in damages. Further the jury held that digital assets are not protected speech.

EXTENSION OF TIME FOR THE FILING OF 45 (FOURTY-FIVE) E-FORMS

The MCA had earlier *vide* general circular bearing no. 1/2023 dated January 9, 2023 (accessible here) granted extension of 15 (fifteen) days in filing of 45 (forty five) E-Forms *(as listed in Annexure of the aforesaid circular)* without additional fees where the due dates for filing were falling between the period January 7, 2023 and January 22, 2023.

Subsequently, the MCA *vide* general circular bearing no. 3/2023 dated February 7, 2023 (accessible here), had further granted an additional extension of 15 (fifteen) days in filing of the aforesaid 45 (forty five) company E-Forms without additional fees. Further, Form PAS 3, which were due for filing between the period January 20, 2023 and February 6, 2023, were further allowed to be filed without paying additional fees for a period of 15 (fifteen) days.

Now, the MCA *vide* general circular bearing no. 4/2023 dated February 21, 2023 (accessible here) has granted an additional extension in filing of the aforesaid 45 (forty five) company E-Forms without payment of additional fees till March 31, 2023. Further, Form PAS 3, which were due for filing between the period January 20, 2023 and February 28, 2023, can now be filed without paying additional fees till March 31, 2023.

CLARIFICATION REGARDING FILING OF CERTAIN FORMS IN PHYSICAL MODE

The MCA *vide* general circular bearing no.5/2023 dated February 22, 2023 (accessible here), has provided that, in light of challenges being faced by companies in filing E-Forms on MCA portal due to migration of the MCA portal from V2 to V3 version, the companies intending to file ***(i)*** Form GNL-2 (filing of prospectus related documents and private placement); ***(ii)*** MGT-14 (filing of Resolutions relating to prospectus related documents, private placement); ***(iii)*** PAS-3 (Allotment of Shares); ***(iv)*** SH-8 (letter of offer for buyback of own shares or other securities); ***(v)*** SH-9 (Declaration of Solvency); and ***(vi)*** SH-11 (Return in respect of buy-back of securities) during the period between February 22, 2023 and March 31, 2023, may file such form in physical mode with the jurisdictional Registrar of Companies ("**ROC**"), duly signed by the persons concerned as per the requirements of the relevant forms, along with a copy thereof in electronic media, without payment of fee. Such filing is to be accompanied by an undertaking from the Company that the company will also file the relevant form in electronic form on the MCA portal along with fees payable as per Companies (Registration Offices and Fees) Rules, 2014. During the filing of the physical forms, the company shall receive an acknowledgement of the receipt of the form filed.

RBI & FEMA

SECURITIES EXCHANGE BOARD OF INDIA LISTS DO(S) AND DON'T(S) RELATING TO GREEN DEBT

Securities Exchange Board of India ("**SEBI**") has set out a list of basic dos and don'ts relating to green debt securities to address 'greenwashing' related risks vide circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 dated February 3, 2023 ("**Circular**"). As per the Circular, greenwashing shall mean making false, misleading, unsubstantiated, or otherwise incomplete claims about sustainability of a product, service, or business operation.

Some of the do(s) and don't(s) to be ensured by an issuer of green debt securities as given under the Circular are as follows:

(a) the issuer of green debt securities has to ensure that it will not use misleading labels, hide trade-offs or cherry-pick data from research to highlight green practices and will maintain highest standards associated with issue of green debt security while adhering to the rating assigned to it;

(b) issuer will not utilize funds raised through green bonds for purposes that would not fall under the definition of 'green debt security'; and

(c) issuer will quantify the negative externalities associated with utilization of the funds raised through green debt security and will not make untrue claims giving false impression of certification by a third-party entity.

DSK View: *Listing out a list of dos and don'ts, provides a guiding framework to companies to ensure compliance with the provisions applicable to green bonds. The Circular aims to protect the interest of investors and promote the development and regulation of the securities market.*

SEBI ISSUES SECURITIES AND EXCHANGE BOARD OF (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) (AMENDMENT) REGULATIONS, 2023

SEBI, has amended the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**") vide notification no. SEBI/LAD-NRO/GN/2023/119 dated February 02, 2023 ("**Notification**").

Following are some of the key amendments made by SEBI vide the Notification:

1. the definition of green debt securities has been amended to include blue bonds and yellow bonds;

2. SEBI has prescribed the timeline for appointment of nominee director on recommendation of debenture trustee under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by mandating issuers to ensure that debenture trust deed contains a provision for appointment of a nominee director nominated by the debenture trustee(s) on issuer's board of directors at the earliest and not later than one month from the date of receipt of nomination from the debenture trustee(s).

3. issuers whose debt securities are already listed have been mandated to amend the trust deed to incorporate the above provision on or before September 30, 2023;

4. Regulation 15 of the NCS Regulations has been amended to state that the issuer shall send a notice regarding recall or redemption of non-convertible securities, prior to maturity, to all the eligible holders of such securities and the debenture trustee(s), at least 21 (twenty one) days before the date from which such right is exercisable. Further SEBI has also prescribed the

manner in which the notice to the eligible holders shall be sent; and

5. Further, SEBI has inserted new regulation after Regulation 33 of the NCS Regulations and has now prescribed that in case of public issue of debt securities or, non-convertible redeemable preference shares, the offer shall be kept open for a minimum of three working days and a maximum of ten) working days.

DSK View: *By way of this amendment, SEBI has streamlined the process of appointment of a director nominated by the debenture trustee(s) in case of default, prescribed the time for which public issues may be kept open among other miscellaneous changes and has widened the definition of 'Green Debt Security' as specified under the NCS Regulations.*

SEBI REVIEWS CHAPTER IX OF THE OPERATIONAL CIRCULAR ON GREEN DEBT SECURITIES

SEBI, vide circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023 dated February 6, 2023 ("**Circular**"), has issued certain clarifications for Chapter IX – Green Debt Securities of the Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 10, 2021 ("**Operational Circular**"). Previously, under the Operational Circular, SEBI had specified the following with reference to issuers of green debt securities:

(i) Additional disclosure requirements in the offer document;

(ii) Continuous disclosure requirements in the annual report and financial results; and

(iii) Responsibilities of the issuer.

Accordingly, Chapter IX of the Operational Circular shall now be replaced with the provisions detailed under the Circular with the amendments/ additions listed thereunder.

DSK View: *In light of increasing interest in sustainable finance in India, SEBI with a view to align the existing framework for green debt securities with international market standards, has undertaken a review of the regulatory framework for green debt securities.*

SEBI ISSUES CLARIFICATION IN RELATION TO ISSUANCE AND LISTING OF PERPETUAL DEBT INSTRUMENTS/PERPETUAL NON-CUMULATIVE PREFERENCE SHARES

SEBI, vide its circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/027 dated February 8, 2023 ("**Circular**"), has issued a clarification with respect to issuing and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under Chapter V of the NCS Regulations. The clarification sought by market participants, including issuers and merchant bankers, was regarding the applicability of the provisions of Chapter V of NCS Regulations, where securities are proposed to be issued for a fixed maturity which shall not have features viz. option of conversion to equity, write-off, etc. Accordingly, SEBI has clarified that only securities which have characteristics as stated below, shall necessarily be required to comply with the provisions for issuing and listing as specified under Chapter V of NCS Regulations:

a) The issuer is permitted by the RBI to issue such instruments.

b) The instruments from part of non-equity regulatory capital.

c) The instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature.

d) The instruments contain a discretion with the issuer/ RBI for events including but not restricted to all or any of the below events: conversion into equity; write off of interest/ principal; skipping/ delaying payment of interest/principal; making an early recall; changing any terms of issue of the instrument.

DSK View: *This Circular is applicable to Issuers who have listed and/ or propose to list Non-convertible Securities, Recognized Stock Exchanges, Registered Depositories, Registered Credit Rating Agencies, Debenture Trustees and Merchant Bankers. The Circular has advised Stock Exchanges and Depositories to make amendments to the relevant bye-laws, rules and regulations; disseminate the provisions of this circular on their website; communicate and create awareness amongst stakeholders; and monitor the compliance of such issuances for better governance.*

SEBI ISSUES CLARIFICATION IN RELATION TO COMPLIANCE BY THE FIRST-TIME ISSUERS OF DEBT SECURITIES UNDER NCS REGULATIONS

SEBI, vide its circular SEBI/HO/DDHS/DDHS-RACPOD1/CIR/P/2023/028 dated February 9, 2023 ("**Circular**"), has issued a clarification in respect of compliance by first-time issuers of debt securities with the provisions of Regulation 23(6) of the NCS Regulations read with Regulation 2(1)(r), requiring the articles of association of an issuer to include provisions with respect to requirements for board of directors nominated by the debenture trustee in terms of Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993.

The clarification has been issued by SEBI, pursuant to several requests received from parties who are proposing to issue privately placed/publicly placed, listed, non-convertible debentures ("**NCDs**") for a time frame to carry out such amendment, as provided to existing debt listed issuers who have time up to September 30, 2023, for such amendments. Accordingly, new issuers may provide an undertaking to stock exchanges stating that they will ensure amendment of their articles of association within 6 (Six) months from the date of the listing of the NCDs. This undertaking may be obtained at the time of granting the in-principle approval.

DSK View: *Several first time issuers represented that amendments to the AoA being a time consuming process (due to requirement of shareholder approvals, etc.), such a requirement of amendment, could dissuade issuers from approaching the market if they wish to raise funds before the financial year end. In view of the difficulties posed to first-time issuers, SEBI has issued this clarification, to provide more time to first time issuers and also safeguard the interests of investors by retaining the obligation to amend the AoA within a stipulated timeline.*

SEBI ISSUES CONSULTATION PAPER ON PROPOSAL FOR INTRODUCTION OF CONCEPT OF GENERAL INFORMATION DOCUMENT AND KEY INFORMATION DOCUMENT

SEBI, on February 09, 2023, issued a consultation paper to introduce the concept of General Information Document ("**GID**") and Key Information Document ("**KID**"), stipulate mandatory listing of debt securities of listed issuers, amongst other things ("**Consultation Paper**").

(i) Applicability:

- non-convertible securities issued on private placement basis under Chapter IV and Chapter V of the NCS Regulations;
- commercial papers proposed to be listed under Chapter VI of the NCS Regulations.

(ii) An issuer making a private placement of non-convertible securities and seeking listing thereof on a stock exchange shall file a GID and a KID along with other required documents with the stock exchanges at the time of making the first issuance.

(iii) Validity of GID – The GID shall be valid for a period of one year, which shall commence from the date of opening of the first offer of non-convertible securities under that GID.

(iv) Disclosures in the GID – Issuers of such non-convertible securities shall be required to make the following disclosures:

- disclosures as specified in Annex-I of the Consultation Paper;
- disclosures specified in the Companies Act, 2013 along with additional disclosure as may be specified by SEBI.

(v) KID requirements – For subsequent private placements of non-convertible securities and commercial papers within the validity period, only a KID shall be required to be filed with the Stock Exchanges.

(vi) Disclosures in the KID for the issue of non-convertible securities –Issuers of such non-convertible securities are required to make certain disclosures in the KID including:

- details of the offer of non-convertible securities made through the KID;
- financial information, if such information provided in the GID is more than six months old;
- material changes, if any, in the information provided in the GID; and
- any material developments not disclosed in the GID, since the issue of the GID is relevant to the offer of non-convertible securities made through the KID.

(vii) Requirement for listing of commercial paper –

- If an issuer has already filed a GID for issue of non-convertible securities with a stock exchange during a year, which is valid as on date of filing application with a stock exchange for listing commercial paper, then the issuer shall be required to file a KID with the disclosures given in Annex-II of the Consultation Paper.
- If an issuer has not filed GID for issue of non-convertible securities with a stock exchange during a year and intends to list only commercial paper, then such issuers shall comply with the provisions of Regulation 51 of NCS Regulations read with Chapter XVII of NCS Operational Circular thereby saving the cost, time and effort of the issuers without diluting the essence of disclosures.

DSK View: *This Consultation Paper aims to provide ease of doing business to the issuers, safeguard the interest of the investors and at the same time increase transparency by aiming to streamline the disclosure requirements for debt securities.*

RBI ISSUES CLARIFICATIONS ON DIGITAL LENDING GUIDELINES

RBI issued certain additional frequently asked questions on February 14, 2023 ("**Clarifications**"), in relation to Digital Lending Guidelines ("**Guidelines**") clarifying certain issues in respect of similar frequently asked questions ("**FAQs**") issued by the RBI in September 2022. Pursuant to the Clarifications, RBI has clarified *inter alia* whether payment aggregators can be used for loan disbursals and repayments, the manner of disclosure of recovery agents at the time of loan sanction, not all service providers will be considered lending service providers, applicability of the Guidelines to all transactions falling under the definition of digital lending, etc. The RBI has also clarified that in case of delinquent loans, regulated entities can deploy physical interface to recover loans in cash, where absolutely necessary.

DSK View: *The RBI had issued the Guidelines in order to encourage innovation and growth in the digital lending space. The Clarifications have been issued in order to simplify the Guidelines, the extent of their applicability and also to address the concerns of stakeholders in India's digital lending ecosystem.*

RBI ISSUES CLARIFICATIONS ON LEGAL ENTITY IDENTIFIER FOR CROSS-BORDER TRANSACTIONS

RBI, vide FAQs dated February 7, 2023, has issued clarifications ("**Clarifications**") in relation to the introduction of Legal Entity Identifier ("**LEI**") for cross-border transactions that was released by RBI in December 2021 vide A.P. (DIR Series) Circular No. 20 ("**Circular**"). Some of the issues addressed by the RBI are given below:

a. For cross-border transactions for INR 50,00,00,0000/- (Rupees Fifty Crore only) or more carried out through an Authorized Dealer ("**AD**") bank on or after October 01, 2022, a valid LEI must be recorded. Subsequently, the AD bank is required to record the legitimate LEI for all cross-border transactions, regardless of their value.

b. Circular shall apply to any debit from or credit to a non-account resident's in India as a result of a transaction with a resident that is subject to the provisions of the Foreign Exchange Management Act, 1999 (the "**FEMA**").

c. In case of non-fund facilities, the AD banks need to ensure compliance with LEI requirements at the issuance stage itself.

RERA

DISPLAY OF COMMENCEMENT CERTIFICATE AND OCCUPANCY CERTIFICATE ON LOCAL BODIES WEBSITE IS NOW MANDATARY IN MAHARASHTRA

Vide resolution issued by the urban development department on February 23, 2023, all local planning authorities must display the commencement certificate and occupancy certificate granted for new and upcoming real estate projects on their websites and notify the Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") about the sanctions. It was further instructed to the local authorities not having their website, shall put in best efforts to activate the website and integrate on the deadline. The resolution was passed keeping in mind the recent case of developers in Thane producing forged document for MahaRERA registration for their projects.

MAHARERA WILL INITIATE SUO-MOTO ACTION AGAINST BUILDING PROJECT ADS WITHOUT REGISTRATION NUMBERS

"The Real Estate (Regulation and Development) Act ("**Act**") under Section 3 (1) of the Act makes it compulsory for the real estate developers to register their projects with the Real Estate Regulatory Authority (RERA) and it is made abundantly clear that the promoter cannot market, book, sell or offer for sale, or invite persons to purchase a property in a real estate project without getting the project's registration done. Section 3(2) of the Act provides an exception to registration laying that no registration of the real estate project is required where:

i. The area of land proposed to be developed does not exceed five hundred square meters or

ii. Where the number of apartments proposed to be developed does not exceed eight inclusive of all phases.

Home-buyers were further advised not to invest in the projects without MahaRERA registration number. The MahaRERA has taken serious notice of these irregularities and action is being taken against the developer by sending notices to these projects.

TRAI HAS RECOMMENDED THE GOVERNMENT TO CREATE PROVISIONS UNDER THE ACT TO MAKE DIGITAL CONNECTIVITY INFRASTRUCTURE ("DCI") MANDATORY UNDER BUILDING DEVELOPMENT PLANS, ITS MAINTENANCE AND TIMELY UPGRADATION

TRAI in its recommendations on 'Rating of Buildings or Areas for Digital Connectivity' stated that digital connectivity infrastructure should be made an essential component of the building development plans, it has recommended assigning the task to the Bureau of Indian Standards (BIS) to review existing standards and procedures for buildings. DCI will be co-designed and co-created alongside building development through collaborations between various stakeholders such as the owner or developer or builder, service providers, infrastructure suppliers, DCI professionals, and authorities at various urban/local bodies. TRAI also proposed that a new chapter on "Digital Connectivity Infrastructures in Buildings" be included in the Model Building Bye-Laws 2016, by revising and upgrading current laws released by the Ministry of Housing and Urban Affairs' Town and Country Planning Organization in March 2022.

ORISSA HIGH COURT EXPRESSED DISSATISFACTION OVER THE EXECUTION ORDERS AND SEEKS STATUS REPORT ON ODISHA REAL ESTATE REGULATORY AUTHORITY STATUS

The Orissa High Court expressed its dissatisfaction on Tuesday with the affidavits produced by the Odisha Real Estate Regulatory Authority ("**ORERA**") and the state government since they did not disclose whether the execution orders regarding the recovery of money from builders had been enforced.

The Hon'ble High Court of Orrisa, while hearing a public interest litigation seeking intervention against ORERA's

failure to execute its orders on disputes pertaining to the realisation of interest on money paid in a matter of delayed delivery of possession and handover of flat to a consumer.

Attorney representing the petitioner, submitted that ORERA and the state government have both declared that the authority lacks the necessary mechanisms to deal with concerns brought by buyers of flats and apartments. As a result, it is entirely correct and legal for ORERA to send its orders to the civil court for execution within the local borders of whose jurisdiction the project is located or against whom the order is made.

The Hon'ble Division Bench noted that, according to the state government's affidavit, ORERA has disposed of 152 cases. 62 (Sixty-Two) of them have been forwarded to the collector, who is the authority under the Odisha Public Demand Recovery (OPDR) Act 1962, or to the civil court. The Hon'ble Division Bench instructed ORERA and the state government to file supplementary affidavits after reviewing the records of the 62 (Sixty-Two) cases and clarifying the position in each of those cases about the recovery of the money for which the decree was issued. The bench asked ORERA to file their respective supplemental affidavits.

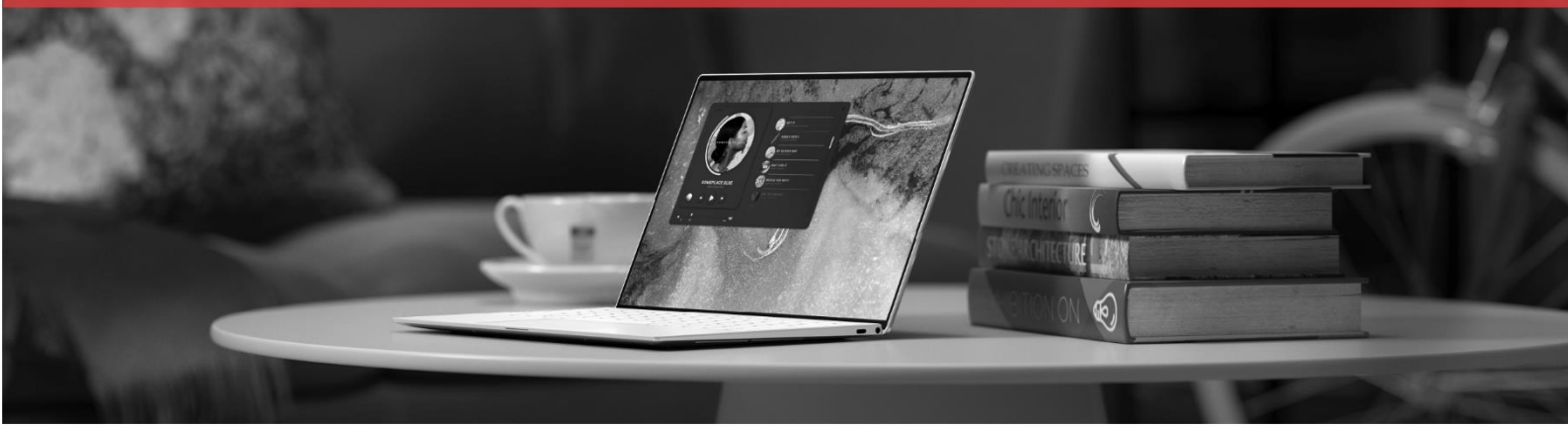
ANDHRA PRADESH RERA ("APRERA") DIRECTS APCRDA TO PAY INTEREST FOR FLAT ALLOTTEES IN THE HAPPY NEST PROJECT

APRERA has directed the Andhra Pradesh Capital Region Development Authority ("**APCRDA**") to pay interest at the rate of prime lending rate of State Bank of India plus 2% on the amount paid by the flat allottees in Happy Nest project, for failing to handover the flats as agreed in the contract. The direction is to pay interest from June 30,2022 till the time possession of flats. Happy Nest project was announced by the APCRDA in 2018 to build luxurious apartments in Amaravati. The flats were allotted in online allotments. As the flats were sold out within minutes, the APCRDA announced second phase of the project and 1200 flats were sold in second phase. The APCRDA was under obligation to complete the project and handover the flats by December 2021. But the construction if the apartments was not done as according to the decided timelines. APRERA observed that APCRDA has failed to complete the project even after grant of additional six months due to Covid-19 and held that complainants are entitled for the interest on the amount paid.

MAHARERA ORDERS, SPECIAL OFFICIALS MUST UNDER PMLA FOR ESTATE AGENTS WITH RS. 20 LAKH TURNOVERS

MahaRERA issued an order under the Prevention of Money Laundering Act,2002 ("**PMLA**") as well as Prevention of Money Laundering (Maintenance of Records) Rules, 2005 ("**PMLR**"), directing real estate agents with annual turnover of more than Rs. 20 lakhs, to share details of appointment of a principal officer and a designated director. The principal officers will facilitate in identifying and reporting of suspicious transactions. Whereas the designated director would ensure overall compliance with PMLA and PMLR rules. Under section 9 of the Act, real estate agents must be registered with MahaRERA. The act also mandates to maintain and preserve books of accounts, records, and documents.

The order of the MahaRERA also required that all real estate agents upload a half-yearly progress report, which will include the details of booking and sale transactions of flats, shops, plots, apartments, or buildings carried out by the agents and details of projects where a promoter has designated the agent and mention the fees charged for booking and sale transaction. Except the fees charged, all the information will be made public to enable transparency and to help home buyers in making an informed decision.



CENTRE SETS UP A COMMITTEE TO PREPARE THE DRAFT DIGITAL COMPETITION ACT

Basis an order dated February 6, 2023, the Ministry of Corporate Affairs ("**MCA**") has constituted a ten-member committee for the purposes of examining the requirement of a separate law on competition in digital markets and the said committee is required to submit a draft digital competition act ("**DDCA**") to MCA within a period of three months form the date of the order (accessible here).

The said committee shall *inter alia* assess and examine various aspects while framing the DDCA such as whether the present legal regime is equipped to combat the challenges posed by the digital economy, the international best practices on regulation in the field of digital markets, practices of the leading players/ systematically important digital intermediaries which limit or have the potential to cause harm in the digital markets, and so on.

RESERVE BANK OF INDIA ISSUES FAQs ON DIGITAL LENDING GUIDELINES

The Reserve Bank of India ("**RBI**") has recently released a set of frequently asked questions ("**FAQs**") (accessible here) on the Digital Lending Guidelines ("**Guidelines**") which were released last year on September 02, 2022 (accessible here). The said FAQs provide much need clarifications regarding some of the ambiguities surrounding the Guidelines.

Pursuant to the FAQs, some of the crucial clarifications provided by RBI *inter alia* include elucidation regarding the intent that a lending transaction would fall under the definition of 'digital lending' in case even only some of the physical interface is present with customer, as the phrase 'largely by use of seamless digital technologies' has been used in digital lending definition to provide operational flexibility to the regulated entities.

The FAQs, among others, also clarify that: (i) only those lending service providers ("**LSPs**") which have interface with borrowers would need to appoint nodal grievance officer; (ii) the annual percentage rate ("**APR**") in case of floating rate of loans maybe disclosed at any time based on prevailing rate as per the format of key fact statement; (iii) only those insurance charges which are linked/integral to the product shall be included in computation of APR; and (iv) a payment aggregator which is performing the role of an LSP will be governed within the ambit of the Guidelines.

RBI ALLOWS ISSUANCE OF PREPAID PAYMENT INSTRUMENTS TO FOREIGN NATIONALS AND NRIs VISITING INDIA

The RBI through an amendment to its Master Directions on Prepaid Payment Instruments ("**PPIs**") (accessible here) has allowed access to PPIs to foreign nationals and non-residents Indians ("**NRIs**") visiting India. Presently, the facility has been extended to travellers from the G-20 countries, arriving at select international airports for their merchant payments for the duration of their stay in India. Going forward, the same will be implemented across all entry points in India in due course.

Regarding this, banks /non-banks which are permitted to issue PPIs, may issue an INR denominated full-KYC PPIs to the foreign nationals/ NRIs. It can be issued in form of wallets linked to unified payment interface ("**UPI**") but can be used for merchant payments only. For issuance of PPI, physical verification of passport and visa at point of issuance is mandatory. The loading and re-loading of such PPIs shall be against receipt of foreign exchange by cash or through any payment instrument.

It must be noted that amount outstanding at any time in such PPI shall not exceed the limit applicable on full-KYC PPIs. Further, for the unutilized balances, the same can be encashed in foreign currency or to be transferred back to

source from where the PPI was loaded, provided the same is done in compliance with extant foreign exchange regulations.

TRAI RELEASES CONSULTATION PAPER ON INTRODUCTION OF DIGITAL CONNECTIVITY INFRASTRUCTURE PROVIDER

The Telecom Regulatory Authority of India ("**TRAI**") has released a consultation paper dated February 9, 2023 (accessible here) on the introduction of Digital Connectivity Infrastructure Provider ("**DCIP**") authorization under Unified License ("**UL**").

The purpose of the consultation paper is to seek views of stakeholders on the proposed DCIP authorization under UL. The paper comes in the backdrop of increased role of digital communication and the ever-increasing need of robust Digital Connectivity Infrastructure ("**DCI**") to enhance the economic development by providing amenities that enhance quality of life.

The consultation paper, *inter-alia,* proposes that DCIP license should not be a standalone license but a new authorization under UL regime. Further, the paper seeks comments on legality of not charging any license fee. Further, assuming no license fees is charged on DCIP, the consultation paper proposes that DCIP be allowed to lease/ rent/ sell their infrastructure only to entities licensed under Indian Telegraph Act, 1885.

TRAI DIRECTS TELECOM SERVICE PROVIDERS TO SUBMIT QUALITY OF SERVICE REPORTS

TRAI, on February 23, 2023, has issued directions (accessible here) to all basic telephone service providers and cellular mobile telephone service providers to submit the State and Union Territory-wise data and reports in respect of Quality of Service ("**QoS**") parameters.

The data under the direction has to be submitted in electronic form duly signed by the service provider within forty-five days from the end of each quarter for basic telephone service and within twenty-one days from the end of each quarter for cellular mobile telephone service.

CONDITIONS FOR GRANTING BAIL UNDER SECTION 45 OF THE PMLA APPLIES TO ANTICIPATORY BAIL APPLICATIONS UNDER SECTION 438 OF THE CRPC

The Supreme Court, in the case of ***The Directorate of Enforcement v. M. Gopal Reddy & Anr***. (Criminal Appeal No. 534 of 2023) held that the conditions under Section 45 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") for grant of bail are also applicable to anticipatory bail applications under Section 438 of the Code of Criminal Procedure, 1973 ("**CrPC**"). In the present case, an FIR was registered by the Economic Offences Wing in Bhopal, naming 20 individuals and companies as suspects for money laundering. The investigation revealed that some officials of the Madhya Pradesh State Electronics Development Corporation colluded with companies tasked with maintaining the government's e-procurement portal to manipulate the bidding process and award contracts to certain private bidders for large bribes. This scheme resulted in the diversion of public funds meant for development activities. The High Court of Telangana placed reliance on the judgement of *Nikesh Tarachand Shah v. Union of India and Anr.*[20] on the point that the rigours of Section 45 PMLA do not apply to Section 438 CrPC and allowed the anticipatory bail application. The Appellant contended that the Hon'ble High Court did not take into consideration the observations made in the recent case of Assistant Director, *Enforcement Directorate v. Dr. V. C. Mohan*[21] which provides that Section 45 PMLA will apply to the applications under section 438 of the CrPC. The Supreme Court in the present case, reiterated the observations made in the case of *Assistant Director, Enforcement Directorate v. Dr. V. C. Mohan* and held that the conditions under Section 45 of the PMLA for granting bail are applicable to anticipatory bail applications under Section 438 of the CrPC and accordingly set aside the judgement of Telangana High Court.

FILLING OF CHARGE SHEET CANNOT ACT AS AN IMPEDIMENT IN ORDERING FURTHER INVESTIGATION

The Supreme Court, in the case of ***Anant Thanur Karmuse v. The State of Maharashtra & Ors.*** (Criminal Appeal No. 13 of 2023) held that mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation. The allegation of the Petitioner was that he was kidnapped and assaulted by police officers over a negative post on Facebook by him against the then Cabinet Minister. He further alleged that he was dragged from his home to the Minister's bungalow and thrashed by officers in front of the Minister for the alleged post on Facebook. Subsequently he filed a complaint, and an FIR was registered. Despite the fact that, he had narrated the entire incident along with the specific allegations against the Minister and his men, their names were not mentioned in the FIR. Consequently, the Petitioner approached the Bombay High Court, seeking transfer of the investigation to the Central Bureau of Investigation ("**CBI**") alleging that the entire investigation was conducted in sham and casual manner. The High Court issued several directives to oversee the probe and subsequently, Minister's name was added as an accused, two years after the occurrence of offence. Thereafter, the High Court dismissed the writ petition with an observation that, since the charges were framed and trial had begun, reinvestigation/further investigation is not permissible. Being aggrieved by the said order Petitioner approached the Supreme Court. The Supreme Court held that investigation can be transferred to the CBI only in "rare and exceptional" circumstances and the High Court was justified in not transferring the investigation to CBI. However, the court observed that a victim has fundamental right of fair investigation and fair trial. The Supreme Court accordingly held that mere filling of chargesheet and framing of the charges cannot be an impediment in ordering further investigation/re-investigation/de novo investigation, if facts so warrant.

[20] (2018) 11 SCC 1

[21] (2022 SCC Online SC 452)

DSK View: *The Supreme Court in this case has made an important distinction between the power to transfer cases to some other investigation agency and the power to order re-investigation/further investigation. The court has rightly observed that power to transfer cases to some other investigation agency can be exercised in exceptional circumstances and commencement of trail cannot be a bar for further investigation.*

IF THE POLICE DO NOT COMPLY WITH THE PROVISIONS OF SECTION 41A OF THE CRPC, THE PERSON ARRESTED IS ENTITLED TO BE RELEASED ON BAIL

The Gauhati High Court, in the case of ***Deep Jyoti Nath v. The State of Assam*** (Bail Application No. 480 of 2023) held that if the police do not comply with the provisions of Section 41A CrPC in appropriate cases, the person arrested would be entitled to be released on bail. The Petitioner was an employee of Instakart Services Private Limited and it was alleged that he had misappropriated more than twenty lakhs belonging to the company. The Advocate for the Petitioner submitted that no notice under Section 41A of the CrPC was served upon the Petitioner and relied on the judgement of *Arnesh Kumar v. State of Bihar*[22]. The High Court observed that on mere application made by the complainant for the offences under Section 420 and 408 of the IPC, the petitioner was arrested. The Court therefore allowed the bail application, for non-compliance of the provisions of Section 41A of CrPC.

MAINTAINABILITY OF CRIMINAL REVISION APPLICATIONS, IN CASES WHERE FIR HAS BEEN REGISTERED PURSUANT TO THE ORDER PASSED UNDER SECTION 156(3) OF CRPC

The Bombay High Court, in the case of ***Arun P Gidh v. Mr. Chandraprakash Singh & Ors.*** (Criminal Writ Petition No. 2517 - 2520 of 2022) has referred a group of writ petitions to two or more judges, as per Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960, while deciding a short question, whether remedy of revision under Section 397 of CrPC is available to the person aggrieved by an order directing investigation, pursuant to an order passed under Section 156(3) of CrPC. The respondents/accused in these criminal writ petitions are alleged to have committed offences punishable under Sections 420, 418, 415, 467, 448, 120-B read with 34 of the IPC and Section 9 and 13 of Prevention of Corruption Act, 1988. The respondents herein filed criminal revision applications against an order passed by the Judicial Magistrate First Class, Kalyan, directing registration of an FIR, which was allowed. Therefore, the Petitioner challenged the order passed by the Sessions court mainly on the ground of maintainability of a CRA. The Court observed that there are three judgments of Division Bench of this Court of an equal strength on one hand holding that the remedy under Section 397 of CrPC is an efficacious remedy for taking exception to an order passed under Section 156(3) of CrPC and the judgment in the case of *Kailash Dattatraya Jadhav and Anr. v. State of Maharashtra*[23] holding that such a remedy is not an efficacious remedy. Therefore, in order to resolve the conflicting views, this Court held that these matters could be more advantageously heard by a bench of two or more judges and directed the Registrar (Judicial) to place the matter before the Hon'ble Chief Justice for necessary orders in this regard.

[22] *(2014) 8 SCC 273*

[23] *2016 SCC OnLine Bom 5030*

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