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NEWSLETTER

May 2023

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ADVERTISEMENT CODE FOR INVESTMENT ADVISERS ("IA") AND RESEARCH ANALYSTS ("RA")

The SEBI (Investment Advisers) Regulations, 2013 and the SEBI (Research Analysts) Regulations, 2014 provide the code of conduct to be followed by IAs and RAs respectively. In order to strengthen the conduct of IAs and RAs, while issuing any advertisement, SEBI has issued a circular dated April 05, 2023[1] ("**Advertisement Code**").

Following are certain directions that shall be followed by IAs and RAs to ensure compliance with the Advertisement Code:

(i) Advertisements shall include all forms of communications, issued by or on behalf of IA/RA, that may influence investment decisions of any investor or prospective investor;

(ii) The advertisement shall contain certain information/disclosures such as:

- Standard warning in legible fonts (minimum 10 font size) which states "Investment in securities market are subject to market risks. Read all the related documents carefully before investing." No addition or deletion of words shall be made to/from the standard warning.
- In audio-visual media based advertisements, the standard warning in visual media based advertisement and accompanying voice over reiteration shall be audible in a clear and understandable manner.

(iii) In the event of suspension of any IA/RA by SEBI and/or by SEBI recognized supervisory body, the IA/RA so suspended shall not issue any advertisement either singly or jointly with any other IA/RA, during the period of suspension.

USAGE OF BRAND NAME/TRADE NAME BY IAS AND RAS

SEBI has issued a circular dated April 06, 2023[2] to ensure that there is transparency in usage of brand names/ trade names/ logos by IAs and RAs. IAs and RAs shall ensure that:

a. The information such as name of the IA/RA as registered with SEBI, its logo, its registration number and its complete address with telephone numbers shall be prominently displayed on portal/website, if any, notice board, display boards, advertisements, publications, know your client forms and client agreements.

b. Disclaimer that "*Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors*" shall be mentioned on portal/web site, if any, notice board, display boards, advertisements, publications, know your client forms, client agreements, statements or reports or any other form of correspondence with the client.

c. SEBI logo shall not be used by IA/RA.

The provisions of this circular shall be applicable with effect from May 01, 2023.

[1] SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51

[2] SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/52

GUIDELINES WITH RESPECT TO EXCUSING OR EXCLUDING AN INVESTOR FROM AN INVESTMENT OF AIF

SEBI has issued a circular dated April 10, 2023[3] that lays down circumstances where an Alternative Investment Fund ("**AIF**") may excuse its investor from participating in a particular investment. Following are some of these circumstances where an investor may be excused:

(i) If the investor, based on the opinion of a legal professional/legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation;

(ii) an AIF may exclude an investor from participating in a particular investment opportunity, if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of the AIF;

(iii) If the investor, as part of contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, participation of the investor in such investment opportunity would be in contravention to the internal policy of the investor;

DIRECT PLAN FOR SCHEMES OF AIFS AND TRAIL MODEL FOR DISTRIBUTION COMMISSION IN AIFS

SEBI *vide* circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020 introduced template(s) for private placement memorandum ("**PPM**") for AIFs, in order to ascertain that certain minimum level of information in a simple and comparable format is disclosed to investors. This PPM template(s) *inter-alia* provides for disclosure with respect to direct plan for investors, and constituents for fees that may be charged by the AIF/ scheme of AIF, including distribution fee/ placement fee.

In order to provide flexibility to investors investing in AIFs and to bring transparency in expenses to curb mis-selling SEBI by circular dated April 10, 2023[4] has specified the following:

(i) Direct Plan for schemes of AIFs

(a) Schemes of AIFs shall have an option of 'Direct Plan' for investors. Such direct plan shall not entail any distribution fee/placement fee.

(b) AIFs shall ensure that investors who approach the AIF through a SEBI registered intermediary which is separately charging the investor any fee (such as advisory fee or portfolio management fee), are on-boarded via direct plan only.

(ii) Trail model for distribution commission in AIFs

(a) AIFs shall disclose distribution fee/placement fee, if any, to the investors of AIF/scheme of AIF at the time of on-boarding.

(b) Category III AIFs shall charge distribution fee/placement fee, if any, to investors only on an equal trail basis i.e., no upfront distribution fee/ placement fee shall be charged by Category III AIFs directly or indirectly to their investors. Further, any distribution fee/ placement fee paid shall be only from the management fee received by the managers of such Category III AIFs.

(c) Category I AIFs and Category II AIFs may pay up to one-third of the total distribution fee/placement fee to the distributors on upfront basis, and the remaining distribution fee/ placement fee shall be paid to the distributors on equal trail basis over the tenure of the fund.

The provisions of this circular shall be complied with for investors on-boarded for AIFs/ schemes of AIFs from May 01, 2023 onwards.

[3] SEBI/HO/AFD-1/PoD/P/CIR/2023/053

[4] SEBI/HO/AFD/PoD/CIR/2023/054

COURT FEE CAN BE REFUNDED IN A COMMERCIAL SUIT AFTER THE IMPOSITION OF AN INTERIM MORATORIUM ON THE BY THE NCLT ON THE DEFENDANTS

The Hon'ble High Court of Delhi in ***Proud Securities & Credits Private Limited vs. Urrshilla Kerkar & Anr***.[5] has allowed the refund of Court fee in a commercial suit after NCLT imposes an interim moratorium on the Defendants. In the said case, the Plaintiff had filed a commercial suit against the Defendants promoters of an Indian travel company by the name of Cox & Kings Ltd. for recovery of Rs. 15,85,00,000/- (Rupees Fifteen Crore and Eighty-Five Lakhs) arising from a Master Facility Agreement for providing Revolving Bill Discounting Facility for Cox and Kings Ltd. During the pendency of the said suit, NCLT, Mumbai imposed an interim moratorium on the Defendants, thus, staying the suit in terms of Sections 96 and 238 of the Insolvency and Bankruptcy Code, 2016.

The counsel for the Plaintiff submitted that the purpose of the Court Fee is for facilitating the adjudication of disputes between the parties. However, in the present case since no adjudication is possible for reasons beyond the control of the Plaintiff, the Hon'ble Court should exercise its inherent discretionary powers to grant the complete refund of court fees. The counsel for the Plaintiff further submitted that to achieve the true purpose of an enactment, the Courts are empowered to expand the scope of provisions of a statute to cover situations that are not strictly encapsulated in the language used therein. The Hon'ble High Court of Delhi observed and felt that there is a need to expand the scope of the provisions of the Court Fee Act and directed for a refund of the entire amount paid by Plaintiff as a court fee. Accordingly, while passing the said Order, the Hon'ble High Court of Delhi observed that upon the commencement of an interim moratorium, the Plaintiff would have the solitary remedy of filing a claim before the Resolution Professional and to participate in the collective statutory settlement process. As the statutory settlement process relates to the settlement of claims, the rigors of Section 16 of the Court Fee Act would stand satisfied warranting a refund of the court fee.

PURPOSE OF SECTION 31(5) OF THE ARBITRATION AND CONCILIATION ACT 1996 IS TO INFORM THE PARTY THAT THE ARBITRAL AWARD HAS BEEN PASSED

The Hon'ble High Court of Bombay in ***Rahul vs. The Akola Janta Commercial Co-Operative Bank Limited***[6] has held that the purpose of Section 31(5) of the Arbitration and Conciliation Act 1996 is that the party to the award should be made known the nature, effect, and import of the award, so that each party, may then take a decision whether to challenge the award further by instituting appropriate proceedings under Section 34 of the Arbitration and Conciliation Act 1996, before the Court, or in case there are any inaccuracies, corrections, interpretations or need for an additional award therein, to get it corrected by filing an application under Section 33 of the Arbitration and Conciliation Act 1996, before the Arbitrator. The Hon'ble High Court of Bombay further observed that both Section 33(1) and 34(3) of the Arbitration and Conciliation Act 1996, provide for limitations of time in this regard to approach either the Arbitral Tribunal or the Court for the said purpose and therefore the delivery of the award as contemplated in Section 31(5) has the effect of setting in motion these time periods, within which the remedies available are to be availed of by the party and it is in this context Section 31(5) of the Arbitration and Conciliation Act 1996 has to be understood.

In the said case, the Petitioner who was a party to the arbitration proceeding submitted the Arbitral Award dated 27.01.2015, passed by the Arbitrator had not received the

[5] CS (Comm) No. 469 of 2019

[6] Writ Petition No. 6091 of 2022

signed copy of the award within the meaning of Section 31(5) of the Arbitration and Conciliation Act, 1996 and therefore, in view of the provisions of Section 36 (1) of the Arbitration and Conciliation Act 1996, the award was not enforceable. It was also contended, that the receipt of the certified copy of the award, which is claimed to have been received by post on 07.03.2015, cannot be considered to be an act in compliance with Section 31(5) of the Arbitration and Conciliation Act, 1996 and the execution proceedings filed by the Respondent are pre-mature cannot be permitted to proceed with it. The Hon'ble High Court of Bombay rejected the argument of the Petitioner and observed that the if the Petitioner's contention is accepted it shall amount to taking a too literal and narrow view of the language of Section 31(5) of the Arbitration and Conciliation Act 1996, which would defeat the very purpose and object of the Act itself, as once a 'party', is held to have received/obtained the signed copy of the award, maybe a certified copy, the information regarding the contents of the award stands attributed to the party, and therefore the time, would begin to run for raising a challenge to the award immediately thereafter.

THE SUBMISSION OF A ONE TIME SETTLEMENT PROPOSAL IS ACKNOWLEDGEMENT OF DEBT IN TERMS OF THE LIMITATION ACT, 1963 AND OR ANY SUBSEQUENT ONE TIME SETTLEMENT PROPOSAL WOULD FURTHER EXTEND THE LIMITATION PERIOD

The Hon'ble National Company Law Appellate Tribunal, Chennai in the case of ***M/s. State Bank of India vs. M/s. Hackbridge Hewittic and Easun Limited***[7] held that the submission of a One Time Settlement ("**OTS**") proposal is an acknowledgement of debt in terms of Section 18 of the Limitation Act, 1963 and any fresh or subsequent/modified OTS proposal would further extend the limitation period by three years. State Bank of India ("**Appellant / Financial Creditor**") filed the present appeal against the order dated 06.01.2021 passed by the Hon'ble National Company Law Tribunal, Chennai ("**NCLT, Chennai**"), whereby, the Ld. Adjudicating Authority dismissed the Section 7 petition filed by the Financial Creditor against the M/s. Hackbridge Hewittic and Easun Limited ("**Guarantor**") under the Insolvency & Bankruptcy Code, 2016 ("**IBC**"). In their Appeal, the Appellant contended that the application was dismissed only on the ground of the 'limitation' without considering the other relevant facts including the OTS proposal and that the Ld. 'Adjudicating Authority' erred in calculating the limitation period. In the given case, M/s Victory Electricals Ltd. ("**Principal Borrower**") had availed financial facility from the Financial Creditor. The Guarantor executed a declaration-cum-indemnity, undertaking to pay the loans of the Principal Borrower with interest to the Financial Creditor. Subsequently, the Principal Borrower was finding it difficult to pay back the original loan, hence it proposed an OTS proposal on 13.03.2014 which was rejected by the Financial Creditor. Following the rejection of the OTS proposal, the Principal Borrower submitted a total of thirteen modified OTS proposals to the Appellant and part payments were also made by the Principal Borrower.

Hon'ble Tribunal clarified that Section 18(1) of the Limitation Act, 1963 provides that where before the expiration of the prescribed period for a suit/application in respect of any right, an acknowledgement of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was signed. The Hon'ble Tribunal noted that in the present case, the date of default would automatically get extended from the date of the OTS proposal submitted by the Principal Borrower. The Hon'ble Tribunal further noted that the liability of the Guarantor is co-extensive with the debt of the Principal Borrower, therefore, the acknowledgement of the debt by OTS proposals was also deemed acknowledgement by the Guarantor of its liability as a guarantor on behalf of the Principal Borrowers. The Hon'ble Tribunal observed that the Adjudicating Authority didn't consider the subsequent OTS proposals and adjudged that NCLT, Chennai erred in not considering that submission of the subsequent OTS proposals. The Hon'ble tribunal concluded that submission of an OTS proposal tantamount to acknowledgement of debt by the Principal Borrower and any subsequent modification of such proposal would further extend the limitation period by three years. Accordingly, the matter was remitted back to the Hon'ble NCLT, Chennai for reconsideration.

ADJUDICATING AUTHORITY IS NOT REQUIRED TO ASSESS THE CORRECT AMOUNT OF DEBT AT THE ADMISSION STAGE

The Hon'ble National Company Law Appellate Tribunal, New Delhi in the case of ***Manmohan Gupta vs. MDS Digital Media Pvt. Ltd. & Anr*** [8] held that Adjudicating Authority is not required to assess the correct amount of debt at Admission stage.

In the given case, Manmohan Gupta**,** the suspended Director of the Planet 41 Mobi Venture Ltd ("**Corporate Debtor**") filed an appeal against the order dated 16.12.2022 passed by the Hon'ble National Company Law Tribunal wherein the Ld. Adjudicating Authority admitted the petition filed by the MDS Digital Media Pvt. Ltd. ("**Operational Creditor**") under Section 9 of Insolvency and Bankruptcy Code, 2016 ("**IBC**") against the Corporate Debtor for initiation of Corporate Insolvency Resolution Process ("**CIRP**"). The Appellant, in their Appeal, contended that the Operational Creditor has not shown the existence of any debt in the Balance Sheet. Further, the Appellant claimed that the amount claimed by the Operational Creditor in their Section 9 Petition was not the correct amount.

[7] Company Appeal (AT) (CH) (Ins.) No. 05 of 2021

[8] Company Appeal (AT) (Insolvency) No.202 of 2023

The Hon'ble Tribunal noted that the Ld. Adjudicating Authority admitted the Section 9 application on the basis of admission made by the Corporate Debtor for an amount of Rs.8,56,836/-. The Hon'ble Tribunal further noted that since the admitted amount is more than the threshold, the Ld. Adjudicating Authority did not commit any error in admitting the Section 9 application. The Hon'ble Tribunal concluded that the question as to what the correct amount of debt was the question which was to be subsequently looked into at the time of collation of the claims by the Resolution Professional and at the stage of admission of section 9 application, it was not necessary for the Adjudicating Authority to express any opinion. Accordingly, the Appeal was dismissed by the Hon'ble Tribunal.

E-SHRAM INTEGRATED WITH UNIFIED MOBILE APPLICATION FOR NEW-AGE GOVERNANCE MOBILE APPLICATION TO PROVIDE ON-THE-GO REGISTRATION AND UPDATION FACILITIES TO UNORGANISED WORKERS

The Ministry of Labour and Employment, vide press release dated April 3, 2023, announced that they have launched the "e-Shram portal", a national database for the unorganised workers between the age group of 16 (Sixteen) – 59 (Fifty Nine) seeded with Aadhaar. The Ministry of Labour and Employment has taken several steps to increase registration on the e-Shram portal like providing multi-channel registration facility to unorganised workers across the country. The Common Services Center which is a special purpose vehicle along with its more than 4,00,000 (Four Lakh) village level entrepreneurs have been on boarded to provide registration facilities at the village level. In addition to the above, the e-Shram portal has been integrated with Unified Mobile Application for New-age Governance (UMANG) mobile application to provide on-the-go registration and updation facilities to unorganised workers.

CODE ON WAGES, 2019 PROHIBITS DISCRIMINATION IN WAGES BASED ON GENDER FOR SIMILAR WORK

The Ministry of Labour and Employment, vide press release dated April 3, 2023, has clarified that the Code on Wages, 2019 ("**Code on Wages**") prohibits discrimination in wages based on gender for similar work. The Code on Wages has provisions which state that there shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect to the same work or work of similar nature done by any employee.

Further, no employer shall make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

GUIDELINES ON THE EXEMPTION FROM OPENING AND CLOSING HOURS OF THE TELANGANA SHOPS AND ESTABLISHMENTS ACT 1988

The Labour, Employment, Training and Factories (Labour) Department of Telangana vide notification dated April 4, 2023, has issued guidelines for granting exemption from Section 7 (*opening and closing hours*) of the Telangana Shops and Establishments Act, 1988 to all shops and establishments as defined in Section 2 (21) of the Telangana Shops and Establishments Act, 1988 for operating 24x7 in the state of Telangana, subject to the conditions detailed in the notification.

STATE-WISE UPDATED LIST OF NOTIFIED/NON-NOTIFIED DISTRICTS UNDER EMPLOYEES' STATE INSURANCE

The Employee State Insurance Corporation ("**ESIC**"), vide circular dated April 6, 2023, has published its state-wise updated list of notified/non-notified districts in relation to applicability of the Employees' State Insurance Act, 1948 ("**ESI Act**") and rules thereunder. The circular states that as on April 1, 2023, while the entire area of 15 (Fifteen) states/ union territories have been notified, in 20 (Twenty) states the Employees' State Insurance ("**ESI**") is partially notified.

In addition to the above, the circular also states that a total of 492 (Four Hundred Ninety Two) districts have been fully notified, 118 (One Hundred Eighteen) districts have been partially notified and 134 (One Hundred Thirty Four) districts have not been notified till now.

THE MAHARASHTRA STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS (AMENDMENT) ACT, 2023

The Government of Maharashtra, vide notification dated April 6, 2023, has made the following amendments to the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975:

(i) Section 27A (*Exemptions)* wherein the exemption to 'persons with permanent physical disability' has been substituted with 'persons with benchmark disability'; and

(ii) Schedule I (*Schedule of rates of tax on professions, trades, callings and employments)* wherein a distinction has been made between male and female wage earners with revised wage thresholds for levy of taxes.

THE MADHYA PRADESH UDYOGON KI STHAPNA EVAM PARICHALAN KA SARALIKARAN ADHINIYAM, 2023 (MADHYA PRADESH INDUSTRIES ESTABLISHMENT AND OPERATION SIMPLIFICATION ACT, 2023)

The Department of Law and Legislative Affairs, Madhya Pradesh vide notification dated April 6, 2023, has implemented the Madhya Pradesh Industries Establishment and Operation Simplification Act, 2023 which provides exemption from obtaining specific approvals and inspections for establishing and operationalising industrial units in the state of Madhya Pradesh.

PRESS NOTE ON SUBMISSION OF ANNUAL REPORT UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 IN HARYANA

The Government of Haryana, vide press note dated April 7, 2023, reminded the government and non-government entities regarding the submission of annual report under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, latest by April 30, 2023 for all the districts in the state of Haryana.

EXTENSION OF MEDICAL BENEFIT BY ESIC IN DISTRICTS OF IMPHAL IN MANIPUR

The ESIC, vide notification dated April 10, 2023, has extended medical benefits, provided under Regulation 95-A (*medical benefit to families of insured persons*) of the Employees' State Insurance (General) Regulations, 1950 and the Manipur Employees' State Insurance (Medical Benefit) Rules, 2018 to the families of all insured persons in the entire area of Imphal East and Imphal West districts, with effect from March 1, 2023.

ESIC REVISES DEARNESS ALLOWANCE TO CENTRAL GOVERNMENT EMPLOYEES

The ESIC, vide notification dated April 12, 2023, has requested compliance with the office memorandum dated April 3, 2023, wherein the dearness allowance payable to Central Government employees has been enhanced from 38% (Thirty Eight Percent) to 42% (Forty Two Percent) of basic salary from January 1, 2023.

ESIC PROFORMA FOR ANNUAL PERFORMANCE ASSESSMENT REPORTS

The ESIC, vide circular dated April 13, 2023, has notified that it has revised its proforma for annual performance assessment reports in Smart Performance Appraisal Report Recording Online Window ("**SPARROW**") module.

The new form of Multi Tasking Staff with the nomenclature "Multi Tasking Staff NEW" has been deployed on the SPARROW module. It is therefore directed to all the field units to use 'Multi Tasking Staff NEW" form instead of the previously existing "Multi Tasking Staff NEW" form while preparing annual performance assessment report for 2022-2023 session in SPARROW module.

PUBLIC UTILITY SERVICE STATUS FOR IRON ORE MINING

The Ministry of Labour and Employment, vide notification dated April 13, 2023, has declared that the services engaged in the iron ore mining are a public utility service for the purpose of the Industrial Disputes Act, 1947. The public utility service status of iron ore mining shall be in effect for a period of 6 (Six) months from April 14, 2023.

RE-EXAMINATION OF MEDICAL OFFICERS WRONGLY SWITCHED OVER TO 7TH CENTRAL PAY COMMISSION

The ESIC, vide circular dated April 13, 2023, highlighted the wrong switch over to the 7th Central Pay Commission ("**CPC**") with respect to medical officers. The circular stated that ESIC has observed gross negligence with regard to the switch over of pay to 7th CPC structure by multiplying the basic pay with a factor of 2.67 (Two Point Six Seven) instead of 2.57 (Two Point Five Seven) in respect of medical officers posted in different units particularly in level- 13.

It has been further clarified that the existing basic pay shall be multiplied by a factor of 2.57 (Two Point Five Seven). The figure so arrived at shall be added to by an amount equivalent to dearness allowance on the pre-revised non-practicing allowance admissible on January 1, 2016.

The figure so arrived at will be located in that level in the pay matrix and if such an identical figure corresponds to any cell in the applicable level of the pay matrix, the same shall be the pay. If no such cell is available in the applicable level, the

pay shall be fixed at the immediate next higher cell in that applicable level of the pay matrix.

CIRCULAR ON IMPLEMENTATION OF AADHAAR IN ESIC

The ESIC, vide circular dated April 17, 2023, has released guidelines for an employer to seed Aadhaar number of an employee during the process of their registration as an employee.

UTTAR PRADESH POLLUTION CONTROL BOARD ISSUES REVISED FEE STRUCTURE

The Uttar Pradesh Pollution Control Board ("**UPPCB**"), vide notification dated April 17, 2023 has issued revised structure of the following fees:

- Structure of authorization fee under Bio Medical Waste Management Rules, 2016;
- Structure of fee for processing of application for import clearance of hazardous chemicals;
- Structure of application fee for authorization under Hazardous Waste (Management and Handling) Rules, 2016 and subsequent amendments;
- Structure of application fee for authorization under Solid Waste Management Rules, 2016 and subsequent amendments; and
- Structure of application fee for authorization under E-waste (Management) Rules, 2016 and subsequent amendments.

All red category large, medium, small industries should get their effluent sample and air quality sample analyzed on paid basis from UPPCB's laboratory on quarterly, half yearly and yearly basis respectively, and orange category industries should get their effluent sample and air quality sample analyzed on paid basis from UPPCB's laboratory on a yearly basis.

THE FACTORIES (GOA AMENDMENT) ACT, 2019

The department of Law, Legal Affairs division, Goa vide notification dated April 18, 2023 has amended the following provisions under the Factories Act, 1948, as in force in the state of Goa:

- Section 65 (*Power to make exempting orders*) wherein now under Section 65(2) the chief inspector has been given the power to make exemptions on the working hours of workers in a factory without the control of the state government. Further, Section 65(3) has been amended to ensure that the power of exemption as under Section 65(2) is not applicable if the total number of working hours in a week exceed 72 (Seventy Two) instead of the previous 60 (Sixty) hours.
- Section 66 (*Further restrictions on employment of women*) wherein the restriction on employment of women between 10:00 pm and 5:00 am has now been removed and replaced with conditions for ensuring the safety of such women who work between 7:00 pm and 6:00 am.
- Insertion of new Section 92A (*Compounding of certain offences*).
- Section 105 (*Cognizance of offences*) wherein the court can take cognizance of offences under the Factories Act, 1948 upon the complaint of the Chief Inspector as compared to the earlier provision where the power had been given to an Inspector.
- Section 106 (*Limitation of prosecutions*) wherein the limitation for complaint to be initiated by an Inspector has been increased to 6 (Six) months.
- Insertion of new Schedule 4 (*List of compoundable offences*).

EXTENSION FOR MANDATORY SEEDING OF AADHAAR WITH UAN

The Employees' Provident Fund Organisation ("**EPFO**"), vide circular dated April 18, 2023, has extended the date for seeding of Aadhaar to March 31, 2024, for certain class of establishments, i.e., beedi making, building and construction and plantation industries and for north-eastern regions comprising of States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

AMENDMENTS UNDER VARIOUS LABOUR LAWS IN MAHARASHTRA

The Law and Justice Department, Maharashtra, vide notification dated April 19, 2023, has made amendments to the following labour laws:

- **Maharashtra Industrial Relations Act, 1947**- Amendment to Section 104 (*Penalty for instigating, etc., illegal strikes, lock-outs, closures and stoppages*) and Section 106 (*Penalty for illegal change*) wherein the penalty for imprisonment has been removed and replaced with appropriate fines;
- **Maharashtra Labour Welfare Fund Act, 1953**- Amendment to Section 17A (*Penalty for obstructing inspection in discharge of Inspector's duties or for failure to produce documents, etc*.) wherein the penalty

for imprisonment has been removed and replaced with appropriate fines. Further Section 17C (*Compounding of offences*) has now been inserted;

- **Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969**- Amendment to Section 3 (*Schemes for ensuring regular employment of unprotected workers*) wherein the penalty for imprisonment has been removed replaced with appropriate fines, Section 27 (*General penalty for offences*) wherein fines to be paid in case of offences have been updated and a new section namely, Section 27-1A (*Compounding of offences*) has been inserted;

- **Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981**- Amendments to Section 3 (*Scheme for ensuring regular employment of security guards)* wherein the penalty for imprisonment has been removed and replaced with appropriate fines and Section 27 (*General penalty for offences*) wherein the fines to be paid in case of offences have been updated. Further, a new section has been inserted namely, Section 27A (*Compounding of offences*); and

- **Maharashtra Workmen's Minimum House-rent Allowance Act, 1983**- Amendment to Section 10 (*Penalties for offences*) wherein the penalty for imprisonment has been removed and replaced with appropriate fines.

GUIDELINES ON PREPARATORY ACTION FOR HEAT WAVES IN HARYANA

The Labour Department of Haryana, vide notification dated April 20, 2023, has directed occupiers, employers, construction companies, and industries to take the preparatory actions detailed in the notification to mitigate the adverse effects of heat waves.

EPFO CIRCULAR ON THE APPLICATION FOR VALIDATION OF APPLICATION FORMS AND JOINT OPTION FORMS

The EPFO, vide circular dated April 23, 2023, has deployed an online facility for receiving the application forms for validation of joint options from the employees who retired prior to September 1, 2014, and joint option forms from the employees who were members on September 1, 2014, which will be received from employers, till May 3, 2023.

ENFORCEMENT OF PROVISIONS OF THE ESI ACT IN KAVARATTI, AGATTI AND MINICOY ISLANDS OF LAKSHADWEEP

The Ministry of Labour and Employment, vide notification dated April 25, 2023, implemented the following provisions of the ESI Act effective from May 1, 2023, in all the areas of Kavaratti, Agatti and Minicoy islands in the Union Territory of Lakshadweep:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV (*contribution*);

- Sections 46 to 73 of Chapter V (*benefits*); and

- Sections 74, 75, and sub-sections (2) to (4) of Sections 76, 80, 82 and 83 of Chapter VI (*adjudication of disputes and claims*).

ALL MEDIUM RISK CATEGORY FACTORIES IN THE STATE OF TELANGANA CAN APPLY FOR THE SELF-CERTIFICATION THROUGH ONLINE PORTAL TO COME UNDER LOW RISK CATEGORY FACTORY

The Labour Department of Telangana updated its website to notify that all 'medium risk' category factories are requested to apply for the self-certification through online portal of tsfactories.cgg.gov.in so as to come under the low risk category factory.

The inspections will be carried out once in 5 (Five) years instead of once in 2 (Two) years. Grievances, if any, can be registered through complaint registration available in the user login of the website.

JUDICIAL UPDATES

State of Orissa & Anr. vs. Orissa Khadi and Village Industries Board Karmachari Sangh & Anr.

The Supreme Court of India has held that the employees of a body corporate established by a State Government cannot be treated at par with the employees of the State Government. A bench comprising of Justices Dinesh Maheshwari and PV Sanjay Kumar made this observation while holding that the employees of the Board are not entitled to pension on par with Government employees. The bench observed that even if the State had established the Orissa Khadi and Village Industries Board ("**Board**") to discharge its obligations under Article 43 (*Directive Principles of State Policy*) of the Constitution of India to promote cottage industries, its employees cannot be treated at par with the State Government employees.

The Apex Court noted that the service conditions of the Board's employees are specifically governed by the regulations made in this regard under the Orissa Khadi and Village Industries Board Regulations, 1960. The Orissa Khadi and Village Industries Board Regulations, 1960 specifically contain the stipulation in Regulation 52 that they shall not be entitled to pension. Hence, the employees cannot claim a right overriding this regulation.

Saheer S vs. Union of India

The High Court of Kerala on April 12, 2023, directed the EPFO to modify its online system to allow employees/pensioners to comply with the directives of the Supreme Court of India to opt for higher pension without having to provide copies of the option under Paragraph 26(6) of the Employees Provident Fund Scheme, 1952. The Supreme Court had in its judgment dated November 4, 2022, struck down a portion of the Employees' Pension (Amendment) Scheme 2014, in which the employees were asked to make an additional contribution of 1.16% (One Point One Six Percent) of the wages exceeding the notified limit of INR 15,000 (Rupees Fifteen Thousand) per month.

ENERGY & INFRASTRUCTURE

ENERGY

THE CERC NOTIFIES THE CENTRAL ELECTRICITY REGULATORY COMMISSION (CONNECTIVITY AND GENERAL NETWORK ACCESS TO THE INTER-STATE TRANSMISSION SYSTEM) (FIRST AMENDMENT) REGULATIONS, 2023

The Central Electricity Regulatory Commission on 1st April 2023 notified that the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023 (hereinafter 'First Amendment Regulations') shall come into effect from 05.04.2023 with the exception of certain provisions.

It further stipulated that Regulations 40.2 to 40.4 (Dealing with the payment of One time GNA Fees), sub-clauses (a) and (b) of Regulation 43.1 (repealment of prior procedure) shall come into force with effect from 5.4.2023 along with the provisions regarding fresh applications for Connectivity and General Network Access and their processing and grant.

The notification also states that the scheduling and despatch of electricity shall continue to be based on the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Short Term Open Access shall be granted under the provisions of Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2008 and Billing, Collection and Disbursement of the inter-State Transmission Charges and Losses shall continue to be as per the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 till further notice.

SJVN LIMITED DESIGNATED AS INTERMEDIARY PROCURER/RENEWABLE ENERGY IMPLEMENTING AGENCY BY MNRE

The Ministry for New and Renewable Energy ("MNRE") through office memorandum dated 24.04.2023 designated SJVN Limited as an intermediary producer/Renewable Energy Implementing Agency (REIA) for the purposes of the Electricity Act, Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022, as amended by (First Amendment) Regulations, 2023 and Guidelines issued by the Central Government under Section 63 of the Electricity Act, for Tariff Based Competitive Bidding Process for Procurement of Renewable Power subject to SJVN Limited complying with the following conditions:

(i) Bids are to be floated in accordance with relevant Standard Bidding Guidelines issued by the Government and abiding with MNRE's advice in relation with tenders for Renewable Energy projects.

(ii) Bids are to be floated in accordance with the directions issued by the Government. Formulation of annual plan of tendering for RE projects based on various instructions issued by the Government and getting concurrence by the Government.

(iii) Coordination with other Renewable Energy Implementing Agencies such as SECI, NTPC, and NHPC for floating of tenders and opening of bids to avoid concurrent bids.

INFRASTRUCTURE

AMENDMENTS TO THE MODEL RFP FOR HAM AND BOT (TOLL) PROJECTS

The Ministry of Road Transport and Highways ("MoRTH") vide notification bearing number NH-24028/14/2014-H (Vol. IV) (e-151240) dated March 31, 2023 ("Notification"), amended the standard request for proposal ("RFP") of Hybrid Annuity Model ("HAM") and Build Operate Transfer ("BOT")-Toll projects. The Notification issued by MoRTH has received approval from the competent authority.

The amendments in the standard RFP for HAM and BOT (Toll) projects are as follows:

Sr. No.	Clause	Amendments
Amendments in the standard RFP for HAM and BOT (Toll) projects:		
Modification in the Eligibility Criteria for PPP projects:		
1.	2.2.1(f)	A new eligibility criterion has been introduced for bidders to obtain a credit rating of BBB and above from the Securities and Exchange Board of India authorised credit rating agency. Along with the bid, the bidders shall submit a comfort letter obtained from their bankers/financial institutions stating that they will extend credit facilities to the bidder for meeting the project cost, exclusive of grant.
Amendments in the standard RFP for HAM projects:		
Relaxation in the eligibility criteria of HAM projects:		
2.	2.2.2(AA)	The list of eligible projects has been inserted at the end of the clause which includes widening/reconstruction/up-gradation of national/state highways or expressways, municipal roads, and bypasses, construction of stand-alone bridges, railway over bridge ("**ROB**"), tunnels, linear construction projects such as airport runways, railways, metro rail and ports etc.
3.	3.4.1	In clause 3.4.1(b), the list of core sectors has been modified to include Rural Infrastructure Development Fund ("**RIDF**") projects, Pradhan Mantri Gram Sadak Yojana ("**PMGSY**") road, link roads, city roads, rural roads, sector/municipality roads, real estate projects. Further, in case of joint venture projects executed by the applicant, the project cost shall be restricted to the share of the applicant. The total share executed by the applicant can be considered for determining the eligibility of bidder in case the statutory auditor certifies that the applicant has executed the work of other members also. Maintenance works or works of site/micro grading, surface renewal, temporary restoration, urgent works, period maintenance and repair, etc. shall not be considered eligible for evaluation of the bidder. Where estimated project cost and revised project cost are provided, the revised cost of the project shall be considered during evaluation.
Amendments in the standard RFP for BOT (Toll) projects		
Relaxation in the eligibility criteria of BOT (Toll) projects:		
4.	2.2.2(AA)	Clause 2.2.2(AA) has been inserted which provides that for evaluation of highway projects, similar work of 20% (twenty percent) of estimated project cost shall have been completed. Further, more than 90% (ninety percent) of the value of the work shall be completed for the project to be considered as completed and such completed value of work should be equal to or more than 20% (twenty percent) of the estimated project cost. Furthermore, a list of eligible projects has been inserted at the end of the clause, similar to the Clause 2.2.2(AA) of the RFP for HAM projects. For major bridge/ROB/flyover/tunnel projects, a bidder must demonstrate additional experience of last 10 (ten) financial years preceding the bid due date and shall have completed at

Sr. No.	Clause	Amendments
		least 1 (one) similar major bridge/ROB/flyover/tunnel project depending upon the length of the same. In case of tunnel project, the bidder shall have completed construction of at least 1 (one) tunnel of single or twin tubes of length less than or equal to 200 (two hundred) meters or more than 200 (two hundred) meters. Clause 2.2.2(AAA) has been inserted which contains the eligibility criteria for standalone specialized projects. In case the cost of the specialized major bridge/ROB/flyover project is less than or equal to Rs. 1000,00,00,000 (Rupees One Thousand Crore), the bidder shall have completed at least 1(one) similar project in the last 10 (ten) financial years preceding the bid due date, having span equal to or greater than 50% (fifty percent) of the longest span or 100 (one hundred) meters, whichever is less, and the cost of such project shall be at least 20% (twenty percent) of the estimated project cost. Further, in case the cost of the specialized major bridge/ROB/flyover project is more than Rs. 1000,00,00,000 (Rupees One Thousand Crore), the cost of the project being evaluated shall be at least 20% (twenty percent) of the estimated project cost or Rs. 1000,00,00,000 (Rupees One Thousand Crore), whichever is less. In case of tunnel project, the bidder shall have completed at least 1 (one) tunnel project in the last 10 (ten) financial years preceding the bid due date, consisting of single or twin tubes with 50% (fifty percent) cross sectional area to be constructed or cross sectional area of 2-lane highway, whichever is less, and the length shall be 20% (twenty percent) of the tunnel length to be constructed or 2 (two) km, whichever is less and the cost of such project shall at least be 20% (twenty percent) of the estimated project cost or Rs. 1000,00,00,000 (Rupees One Thousand Crore), whichever is less.
5.	3.4.1	Similar amendments to that of clause 3.4.1 of the HAM RFP have been included.

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

The Department of Expenditure of the Ministry of Finance ("**DoE**") vide office memorandum no. F.1/2/2023-PPD dated April 3, 2023 ("**OM**"), amended Rule 171(i) of the General Financial Rules, 2017 regarding performance security. The amount of performance security shall now be 3% (three percent) to 10% (ten percent) of the value of the contract instead of 5% (five percent) to 10% (ten percent) of the value of the contract as specified in the bid documents.

Accordingly, paragraph 6.1.2 of the Manual for Procurement of Goods, paragraph 6.2.5(iv)(a) of the Manual for Procurement of Consultancy and Other Services and paragraph 4.12 and 4.13 of the Manual for Procurement of Works shall stand amended so that the performance security shall be 3% (three percent) to 10% (ten percent) of the value of the project.

MINISTRY OF PORTS, SHIPPING AND WATERWAYS RELEASES DRAFT SAGARMALA INNOVATION AND START-UP POLICY FOR STAKEHOLDER CONSULTATION

The Ministry of Ports, Shipping and Waterways ("**MoPSW**") through Press Information Bureau issued notification dated April 10, 2023 ("**PIB Notification**") on the draft Sagarmala Innovation and Startup Policy ("**Draft Policy**") for stakeholder consultation. The Draft Policy is in furtherance of supporting start-ups through innovations by distributing the responsibilities of stakeholders and building an ecosystem supporting innovation and startups by collaboration between organizations.

The following key areas have been identified in the Draft Policy for startups to flourish:

- Decarbonization
- Optimizing processes through data
- Maritime education
- Multi-modal transportation
- Manufacturing

- Alternate/ advance materials
- Maritime cybersecurity
- Smart communication
- Marine electronics.

Further, the Draft Policy envisages the following:

- A digital portal based selection procedure of the startups which would ensure transparency in the selection procedure.
- A minimum viable product/services may be created and proprietary technology including market entry or scaling up can be commercialized through grants.
- Trials can be carried out, pilot projects can be facilitated, working space can be established and products and solutions can be adopted by creating launch pads at ports.
- Innovation efforts in the maritime sector can be recognised by annual start-up awards.
- Technical knowledge support may be provided, and buyer-seller meetings may be organised.
- Regulatory support in tendering and sub-contracting may be provided.
- For patent filing, company registration, annual filings and closures by start-ups, legal and accountancy back may be provided.

Under the Draft Policy, maritime innovation hubs ("**MIH**") would be used to promote the start-ups which shall perform the following functions:

- To facilitate the development of a product, incubators and accelerators shall be developed.
- A centralized depository containing all pertinent information shall be developed to assist emerging entrepreneurs.
- Know-how sessions about the maritime industry can be conducted, national and international stakeholders may collaborate for mentorship and knowledge sharing and innovation programs can be launched for the development of entrepreneurs.

AMENDMENT TO THE AIRCRAFT (DEMOLITION OF OBSTRUCTIONS CAUSED BY BUILDINGS AND TREES ETC.) RULES, 1994

The Ministry of Civil Aviation vide notification bearing number G.S.R. 291(E) dated April 13, 2023 ("**Notification**"), amended the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1994 ("**Aircraft Rules**").

The amended Rule 3 of the Aircraft Rules states that where the central government has issued any notification under section 9A(1) of the Aircraft Act, 1934 ("**Act**") (directing the owner or the person having control of any building, structure or tree, which exists on any land within such radius, not exceeding 20 (twenty) kilometres from the aerodrome reference point, to demolish such building or structure or, as the case may be, to cut such tree) and the officer-in-charge of the concerned aerodrome believes that any building or tree violates any provision of the said notification issued by the central government, he shall serve a copy of the notification on the owner of the building or tree, as per the procedure laid down in section 9A(3) of the Act. The officer-in-charge shall also send a report of such violation of the notification issued by central government, to the Director General of Civil Aviation ("**DGCA**") or any officer authorized by him.

The amended Rule 4(1) of the Aircraft Rules provides that where the DGCA or any officer authorized by him receives a report under Rule 3(2) of the Aircraft Rules, he shall, by a written order, direct the owner of such building or tree to furnish a plan showing the location of building, or tree, and also disclosing the dimensions or any other details, to the officer-in-charge of the aerodrome, within 60 (sixty) days from the receipt of the order. The period of 60 (sixty) days may be extended for another 60 (sixty) days by DGCA on reasonable grounds.

The owner of the building or tree shall mandatorily furnish information as specified in the order issued under Rule 4(1) of the Aircraft Rules. The order issued under Rule 4(1) of the Aircraft Rules, shall be served on the owner in the manner specified under section 9A (3) of the Act.

In case the owner does not submit the details within 60 (sixty) days, or the period extended by the DGCA, as per Rule 4(1) of the Aircraft Rules, the details submitted by the aerodrome operator shall be considered final.

The amended Rule 7(3) of the Aircraft Rules provides that after the coming into force of the Notification, if any owner constructs, or erects any structure in violation of the Notification, it shall make the owner ineligible for compensation under Rule 7(2) pf the Aircraft Rules.

OUTSOURCING OF INFORMATION TECHNOLOGY SERVICES DIRECTIONS, 2023

The Reserve Bank of India (RBI) vide its Master Directions issued the RBI (Outsourcing of Information Technology Services) Directions, 2023 ("**Directions**"), which shall come into effect from October 01, 2023. The Directions were introduced to ensure that the outsourcing arrangements between the Regulated Entities (REs) and third parties neither diminish the ability of REs to fulfil their obligations to customers nor impede effective supervision by the RBI. These Directions will be applicable to all the banking companies such as primary co-operative banks, non-banking financial companies, credit information companies, national bank for agriculture and rural development, small industries development bank of India, etc.

As per the Directions, all REs must put in place a comprehensive Board-approved IT outsourcing policy which will cover the roles and responsibilities of the Board, Senior Management, IT function, criteria for the selection of activities and service providers, delegation of authority depending on risk and materiality, disaster recovery and business continuity plans, systems to monitor and review the operations of these activities, termination processes, and exit strategies.

Under Appendix-III, the Directions also provide an indicative list of the vendors/entities that are not covered under the ambit of third-party service providers. The list includes licensed payment system operators under the Payment and Settlement Systems Act, 2007, partnership-based Fintech firms who are providing co-branded applications, service, products, services of Fintech firms for data retrieval, data validation and verification services; and/or independent third-party auditors/consultants appointed for certification/audit/VA-PT related to IT infra/ IT services/ Information Security services.

DSK View: *It is pertinent to note that the Directions do not apply to payment system operators, to which the RBI Framework for Outsourcing of Payment and Settlement-related Activities by Payment System Operators, 2021 will apply. From the perspective of the Service Providers, it is to be noted that in lieu of the comprehensive level of compliance required to be followed by the RE's under the Directions, the REs may opt for bequeathing various compliances to the Service Providers in order for the REs to be compliant with the law. While various practical concerns (such as renewal of agreement, scope of material outsourcing of IT services, etc.) are bound to arise from the Directions upon becoming operational are yet to be witnessed, the Directions are expected to give a structured boost to the business of neo banks and other digital Service Providers in India.*

Source: RBI Direction 2023

GUIDELINES ON THE GENERAL CREDIT CARD SCHEME ("GCC FACILITY")

The RBI vide instructions dated April 25, 2023, issued new guidelines regarding the General Credit Card (GCC) Scheme. In terms of the GCC Facility, the GCC shall be issued in the form of a credit card conforming to the stipulations in the RBI Master Direction as updated from time to time. The terms and conditions of the credit facilities extended in the form of GCC shall be as per the Board approved policies of the banks, within the overall framework laid down by RBI. Guidelines of RBI on collateral-free lending for micro and small units issued from time to time shall apply. The cards can be used by individuals for the purpose of entrepreneurial expenses with specified terms and conditions and not for personal use.

Source: GCC Notification

AMENDMENT TO THE MASTER DIRECTION ON KYC

The RBI on April 28, 2023 issued a notification regarding the amendment to the Master Direction on KYC with the aim of aligning with the recent amendments carried out in Prevention of Money Laundering (Maintenance of Record) Rules, 2005, Government Order dated January 30, 2023, titled "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMD Act, 2005) and Financial Action Task Force Recommendations. The key features of the amendment are: (i) the threshold for identification of beneficial ownership has been revised to 10% for companies and trusts; (ii) Aadhar OTP based e-KYC is permitted for updating of KYC in case of non-face to face mode; (iii) REs to ensure compliance with the UNSC sanction list on a daily basis; (iv) clarity on the definition of the 'Shell Bank'; (v) the standards of the correspondent banking relationship have been aligned with international standards; (vi) Enhanced due diligence measures have been introduced in the case of non-face to face mode; and (vii) collection of additional information/ document from non-individuals customers while undertaking customer due diligence process.

Source: Amendment to KYC Master Direction

IMPLEMENTATION OF ADVANCED REFUND API AS PART OF UPI HELP

On April 19, 2023, the National Payments Corporation of India (NPCI) issued guidelines on the Implementation of advanced Application Programming Interface (API) to activate Unified Payments Interface Help (UPI Help) in relation to the RBI circular on Online Dispute Resolution (ODR) system for resolving customer disputes and grievances pertaining to digital payments, using a system-driven and rule-based mechanism with zero or minimal manual intervention.

The Guidelines state that UPI participant Banks and Third-Party Application providers (TPAPs) must implement a 'pre-approved online refund functionality via 'refund API' and should provide real time check transaction status option to merchants. The Banks and TPAPS must also enable a 'reg-complaint API' to merchant platform for real time status of complaints, which can be further provided to their merchants and customers.

The UPI Help feature is required to be embedded with the UPI to ensure quick and speedy redressal of customer complaints and ensuring a seamless experience for users. It must be noted that these functionalities set out in the guidelines shall be implemented on or before June 15, 2023.

DSK View: *It is notable on the part of the NPCI to take initiative and work towards creating a user-friendly platform for customer whereby the customer has an option to raise their complaints not only at the Participant bank/ Third-Party Application providers platform but can escalate the matter by taking it up with the bank where the customer has an account and, after that, to NPCI. These guidelines will go a long way in easing the concerns of the customers in relation to online transactions.*

Source: NPCI guideline

CRED LAUNCHES UPI P2P PAYMENTS

CRED has launched a UPI based peer-to-peer (P2P) payments, providing its users with a new payment option whereby CRED members can transact with CRED members or non-members by searching their contact list and adding mobile number/ UPI ids. The other key features of the CRED UPI P2P payments are: recommendations that provide reminders for recurring payments, nudges for payment protection in potentially risky scenarios, and a custom VPA for enhanced privacy and the "WIN-WIN" feature whereby when members use the P2P experience to pay "special contacts," a reward is issued in the form of cashback to both the payer and recipient.

DSK View: *The new feature as launched by CRED focuses on elevating user experience and enabling users to make payments instantly and in a secure manner. However, it is pertinent to note that as on April 16, 2023, the application of Dreamplug Paytech Solutions Private Limited (subsidiary of Dreamplug Technologies Private Limited, the parent company functioning under the brand name 'CRED') for operating as an Online Payment Aggregator is still under process.*

Source: CRED UPI P2P payments

RBI IMPOSES PENALTY ON INDIAN BANK FOR NON-COMPLIANCE OF KYC NORMS

The RBI, in accordance with the provisions of sections 47A(1)(c), 46(4)(i), and 51(1) of the Banking Regulation Act of 1949, imposed a monetary penalty of Rs. 55 Lakh on Indian Bank (Bank) for non-compliance with certain provisions of the Reserve Bank of India (Know Your Customer (KYC) Directions, 2016 (Directions).

This action is based on the deficiencies in regulatory compliance observed as the bank failed to undertake customer due diligence measures while opening an account in the name of a sole proprietary firm which is mandatory as per Chapter IV, Part II of the said Directions.

Regulatory Background: *In the current digital era and in view of major technological advancements, the primary objective of KYC compliance is to ensure that REs (including banks), monitor and prevent all fraudulent transactions. This compliance is necessary to ensure the highest standard of due diligence, to preclude any money laundering or financing of terrorist activities. Thus, KYC procedures seek to facilitate the understanding of REs towards their customers' financial transactions, thereby assisting in better allocation and management of their customers' risk profile in the most prudent and efficient manner.*

Source: RBI Penalty

RBI IMPOSES PENALTY ON THE KARNATAKA STATE CO-OPERATIVE APEX BANK LTD., BENGALURU FOR NON-COMPLIANCE OF KYC NORMS

RBI imposed monetary penalty of ₹23.23 lakh (Rupees Twenty-Three Lakh and Twenty-Three Thousand only) on the Karnataka State Co-operative Apex Bank Ltd. (Bank) for non-compliance with certain provisions of the Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016 ("**KYC Directions**") as well as directions issued by RBI on Membership of Credit Information Companies ("**CICs**") both collectively referred as Directions.

This action is based on the deficiencies in regulatory compliance observed as the bank did not (i) undertake risk categorization of customers; (ii) put in to use any robust software as a part of effective identification and reporting of suspicious transactions; and (iii) submit data to all the four CICs regularly (at monthly or shorter intervals) as per the said Directions.

Regulatory Background: *Vide its press release dated January 15, 2015, the RBI had mandated all credit institutions to become members of all CICs and submit data (including historical data) thereto. Further, CICs and CIs shall keep such credit information updated regularly on a monthly basis or at intervals as agreed between the CICs and Cis. Under para 12 (Chapter-IV) of the Master Direction - Know Your Customer (KYC) Direction, 2016, all the covered regulated entities are supposed to undertake risk categorisation based on grounds such as the "customer's identity, social/financial status, nature of business activity, and information about the customer's business and their location, geographical risk covering customers as well as transactions, type of products/services offered, delivery channel used for delivery of products/services, types of transaction undertaken (cash, cheque/monetary instruments), wire transfers, forex transactions, etc." Further, para 50 of Chapter-VIII of the Directions stipulates that 'robust software, giving alerts when transactions inconsistent with risk categorization and updated profile of the customers occur, have to place as a part of effective identification and reporting of suspicious transactions. This data has to be reported to the four CICs recognised by the RBI (Credit Information Bureau (India) Limited, Equifax Credit Information Services Private Limited, Experian Credit Information Company of India Private Limited and CRIF High Mark Credit Information Services Private Limited).*

Source: RBI Penalty

APPELLATE COURT HOLDS THAT IT IS NOT NECESSARY TO CLEARLY MENTION THE COMPETITOR'S PRODUCT AND EVEN AN INFERENCE TO SHOW THE PRODUCT IN BAD LIGHT CAN PROVE DISPARAGEMENT

In a case involving comparative advertisement of a toilet cleaner, the Division Bench of the Hon'ble Delhi High Court observed that it is not necessary to clearly mention the competitor's product. An inference, which can be drawn from the manner the advertiser has used the competitor's brands and packaging, would be sufficient to establish disparagement. For reference, the impugned advertisement had shown the competing product in the following manner:

The Bench also observed that any comparative statement which claims that the competing product is inferior and advertiser's product is better, is not puffery and in light of inference to the competing product, such statement would amount to disparagement.

DSK View: *As part of its marketing strategy, business must protect crucial source identifiers including brands, shape of packaging or trade dress.*

[Hindustan Unilever Limited vs. Reckitt Benckiser (India) Private Limited, 2023 SCC OnLine Del 2133]

DELHI HIGH COURT REFUSES TO GRANT INTERIM INJUNCTION AGAINST USE OF PLAYER'S ATTRIBUTES FOR NFT BASED DIGITAL PLAYER CARDS BY ONLINE FANTASY SPORTS (OFS) PLATFORM

In an interesting dispute concerning use of Player's attributes for NFT based digital player cards, the Hon'ble Delhi High Court declined injunction to the Plaintiffs on the basis that the use of name and / or image of celebrity along with data with regard to his on-field performances by OFS platforms is protected by the Fundamental Right to Speech & Expression under Article 19(1)(a) of the Constitution of India. The Court emphasised that Right of Publicity, in Indian context, is not an absolute right. For a plausible claim of passing off, there has to be misappropriation of goodwill and reputation of a celebrity in selling a good or service.

DSK View: *Use of Player's attributes, not amounting to misappropriation of player's goodwill or reputations, is allowed and protected under Article 19(1)(a) of the Indian Constitution.*

[Digital Collectibles PTE Ltd. and Ors. vs. Galactus Funware Technology Private Limited and Anr., 2023: DHC: 2796]

RULING OF THE WTO PANEL IN ICT TARIFFS DISPUTE AGAINST INDIA

In 2020, the European Union ('EU') brought a WTO dispute (WT/DS582/R) against India, challenging the duties imposed by the latter on the imports of certain information communication technology (ICT) products, namely, mobile phones, microphones, transmission apparatus for radio broadcasting, parts used in television cameras, electronic integrated circuits, insulated wire, oscilloscopes and measuring or checking instruments. It was alleged that India has imposed tariffs on the aforementioned ICT products in excess of their relevant tariff bindings as set forth in India's Schedule of Concessions. Violations of commitments were alleged for tariff items 8504.40 ex02; 8517.12; 8517.61; 8517.62; 8517.70 ex01, ex02, and ex03; 8518.30 ex01; and 8544.42 ex01 – of India's WTO Schedule.

In this regard, it was argued by the complainant that the WTO Members, in accordance with Articles II:1(a) and (b) of the General Agreement on Tariffs and Trade 1994 ('GATT'), are obligated to provide tariff treatment in consonance with the commitments set forth in their respective Schedules of Concessions. Through such Schedules, the WTO Members commit to not raising tariffs beyond a certain bound rate.

Further, the various WTO Members who joined the Information Technology Agreement ('ITA') agreed among themselves to bind and eliminate customs and other duties of any kind, with respect to certain ICT products. Consequently, the Annex to the ITA requires the Members to incorporate such measures into their Schedules of Concessions annexed to the GATT. India, being a Member of the ITA, had modified its Schedule of Concessions; however, it later imposed certain import duties on some of these items, by issuance of various customs notifications, and through the First Schedule of the Customs Tariff Act, 1975.

India defended its tariffs by submitting that it understood that the scope of its tariff concessions would not be expanded from the commitments it had undertaken under the ITA, when the Harmonized System of Nomenclature ('HSN') was updated in 2007. It was submitted that at the time of the transposition of its HS2002 Schedule into its HS2007 Schedule, India had assumed that the scope of its WTO commitments was limited to the scope of its ITA undertakings and that the scope of those tariff commitments would not be expanded through the HS2007 transposition process. Further, most of the items identified under the updated HSN did not exist in 1996 and hence, its committed tariff lines were not covered under the ITA. Accordingly, India submitted that the scope of its tariff concessions did not include newer products which come into existence as a result of technological innovation, and which did not exist at the time when the concessions in the Schedule was agreed upon.

The WTO Panel issued its report on 17 April 2023 (available here) wherein it ruled in EU's favour and stated that the ITA specifically requires its Members to incorporate their undertakings into their WTO Schedules of Concessions, which are annexed to the GATT and thus, all such undertakings become binding WTO obligations under Articles II:1(a) and (b) of the GATT. It was further elaborated that, as a general rule, the product scope of Members' tariff concessions evolves over time to capture products that may come into existence as a result of technological developments.

Apart, from the above, the Panel also noted that as of 1 February 2022, India accords unconditional duty-free treatment to products falling under tariff items 8518.30 ex01; and 8544.42 ex01, in accordance with the terms of its WTO Schedule, and is therefore acting consistently with regards to these tariff items.

DSK View: *It is not clear whether the Panel's recommendations will be implemented with respect to the remainder of the tariff lines discussed above. India may be reluctant to eliminate tariffs on ICT products which form a substantial part of the import basket, and thus a major revenue generator. However, some downstream industries argue that the removal of the customs duties on the importation of ICT products may help India in building a manufacturing ecosystem with greater access to inputs, which in turn may lead to an increase in domestically manufactured value-added goods.*

If India plans to appeal the findings of the WTO Panel before the presently defunct Appellate Body; it may continue to maintain its existing tariffs on the above-mentioned ICT products in the interim. The current impasse surrounding the functioning of the Appellate Body makes it unclear as to when and how the report of the Panel will be adopted, if at all.

Regardless, the findings of the Panel shed light on the fact that previously negotiated commitments ought to be revisited considering new technology. EU's win at the WTO may also be a pressure point in the ongoing FTA discussions between India and the EU.

MEDIA & ENTERTAINMENT

CINEFIL PRODUCERS PERFORMANCE LIMITED RECEIVES REGISTRATION AS A COPYRIGHT SOCIETY FOR CINEMATOGRAPHIC WORKS

Cinefil Producers Performance Limited ("CPPL") has received registration as a copyright society under section 33(3) of the Copyright Act, 1957. By way of issuing Cinematograph Performance License (CPL), CPPL under the principal and agent relationship collect royalties from India and overseas in connection with cinematography film work (video). Post Copyright Amendment Act, 2012 came into effect, CPPL is the first copyright society that has been registered for non-music works. Currently IPRS, ISRA and RMPL are existing copyright societies which deal with the music industry. However, the Screenwriters Rights Association of India (SRAI) has not yet been granted registration as a copyright society for literary works. Hence, it may result in a situation where CPPL is able to claim royalties for public performance of cinematographic films but for the same exploitation, royalties to authors of the underlying script of such films may not be made in the absence of any existing copyright society for such underlying works.

MINISTRY OF INFORMATION & BROADCASTING ISSUED ADVISORY ON ADVERTISEMENTS INCLUDING SURROGATE ADVERTISEMENTS OF ONLINE BETTING PLATFORMS

The Ministry of Information & Broadcasting (MIB) has advised media entities, media platforms and the online advertisement intermediaries to refrain from carrying advertisements/promotional content of betting platforms. The Advisory has been issued to all media formats, including newspapers, television channels, and online news publishers, and showed specific examples where such advertisements have appeared in the media in recent times. This is the third instance of MIB issuing such an advisory. The Ministry has also objected to the promotion by a specific betting platform encouraging the audience to watch a sports league on its website, which prima facie appears to be in violation of the Copyright Act, 1957. While emphasizing on the legal obligation as well as the moral duty of the media, the Advisory refers to provisions of the Norms of Journalistic Conduct of the Press Council which, *inter alia*, mentions that "newspapers should not publish an advertisement containing anything which is unlawful or illegal……", and further that "The newspapers and periodicals should scrutinize the advertisement inputs from ethical as well as legal angles in view of the editor's responsibility for all contents including advertisement, under Section 7 of PRB Act, 1867. Revenue generation alone cannot and should not be the sole aim of the Press, juxtaposed much larger public responsibility". The Ministry had earlier issued Advisories in the months of June and October 2022 stating that betting and gambling are illegal, and hence direct or surrogate advertisements of such activities falls foul of the Consumer Protection Act, 2019, the Press Council Act 1978, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and other relevant statutes.

ECONOMIC OFFENCES WING OF MUMBAI POLICE HAS CHARGED CEO OF A FIVE-STAR HOTEL AND OTHERS IN A COPYRIGHT VIOLATION CASE

The director, CEO, general manager, executive manager, event manager and other top officials of a prestigious five-star hotel in Vile Parle (East), Mumbai have been charged in a case of copyright violation and cheating by the Economic Offences Wing (EOW) of Mumbai Police. The hotel is accused of playing multiple hit movie songs on their premises between March 2021 and December 2022 without obtaining an "On Ground Performance" license from Novex Communication Private Ltd, a prominent copyright distribution management firm. Novex Communication Private Ltd is authorized by reputable film production and music companies for On Ground Performance of their films and songs. After discovering that the hotel was playing unauthorized songs, the company's sales officer, Rishi Singh, sent a legal notice to the hotel, but the hotel continued to

play the songs without a license. The complainant filed a complaint with the EOW, alleging that the hotel played songs for commercial programs and events for financial gain, causing losses worth Rs. 2.70 lakh. The FIR was lodged at the Airport police station on Wednesday, and the EOW's CB control unit took over the investigation. EOW DCP (STF) M Pandit confirmed that the hotel has been charged with cheating and violating the Copyright Act. He added that the police are examining if the hotel has committed similar violations in the past.

DELHI HIGH COURT HELD THAT USAGE OF CELEBRITY NAMES FOR ART, SATIRE ETC. ARE PERMISSIBLE UNDER THE RIGHT TO FREEDOM OF SPEECH

In a suit filed by Dream 11's subsidiary, Digital Collectibles Pte. Ltd. ("Plaintiff") carrying on its business in India and worldwide under the trade name "Rario", seeking permanent injunction order against usage of player marks and other attributes, the "mobile rights" and "mobile activation rights" of which have been exclusively assigned to the Plaintiff by BCCI, by "Mobile Premier League" and an application named "Striker" ("Defendants"), the Delhi High Court ("Court") observed that, "*Use of celebrity names, images for the purposes of lampooning, satire, parodies, art, scholarship, music, academics, news and other similar uses would be permissible as facets of the right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India and would not fall foul to the tort of infringement of the right of publicity*". The Court further noted that the information being used by the Defendants, such as the player name and data concerning the player's real-life match performance is part of the public domain and could be used by anyone in view of the same and cannot be monopolized and no actionable right arises in favour of the Plaintiff even if the third-party were to publish such aforesaid information for commercial gain. The Court dismissed the Plaintiff's application for interim injunction while holding that "*An injunction granted at this stage would result in the closure of the business of the defendant no.2 and cause huge financial losses not only to defendant no.2 but also to the users of the Striker platform*". The next hearing is scheduled on July 10, 2023.

A PETITION HAS BEEN FILED IN THE BOMBAY HIGH COURT BY STAND-UP COMEDIAN KUNAL KAMRA AGAINST THE RECENT AMENDMENTS TO THE IT RULES 2021

The standup comic Kunal Kamra moved to the Bombay High Court challenging the recent amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The amendment provides that the central government's Ministry of Electronics and Information Technology (MeitY) can notify a fact-checking body which is empowered to identify and tag what it considers false or fake online news with respect to any activity of the central government. Kamra sought a declaration that Rule 3(i)(II)(A),(C) brought in by the amendment is ultra vires section 79 of the Information Technology Act and Article 14 and 19(1)(a), (g) of the Constitution. The Bombay High Court directed the Ministry of Electronics and Information and Technology (MeitY) to respond to the writ petition submitted by political satirist and activist, Kunal Kamra, against the IT Amendment Rules, 2023. The Court while hearing the petition also observed that the new amendments prima facie lacks the necessary safeguards to protect satire and parody.

MADRAS HIGH COURT RESTRAINS VISHAL FROM RELEASING ANY FILMS WITHOUT DEPOSITING 15 CRORES TO THE CREDIT OF LYCA

Actor Vishal's loan of 21 crore rupees from Lyca Film Production Company was subject to an agreement which guaranteed Lyca the rights to all of Vishal's films until the loan was fully repaid. Lyca filed a case against Vishal when he breached this guarantee by not repaying the loan and sought an injunction against the release of Vishal's film "*Veerame Vaagai Soodum*". The Madras High Court ordered Vishal to deposit Rs. 15 crores as a permanent deposit in the bank and submit property details. A division bench of Chief Justice Raja and Justice Bharatha Chakraborty upheld the single judge's order and ruled that Vishal must pay Rs. 15 Crores to the court. If the amount is not paid, they ordered that any films produced by Vishal Film Factory should not be released in theatres and OTT sites until the judgment of the case is pending before the single judge.

THE BOMBAY HIGH COURT UPHOLDS IPRS' RIGHTS IN A LAWSUIT AGAINST PRIVATE FM PLAYERS

In a lawsuit filed by the Indian Performing Right Society ("IPRS") against private FM radio broadcasters ("Defendants"), the Bombay High Court ("Court") upheld the contentions of IPRS that the broadcast of music by the Defendants required the payment of royalties in respect of the utilisation of literary and musical works, underlying sound recordings notwithstanding the payments made by the broadcasters to owners of the sound recordings. The Court held that "*the communication of the sound recording to the public on each occasion amounts to the utilisation of such underlying literary and musical works in respect of which the authors have a right to collect royalties and accordingly, the authors of such literary and musical works who are entitled to claim royalties on each occasion that such sound recordings, whether part of cinematographic films or otherwise are communicated to the public through radio stations*". The Court further directed the Defendants to pay the royalties to IPRS within a period of 6 weeks failing which interim injunctions restraining the broadcast of music would come into effect.

DELHI HIGH COURT RESTRAINS YOUTUBE CHANNELS FROM SPREADING "FAKE NEWS" ON AARADHYA BACHCHAN

In a suit filed by Aaradhya Bachchan ("Plaintiff") seeking an injunction against various YouTube channels reporting claims about her mental and physical health, the Delhi High Court ("Court") barred the aforesaid channels from distributing, publishing, or posting films or misleading content related to the Plaintiff stating that it has "zero tolerance" in cases when deceptive content relating to a child's physical well-being is published on such sites. The main grievance relates to circulation of various videos on social media claiming ill-health of Plaintiff with few reports suggesting even her death with her morphed images. The suit was filed by the Plaintiff's father on her behalf claiming that the alleged videos are in violation of the Plaintiff's privacy and the provisions of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The Court held that "*Circulating information with respect to the mental and physical health of a child is completely impermissible in law*". The Court also directed YouTube to immediately delist the 24 videos that were identified in the plaint and also provide details (such as contact details, email ids, etc.) of these Defendants to the Plaintiff. The Court further directed the Ministry of Electronics and Information Technology (MeitY) to ensure that the offending and defamatory contents are made inaccessible on the internet.

THE ITALIAN COMPETITION AUTHORITY IS PROBING META OVER MUSIC COPYRIGHT NEGOTIATIONS

The parent company of Facebook, Meta, is under investigation by Italy's competition watchdog for allegedly abusing its dominant position during copyright negotiations with Italian music artists. The Italian Competition Authority is investigating Meta's "alleged abuse of economic dependence" of the Italian Society of Authors and Publishers (SIAE), the public authority charged with protecting artists' copyright in Italy. The SIAE had a contract with Meta that expired in December 2022, and unsuccessful renewal talks led to Meta cutting off negotiations and removing SIAE's artists from all its platforms.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

AMENDMENTS TO COMPANIES ACCOUNTS RULES, 2014

The MCA, *vide* its notifications dated March 24, 2021 (accessible here) and March 31, 2022 (accessible here) had notified the Companies (Accounts) Amendment Rules, 2021 and Companies (Accounts) Amendment Rules, 2021 respectively (collectively, the "**Accounts Amendment Rules**"), which amended the Companies (Accounts) Rules, 2014.

As per the Accounts Amendment Rules, every company using accounting software for maintaining its books of account, shall with effect from April 1, 2023 use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) AMENDMENT RULES, 2023

The MCA, *vide* its notification dated April 17, 2023 (accessible here) has notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 ("**Amendment Rules**"), which amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. As per the Amendment Rules, the responsibility of striking off companies has been transferred from Registrar of Companies to the Registrar, Centre for Processing Accelerated Corporate Exit with effect from May 1, 2023. The Amendment Rules has also substituted the existing forms related to striking up off companies with new E-Form STK-2 (Application by company to ROC for removing its name from register of companies), Form STK-6 (Public Notice) and Form STK-7 (Notice of Striking Off and Dissolution).

RBI & FEMA

DRAFT CIRCULAR ON FAIR LENDING PRACTICE

RBI released a draft circular on "Fair Lending Practice - Penal Charges in Loan Accounts" ("**Draft Circular**") vide it's press release bearing reference number 2023-2024/56 dated April 12, 2023 ("**Press Release**"). The Draft Circular is applicable to regulated entities, namely, all Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks, excluding Payments Banks), all Primary (Urban) Co-operative Banks, NBFCs (including HFCs) and All India Financial Institutions (EXIM Bank, NABARD, NHB, SIDBI and NaBFID ("**REs**").

Some of the key provisions of the Draft Circular are given below:

1. determination of interest rates on credit facilities, including conditions for reset of interest rates, to be strictly governed by the relevant regulatory instructions issued in this regard and REs shall not introduce any additional component to rate of interest;

2. if a penalty is levied for the borrower's breach of a material term or condition of the loan agreement, the same would be considered as a "penalty charge" instead of "penal interest" and the same will not be capitalised, i.e. no further interest will be computed on such charges;

3. if the credit risk profile of a borrower undergoes change, REs may alter credit risk premium as per the contracted terms and conditions, in terms of extant instructions as rate of interest on a loan includes appropriate credit risk premium reflecting the credit risk profile of the borrower;

4. relevant regulatory directions should be followed in determining interest rates on credit facilities, including the requirements for interest rate resets and REs should not add any extra components to the interest rate;

5. the quantum of penal charges shall be proportional to the defaults/ non-compliance of material terms and conditions of loan contract beyond a threshold, which threshold is to be determined by the REs and shall not be discriminatory within a particular loan / product category;

6. Penal charges and the conditions precedent to be clearly disclosed by REs to customers in the loan agreement and most important terms and conditions or Key Fact Statement (KFS) as applicable, in addition to being displayed on REs website under Interest rates and Service Charges;

7. whenever reminders are sent to borrowers to make instalment payments, the applicable penal charges must also be communicated;

8. REs shall ensure that there is a clearly laid down board approved policy on penal charges or similar charges on loans, by whatever name called.

DSK View: *In its press release, RBI observed, that although REs have been given the opportunity and independence to formulate their policies for charging penal interest, REs are using penal rates of interest, as a means of revenue enhancement. The Draft Circular has made it amply clear that REs should use penal interest/charges only to inculcate sound credit discipline amongst borrowers and not as a means of revenue enhancement. Currently, REs are following divergent practices with respect to penal interest rates and the Draft Circular, if notified, will bring much relief to both individual and corporate borrowers.*

FRAMEWORK FOR ACCEPTANCE OF GREEN DEPOSITS

RBI released the Framework for acceptance of Green Deposits on April 11, 2023, vide notification bearing reference number RBI/2023-24/14 ("**Green Deposit Framework**"). The Green Deposit Framework will be applicable to Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks and Payments Banks), deposit taking Non-Banking Finance Companies (NBFC) including Housing Finance Companies (HFCs) ("**Applicable Entities**") and shall come into effect from June 1, 2023.

The Green Deposit Framework has been issued by the RBI to encourage Applicable Entities to offer green deposits to customers, protect interest of depositors, aid customers to achieve their sustainability agenda, address greenwashing concerns and help augment credit flow to green activities/projects.

Some key provisions of the Green Deposit Framework are given below:

1. Applicable Entities shall issue green deposits denominated in Indian Rupees, as cumulative/non-cumulative deposits and the green deposits would be renewed or withdrawn on maturity at the option of the depositor.

2. Provisions with regard to tenure, size, interest rate as given under the Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016 dated March 03, 2016, Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 dated August 25, 2016 and Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021 dated February 17, 2021, shall be applicable to green deposits.

3. Board of directors of Applicable Entities shall formulate a policy on green deposits and the same shall be published on the website of the Applicable Entity. The board of such entities also need to develop a financing framework for allocation of green deposits which shall be made available on the website of the Applicable Entities, and which shall cover, amongst other things, green activities or projects utilizing the green deposits, process adopted by the Regulated Entities for project allocation and selection, reporting mechanism, etc.

4. A list of eligible green activities/projects under sectors such as renewable energy, energy efficiency, clean transportation, climate change adaptation, pollution prevention and control, sustainable management of living natural resources, aquatic biodiversity conservation, etc. is provided in the Green Deposit Framework, for which allocation of green deposits by the Applicable Entities are encouraged.

5. Green deposits of Applicable Entities shall undergo an independent third-party verification/assurance on an annual basis and must cover *inter alia* end use of the funds raised under green deposits, policies of Applicable Entities while selecting projects, management of funds, etc.

DSK View: *The RBI, in its Statement on Developmental and Regulatory Policies, issued in February 2023, recognised the need to have a framework to address climate-related financial risks for Applicable Entities, to address the financial stability implications they may face as a result of climate change. The Green Deposit Framework will help to provide a comprehensive guide to Applicable Entities, within which to issue green deposits while trying to ensure end use of proceeds meet the required purpose of climate change and greenwashing concerns are suitably addressed.*

RERA

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY ("MAHARERA") SEND SECOND NOTICE TO 16,000 PROMOTERS FOR NON-COMPLIANCE WIT RERA ACT

A second show-cause notice was sent by Maharashtra Real Estate Regulatory Authority ("**MAHARERA**") to about 16,000 builders who failed to update the information required under the Real Estate Regulation and Development) Act ("**RERA Act**"). The promoters were asked to update the clarifications and information on the Maharera website within 15(fifteen) days of receiving the emails sent by MAHARERA sent at the time of project registration.

As per the provisions of RERA Act, every promoter is required to regularly update the information pertaining to their project information on the website maintained by MAHARERA. In January, MAHARERA issued show cause notices to around 19,500 projects that did not update the mandatory information of the project as per Section 11 of the RERA Act.

CONFERENCE HELD BY THE CENTRE TO DISCUSS WAYS TO REDRESS CONSUMER GRIEVANCES IN REAL ESTATE IN MUMBAI

The Department of Consumer Affairs organized a conference in association with the Government of Maharashtra in Mumbai on April 18, 2023 discussing effective redressal of the grievances pertaining to the real estate sector.

According to the Department of Consumer Affairs, there is a rise in the number of cases in consumer commissions, despite separate tribunals, such as Real Estate Regulation Authority ("**RERA**") and National Company Law Tribunal ("**NCLT**"), for housing sector cases. The systematic policy interventions required to reduce litigations in the housing sector was discussed in the said conference post analysing several cases filed in the consumer commission.

UTTAR PRADESH RERA HIRED CONSULTANT COMPANY TO FIND A WAY OUT OF LAND DUES LOG-JAM

The development authorities of Noida and Greater Noida and real estate corporations are at odds over legacy of land dues amounting to Rs 39,000 Crore ("Rupees Thirty-Nine Crore Only"). In order to resolve this deadlock, the Uttar Pradesh Real Estate Authority ("**UP RERA**") has appointed a consultant who will produce a report in a month outlining possible roadmap to resolve the said issue. This impasse has halted the registries across the residential societies in these areas and have also led residents to live in societies with subpar/ incomplete amenities.

UP RERA TAKES STRICT ACTION AGAINST DEVELOPERS DUE TO NON-ATTENDANCE OF THE MEETING ORGANISED BY THE AUTHORITY

An action was taken by the UP RERA against 41(Forty-One) developers for not joining the review meeting of the authority. In the said case, a meeting was organised by UP RERA for a total of 51 (Fifty-One) members, out of which 41(Forty-One) developers did not attend the meeting. Due to the same, UP RERA took actions including freezing of bank accounts, withholding of purchase of unit sales, and ban of new projects against such defaulting developers.

INSOLVENCY LOOMS OVER 308 HOUSING PROJECTS IN MAHARASHTRA

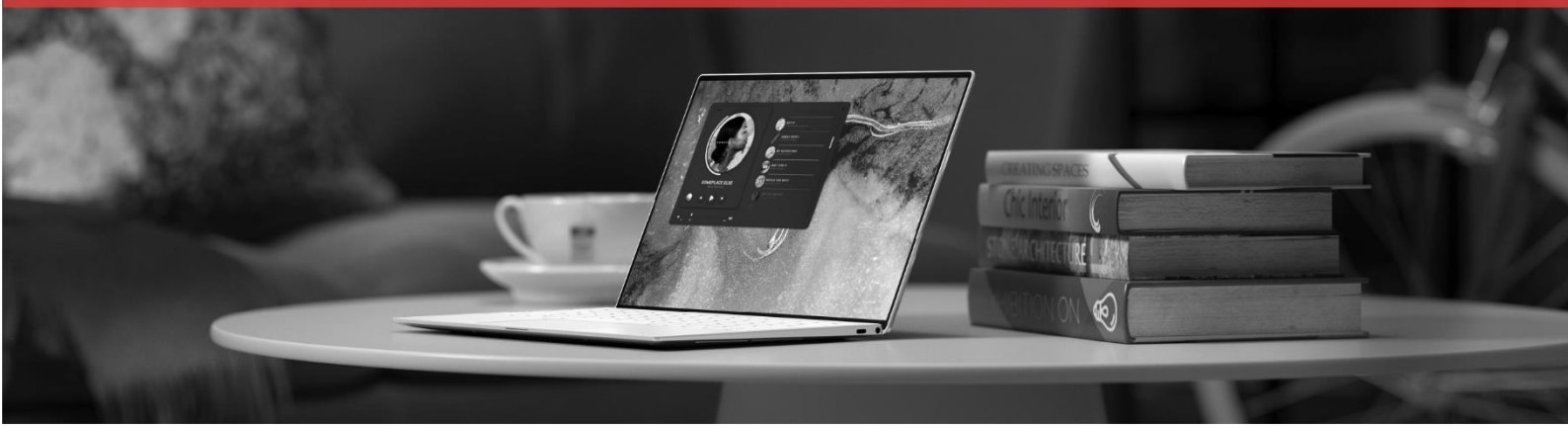
According to data released by the MAHARERA, insolvency proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 were initiated against 308 (Three Hundred Eight) housing projects in Maharashtra. The NCLT noted that these projects have been the subject of insolvency and bankruptcy proceedings by several banks, financial institutions, and other credit sources in the market.

As per the information available on the official website of the MAHARERA, out of the aforesaid 308 projects, 233 projects

are in the Mumbai metropolitan area, 63 in Pune, 5 in Ahmednagar, 4 in Solapur, 1 each in Ratnagiri, Chhatrapati Sambhajinagar, Nagpur, and Sangli.

PETITION IN HON'BLE HIGHT COURT OF ODISHA AGAINST ODISHA RERA'S MOVE TO HIKE REGISTRATION FEES

The Hon'ble High Court of Orissa issued notice to the Odisha Real Estate Regulatory Authority ("**ORERA**") in response to a petition filed against the recent raise of registration fees towards the registration of the project by the authority. The Petitioner called such rise as "*exorbitant, unreasonable, and arbitrary*". The ORERA hiked the registration fees for the registration of project ten-fold *vide* a notification dated July 28, 2022. The Petitioner pleads that such notification providing an arbitrary increase shall be quashed. The bench declined to provide any temporary relief to the petitioners which is CREDAI Orissa Private Limited along with a developer.



IRDAI ISSUES CYBER SECURITY GUIDELINES

The Insurance Regulatory and Development Authority of India ("**IRDAI**") vide its notification dated April 24, 2023, issued the Information and Cyber Security Guidelines, 2023 ("**Guidelines**") (*accessible here*). The Guidelines have been issued with the objective of enhancing the resilience of the insurance industry in response to the widespread utilization of information technology and the increasing occurrence of cyber incidents, and are applicable to all data created, received, or maintained by insurance intermediaries including brokers, corporate agents, web aggregators, third-party administrators (TPAs), insurance marketing firms (IMFs), insurance repositories, insurance self-network platform (ISNP), corporate surveyors, motor insurance service providers (MISPs), common service centres (CSCs), and the Insurance Information Bureau of India (IIB) ("**Regulated Entities**") while carrying out their functions. The Guidelines, *inter-alia*, provides for: (a) classification of insurance intermediaries based on gross insurance revenue; (b) applicability of National Institute of Standards and Technology Cybersecurity Framework on Regulated Entities; (c) format of the auditor's report, including the audit summary, overall findings, non-compliances, risk rating, and audit checklist; (d) eligibility criteria for the audit firm; and (e) format of the auditor's report, including the audit summary, overall findings, non-compliances, risk rating, and audit checklist. The predecessor of the Guidelines was issued in 2017 and unlike the Guidelines, was aimed at ensuring that insurers are adequately prepared to manage any cyber threat to their systems, processes, and data.

MEITY NOTIFIES IT AMENDMENT RULES FOR REGUATING ONLINE GAMING

The Ministry of Electronics and Information Technology ("**MeitY**") has issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ("**IT Amendment Rules**") (*accessible here*) on April 6, 2023, in order to regulate the online gaming industry in India under the ambit of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules**").

The IT Amendment Rules, *inter-alia*, envisages: (a) undertaking of certain due diligences by the online gaming intermediaries as prescribed under the IT rules; (b) any aggrieved person whose grievances is not resolved by grievance officer within prescribed timelines can approach the grievance appellate committee which was earlier allowed only against the order of grievance officer; (c) the online gaming intermediary who provide access to 'permissible online real money game' is required to inform its users about the change in its rules and regulations, privacy policy or user agreement within 24 (Twenty Four) hours from such change; (d) the intermediaries are now required to undertake reasonable efforts to not host, display, modify, publish, transmit, store or share any information which is obscene, pornographic, related to online game (game offered on internet and is accessible by user through computer resource of intermediary) that cause harm to user; and (e) the online gaming intermediaries are now required to undertake additional due diligences envisaged under Rule 4 of the IT Rules such as appointment of chief compliance officer, appointment of nodal contact person, appointment of a resident grievance officer, publication of periodic compliance report, display of verification mark given by online gaming self-regulatory body on the permissible online real money game, information to users about the withdrawal/ refund policy, etc.

Further, MeitY can now designate online gaming self-regulatory bodies which will be responsible for verifying an online real money game as permissible online real money game and giving verification mark to same. For getting such designation, any entity which fulfils criteria prescribed under

Rule 4A(2) of IT Amendment Rules may file an application with MeitY.

GOVERNMENT UNDERTAKES PAUSING FACT-CHECKING AMENDMENT OF IT RULES UNTIL JULY

On April 27, 2023, MeitY gave an undertaking to the High Court of Bombay that the fact-checking unit to be set up under the IT Amendment Rules will be put on pause until July 5, 2023. This undertaking was given in response to the petition filed by comedian Kunal Kamra challenging Rule 3(i)(II)(A) and (C) of the IT Amendment Rules, which empowers the government to identify fake, false, or misleading news in respect of any business of the Central Government and order its removal by social media intermediaries from their platforms. The petition stated that the aforementioned rule is ultra vires to Section 79 of the Information Technology Act, 2000, and Article 14 and 19(1)(a) & (g) of the Constitution.

TAMIL NADU GOVERNOR GIVES ASSENT TO THE STATE'S ONLINE GAMBLING AND ONLINE GAMING RULES

On April 10, 2023, the Tamil Nadu government published the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 ("**Act**") in the state gazette (*accessible here*) after Shri R.N. Ravi, Governor of Tamil Nadu, gave his assent to the re-adopted bill. The Act comes into force despite the amendments related to online gaming being notified under the IT Amendment Rules by the Central Government. The Governor had earlier returned the bill in March, stating that it was ultra vires to the Constitution and against the judgments of courts, however, the legislative assembly of Tamil Nadu re-adopted the same.

The Act establishes the Tamil Nadu Online Gaming Authority ("**Authority**") which will regulate online games in the state of Tamil Nadu and issue certifications of registration to local online game providers. The Authority will also resolve any grievances or complaints it may receive against any of the online game providers. The Act *inter-alia* prohibits: (a) online gambling; (b) the playing of online games of chance with money or other stakes or online games specified in the Schedule of the Act; (c) advertisement in any form that induces online gambling or partaking in such online games; and (d) the transfer of money for online gambling or playing online games specified in the schedule. The specified online games of chance in the schedule are rummy and poker.

Under the Act, any person indulging in online gambling or online games of chance with money or other stakes may be punished with imprisonment for a term that may extend to 3 (Three) months or with a fine up to INR 5,000 (Indian Rupees Five Thousand) or with both. Further, those who induce people to play online gambling or games of chance may face punishment with imprisonment of up to 1 (One) year or with a fine that may extend to INR 5,00,000 (Indian Rupees Five Lakhs) or with both. Additionally, any person who provides online gambling services or games listed in the schedule to be played with money or other stakes may face punishment with imprisonment for a term that may extend to 3 (Three) years or with a fine that may extend to INR 10,00,000 (Indian Rupees Ten Lakhs), or with both.

DELHI HIGH COURT ORDERS DIRECTIONS TO PREVENT CIRCULATION OF NON- CONSENSUAL INTIMATATE PICTURES

The Delhi High Court ("**DHC**") vide its judgement dated April 26, 2023 (*accessible here*) in the case of Mrs. X *vs* Union of India and Others, issued directions to the Central Government, Delhi Police and social media intermediaries for handling the cases pertaining to non-consensual images uploaded on the internet in an expeditious manner which minimizes the mental trauma of victim. The DHC observed that the right to be forgotten is subsumed in the right to privacy and dissemination of such intimate images is a flagrant violation of the fundamental right.

The direction of DHC comes in backdrop of the concern that once an image is uploaded on the internet, it is very difficult to control its spread on the internet. The DHC, *inter-alia*, directed that: (a) the affidavits filed to court for takedown order must be in sealed cover; (b) the grievance officer of the intermediaries shall be appropriately sensitised and the definition of non-consensual intimate images must be interpretated in a broad manner to include sexual images obtained without consent; (c) the timelines envisaged in the Rule 3 of the IT Rules must be complied without any exception; (d) the intermediaries must sensitize users about the reporting mechanism by prominently displaying the same on the websites; (e) the Central Government may develop a third-party encrypted platform for collaborating with various search engines for registering the offending content and/or its link; (f) a dedicated helpline number may be developed for reporting the content; and (g) the Online Cybercrime Reporting Portal should shall have a status tracker from depicting status of the matter from complaint to its resolution.

The DHC took cognizance of the reluctance exhibited by the social media intermediaries in dealing with such complaints and further directed that every district cyber police station must have an assigned officer to liaise with the intermediaries against such complaints, and the intermediaries are directed to expeditiously respond to police and cooperate unconditionally in such matters.

DELHI HIGH COURT DIRECTS CCI TO ADJUDICATE ON THE NEW PAYMENTS POLICY OF GOOGLE

On April 26, 2023, the division bench of DHC issued notice on the appeal filed by Google's parent company Alphabet Inc against a single judge order directing the Competition

Commission of India ("**CCI**") to take up the applications moved by the Alliance of Digital India Foundation ("**ADIF**") against Google's new payment policy for its play store in India. The new policy requires app developers to use Google's billing system and pay a commission on in-app purchases, which has been criticized for being anti-competitive and violating Indian laws. Several app developers had filed complaints with the CCI, seeking an investigation into Google's conduct. However, Google had challenged the CCI's jurisdiction to investigate the matter and argued that other regulatory bodies were already examining the issue.

The single judge bench of the DHC vide its order dated April 24, 2023, had observed that the proceedings before the CCI would not be vitiated due to vacancy or any defect in its constitution. The said order also mentioned that "There is no impediment, legal or otherwise, in directing the CCI to take up the applications under Section 42 of Competition Act, 2002 as filed by the petitioner for hearing and considering the same in accordance with law on or before April 26, 2023. It is made clear that the observations made herein are only to the extent of deciding the present lis before this court and shall not tantamount to any expression on the merits of the case and the same is therefore, without prejudice to the rights and contentions of all parties to be taken at the appropriate proceeding".

WHITE COLLAR CRIME

HIGH COURT CANNOT CONDUCT A MINI TRIAL WHILE EXERCISING POWERS UNDER SECTION 482 OF CRPC:

The Supreme Court in the case of ***Central Bureau of Investigation vs. Aryan Singh*****,** (Criminal Appeal Nos. 1025-1026 OF 2023) held that a High Court cannot conduct a "mini trial" while exercising powers under Section 482 CrPC. In the present case both the Respondents (Aryan Singh and Gautam Cheema) had filed discharge applications before the learned Trial Court in criminal proceedings for offences under various sections of the IPC which came to be dismissed on merits. Thereafter, exercising its powers under Section 482 of the CrPC the High Court of Punjab and Haryana quashed the proceedings against the Respondents observing that the allegations/charges against them have not been proved and that the prosecution is malicious. On an appeal preferred by the CBI, the Supreme Court observed that the order passed by the High Court, appeared as the High Court was conducting a mini trial. The Supreme Court held that the High Court exceeded its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 CrPC and/or Article 226 of the Constitution of India. The Court further held that the High Court had materially erred by going into the details of the allegations and the material collected in the course of the investigation against the Respondents at this stage, which essentially has to be done during the trial.

DSK View: *The Supreme Court with this judgement, reiterated the limited powers of the High Court while deciding a petition under section 482 of the CrPC. The Supreme Court has clarified that as per cardinal principle of law, at the stage of discharge or quashing of the criminal proceedings, the Court is not required to conduct a mini trial.*

PROVIDING ILLEGIBLE DOCUMENTS IN PREVENTIVE DENTITION CAUSES GRAVE PREJUDICE TO THE DETENU:

The Supreme Court in the case of ***Pramod Singla vs. Union of India and Ors.*** (Crl. Appeal No. 001051 of 2023) has held that providing illegible documents in preventive detention violates the principles enshrined under Article 22(5) of the Constitution of India and also vitiates the reliefs to the detenu under other statutory laws. In the present case, the Appellant was arrested along with other Accused persons by the Directorate of Revenue Intelligence ("**DRI**") for the offence of smuggling gold in India but was later released on bail. Subsequently, DRI sent a proposal to the Joint Secretary (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("**COFEPOSA**") ("**Detaining Authority**") to issue an order of detention against the Appellant. The Detaining Authority passed the detention order against the Appellant and the Appellant was again arrested by the DRI. The Appellant sent a representation to the Detaining Authority which was rejected. The Appellant also sent a representation to the Central Government and subsequently to the advisory board. The Central Government, on advice from the advisory board rejected the representation of the Appellant after a delay of 60 days. The Appellant filed a writ in the High Court of Delhi seeking to quash the detention order against him on the ground that the Detaining Authority considered the Appellant's representation in a timely manner however the Government took 60 days to consider it. The said writ petition was dismissed by the High Court. In appeal before the Supreme Court, the Court held that the present case fell within the ambit of the judgment in *K.M. Abdulla Kunhi vs. Union of India, [(1991) 1 SCC 476]*, where the preventive detention of the petitioner under the COFEPOSA was challenged on similar grounds. A Constitutional Bench of the Apex Court, considering the issue of submitting representation before and after the matter is referred to the advisory Board, had held that the Government must wait for the decision of the Advisory Board before making its decision on the representation and thus in the present case the Government was right in holding its decision for the advice of the advisory board.

The Court further observed that the documents supplied to the Appellant as grounds for his preventive detention were

illegible and in Chinese language. The Court held that in cases where illegible documents are supplied to the detenu, a grave prejudice is caused to him in availing his right to send a representation to the relevant authorities, because the detenu while submitting his representation, does not have clarity on the grounds of his/her detention. In such circumstances, the relief under Article 22(5) of the Constitution of India and the relevant statutory provisions allowing for submitting a representation are vitiated since no man can defend himself against an unknown threat. The Court further while allowing the petition held that principle of parity is squarely applicable in this case, as the co-detenue with identical circumstances has already been granted the relief of quashing the detention order.

DSK View: *The Apex Court in this judgement has rightly observed that preventive detention being a colonial legacy has a great potential of being abused and misused.*

THE COURT WHILE DISPENSING JUSTICE SHOULD NOT ALIGN WITH ANY ONE OF THE PARTIES

The Orissa High Court, in the case of ***Raj Kishore Behera & Anr. vs. State of Odisha*** (CRLMC No. 343 of 2023), criticised and set aside the orders passed by a JMFC and Sessions Judge for rejecting default bail of two accused persons arraigned under sections 302, 364, 120(B), 114 and 34 of the IPC, despite the fact that the chargesheet was not filed before the court within the statutory period. In this case, the petitioners were arrested on July 11, 2022 and remanded to judicial custody on the same day. Subsequently their application for bail was also rejected on the same day. The investigating officer ("**IO**") submitted that the chargesheet was submitted to the Court Sub- Inspector ("**CSI**") on November 5, 2022, however, the same was not placed before the Court until November 11, 2022 (i.e., 5 days after the expiry of the statutory period). Learned JMFC, despite knowing the fact that the submission of chargesheet was delayed due to laches and lapse of CSI staff, rejected the bail application on the ground that the right of the accused persons to statutory bail came to an end, as there was no delay in submission of the chargesheet by the IO. A similar order was passed by the Court of Sessions, conceding to the findings of the JMFC. Aggrieved by the same, the petitioners filed an Application under Section 482 of the CrPC before the Hon'ble High Court, seeking to be released on default bail as per the provision under section 167(2) of CrPC, on the ground that the chargesheet had not been submitted even after the lapse of the statutory period of 120 days. The High Court allowing the default bail of the Petitioners held that when the question of liberty of a person is involved, the Court is expected to rise to the occasion to dispense justice without aligning itself with any party whatsoever. The Court further held that the JMFC committed a glaringly manifest illegality by condoning the delay of the prosecution in submitting the chargesheet and was surprised by the fact that the Sessions Judge, despite being a senior judicial officer, also failed to appreciate the principle of law.

DSK View: *The High Court in this judgment has criticised the conduct of the JMFC and Sessions Court in turning a blind eye to the statutory rights of a person and for aligning with the prosecution. Such mechanical and unconscionable views taken by lower Courts often result in defeating the valuable rights of an accused.*

HIGH COURT ORDER SEEKING EXPLANATION FROM LOWER COURTS CAN HAVE CHILLING EFFECT ON DISTRICT JUDICIARY:

In the case of ***Totaram vs. State of Madhya Pradesh & Anr.*** (Cri. Appeal No. 1010 of 2023) the Hon'ble Supreme Court set aside an order of the Madhya Pradesh High Court rejecting bail granted to Appellant by the Second Additional Sessions Judge. In the present case the Appellant was arrested under sections 294, 323, 342, 354 and 506 read with section 34 of the IPC. Firstly, the Appellant made an application for bail before the Trial court which was rejected. Subsequently, on July 21, 2022, the High Court declined to grant bail to the Appellant. The application before the High Court was dismissed as withdrawn while granting liberty to the Appellant to file a fresh application for bail after the passage of reasonable time. Subsequently, the charge-sheet came to be filed and thereafter, the Appellant moved a second regular bail application. The Additional Sessions Judge granted bail on the ground that the charge-sheet had been submitted and the other accused have been granted bail.

The High Court of Madhya Pradesh cancelled the bail which was granted to the Appellant by the Additional Sessions Judge and observed that the trial court had granted bail to the Appellant without taking into account an earlier order of the High Court rejecting bail. The High Court further directed the police to arrest the Appellant immediately. The Supreme Court observed that though the application for bail had been rejected both by the trial court and the High Court on the earlier occasion, the High Court had granted liberty to the Appellant to move a fresh application for bail after a reasonable period of time. The Supreme Court observed that the Trial Judge's decision to grant bail to the Appellant was eminently fair and reasonable based on the fact that the charge-sheet had been submitted and the other accused were already out on bail, hence, in the above circumstances the High Court's order was held to be disproportionate and it was observed that such orders would produce a chilling effect on the District judiciary. The Supreme Court set aside the order of the High Court and granted bail to the Appellant, subject to the terms and conditions imposed by the Trial Court.

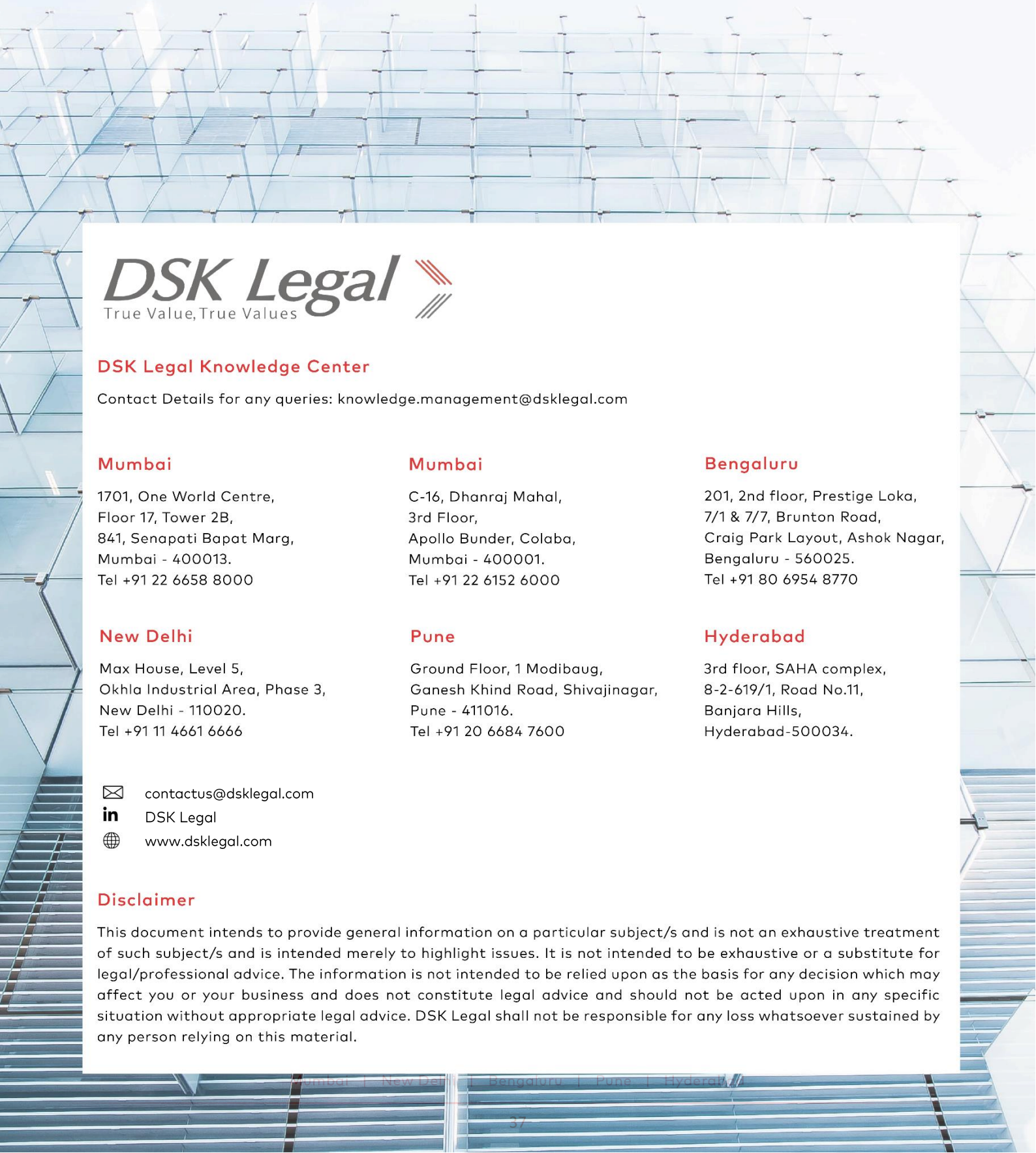
DSK View: *The order passed in the present case reaffirms the importance of the independence of the judiciary and*

emphasizes that judges should be able to exercise their powers without fear of reprimands.

SUPREME COURT OF INDIA RECONSIDERED THE DECISION IN THE LANDMARK CASE OF *CBI VS. ANUPAM J. KULKARNI*:

In the case ***Central Bureau of Investigation vs. Vikas Mishra*** (Cri. Appeal No. 957 of 2023) the Supreme Court of India reconsidered the decision in the landmark case of *CBI vs. Anupam J. Kulkarni [(1992) 3 SCC 141]* that prohibits the detention of an accused person in police custody beyond the first 15 days of arrest. In the present case, Respondent was arrested under sections 120B and 409 of the IPC and provisions of the Prevention of Corruption Act, 1988. The Respondent was initially remanded to CBI custody for seven days from April 16, 2021, but was hospitalized after two and a half days. Later, the Accused was granted interim bail. However, on December 8, 2021, the Special Court cancelled the bail granted to him on the ground that he did not appear before the Special Court, despite specific directions and also did not cooperate with the CBI. Subsequently, the Respondent submitted an application for grant of default bail under section 167(2) of CrPC. However, the Special Judge rejected the said application *inter alia* on the ground that Respondent was granted interim bail under the provisions of Chapter XXXIII CrPC and his detention pursuant to cancellation of bail was on the strength of warrants issued by the Court.

The Respondent then preferred an application before the High Court which was allowed and the High Court directed to release the respondent on statutory/default bail under Section 167(2) of CrPC as even within 90 days from the date of re-arrest, i.e., from December 11, 2021, the charge sheet was not filed and the same came to be filed only on June 19, 2021. The Supreme Court in this case observed that, although in the case of Anupam J. Kulkarni, this Court observed that there cannot be any police custody beyond 15 days from the date of arrest, however, as Respondent has avoided the full operation of the order of police custody granted by the Special Judge, by getting himself hospitalized and thereafter, obtained the interim bail. The Court therefore held that by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, will be equivalent to giving a premium to an Accused who has been successful in frustrating the judicial process. Hence, the Court permitted police custody remand of the Respondent for four days and allowed the petition.



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